

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: DISCUSSION/POSSIBLE VOTE ON FULL POWER OPERATING
LICENSE FOR VOGTLE, UNIT 2

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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DISCUSSION/POSSIBLE VOTE ON FULL POWER
OPERATING LICENSE FOR VOGTLE, UNIT 2

- - -

PUBLIC MEETING

NUCLEAR REGULATORY COMMISSION
ONE WHITE FLINT NORTH
ROCKVILLE, MARYLAND

THURSDAY, MARCH 30, 1989

The Commission met in open session, pursuant
to notice, at 2:00 p.m., Lando W. Zech, Jr., Chairman
presiding.

COMMISSIONERS PRESENT:

- Lando W. Zech, Jr., Chairman of the Commission
- Thomas M. Roberts, Member of the Commission
- Kenneth M. Carr, Member of the Commission
- Kenneth C. Rogers, Member of the Commission
- James R. Curtiss, Member of the Commission

STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

ROBERT W. SCHERER, CEO and Chairman of the Board
Georgia Power Company

A. WILLIAM DAHLBERG, President
Georgia Power Company

PAUL D. RICE, Executive Vice President
Georgia Power Company

R. PATRICK McDONALD, Executive Vice President
Nuclear Operations, Georgia Power Company

GEORGE BOCKHOLD, Plant Manager
Vogtle Plant, Georgia Power Company

C. KEN McCOY, Vice President for Nuclear Generation
Vogtle Plant, Georgia Power Company

MR. SNEZICK, Deputy Director, NRR

JOHN HOPKINS, NRR Project Manager

MEL ERNST, Deputy Regional Administrator, Region II

JOHN ROGEEY, Senior Resident Inspector

DAVE MATTHEWS, Project Director, NRC

MR. TAYLOR

P-R-O-C-E-E-D-I-N-G-S

2:00 p.m.

CHAIRMAN ZECH: Good afternoon, ladies and gentlemen. Commissioner Roberts will be joining us shortly.

The purpose of today's meeting is for Georgia Power Company and the NRC staff to brief the Commission concerning the readiness of Vogtle Unit 2 to receive a full power license.

At the conclusion of the meeting, the Commission may vote to authorize the Director of NRR, after making the appropriate findings, to issue a full power operating license for Vogtle Unit 2.

The Commission will first be briefed by Georgia Power Company and then by the NRC staff. Copies of the slides, I understand, are available at the briefing room entrance.

Do any of my fellow Commissioners have any opening comments before we begin this afternoon?

First of all, I'd like to welcome the representatives from Georgia Power Company here.

Mr. Scherer, are you going to begin?

MR. SCHERER: Yes.

CHAIRMAN ZECH: You may proceed, sir.

MR. SCHERER: Thank you, Mr. Chairman.

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1 Mr. Chairman, Commissioners Carr, Rogers and
2 Commissioner Roberts is not here, and Commissioner
3 Curtiss, it is my pleasure to be here. I am Bob
4 Scherer and I'm Chairman of the Georgia Power Company.
5 I am proud to be here today to participate in the full
6 power license hearings for Unit 2 of Plant Vogtle.

7 This is a very significant day for me. It
8 was in March of 1987 when I last had the pleasure of
9 coming before this Commission to request a full power
10 license for Vogtle Unit 1.

11 I began my career with Georgia Power in July
12 of 1946 and I have been associated with the company's
13 nuclear programs for 20 years, beginning with our
14 first nuclear facility, Plant Hatch. During that
15 time, we have completed four nuclear units with three
16 licensed for operation and have more than 13 years of
17 operating experience.

18 I am particularly proud of the performance
19 of Unit 1 of Vogtle which has had increasing
20 reliability over the past year. Our commitment to
21 safety is as clear as our commitment to operating
22 excellence. We will always strive to put safety
23 first, to respond to concerns before they become
24 problems, and to set high goals to find safer, more
25 efficient methods for performing tasks.

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1 I personally am convinced that Plant Vogtle
2 has been designed and built and will be operated in
3 the future in a manner that will demonstrate that it
4 was indeed an extremely -- and is indeed an extremely
5 valuable energy resource for the people of the State
6 of Georgia.

7 For several years I have scheduled my
8 personal retirement date to coincide with the
9 licensing of Unit 2, which I wanted to see through to
10 successful completion. I will leave the management
11 and operation of Plant Vogtle to Bill Dahlberg, our
12 present President and Chief Executive Officer, and
13 others on our Nuclear Management team who I am sure
14 will do an exemplary job.

15 Let me now introduce to you Bill Dahlberg,
16 our President and Chief Executive Officer.

17 CHAIRMAN ZECH: Thank you very much, Mr.
18 Scherer.

19 MR. DAHLBERG: Mr. Chairman and members of
20 the Commission, we appreciate the opportunity to come
21 before you today, to give us an opportunity to give
22 you a present status on Vogtle Unit 2.

23 I guess I should take just a minute too to
24 thank Bob Scherer personally for the leadership that
25 he's provided our company and provided to the Vogtle

1 Project during the entirety of that project. He has
2 set very high standards for our company and also very
3 high standards for nuclear operations and we
4 appreciate his wisdom, guidance and leadership during
5 his career with our company.

6 I also should take just a minute to mention,
7 of course, that this plant is jointly owned. There
8 are four owners of the plant. The plant is owned
9 jointly by Georgia Power Company, the Municipal
10 Electric Authority of Georgia, the City of Dalton and
11 Oglethorpe Power Corporation. We have several members
12 from two of those organizations today.

13 From the Municipal Electric Authority of
14 Georgia, John Schleck, who is Vice President of
15 Engineering, is in the audience.

16 CHAIRMAN ZECH: Welcome.

17 MR. DAHLBERG: As well as L. Clifford Adams,
18 General Counsel for the Municipal Electric Authority
19 of Georgia.

20 CHAIRMAN ZECH: Welcome.

21 MR. DAHLBERG: From Oglethorpe Power
22 Corporation is Stephen R. McGee.

23 CHAIRMAN ZECH: Welcome.

24 MR. DAHLBERG: Steve is the Program Director
25 of Regulatory and Project Services with Oglethorpe.

1 Let me also introduce the other members of
2 our team here at the table. To my left is Paul Rice.
3 Paul is Vice President and Project Director for
4 Georgia Power Company at the Vogtle Project. In
5 addition to Paul, we have Pat McDonald, to my right.
6 Pat is Executive Vice President of Georgia Power
7 Company for Nuclear Operations. To his right is
8 George Bockhold, who is the Plant Manager at Plant
9 Vogtle. To his right is Ken McCoy, who is Vice
10 President of the Vogtle Project for Georgia Power
11 Company.

12 All of these gentlemen will be making brief
13 presentations to the Commission to give you a current
14 status of the plant. But before we get into those,
15 let me add just a couple of brief comments on my own
16 on a couple of items.

17 First let me mention emergency planning and
18 community relations. I guess we're fortunate that the
19 operating area in which Plant Vogtle is located is
20 very sparsely populated. In fact, the density in that
21 area in the emergency planning zone I think is the
22 least dense of any plant in the country. In that ten
23 mile radius there are only 1050 inhabitants of that
24 area. Despite that, that doesn't mean that we don't
25 have a very strong commitment to emergency planning

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1 and to the community relationship, as strong as any
2 plant in the country.

3 Our corporate slogan, in fact, is to be a
4 citizen wherever we serve. We take that as a
5 responsibility and that means being a responsible
6 citizen in the community of Burk County and a
7 responsible citizen of the State of Georgia and also a
8 responsible citizen even to the State of South
9 Carolina, which is just across the river from Plant
10 Vogtle.

11 When we began construction back in 1974, we
12 made that strong commitment to the communities and to
13 the state to be a good citizen and we think we have
14 upheld that responsibility. Those efforts, we think,
15 have paid substantial dividends for our company.
16 We're proud to report that local and state agencies
17 have been full participants in the emergency planning
18 process and have provided enthusiastic and
19 professionally participated in the emergency drills
20 and exercises at the Vogtle facility.

21 We've had a number of practice drills and
22 annual exercises at the Vogtle Plant. They have
23 required the cooperation of not one state but two,
24 Georgia and South Carolina. I'm pleased to report
25 that those drills have gone and are going very well

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1 with the states and the local people that are
2 involved. We intend to maintain that strong
3 commitment to the community and to the state. Even
4 after we bring this unit commercial, we have strong
5 commitments for communication and cooperation with all
6 the locations involved.

7 The second area that I'd like to mention
8 briefly is training. We do have a strong commitment
9 to training at the Vogtle Project. We received our
10 operating license for Vogtle Unit 1 about two years
11 ago, in March of 1987. And now, as we prepare to
12 bring Unit 2 on line, we believe that we have a
13 complement of well trained and competent personnel at
14 the plant. That means that we do have a strong
15 commitment to their training on an ongoing basis. We
16 had developed formal training programs and we have
17 sought to have those programs accredited through the
18 National Academy of Nuclear Training. I'm pleased to
19 report that all 11 of our training programs have now
20 been accredited.

21 We're proud of those programs because we
22 believe they have had a very positive impact on our
23 operators and personnel at the plant and we intend to
24 maintain that commitment to training and
25 professionalism of our people.

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1 With those brief remarks, I'd like now to
2 introduce Paul Rice to you. Paul is Vice President
3 and Project Director of the Vogtle Project, as I
4 mentioned. He is responsible for the construction and
5 the testing of Vogtle Unit 2. Paul has been the
6 Project Director at Vogtle since January of 1987, and
7 prior to that time he was on the site as Vice
8 President of Engineering on the Vogtle Project.

9 The owners of Vogtle, not just Georgia Power
10 Company, but the other owners of the plant as well,
11 are deeply indebted to Paul and his staff for the work
12 they've done on Unit 2. That unit is soundly
13 designed, it is well built and I think the fact that
14 it's well built is reflected in the latest SALP report
15 that we got, which reflected all 1s on that project.
16 We're proud of that and we're proud of Paul and the
17 work that he and his staff have done there.

18 Paul, will you make some brief comments?

19 CHAIRMAN ZECH: Thank you.

20 You may proceed.

21 MR. RICE: Thank you. Gentlemen, first let
22 me just describe the plant. It's a two unit
23 Westinghouse pressurized water reactor located about
24 34 miles southeast of Augusta, Georgia on the Savannah
25 River. It is rated at 1160 megawatts electrical and

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1 3411 megawatts thermal. GPC, Georgia Power, was the
2 constructor and Bechtel and our sister company,
3 Southern Company Services, have been our
4 architect/engineer. Unit 2 is a follow-on, mirror
5 image of Unit 1.

6 My job is almost done at Vogtle. I would
7 like to -- I've had the opportunity to discuss with
8 many of you on more than one occasion, both with
9 visits at the site and also in meetings here, of some
10 of our special programs. And while we don't have time
11 to go through all those special programs, I'd like to
12 give you a follow-up report on three of them because
13 of the interest and the interaction between the NRC
14 and Georgia Power Company on these programs.

15 They are the Readiness Review Program, the
16 Quality Concern Program and a short summary of our
17 lessons learned results.

18 In Readiness Review, you'll recall was
19 initiated as a result of a report issued in 1984 by
20 the NRC which questioned the quality and the assurance
21 of quality in the construction and design of nuclear
22 plants. That was NUREG-1055. As a result of that
23 NUREG-1055, we tried to take a leadership position and
24 volunteered to participate in a program called
25 Readiness Review and which really involved three

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1 things.

2 One, to provide an in-depth self-assessment
3 of our own performance and activities in terms of the
4 commitments and meeting those commitments.

5 Two, to provide a mechanism for the many
6 interactions which occur between the Nuclear
7 Regulatory Commission and the utility during this
8 process.

9 And three, I guess in the bottom line we
10 were looking to improve the predictability and
11 stability of the licensing of the work process.

12 The scope of the program was large. Just to
13 summarize a little bit of how the size of that program
14 went probably would come home the fact that we pulled
15 together over 5,000 commitments that involved Vogtle
16 into a -- we zero-based those commitments, put it into
17 a formal database. We reviewed over 50,000 quality
18 assurance documents in the process of going through
19 that program and expended over 300,000 manhours of
20 work.

21 And if I might pause here, I would say that
22 that's the direct work that Georgia Power Company put
23 into that program. In addition to that, there was a
24 good deal of effort by the NRC, both in terms of the
25 Headquarters staff and especially the region staff for

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1 which we are grateful because that participation, I
2 believe, made a good deal of difference in the success
3 of the program.

4 The program on Unit 2, we continued it from
5 Unit 1 pilot program into Unit 2 on the basis that we
6 considered that it had a significant payoff in terms
7 of what we learned from that program. The differences
8 were in Unit 2 mainly a reduction in some of the
9 modules that we put together because the work that was
10 associated with Unit 1 covered Unit 2 because of its
11 progress in construction at the time.

12 We added features into the Unit 2 program to
13 take advantage of lessons learned that came from the
14 NRC reviews and our own reviews, such as we put the
15 security system into our Readiness Review Program for
16 Unit 2, and we made some changes to take a graded
17 approach in the way we treated the testing program so
18 that we could look at it more from cradle to grave as
19 opposed to one time.

20 The findings? As you might expect, we had a
21 number of findings. We had more on Unit 1 than we did
22 on Unit 2 because we plowed back in the lessons from
23 that Unit 1 program into Unit 2. They ranged from
24 very small items which had no effect on the work or
25 the hardware all the way to major issues which had

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1 occurred at some other facilities which if not found
2 and corrected early could have significantly impacted
3 our work process or resulted in rework.

4 In that regard, I think that the Readiness
5 Review Program demonstrated itself. My conclusions of
6 the results of Readiness Review was that it provided
7 an early identification of problems which we were able
8 to correct before they became impacting. But it did
9 provide a mechanism for resolving differences of
10 interpretation, of regulatory requirements before it
11 became late in the game and resulted in an impact. It
12 did enhance the predictability and stability of our
13 process. And I guess, in summary, I would think it
14 may have potential in the future, for future similar
15 construction projects provided it is viewed in terms
16 of a program which could consolidate and streamline
17 and make more effective the many, many quality
18 assurance requirements that we now have built into the
19 program.

20 The second special program I'd like to just
21 briefly cover is Quality Concerns. In 1983, we took a
22 very proactive approach to the problems that we saw
23 happening in the industry that involved soliciting the
24 input from the workers and the work staff at the
25 nuclear facilities, resolving the problems that we

1 could glean from that program, and provide feedback to
2 the people who participated.

3 I think the basic features were that we
4 decided it had to be a very proactive approach, that
5 the suggestion box approach has a very short half-
6 life. In that regard, we took the program and decided
7 that we would do a lot of work that had visibility and
8 management involvement. I guess I could summarize
9 that by saying that during that period of time we
10 oriented over 30,000 people into the Quality Concerns
11 Program. We had over 3,000 concerns submitted, which
12 again ranged from very minor items which had little or
13 nothing to do with the plant, such as parking lot
14 conditions, all the way to significant issues that we
15 needed to know about and that we needed to go treat,
16 otherwise they could have impacted us later.

17 In this last year, in 1988, we exited over
18 5,000 people in the program. I think that from our
19 complete experience we found that it was very accepted
20 by the employees, it was very useful. It gave
21 management a view which you might not otherwise get in
22 terms of trends and the way people are feeling, and it
23 gave employees a way to participate in the program
24 that in many cases they're the closest to the work
25 process.

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1 That program, by the way, started a
2 transition into the Unit 1 operations back in April of
3 1987 and will finish that transition in the next few
4 weeks. George Bockhold will have full charge of the
5 Quality Concerns Program from here on out.

6 The third program I'd like to summarize is
7 Lessons Learned. We knew when we finished Unit 1 that
8 we had learned many lessons, that it was a prototype
9 of sorts and that we needed to take advantage of that
10 both in terms of the cost, our schedule and we knew
11 that the things we could do would enhance quality. We
12 solicited very visibly from all levels of the
13 organization, including our contractors, our
14 management, all the way down to individual
15 technicians, operators, test engineers, their input
16 from what we learned in the Unit 1 experience.

17 The bottom line was that we collected over
18 3200 items and, of note, over 400 of those items were
19 the result of the Unit 1 test program going all the
20 way out through power ascension testing. We took that
21 database of 3200 items. We formalized it, we
22 developed corrective action plans and we put it into a
23 system in which an item could not be removed until
24 action was taken. It was not good enough just to
25 think of an idea, to correct it.

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1 We completed that program by fuel load. I
2 feel very strongly that it had positive results. It
3 completely changed in many cases our scheduling
4 strategies. It took into account such things as the
5 security problems that we had coming out of Unit 1.
6 It made a major contribution in certain technical
7 programs such as streamlining the 7914 Reconciliation
8 Program. We did a major snubber reduction program as
9 a result of lessons learned. It had a significant
10 impact.

11 I guess I would summarize my conclusions as
12 to its effect in three ways. One, I think it was a
13 significant contributor to having maintained an on
14 schedule or a little bit ahead of schedule performance
15 over the last two and a half years. It allowed us to
16 reduce the number of staff on that site which made the
17 project more manageable. It resulted in reductions of
18 problems such as deficiencies and reworks, which
19 obviously effect the cost. In the cost arena, it
20 probably was a major contributor in our ability to
21 finish this project probably expending 15 percent less
22 dollars than we had predicted we would spend during
23 this last 30 month period.

24 So, the lessons learned were clearly
25 important and I think set up the right conditions for

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1 our transfer of this plant to George Bockhold such
2 that it will be a reliable and high quality plant.

3 COMMISSIONER ROGERS: Could I ask a
4 question?

5 MR. RICE: Yes, sir.

6 COMMISSIONER ROGERS: You had three
7 programs. Were they sequential, concurrent? How much
8 overlap was there? It sounds to me like that some
9 items might appear in both programs.

10 MR. RICE: Yes, it is and that's an
11 interesting question in that they were concurrent to a
12 great extent. For example, there was a good bit of
13 synergism. If you look at the Readiness Review
14 Program, it took more of a programmatic approach
15 toward the commitments and how they were implemented,
16 although we did conduct an evaluation of the hardware
17 in the field.

18 The Quality Concerns Program, which
19 paralleled the Readiness Review, more solicited the
20 input from workers and people's opinions and ideas and
21 thoughts rather than programmatically adjusting
22 procedures. So, they were complimentary in that
23 regard.

24 And, of course, the Lessons Learned Program
25 really pulled on all those features. It pulled on

1 Readiness Review, it pulled together items that came
2 out of the Quality Concern Program. So it really
3 enveloped both of the others. I think they are very
4 synergistic.

5 CHAIRMAN ZECH: Thank you very much.

6 MR. RICE: Yes, sir.

7 MR. McDONALD: Gentlemen, looking toward the
8 future, I'd like to give you a status report on
9 operator performance of Plant Vogtle.

10 Until recently, we had not experienced any
11 operational event of major concern caused by operator
12 error for about a year. During that year, we had
13 continued building and had developed confidence of an
14 upward trend and an overall professional performance
15 among our operators. However, during the past two
16 months, and despite even greater efforts toward
17 further improvement during that period, we have
18 experienced four notable events caused by personnel
19 errors.

20 Three of the four events were each caused by
21 a combination of inadequate adherence to procedural
22 guidance, inadequate attention to detail and
23 inadequate teamwork. The fourth event was a non-
24 cognitive nature, attributable only to inadequate
25 attention to detail.

1 We have taken actions that we expect will
2 help us to reestablish our upward performance trend.
3 Although errors are never welcomed, we have used these
4 are graphic examples of non-professional performance.
5 In particular, we have stressed teamwork as a
6 necessity to avoid the otherwise initiation of many
7 errors, and a necessity for catching errors before
8 they cascade into events.

9 Our operators are bright and relatively
10 young. We expect continuing improvement. We are far
11 from reaching a performance level that might be
12 vulnerable to management complacency.

13 In proceeding now with the status report,
14 I'd like to introduce George Bockhold, our General
15 Manager of Plant Vogtle, who will provide an
16 operational status report, describe our complement of
17 on-shift licensed operators and discuss our Reactor
18 Trip Reduction Program.

19 George started his career as a nuclear
20 submarine officer. He then served as a licensed shift
21 supervisor at Indian Point, followed by duties as the
22 Indian Point training manager. From there he joined
23 the Commercial Services firm and served as an officer
24 of that firm providing simulator and nuclear services.
25 He later joined Georgia Power as our nuclear training

1 manager. He has been the on-site operations general
2 manager for the Vogtle Plant for the past six years,
3 responsible for start-up, operations, maintenance and
4 other generation functions on Unit 1 and 2.

5 George Bockhold.

6 MR. BOCKHOLD: Let me first cover the
7 current operational status of Unit 2. Unit 2 is
8 critical and in mode 2. We went critical this past
9 Tuesday, the 28th. We are currently doing physics
10 testing which involves temperature coefficient
11 measurements and boron coefficient measurements. It
12 involves rod worth measurements. In fact, that's what
13 we're doing today. We will be doing bank overlap
14 measurements for the rest of today. Tomorrow, we
15 expect to be at three percent power and do our flux
16 map. At the conclusion of our flux map, the plant
17 will be ready for power operation in excess of five
18 percent power.

19 On shift, we have a full complement of
20 licensed operators. I'd like to quickly go over their
21 experience at this time. We have 20 senior licensed
22 operators on shift today. Seventeen have degrees,
23 three have been previously RO licensed. We have 26
24 licensed reactor operators on shift, three with
25 degrees.

1 I'd like to talk about our Lessons Learned
2 Program associated with reactor trip reduction. We
3 use an extensive and comprehensive critique and root
4 cause program associated with reactor trips. We
5 thoroughly investigate all reactor trips. We believe
6 we have an improving trend. In 1987, we were unhappy
7 with 25 automatic reactor trips. In '88 we had
8 brought that number down to six and so far this year
9 we do not have any unplanned automatic reactor trips.
10 Since February of 1988, we've had no personnel error
11 reactor trip.

12 The three areas that we attribute the
13 reduction to are, first, steam generator, water level
14 control during a difficult transition from four
15 percent power to 25 percent power. By accurately
16 tuning the automatic controls, the controls associated
17 with steam dump, bypass feed reg. valve and main feed
18 reg. valve, we have good automatic controls.

19 Before a start-up, we do special observation
20 of the main and bypass feed reg. valves to make sure
21 they stroke correctly, to make sure those valves do
22 not have any mechanical, electrical or pneumatic
23 problems.

24 Finally, in a steam generator level control
25 area, our operators have been trained to consistently,

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1 in the same manner, perform the start-up the same way
2 each time. In '87, we had nine reactor trips caused
3 from this problem. But by the end of the summer of
4 '87, we had implemented these lessons learned and we
5 haven't had a reactor trip from this area since then.

6 Let me talk about personnel reactor trips.
7 In 1987 we had eight personnel reactor trips. In '88
8 we had one. We improved procedures, training,
9 labeling, improved field supervision of surveillances
10 and work direction and our people, of course, had more
11 experience. Since February of '88, we haven't had a
12 personnel reactor trip.

13 The final area is equipment trips, which are
14 the remaining trips. We had design and set point
15 changes and, of course, we replaced defective
16 components. I believe our reactor trip reduction
17 program has been comprehensive. I expect few reactors
18 trips on Unit 2 and at the same time we're committed
19 to aggressively pursue an improving operations
20 performance program.

21 CHAIRMAN ZECH: Thank you very much.

22 MR. McDONALD: I'd like to now introduce Mr.
23 Ken McCoy who is our Vice President of Nuclear
24 Generation for the Plant Vogtle. He will discuss our
25 readiness for Unit 2 operations.

1 Ken also started his career in nuclear
2 submarines, including a tour as an engineering
3 officer. He entered commercial nuclear power and
4 served as a plant manager of Grand Gulf. Before
5 coming to Georgia, he served at INPO for four years.
6 In his last position there, he was Director of the
7 Plant Operations Division responsible for running the
8 plant evaluation program. He joined our company in
9 June of 1988.

10 CHAIRMAN ZECH: Thankyou very much.

11 You may proceed.

12 MR. McCOY: I'd like to address now our
13 readiness to operate our second unit at Vogtle. I'd
14 like to break this into several parts. First I'll
15 talk about our readiness of the operators to operate
16 two units.

17 All of our operator crews are trained and
18 licensed on both units at Vogtle. All of our
19 operators have hot operating experience on Unit 1.
20 All of our operating crews rotate between units as a
21 standard practice. Our operating crews train together
22 on the simulator. In summary, we have experienced,
23 well trained operating crews for both units, as well
24 as sufficient licensed personnel for backup and relief
25 purposes.

1 The second area I'd like to address in terms
2 of readiness is the material condition of Unit 2 for
3 operation. We received a completed plant from
4 construction. By that I mean the plant was turned
5 over in good condition with few punch list items. We
6 are also well prepared to maintain the material
7 condition of this plant. Currently there are
8 approximately 250 MWOs, or maintenance work orders, on
9 Unit 2. Since our operating forces took over
10 responsibility for the maintenance of both units in
11 January, we have had a decreasing trend in the amount
12 of outstanding work on both units, both preventive
13 maintenance and corrective maintenance.

14 Finally, I would like to talk about our
15 demonstrated capability to manage and operate two
16 units. Our first test of this really was the
17 management of the first refueling outage concurrently
18 with hot functional testing last fall. We think that
19 that went quite well, both the hot functional test
20 program which was completed on schedule, and the
21 program test results went well, as well as our first
22 refueling outage which was completed in 52 days and
23 also went quite well with few errors.

24 The second area where this was demonstrated
25 was in our ability to meet the milestones in the test

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1 program, and at the same time operate Unit 1 with the
2 same group of people. By the same group of people, I
3 mean that we actually had our operations people who
4 were participating in the test program doing the
5 maintenance and doing the operation of the equipment.
6 Those people have now been folded into our operating
7 organization. But the management of those people was
8 under George Bockhold throughout this period of the
9 test program.

10 So, we feel that we have demonstrated
11 ability to manage these two units and we look forward
12 to the opportunity to manage both units.

13 CHAIRMAN ZECH: All right. Thank you very
14 much.

15 MR. DAHLBERG: Ken, thank you.

16 Mr. Chairman and members of the Commission,
17 through these presentations that we've made, we've
18 tried to give you an overview of construction and the
19 start-up activities of the Vogtle Project, and also
20 with the information concerning our current state of
21 operational readiness.

22 The construction and start-up of a nuclear
23 generating facility is a complex business. In the
24 complexity we have encountered problems and we have
25 encountered some obstacles, but we are committed to

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1 the early identification of problems. We are
2 committed to the prompt resolution of problems and
3 we're also committed to resolutions that prevent
4 reoccurrence.

5 This unit has been properly constructed to
6 what we believe are very high standards. In fact,
7 they're the very highest standards that we think are
8 practical to achieve. The unit has been thoroughly
9 tested. It is fully staffed with competent and
10 capable personnel and it is now ready to operate.

11 The plant is critical. We are prepared to
12 move forward into power ascension. We're here today
13 to give you this information and to ask the Commission
14 to approve and grant a full power license for Vogtle
15 Unit 2 so we can proceed.

16 We thank you.

17 CHAIRMAN ZECH: All right. Thank you very
18 much.

19 Questions from my fellow Commissioners?

20 Commissioner Roberts?

21 Commissioner Carr?

22 COMMISSIONER CARR: Yes, I've got a couple.

23 You're going to start flux mapping tomorrow.

24 When will you finish your low power testing then?

25 MR. BOCKHOLD: We expect to finish tomorrow

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1 evening, sir.

2 COMMISSIONER CARR: Okay. And you're on
3 five shifts now. Are you planning to go to six?

4 MR. BOCKHOLD: We're on five shifts now. We
5 find that as an advantage. Our extra operators can
6 substitute either on-shift if need be and otherwise
7 they can substitute from the staff if somebody is
8 going to be out for a special reason, the extra
9 operators that we have in staff doing other
10 assignments.

11 The flexibility and the focus of five shifts
12 for the operating crews and the training as a crew and
13 gaining experience together as a crew has certain
14 advantages and right now we think that's the best way
15 for the plant to be. We have enough operators to go
16 to six shifts, but at this point five shifts is best
17 for us.

18 COMMISSIONER CARR: The answer is no, you
19 don't plan to go?

20 MR. BOCKHOLD: The answer is no.

21 COMMISSIONER CARR: And are you on eight
22 hour or 12 hour shifts?

23 MR. BOCKHOLD: The unit shift supervisors
24 and the reactor operators work together as a crew on
25 eight hour shifts. The overall shift manager, we call

1 an operations supervisor, is on a 12 hour shift with a
2 maintenance supervisor to continue to work on
3 improving plant material conditions.

4 COMMISSIONER CARR: Okay. Your nine trips
5 last year compared with the Westinghouse average of
6 2.38 and additionally you had 44 LERs on Unit 1, which
7 is twice the Westinghouse average of 22. Do you want
8 to comment on that, on how you're -- I notice you said
9 you've got one trip since January, I guess it was.

10 MR. BOCKHOLD: I said one personnel error
11 trip since February of '88. We've been working on
12 trip reduction and LER reduction. Our PERM system,
13 which is plant effluent radiation monitoring system, a
14 state-of-the-art system, as being a first of a kind,
15 has given us a significant number of engineering
16 safety feature actuations and we've been working on
17 improving its reliability and we have made significant
18 progress improving its reliability. We have been
19 working on our trip reduction program and I think
20 we've made improvements there. We'll just keep
21 working hard on it.

22 MR. McDONALD: The PERM system is a highly
23 integrated, automated system that is supposedly art,
24 but like most things it's one of a kind. With only
25 something one of a kind, it takes a longer period of

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1 time to find all the bugs. So, it has given us a lot
2 of false actuations and reportable events.

3 COMMISSIONER CARR: Also, the SALP noticed
4 that you have a persistent fluid system leaks in both
5 primary and secondary systems. Are you getting ahead
6 of those?

7 MR. BOCKHOLD: I think we're making good
8 progress on our fluid leaks, yes, sir.

9 COMMISSIONER CARR: Any particular thing
10 you've found that should be noted that you had more
11 fluid system leaks in both systems than would be
12 normally expected?

13 MR. BOCKHOLD: I can't attribute it to
14 anything special. I just think it's continued work on
15 maintenance. We've had like a 30 percent reduction in
16 corrective maintenance work orders since you visited
17 us, Chairman.

18 MR. RICE: I would make one other comment on
19 that as a part of lessons learned on the leaks. We've
20 factored in during hot functional testing and in
21 subsequent steam plant operations before fuel load,
22 numerous checks and walkdowns to try to reduce the
23 leaks and to reduce the area of leakage, for example.
24 That was a major effort that we put forth to improve
25 that area.

1 MR. BOCKHOLD: It's a continuing effort.

2 COMMISSIONER CARR: Also, I was a little
3 concerned about in the south area of security, it
4 looked like you got ten security violations, eight of
5 which were repeat violations. Have you got a handle
6 on that problem yet?

7 MR. BOCKHOLD: I believe that we have a
8 handle on the security area. The hardware has really
9 been improved over the two years of operation and we
10 have recently been recommended to other plants for
11 people to come visit and look at our security system
12 and how it works. It's still a very complex system
13 and we're still going to have a few problems, but I
14 think we've made a significant improvement.

15 COMMISSIONER CARR: Thank you.

16 CHAIRMAN ZECH: Commissioner Rogers?

17 COMMISSIONER ROGERS: Your organization is a
18 little special, I think, in that you don't have
19 individual managers for each of the two plants, but a
20 single station manager for each and a support manager
21 for both. Do you know of any other similar situations
22 and what their experience has been that you could spot
23 any problems?

24 MR. McDONALD: Yes.

25 COMMISSIONER ROGERS: You just cited one of

1 a kind and --

2 MR. McDONALD: I know of one other company
3 that has similar arrangements.

4 COMMISSIONER ROGERS: Two identical units
5 with one --

6 MR. McDONALD: Yes.

7 COMMISSIONER ROGERS: And have they
8 experienced any particular problems because of that?

9 MR. McDONALD: No, that's worked out very
10 favorably.

11 MR. McCOY: Pat, I might comment on that for
12 Commissioner Rogers. I had an opportunity while at
13 INPO to visit a large number of plants. I think of
14 the multi-unit plants, the significant majority are
15 organized in that manner with a single plant manager
16 and there are several that have individual unit
17 managers, but that's the exception rather than the
18 rule.

19 COMMISSIONER CARR: My experience is that
20 you have somebody called a site director. Do you have
21 somebody in each plant that reports directly --

22 MR. McDONALD: No. Our arrangement is
23 George is the general manager of the plant. He has
24 reporting to him two people. He has an Assistant
25 General Manager for Operations and an Assistant

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1 General Manager for Support.

2 The Assistant General Manager for
3 Operations, he has reporting to him a Manager of
4 Operations because that Assistant General Manager has
5 other things reporting to him. So, you go right down
6 that line through his assistant general manager and
7 manager of operations.

8 COMMISSIONER CARR: So, the two plant is one
9 plant as far as management is concerned.

10 MR. McDONALD: That's right. That's exactly
11 right.

12 COMMISSIONER CARR: I had a management
13 concern that looked to me like he was a long way from
14 the CEO.

15 MR. McDONALD: He's a long way from the CEO?

16 COMMISSIONER CARR: Yes. Maybe I don't
17 understand what Ken's -- what's the hierarchy between
18 the CEO and the plant manager?

19 MR. McDONALD: Okay. That's what you mean.
20 Okay. The hierarchy between a CEO and a plant
21 manager, I report to Mr. Dahlberg. Reporting to me is
22 Ken McCoy who is in charge of the entire Vogtle
23 Project. He and I have a -- I have two Vice
24 Presidents reporting to me. The Vice President of
25 Hatch has a similar position to his. So, he is

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1 responsible for all the corporate support as well as
2 the plant. George reports directly to him.

3 CHAIRMAN ZECH: Both units he has.

4 MR. McDONALD: Both units.

5 CHAIRMAN ZECH: Yes. All right.

6 MR. McDONALD: Is that what you want to
7 know?

8 COMMISSIONER CARR: So, you have a guy for
9 each, Vogtle and Hatch.

10 MR. McDONALD: Yes.

11 COMMISSIONER CARR: But they don't have
12 anybody for the two plants.

13 MR. McDONALD: They manage those two plants
14 as one plant, those two units as one plant.

15 COMMISSIONER CARR: And Ken has Vogtle and
16 Hatch.

17 MR. McDONALD: No. No, Ken has reporting to
18 him three people. He has George reporting to him, he
19 has a QA manager reporting to him and he has the
20 corporate staff support reporting to him.

21 MR. BOCKHOLD: Only for Vogtle.

22 MR. McDONALD: For Vogtle, for Plant Vogtle.

23 MR. RICE: Then there's a Vice President for
24 Hatch.

25 MR. McDONALD: That has a similar

1 organization.

2 COMMISSIONER CARR: Okay. I understand your
3 organization. I still have my concern, I guess.

4 MR. McDONALD: May I be responsive to more?

5 COMMISSIONER CARR: Oh, sure. I just say,
6 if he's got a problem that needs the CEO's attention,
7 he goes a long way to get there, was my concern.

8 MR. DAHLBERG: I guess I should add
9 something on that matter also. I guess one of the
10 things we have done well is while Pat is an Executive
11 Vice President of Nuclear, it does mean that he is
12 available to the site. He visits the site. He is
13 there. He talks to the people and he looks at the
14 equipment. We've tried to use that philosophy for all
15 of our operations. It doesn't stop with Pat. I have
16 the same type of a relationship. I guess we could go
17 even further than that. We do have a Board of
18 Directors committee for oversight of nuclear. They
19 even visit the site. So, it's not removed.

20 I think we have established the kind of a
21 relationship and the kind of a personal hands on with
22 management. George has access to anybody he needs
23 access to.

24 COMMISSIONER CARR: Let me -- are you -- is
25 Ken at the site?

1 MR. McCOY: No, I'm --

2 COMMISSIONER CARR: You're at the
3 headquarters.

4 MR. McDONALD: Let me expound on that just a
5 moment. One of our major management techniques is
6 managing problems and we keep pretty comprehensive
7 lists of the top problems, top 10, 20, 30 problems.
8 Those problems are reviewed periodically by all levels
9 of management including the Board of Directors. We
10 have a completely technical meeting with the Board of
11 Directors describing such things as the PERM problem
12 and any other kind of a technical problem there is, so
13 that the entire management structure is involved in
14 personnel matters, technical matters and what have you
15 on a routine basis. All these facts which might
16 otherwise get lost are brought up to the top level of
17 the company.

18 On the Board of Directors committee, which
19 he takes part, we have some very capable people from
20 various walks of life, like almost any board. We have
21 a gentleman who is head of a big construction company
22 and another -- various types of things. So, I think
23 that we talk technical detail on a routine basis with
24 all levels of management very frequently.

25 CHAIRMAN ZECH: Commissioner Rogers?

1 COMMISSIONER ROGERS: Well, I was just
2 curious on this management lineup because when I
3 visited you not so long ago, you showed me your
4 organizational chart.

5 Mr. Bockhold, your title is General Manager
6 and you had Mr. Bellamy reporting to you as Plant
7 Manager. Now, I understand he's resigned.

8 MR. BOCKHOLD: That's correct. Yes, sir.

9 COMMISSIONER ROGERS: Now, are you wearing
10 two hats at this time?

11 MR. McDONALD: Let me explain that. We had
12 changed the name of Mr. Bellamy's position to
13 Assistant General Manager for Operations. The term
14 "plant manager" was often construed to mean the person
15 in charge of the plant. Really, the general manager is
16 the man who's in charge of the plant. It's been
17 confusing. So, we changed those two titles to
18 Assistant General Manager of Operations and Assistant
19 General Manager of Support.

20 CHAIRMAN ZECH: And the boss at the plant is
21 the plant manager.

22 MR. McDONALD: He's the general manager of
23 the plant.

24 CHAIRMAN ZECH: All right.

25 MR. McDONALD: That's right.

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1 MR. BOCKHOLD: My name tag should say
2 "general."

3 COMMISSIONER ROBERTS: I'll restrain myself
4 from that.

5 COMMISSIONER ROGERS: Well, have you changed
6 responsibilities or just titles?

7 MR. McDONALD: Just titles. No change in
8 responsibilities.

9 COMMISSIONER ROGERS: The work chart still
10 remains the same?

11 MR. McDONALD: Yes, that's correct.

12 COMMISSIONER ROGERS: Well, now, I still am
13 a little confused because the so-called plant manager
14 title which went with Mr. Bellamy now, what is --

15 MR. McDONALD: The new title is Assistant
16 General Manager for Operations.

17 COMMISSIONER ROGERS: And who holds that
18 title?

19 MR. McDONALD: That's being held by Skip.

20 COMMISSIONER ROGERS: I see. All right.

21 MR. BOCKHOLD: Skip Kitchens, who was the
22 operations manager. Jim Schwartzwelder is now the
23 operations manager.

24 COMMISSIONER ROGERS: Do you see that as a
25 significant shift in your organization?

1 MR. McDONALD: No, it's just replacing one
2 person. Actually, the person who is in that job, Skip
3 Kitchens, has a current SRO license where the previous
4 man did not have one. So, I view it as a very sound
5 organization.

6 CHAIRMAN ZECH: Commissioner Curtiss?

7 COMMISSIONER CURTISS: Just one question.

8 As I recall, your maintenance program was
9 quite complex and had a lot of paperwork associated
10 with it. Are you comfortable with where you are on
11 maintenance, in particular, preventive maintenance for
12 the new plant? Could you say a word or two about
13 that, please?

14 MR. McDONALD: Ken, how about you addressing
15 that?

16 MR. McCOY: As we discussed when you visited
17 the site, Commissioner, that was an area we are
18 focusing on. We have made some improvements in
19 simplifying the maintenance program and we are getting
20 results. At the time you were there, I showed you
21 some charts that showed that we had an increasing
22 trend of work. We've been able to turn that around
23 since January. It's coming down now.

24 So while we're not satisfied with where we
25 are in our ability to do maintenance work efficiently

1 and maintain high quality work, we've always had a
2 reputation for doing high quality work in maintenance.
3 We're trying to increase this and improve our through-
4 put, and we are making progress.

5 COMMISSIONER CURTISS: Okay. And could you
6 say a word about the stratification problem in the
7 pressurizer surge line, what your plan is?

8 MR. McDONALD: Yes, Ken?

9 MR. McCOY: All right. I think the
10 Commissioners are all aware that this is a generic PWR
11 type issue. It has been analyzed for both Vogtle
12 units, and both Vogtle units do meet the ASME Code on
13 the analysis. And that has been reviewed with the NRR
14 staff satisfactorily.

15 COMMISSIONER CURTISS: That's all I have.

16 CHAIRMAN ZECH: Thank you. Well, it's my
17 observation that your operational performance on Unit
18 1 was not really as good as you'd like to have seen
19 it. You've mentioned and are very candid about some
20 of the problems you've had and I appreciate that. I
21 appreciate your self-criticism and your willingness to
22 lay things on the table. That's the way it ought to
23 be. So, that's positive in my judgement.

24 On the other hand, the SCRAM rate on Unit 1,
25 I think, was too high. We all recognize that. And if

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1 you have learned your lessons from Unit 1, then we
2 would hope that Unit 2 performance would be better.
3 I'm sure you hope the same thing. But I would
4 encourage you to -- especially during the initial
5 testing program that you're undergoing at the moment,
6 and if we authorize full power, that you take a very
7 conservative careful safety approach to all of your
8 start-up procedures.

9 I do believe your operators certainly would
10 appear to be competent, but they have made some
11 mistakes. If they've learned from those mistakes, we
12 really should see improved performance from Unit 2.

13 I recall being down there not too long ago
14 too, and I made a comment to you about I thought you
15 could do a little bit better in some of the
16 cleanliness and housekeeping areas. What have you
17 done about that?

18 MR. McDONALD: We have made some additional
19 effort to that. We will not reach the level we want
20 to be without a lot of work and over a period of a
21 year or so.

22 CHAIRMAN ZECH: But are you putting in the
23 resources to improve? It seems to me my observation
24 was that you had a lot of good things going at the
25 Vogtle plants and that perhaps you were not showing

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1 the results that one might expect with an organization
2 that would appear to be in reasonably good shape. You
3 weren't taking advantage, I didn't think, of the plant
4 you have there which looks to be pretty good.

5 But I think if you put some resources into
6 it and devote that little extra attention, perhaps, to
7 cleanliness and to housekeeping and to making the
8 place look like you think it looks or make it look
9 like you want it to look and like you want to operate,
10 your people will see that as a sign of professionalism
11 and a sign that you're running a first-class
12 organization. It looks like you probably have the
13 makings of a first-class organization, but you've got
14 to take that next step, in my judgement anyway, and
15 put the resources into it to actually feel that you
16 have a first-class organization. You have the
17 potential there, and I just thought you needed to take
18 that next step. Do you want to comment on that?

19 MR. McDONALD: Yes. All I can say is Amen.
20 I agree.

21 CHAIRMAN ZECH: All right. Well, then we're
22 going to be watching you to see what you do.

23 MR. McDONALD: Yes, sir.

24 CHAIRMAN ZECH: Okay. You have essentially
25 two plants that are alike. We'd call them

1 standardized plants, essentially. You've mentioned
2 some of the benefits you believe you've achieved from
3 Unit 2 over Unit 1, and I would certainly agree that
4 we'd hope to see the benefits. Maybe Mr. Rice could
5 elaborate just a little bit more on the construction
6 part of the two units. Maybe not so much the
7 operation yet, but during the construction part.

8 Could you comment on any advantages or
9 benefits in the area particularly of safety, of
10 reliability of potential operations that you've seen
11 by building two plants that are essentially alike?

12 MR. RICE: Yes, sir. When I mentioned the
13 Lessons Learned Program, that gave us the opportunity
14 to go back and really formalize what we thought we'd
15 learned. It wasn't just factoring in mistakes that
16 have been made, because we did that as they occurred.
17 So it was really much more of a retrospective look in
18 a broader sense.

19 Things like the Snubber Reduction Program.
20 I mentioned the 7914 Program. My guess is that
21 probably we were able to back off and look at the
22 results from Unit 1, knowing what the design
23 reconciliation was and the margins that were in that
24 design. And we were able to streamline that process,
25 probably in the range of \$15 million to \$20 million.

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1 Those resources and that talent then can be applied to
2 things which are, you know, needed to be done as
3 opposed to things which ended up with more margin,
4 say, than we needed to put in. So there's a resource
5 issue in that second unit in terms of brain power and
6 not just man hours.

7 We saw, for example, the PERM was mentioned
8 a minute ago. Until we got through that prototype
9 effort, particularly with this revision zero system
10 that we talked about, we didn't know how it was going
11 to act. George mentioned the significant effort we
12 put in. Part of that -- well, a good bit of it was
13 learning what was happening in Unit 1. We went into
14 the Unit 2 test program. We started out very early in
15 factoring in how are we going to determine the
16 reliability of those monitors. And by the time we got
17 through with that knowledge, the Unit 2 system sort of
18 set the standard.

19 I could name a number of examples. Security
20 was another example. We really had rocky times in the
21 security area, with our mentality maybe being one of
22 four or five years ago or six or seven years ago.
23 When that first unit was complete, we knew what to do
24 on the second unit to avoid those kinds of problems,
25 many of which, Commissioner, impacted on the personnel

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1 or the operator actions. You know, the equipment
2 condition and the construction conditions actually
3 impacted on the operator, or in this case the security
4 force ability to do their job.

5 So I think that I could probably list many,
6 many examples where the second unit was simpler. It
7 was more streamlined. I was much more effective when
8 we got through with it to turn it over to the
9 operating force. Very significant in lessons learned.

10 CHAIRMAN ZECH: Thank you very much.

11 Well, let me just say, Mr. Dahlberg, we
12 congratulate you on your assumption of these important
13 responsibilities. We would encourage you to continue
14 the active role that Georgia Power Company has played
15 in operational safety and to continue the role of
16 leadership that has been shown by Mr. Scherer across
17 the board in operating those plants safely.

18 Mr. Scherer, we'd just like to say to you as
19 you are about to leave the CEO job -- I guess you have
20 left that now. You're Chairman of the Board, I
21 understand. But we congratulate you on your 20 years
22 of service to the nuclear industry and for your
23 straightforward approach, your honesty, and your
24 leadership you've brought to this demanding
25 technology. We wish you the best in the future.

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1 Are there any other questions from my
2 colleagues before we call on the staff?

3 Commissioner Carr?

4 COMMISSIONER CARR: I can't let them go
5 without mentioning the fact that you show you've got
6 31 degreed operator SROs out of 44 people, and you've
7 been building a plant and putting one in and running
8 one. How did all those guys go get those degrees?

9 MR. BOCKHOLD: They had their degrees before
10 they started into their SRO training program.

11 COMMISSIONER CARR: Were they ROs?

12 MR. McDONALD: No.

13 MR. BOCKHOLD: No, sir.

14 COMMISSIONER CARR: These are direct inputs?

15 MR. BOCKHOLD: Direct inputs.

16 MR. McDONALD: Of the 20 SROs we have on
17 shift, 17 have not been ROs. Three of those have been
18 ROs. This is what I meant that we had a very bright
19 and young group of people who I hope the experience
20 level will increase rapidly.

21 COMMISSIONER CARR: Thank you.

22 CHAIRMAN ZECH: Thank you.

23 Just one last comment, then. I do notice,
24 and it was mentioned earlier in your functional areas,
25 that Unit 2 received all 1s. I'm not sure that I've

1 seen that before, but in any case I would like to
2 congratulate all of you for that and say that that
3 should give you something to live up to. When you've
4 got those kind of marks, the only way you can go
5 really is down. But the challenge is to keep it up,
6 and it's not easy to keep up that kind of performance.

7 But I do think that should be brought out
8 that you have during the construction of Unit 2
9 received those very high marks and I think that should
10 be noted. I think that just gives you an additional
11 challenge to see if you can make your operational
12 experience now live up to that constructional
13 experience that you've shown.

14 I thank you very much.

15 We'll call for the NRC staff to come up.

16 Mr. Taylor, you may proceed.

17 MR. TAYLOR: Good afternoon, sir.

18 At the outset, I would like to say that the
19 staff is very mindful of the problems in the early
20 operation performance of Vogtle Unit 1 and we intend
21 to pay very careful attention to that. Georgia
22 Power's corrective actions during the early phases of
23 Unit 2 operations to be sure that the lessons are
24 applied, this will be covered a little further by Mr.
25 Ernst in his presentation.

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1 With that beginning, I'd now like to turn to
2 Mr. Snezick, the Deputy Director of NRR to commence
3 the presentation.

4 CHAIRMAN ZECH: Thank you very much.

5 Mr. Snezick, you may proceed.

6 MR. SNEZICK: Good afternoon, Mr. Chairman
7 and Commissioners.

8 We are here today to discuss with the
9 Commission the actions the staff has taken to arrive
10 at our conclusion that Vogtle Unit 2 has been
11 constructed in accordance with the Commissions
12 regulations and will be operated safely.

13 With me at the table today are: John
14 Hopkins, the Project Manager for Vogtle 2; to the
15 right of Mr. Taylor is Mel Ernst, the Deputy Regional
16 Administrator of Region II; to his right is the Senior
17 Resident Inspector, John Rogey; and to his right is
18 Dave Matthews, the Project Director for NRC associated
19 with the Vogtle Project.

20 John Hopkins will brief the Commission on
21 the licensing aspects of Vogtle Unit 2, and Mel Ernst
22 will brief the Commission on the construction and
23 operation aspects of Unit 2.

24 In starting, I should first mention three
25 matters of interest which have recently come up.

1 First, a check valve at the pressure boundary
2 interface between the reactor coolant system and the
3 RHR system was found to be leaking, thus having the
4 potential of allowing high pressure reactor coolant to
5 flow into the low pressure RHR system.

6 Also, as mentioned by Mr. McDonald, there
7 have been several personnel errors during the past few
8 weeks that caused us to focus additional attention on
9 the operational readiness of Unit 2. This was
10 especially important in light of the relatively rocky
11 start-up history of Vogtle Unit 1. Mel Ernst will
12 include a discussion of these issues in his
13 presentation.

14 The third item of recent interest concerns
15 the status of the atmospheric steam dump valves at
16 Vogtle. As you know, valves by the same vendor
17 malfunctioned at another operating nuclear power
18 plant. Mr. Hopkins will cover this matter in his
19 presentation.

20 As an additional matter related to the
21 licensing of Vogtle 2, I would like to remind the
22 Commission that on March 23rd, in SECY-89-096, the
23 staff informed the Commission of staff actions
24 regarding the anti-trust review of Plant Vogtle and
25 recommended that the Commission permit the Director of

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1 NRR's Anti-Trust Determination to be considered final
2 when the Commission authorizes the Director to issue a
3 full power license.

4 With that as an introduction, I would now
5 like to turn the briefing over to Mr. Hopkins.

6 John?

7 MR. HOPKINS: Thank you.

8 (Slide) May I have slide 2, please?

9 This is the outline. And there's one slide
10 not shown on the outline, and that concerns anti-
11 trust. That issue will be covered after recent issues
12 identified and corrected.

13 (Slide) Slide 3, please.

14 This is a continuation of the outline.

15 (Slide) Slide 4.

16 As previously stated, Vogtle has four co-
17 owners. Georgia Power is also the operator of the
18 Hatch Nuclear Plants.

19 (Slide) Slide 5.

20 The information on slide 5 has previously
21 been covered by the utility. Vogtle Unit 1 is in its
22 second cycle of operation.

23 (Slide) Slide 6.

24 The Vogtle 2 plant design is essentially the
25 same as Unit 1. There are three differences. Unit 2

1 has leak before break analysis applied to it in
2 accordance with a revised GDC-4. Unit 2 spent fuel
3 racks are also designed by a different vendor than
4 those in Unit 1. And third, Unit 1 spent fuel can be
5 stored in the Unit 2 racks, but not vice versa. This
6 was always the utility's plan, and that's what they've
7 requested.

8 (Slide) Next slide, please.

9 This shows the same as Unit 1. At this
10 point, I'll discuss Vogtle's atmospheric steam dump
11 valves. They have been re-looked at due to a recent
12 event. Vogtle's valves are smaller valves and they're
13 hydraulically operated versus pneumatically, which
14 occurred at the other plant. These valves are
15 acceptable for their intended use.

16 (Slide) Slide 8.

17 The low power license was issued on February
18 9th and initial criticality occurred on March 28th.

19 (Slide) Slide 9, please.

20 Of the exemptions listed here, the first two
21 are normal. The third is the schedule exemption.
22 This allows Unit 2 to submit, along with Unit 1, a
23 decommissioning fund report. There are no special
24 license conditions as stated.

25 (Slide) Slide 10, please.

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1 Recently, with regards to potential
2 fraudulent material, we've looked at two issues. For
3 flanges and fittings, there are approximately 760
4 installed pieces in Vogtle Unit 2. All these pieces
5 have been evaluated and found acceptable. Concerning
6 molded case circuit breakers, all their safety-related
7 breakers were purchased as safety-related and are
8 acceptable. Vogtle has never taken commercial grade
9 breakers and upgraded them to safety-related.

10 (Slide) Slide 10-A, please.

11 We conducted an anti-trust evaluation to
12 review information since December 1986, when we
13 completed our previous evaluation prior to Unit 1
14 licensing. We found that no significant change had
15 occurred.

16 Subsequently, we received a request for
17 reevaluation of our finding. That request raises a
18 concern that we are pursuing from a compliance aspect.
19 However, it is not a new competitive concern and does
20 not meet the criteria for a significant change
21 finding, therefore we have affirmed our finding of no
22 significant change.

23 This ends my presentation. If there are no
24 questions, Mel Ernst will continue the presentation.

25 CHAIRMAN ZECH: Thank you very much. Let's

1 proceed.

2 MR. ERNST: (Slide) Slide 11.

3 On this slide, I listed several of the
4 Licensee's programs. Three of them have been
5 discussed in a fair amount of detail already. The
6 first one, their self-assessment, was an old one back
7 in 1983, but it's on there just to illustrate that
8 they did do a self-assessment using INPO guidelines at
9 that time to look at design, engineering,
10 construction, and project support management to see
11 what benefits they could get from that assessment.

12 Their Quality Concerns Program, we do think
13 that they have a very active Quality Concerns Program
14 that has been successful. They give confidentiality.
15 The program is independent from line organization.
16 It's well advertized. They exit with all employees
17 leaving the site to see if there's any concerns. They
18 do have a third party audit of the process. So we
19 agree that it looks like a strong program.

20 Their Lessons Learned Program, we agree with
21 their statements. They had several thousand lessons
22 learned, almost 500 of which had to do with
23 operations. We think the program was well managed and
24 tracked. The success of it, I guess, comes in what
25 happens with the plant as we go into the operations

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1 mode. But it certainly looks like it was a
2 potentially successful program.

3 (Slide) Slide 12.

4 The Readiness Review, again they went into
5 substantial detail on this program and I will not
6 repeat that. The Unit 2 Readiness Review Program was
7 a lesser extent than Unit 1 because a fair amount of
8 the structural program had been completed in 1971. We
9 found the program to be useful. We were better able
10 to integrate the program into our regular construction
11 inspection program for Unit 2 than Unit 1, so we think
12 we profited from an efficiency standpoint and we do
13 support that effort.

14 (Slide) Slide 13 -- slide 14.

15 The NRC Inspection Program. We had more
16 than 41,000 hours of inspection for Unit 1, but more
17 than 16,000 inspection hours for Unit 2. In the
18 preoperational testing program, we did the required
19 inspections in that area. We really didn't come up
20 with anything significant from the results. The
21 program went very well. For example, in Unit 1 they
22 had a fair amount of trouble in their SFAS testing and
23 Unit 2 went a lot smoother, largely because of lessons
24 learned in the Unit 1.

25 Special inspections, we had a number of

1 different types of special inspections at both units.
2 We've had six inspections of this nature since Unit 1
3 licensing. These consisted of inspection of their
4 Quality Concerns Program, utilization of the NDE van
5 from Region I, Appendix R inspection, what we called
6 an operations performance inspection, procedures
7 inspection and inspection of the new corporate
8 organization as they're transitioning from the old
9 organization to the new one. We went to Birmingham
10 and looked at it.

11 The Operations Performance Inspection, we
12 did take a look at their EOPs and ran some scenarios
13 on the simulator to look at operator performance.
14 We've not had what you'd call an EOP inspection at the
15 present time for Vogtle.

16 Unit 1 operating experience. As it was
17 mentioned, during start up of Unit 1, there were a
18 substantial number of SCRAMS, principally due to
19 balance of plant. But then they also had a number of
20 personnel errors. They did have a large number of
21 corrective actions as they --

22 CHAIRMAN ZECH: Excuse me.

23 MR. ERNST: Yes.

24 CHAIRMAN ZECH: You're on slide 15, I
25 believe, are you not?

1 MR. ERNST: Yes, slide 15.

2 CHAIRMAN ZECH: All right. Thank you.

3 MR. ERNST: They did undertake a number of
4 corrective actions which had reduced the number of
5 trips down to nine in 1988 and one so far in 1989.
6 The corrective actions included better tuning of the
7 balance of plant and steam generator, use of more
8 experienced operators as they got more experienced
9 with plant operations. We did have a special
10 inspection in this area to follow what they were doing
11 and they worked very closely with Westinghouse in
12 trying to arrive at the proper solution, and we had
13 periodic management meetings at the time to get
14 comfortable with what they were doing.

15 So, while from an operations standpoint they
16 certainly did not perform in the early stages like we
17 would wish, we do think they've learned their lessons.
18 At least odds-wise, they should not have problems of
19 that nature for Unit 2.

20 (Slide) Their other major problem area was
21 security. They did have a total of \$200,000 civil
22 penalty in 1987 with security issues. We classified
23 it at that time as a programmatic breakdown. They
24 organized a task force to look at the security matters
25 and made a number of recommendations, including the

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1 necessity to improve the training of their security
2 officers -- they had a lot of inexperienced officers
3 at the time -- and to try and lock down the security
4 system a lot earlier for Unit 2 than for Unit 1.

5 They did succeed in locking down, I believe
6 it was December kind of time frame, to test their
7 guard force. They made some management changes in the
8 security force and we have been watching them very
9 closely with the augmented inspection program.

10 We believe at the present time they're SALP
11 II in security. They have improved and we think that
12 improvement should continue.

13 (Slide) There is a chart, which is
14 viewgraph 17, which shows the trip rate or integrated
15 trips of Vogtle 1 compared to other plants in the
16 country. At one time during early start-up, Vogtle 1
17 had the worst trip performance of all the other plants
18 that -- bigger plants, modern day plants that started
19 up. That's just illustrative of the kind of problem
20 that they had and the one that we think that they have
21 largely resolved. But they did have a large number of
22 trips, a large number of ESF actions and large number
23 of LERs, as has been pointed out.

24 (Slide) Viewgraph 18 speaks to Unit 2
25 readiness. In their fuel loading operation, we looked

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1 very closely at their performance and really had no
2 problems. The fuel loading was completed a week after
3 issuance of their low power license.

4 In pre-critical operations, the story is a
5 little bit different. As was pointed out, there were
6 four significant personnel errors that occurred in the
7 February/March time frame. Two of these occurred on
8 the same shift. Three of them occurred on midnights
9 and a fourth was at some other time.

10 We do agree with Mr. McDonald's statement
11 that basically had inattention to duty and not
12 following procedures and a lack of teamwork. We did
13 have some concern about the shift manning and we did
14 meet with them in Atlanta on this subject and asked
15 for details on their shift manning, which they
16 provided to us.

17 It did appear that the one shift that had,
18 on March 19th, at least by the numbers, had less
19 experience than the other operating shifts. They
20 advised us that they have augmented that particular
21 shift with a reactor operator with more experience.
22 So, if that was a contributor to the problem, that
23 should help solve the problem.

24 I can go in some detail on these four
25 personnel errors, if the Commission so desires.

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1 CHAIRMAN ZECH: Let's proceed. We can come
2 back to it if we want to.

3 MR. ERNST: All right. Let's see. Plant
4 status, as was mentioned, did go critical at 1:42 p.m.
5 on the 28th. As a matter of interest, they went
6 almost as predicted, they went to the 1333 parts per
7 million boron, 160 steps on the D bank of the control
8 rods and that was awfully close to what was predicted.
9 Their start-up testing is almost complete and in the
10 next 24 hours they'll be finishing their evaluation of
11 their start-up tests. If things go right, I do
12 confirm that they would be essentially ready to go
13 above five percent sometime tomorrow or Saturday
14 morning.

15 We have, at this time, no adverse comments
16 on their operations over the past couple of days. It
17 looks like they've not had any personnel errors in
18 that period of time and we do have complete coverage
19 to monitor their activities.

20 We anticipate full coverage from our
21 inspectors, a combination of residents and Atlanta-
22 based inspectors, over the weekend as a minimum. And
23 then based on our observations during that period of
24 time, we'll decide whether further coverage is
25 warranted. Of course, we'll also be covering certain

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1 selected tests and points during their power ascension
2 program.

3 (Slide) Viewgraph 19.

4 We do have a slide on staffing. The points
5 of interest basically are that their anticipated shift
6 complement is significantly above the tech. spec.
7 required. Required is 8. Their actual is 13 for
8 staffing. The STA is normally filled by a degreed SRO
9 at this particular facility. Now, they did have a
10 pass rate on their operators of about 90 percent.

11 (Slide) Viewgraph 20 gives a breakdown of
12 degreed and Unit 1 experience for the SROs and the
13 ROs, considering the total complement of SROs and ROs,
14 not just those on shift.

15 Shift 1 was the one that had the two
16 operator errors and that was the standard midnight
17 shift.

18 (Slide) Viewgraph 21 shows the SALP ratings
19 for Unit 1 which basically shows a SALP II plant.
20 Fairly solid SALP II performer in my judgment, but a
21 ways to go for SALP I. We believe that they do need a
22 little more attention to detail and a little more
23 emphasis on teamwork. With that combination of people
24 working together, they should be able to start
25 knocking on the door for some improvements to a I.

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(Slide) Viewgraph 22.

It was already mentioned that we rated Unit 2 and the construction area to be a SALP I across the board. Frankly, I didn't believe it and I had to be briefed substantially by my staff before I would agree with that. They had done outstandingly well in their construction.

MR. TAYLOR: This might be the time for me to say that the readiness review concept, some Commissioners may remember, we started at Unit 1 Vogtle. It took extra effort on Georgia Power's part, took extra effort on the staff's part. That explains some of those high inspection hours, because we had to shift gears on Unit 1. But I think the staff, and I would believe Georgia Power would believe that that was a very successful overview of construction. I think if we construct more units, more nuclear units across the country, the staff will go back to looking at that concept as being applicable in construction, a good way to assure that the appropriate points of construction are deeply looked at and satisfied as we go along.

CHAIRMAN ZECH: I remember the program well and I would certainly encourage the staff to keep that in mind. It would be applicable in future plants. It

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1 does look like it could have -- certainly had an
2 impact on the construction marks that were given to
3 Unit 2.

4 MR. TAYLOR: This is not meant to detract
5 from the efforts of the Georgia Power, but I think it
6 was a good, solid program that helped them to get
7 these marks.

8 CHAIRMAN ZECH: I think it was -- well, it
9 was an effort on the part of Georgia Power as well as
10 the staff, but I think the combined effort perhaps is
11 reflective in some of these marks. Let's hope it will
12 be reflective in operational performance.

13 MR. TAYLOR: Yes, sir. Excuse me.

14 MR. ERNST: We wound up with very few
15 violations. I forget the exact number, but the number
16 7 comes to mind or something. So, it was well
17 worthwhile.

18 That does conclude my part of the
19 presentation and a very fast overview. As I say, a
20 good bit of the material was covered by Georgia Power
21 in their part of the presentation. I would certainly
22 concur with the substance of what they had to say.

23 MR. SNEZICK: (Slide) Could I have slide
24 23, please?

25 In conclusion, the staff concludes that the

1 plant meets the regulations. And with the
2 Commission's authorization, we will proceed to issue
3 the full power license for Vogtle Electric Generating
4 Plant Unit 2.

5 However, I need to point out that the staff
6 will have to understand whether such authorization
7 from the Commission includes permitting the Director
8 of NRR's Anti-Trust Determination to be considered
9 final.

10 CHAIRMAN ZECH: I understand that. I'm
11 going to call on General Counsel in a moment to
12 address that specific subject.

13 Mr. Taylor, do you have anything else?

14 MR. TAYLOR: That concludes the staff's
15 presentation.

16 CHAIRMAN ZECH: All right. We will give the
17 General Counsel an opportunity to address that in a
18 few minutes. But let me ask my fellow Commissioners
19 if they have any questions or comments from staff
20 while they're here.

21 Commissioner Roberts?

22 COMMISSIONER ROBERTS: Don't your staff
23 conclusions generally say when you recommend a full
24 power license can be operated without any undue risk
25 to public health and safety?

1 MR. SNEZICK: That is part of our finding
2 for issuing a license, yes, sir.

3 COMMISSIONER ROBERTS: Thank you.

4 That's all I have.

5 CHAIRMAN ZECH: Commissioner Carr?

6 COMMISSIONER CARR: Yes. In SALP for Unit
7 1, it indicated that there were 40 violations in that
8 12 month period and I noticed that Region II's got
9 about an average of 18. Have they done any better
10 since the end of that SALP date?

11 MR. ERNST: On Unit 1, sir?

12 COMMISSIONER CARR: Unit 1, yes.

13 MR. ERNST: I don't have the -- I have Marv
14 Sinkule with me also, from the Region, and Chuck
15 Berger from the site. Do we have a number on that?

16 MR. SINKULE: Marvin Sinkule. Since the end
17 of the SALP period, they've had, I believe, and this
18 is an estimate, I believe six violations. The 40 -- I
19 think there were 31 violations in the last SALP. Ten
20 of them had to do with security. They're improving in
21 that area. There were seven or eight that had to do
22 with surveillances and early in the period they had
23 problems with some missed surveillances. Those
24 were -- also showed an improvement in that area.

25 The others had to do with -- six or seven of

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1 them had to do with HP and we show improvement in that
2 area.

3 COMMISSIONER CARR: Okay. And the other
4 area for the same 12 month period in that SALP, they
5 showed 20 allegations per site of Unit 1, Unit 2. I
6 noticed in your last look at them you said that that
7 program has drastically reduced the allegations
8 received. Is that still the case? Are you still
9 getting a lot of allegations?

10 MR. ERNST: We have a fair number of
11 allegations. I believe there were 38 or so in the past
12 couple of years since Vogtle 1 licensing, which is about
13 the same number per year as we had in Vogtle 1.

14 Our statements with regard to their Quality
15 Concerns Program is they have had an awful lot of
16 quality concern. I think it's over 3,000. These have
17 been addressed by the utility. The program is very well
18 advertised. We think it's open, that they've been very
19 responsive. As a matter of fact, their program itself,
20 when they're interviewed on their concerns, they say, if
21 you have any qualms whatsoever, go to the NRC and
22 discuss it with them.

23 So, yes, there have been a fair number of
24 allegations, but we also think their Quality Concerns
25 Program is good, has attracted a large number of issues
26 and that they have closed the issues. We have

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1 inspected their program and they've closed the issues.

2 COMMISSIONER CARR: Well, I brought it up
3 because they're getting about 20 per site and your
4 average in Region II is about 5 per site, which
5 indicated something.

6 MR. ERNST: I don't know the comparison of,
7 say, Vogtle to another plant in a similar status.

8 COMMISSIONER CARR: Including TVA, I should
9 think.

10 MR. ERNST: Yes. When Harris was licensed,
11 for example, I don't know the exact numbers, but they
12 were way up there. There are always a large number of
13 allegations and concerns at a site under construction.
14 In the first place, you have far more people. You
15 know, you have thousands of people on site, so you had
16 the potential for more. But that's been our standard
17 experience. But to compare exact numbers from one
18 site to the other, I don't have that, sir.

19 COMMISSIONER CARR: Okay.

20 CHAIRMAN ZECH: Thank you very much.

21 Commissioner Rogers?

22 COMMISSIONER ROGERS: No.

23 CHAIRMAN ZECH: Commissioner Curtiss?

24 COMMISSIONER CURTISS: Just one question.
25 Has the plant completed all of its post-TMI

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1 modifications?

2 MR. SNEZICK: On the TMI, they've
3 implemented the TMI modification. There are two areas
4 where they are still doing some clean-up work. One is
5 the reactor vessel level instrumentation system and
6 the other one is the detailed control and design
7 review. Mr. Hopkins can give you a little more detail
8 on those.

9 COMMISSIONER CURTISS: Could you, please?

10 MR. HOPKINS: Yes. On the reactor vessel
11 level instrumentation system, that is installed and
12 calibrated. There is a final adjustment calibration
13 that needs to be done during the start-up program and
14 that's because the fuel is not installed. And so the
15 differential pressure across reactor vessel will be
16 different from that calibration previous to this.

17 In detailed control room design review,
18 they've been doing that for six years now and they
19 have implemented 160 human factors changes as a result
20 of that. Now, when you go operational, there are the
21 final walkdowns and surveys that are done for human
22 factors now that the control boards all work and the
23 plant works. They have those yet to do. Any changes
24 that might be identified by those walkdowns are
25 typically implemented at the first refueling outage.

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1 There are also an additional about 20
2 changes that have been previously identified with
3 those other 160 completed that they have not yet done
4 and those will be done with any human factors changes
5 identified with the operational walkdowns. The staff
6 finds that acceptable.

7 COMMISSIONER CURTISS: Those changes will
8 all be done then by the first refueling outage?

9 MR. HOPKINS: I believe so. The operational
10 walkdown changes I can't -- typically, they're all
11 done at the first refueling outage.

12 COMMISSIONER CURTISS: Thank you.

13 CHAIRMAN ZECH: Well, thank you very much.

14 I'd like to thank Georgia Power Company and
15 also the NRC staff for their presentations here today.
16 To summarize, I understand that the staff's position
17 is that they've concluded that the Georgia Power
18 Company and the Vogtle Unit 2 satisfy the requirements
19 for the issuance of a full power license.

20 Before we vote on the full power license,
21 I'd like to call on General Counsel to address the
22 anti-trust matter.

23 MR. PARLER: Well, thank you, Mr. Chairman.
24 There's really no substantive anti-trust matter. It's
25 simply a procedural matter that the Commission will

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1 have to address in a few minutes.

2 The Office of the General Counsel agrees
3 with the Director of NRR's findings, that there has
4 been no significant change in the activities involving
5 the license since the construction permit. We also
6 agree with the Director of NRR's determination that
7 the request for reconsideration did not raise any new
8 issues. That finding by Doctor Murley was published
9 in *The Federal Register* on March the 27th.

10 The Commission's regulations do provide for
11 a period for 30 days Commission review of such
12 determinations. The regulations are solely for the
13 benefit of the Commission.

14 I have conducted such a review and am
15 prepared to advise you now of my opinion as to the
16 correctness of Doctor Murley's determinations. I
17 recommend that the Commission vote later on to waive
18 the 30 day period to prevent Doctor Murley's
19 determinations to become final.

20 With that, Mr. Chairman, I have covered my
21 main assignment. But in the course of our reviews so
22 that I could make this recommendation, and the review
23 is the document that's in SECY-89-096, which I believe
24 is available in the room, we discovered or one of the
25 other lawyers discovered a sentence on page 5 of

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1 Doctor Murley's decision, five lines from the top,
2 which possibly could be misread as changing the
3 applicable precedent. I've been informed by our anti-
4 trust people, the lawyers, that there was no such
5 intent to change applicable precedent. The precedent
6 that the Commission expressed some years ago in its
7 Sumner decision continues to be applicable.

8 The possible misreading was this, that under
9 no circumstances could a change in licensing
10 conditions regarding anti-trust matters ever result in
11 a significant change for anti-trust purposes. That
12 was not the intent. What was the intent was that the
13 issues that were raised by Oglethorpe were within the
14 purview of the licensing conditions and that
15 Oglethorpe may take advantage of the procedures for
16 seeking enforcement of the licensing conditions, which
17 they allege are violated. The NRC staff will follow
18 up on these allegations.

19 With that, Mr. Chairman, I have completed my
20 presentations and I recommend that the Commission
21 waive the 30 day period allowed Doctor Murley's
22 determination to become final.

23 CHAIRMAN ZECH: All right. Thank you very
24 much.

25 Unless there are any additional comments or

1 questions from my fellow Commissioner, I'll ask you
2 now if you're prepared for two votes, one on the anti-
3 trust matter and the other on the full power matter,
4 if you're ready to do that.

5 First of all then, we'll vote in favor of
6 committing the Director's reaffirmed findings of no
7 significant change to become final upon the issuance
8 of a full power license in accordance with the
9 recommendations of the General Counsel.

10 All those who favor doing so, please signify
11 by saying aye.

12 (Ayes.)

13 CHAIRMAN ZECH: Those opposed?

14 The vote is five to zero in favor.

15 The second vote then, those in favor of
16 authorizing the staff after making the appropriate
17 findings, to authorize Georgia Power Company a full
18 power operating license for Vogtle Unit 2, please
19 signify by saying aye.

20 (Ayes.)

21 CHAIRMAN ZECH: Those opposed?

22 The vote is five to zero in favor.

23 Thank you very much. We stand adjourned.

24 (Whereupon, at 3:35 p.m., the hearing was
25 concluded.)

CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: DISCUSSION/POSSIBLE VOTE ON FULL POWER OPERATING
LICENSE FOR VOGTLE, UNIT 2

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: MARCH 30, 1989,

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
transcript is a true and accurate record of the foregoing events.

Carol Lynch

Reporter's name: Peter Lynch

3/30/89

SCHEDULING NOTES

TITLE: DISCUSSION/POSSIBLE VOTE ON FULL POWER OPERATING LICENSE
FOR VOGTLE, UNIT 2

SCHEDULED: 2:00 P.M., THURSDAY, MARCH 30, 1989 (OPEN)

DURATION: APPROX 1-1/2 HRS

PARTICIPANTS: GEORGIA POWER COMPANY 40 MINS

- ROBERT W. SCHERER
CEO AND CHAIRMAN OF THE BOARD - GPC

- A. WILLIAM DAHLBERG
PRESIDENT - GPC

- PAUL D. RICE
EXECUTIVE VICE PRESIDENT - GPC

- R. PATRICK McDONALD
EXECUTIVE VICE PRESIDENT
NUCLEAR OPERATIONS - GPC

- GEORGE BOCKHOLD
PLANT MANAGER

NRC 20 MINS

- T. MURLEY, DIRECTOR, NRR

- J. HOPKINS, NRR PROJECT MANAGER

- M. ERNST, DEPUTY REGIONAL ADMINISTRATOR
REGION II

COMMISSION BRIEFING
ON
VOGTLE ELECTRIC GENERATING PLANT, UNIT 2
FULL POWER LICENSE

MARCH 30, 1989

OUTLINE

- ° BACKGROUND
- ° PLANT DESIGN
- ° LICENSING MILESTONES
- ° LICENSE CONDITIONS AND EXEMPTIONS
- ° RECENT ISSUES IDENTIFIED AND CORRECTED
- ° LICENSEE PROGRAMS
- ° READINESS REVIEW PROGRAM
- ° NRC INSPECTION PROGRAM

OUTLINE (CONTINUED)

- ° UNIT 1 OPERATING EXPERIENCE
- ° UNIT 2 READINESS
- ° STAFFING
- ° SALP
- ° STAFF CONCLUSION

BACKGROUND

- ° OWNERS

- GEORGIA POWER COMPANY (GPC)
- OGLETHORPE POWER CORPORATION
- MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA
- CITY OF DALTON, GEORGIA

- ° OPERATOR

- GPC, OPERATOR OF HATCH NUCLEAR PLANTS

BACKGROUND (CONTINUED)

- ° LOCATION
 - 2 UNITS IN BURKE COUNTY, GEORGIA
 - 26 MILES SOUTHEAST OF AUGUSTA, GEORGIA
- ° VOGTLE UNIT 1 - COMMERCIAL, JUNE 1987

PLANT DESIGN

- ° GENERAL
 - WESTINGHOUSE 4 LOOP PWR
 - ARCHITECT ENGINEER
BECHTEL (LOS ANGELES)
 - GENERAL CONTRACTOR
GPC

PLANT DESIGN (CONTINUED)

- ° NSSS CHARACTERISTICS
 - RATED POWER - 3411 MWT, 1157 MWE
- ° CONTAINMENT CHARACTERISTICS
 - STEEL-LINED, PRESTRESSED
POST-TENSIONED CONCRETE

UNIT 2 LICENSING MILESTONES

CONSTRUCTION PERMIT ISSUED	JUNE 1974
ASLB DECISION	DECEMBER 1986
ISSUE LOW POWER LICENSE	FEBRUARY 1989
FUEL LOAD	FEBRUARY 1989
INITIAL CRITICALITY	MARCH 1989

LICENSE CONDITIONS AND EXEMPTIONS

- ° SPECIAL LICENSE CONDITIONS
 - NONE
- ° EXEMPTIONS
 - 10 CFR PART 50 APPENDIX J AIR LOCK TESTING
 - CRITICALITY MONITORING SYSTEM,
10 CFR 70.24
 - DECOMMISSIONING PLANNING RULE,
10 CFR 50.33(K)(1)

RECENT ISSUES IDENTIFIED AND CORRECTED

- ° FRAUDULENT MATERIAL
 - FLANGES AND FITTINGS
 - MOLDED CASE CIRCUIT BREAKERS

ANTITRUST

- ° FINDING OF NO SIGNIFICANT CHANGE
 - MARCH 2, 1989
- ° REQUEST FOR REEVALUATION
 - MARCH 17, 1989
- ° REEVALUATION COMPLETE
 - MARCH 27, 1989

LICENSEE PROGRAMS

- ° SELF ASSESSMENT (INPO)
- ° LESSONS LEARNED
- ° QUALITY CONCERNS PROGRAM
- ° READINESS REVIEW

READINESS REVIEW PROGRAM

AN IN-DEPTH SELF-ASSESSMENT BY GPC OF THE
PLANT VOGTLE DESIGN, CONSTRUCTION, AND
OPERATIONAL READINESS:

- ° IDENTIFY ALL REGULATORY REQUIREMENTS
- ° PROVIDE ADDITIONAL ASSURANCE THAT
QUALITY PROGRAMS MEET REQUIREMENTS

READINESS REVIEW PROGRAM (CONTINUED)

- ° PROVIDE FOR A PHASED INDEPENDENT NRC
REVIEW OF VOGTLE QUALITY PROGRAMS
- ° PROVIDE EARLY IDENTIFICATION OF PROBLEMS

NRC INSPECTION PROGRAM

- ° CONSTRUCTION INSPECTION
- ° PREOPERATIONAL TESTING
- ° SPECIAL INSPECTIONS
 - PRIOR TO UNIT 1 LICENSING - 9
 - AFTER UNIT 1 LICENSING - 6

UNIT 1 OPERATING EXPERIENCE

1. OPERATIONAL PROBLEMS-REACTOR TRIPS
27 AFTER INITIAL CRITICALITY IN 1987
9 TRIPS IN 1988, 1 TRIP IN 1989

CORRECTIVE ACTIONS

LESSONS LEARNED

SG TUNING, EXPERIENCED OPERATORS

SPECIAL INSPECTION

PERIODIC MANAGEMENT MEETINGS

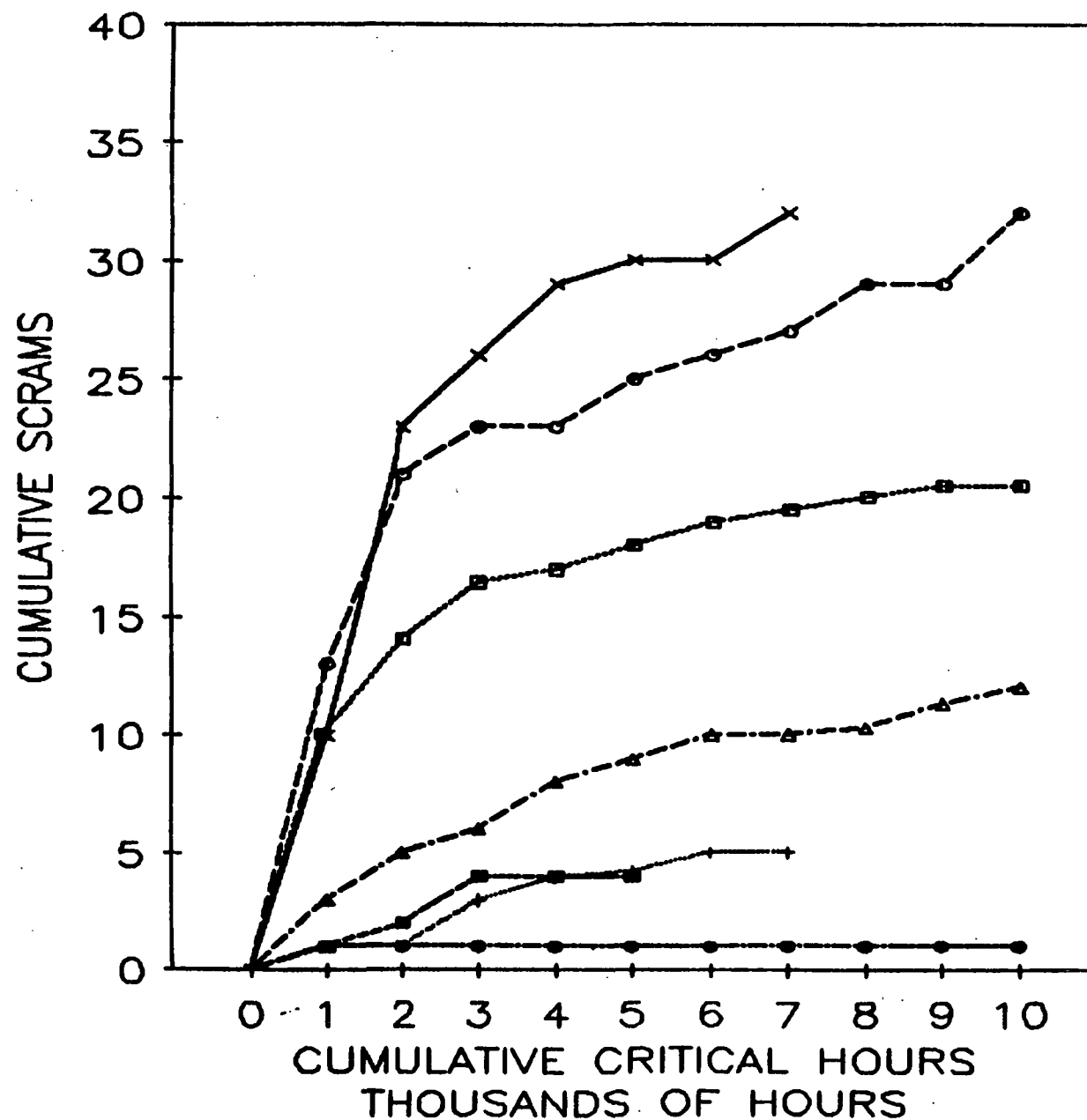
OPERATING EXPERIENCE (CONTINUED)

II. SECURITY PROBLEMS

CORRECTIVE ACTIONS

ADDED SECURITY TO READINESS REVIEW
PERIMETER LOCKDOWN IN DECEMBER 1988
MANAGEMENT CHANGE
ENFORCEMENT ACTION TAKEN
AUGMENTED INSPECTION PROGRAM

COMPOSITE UNPLANNED REACTOR SCRAMS



LEGEND

- x UPPER BOUND
- o VOGTLE 1
- LINE 2 BEAVER VALLEY 2
SHEARON HARRIS
- △ LINE 3 BYRON 2 BRADWOOD 2
CLINTON 1 NINE MILE PT. 2
BRADWOOD 1
- + LOWER BOUND
- PALO VERDE 3
- SOUTH TEXAS 1.

ESF ACTUATIONS

AVERAGE - 4.36
VOGTLE 1 - 9.00

TS VIOLATIONS

AVERAGE - 3.67
VOGTLE 1 - 7.88

UNIT 2 READINESS

- ° FUEL LOADING
 - COMPLETED WEEK AFTER ISSUANCE OF
LOW POWER LICENSE
- ° PRE-CRITICAL OPERATIONS
- ° CRITICAL OPERATIONS

STAFFING

° SHIFT COMPLEMENT (5 SHIFTS)
TS REQUIRED (8) 1 - SUPERVISOR (OSOS)
1 - SRO, 3 - RO
3 - NONLICENSED OPERATORS (NLO)
ACTUAL (13) 1 - OSOS, 3 - SRO
4 - RO, 5 - NLO
(STA NORMALLY FILLED BY DEGREED SRO)

STAFFING (CONTINUED)

<u>LICENSED</u>	<u>DEGREED</u>	<u>UNIT 1 EXPERIENCE</u>
SRO 44	31	36
RO 31	3	27

UNIT 1 SALP 10/01/87 - 09/30/88

PLANT OPERATIONS	2
RADIOLOGICAL CONTROLS	2
MAINTENANCE	2
EMERGENCY PREPAREDNESS	1
SECURITY	2
ENGINEERING/TECHNICAL SUPPORT	2
SAFETY ASSESSMENT/QUALITY VERIF.	2

UNIT 2 SALP 10/01/87 - 09/30/88

PIPING SYSTEMS AND SUPPORTS	1
AUXILIARY SYSTEMS	1
ELECTRICAL EQUIPMENT AND CABLES	1
INSTRUMENTATION	1
ENGINEERING/TECHNICAL SUPPORT	1
SAFETY ASSESSMENT/QUALITY VERIF.	1
PREOPERATIONAL TESTING	1

STAFF CONCLUSIONS

THE STAFF CONCLUDES THAT THE PLANT MEETS
THE REGULATIONS, AND WITH COMMISSION
CONCURRENCE WE WILL PROCEED TO ISSUE THE
FULL POWER LICENSE FOR THE VOGTLE ELECTRIC
GENERATING PLANT, UNIT 2



March 23, 1989

POLICY ISSUE **(Information)**

SECY-89-096

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: FINDING OF "NO SIGNIFICANT CHANGE" PURSUANT
TO THE OPERATING LICENSE ANTITRUST REVIEW OF
PLANT VOGTLE, UNIT 2

Purpose: To inform the Commission of a completed staff action.

Discussion: Pursuant to procedures set forth by the Commission in delegating authority to the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, the Director of the Office of Nuclear Reactor Regulation has made a finding that no significant antitrust changes have occurred since the previous antitrust operating license review of Plant Vogtle, Unit 1.

The Director's finding was published in the Federal Register on March 2, 1989 and provided for requests for reevaluation of the finding by March 17, 1989. A request to reevaluate (Request) the Director's finding was received from Oglethorpe Power Corporation (Oglethorpe) on March 17, 1989. Comments in opposition to Oglethorpe's Request were also received on the last day of the filing period from the Municipal Electric Authority of Georgia (MEAG). Georgia Power Company (GPCo) submitted a reply to the filings received in this proceeding on March 21, 1989. All of the parties involved in this proceeding, i.e., GPCo, Oglethorpe and MEAG are co-owners of Plant Vogtle.

CONTACT:
William Lambe, PMAS
49-21277

Pursuant to Section 105c of the Atomic Energy Act of 1954, as amended and the Commission's Rules and Regulations, the staff is required to conduct an antitrust operating license review to determine whether or not "significant changes" have occurred in the licensee's activities since the construction permit review. The Commission, in its Summer decision (13 NRC 862 (1981)), interpreted its significant change responsibility and delegated the authority to make "significant change" determinations to the staff -- as noted supra. In Summer, the Commission also set forth a definite set of criteria the staff must follow in making the determination of whether or not a "significant change" has occurred. The change or changes, " . . . 1) must have occurred since the previous antitrust review of the licensee(s);

2) are reasonably attributable to the licensee(s); and
 3) have antitrust implications that would likely warrant some form of Commission remedy." The staff applied these criteria and procedures established by the Commission for dealing with "significant change" determinations in reaching its "Finding of No Significant Change" for Plant Vogtle, Unit 2 (Vogtle 2 Finding).

The concerns raised by Oglethorpe in its request to the Director of the Office of Nuclear Reactor Regulation to reevaluate the Vogtle 2 Finding were also analyzed under the criteria established by the Commission in Summer. The staff has determined that Oglethorpe's Request en Bloc addresses concerns that do not represent changed activity by the principal licensee, GPCo, but represent accusations of non-compliance by GPCo with antitrust license conditions that are attached to GPCo's Plant Vogtle and Hatch 2 licenses. As a result of its reevaluation, the staff has determined that the criteria established by the Commission in Summer for making an affirmative significant change determination have not been met. The information provided by Oglethorpe does not identify any new competitive concerns that were not apparent and addressed during the antitrust review which was completed at the construction permit stage in the mid-1970's. Consequently, the initial criterion requiring the changed activity to have occurred since the previous antitrust review at the construction permit stage -- in this instance, since the Plant Vogtle, Unit 1 operating license review -- is the governing criterion for purposes of reevaluating Oglethorpe's request. The activities addressed by Oglethorpe seem to be attributable to GPCo (second criterion) and the activities, if substantiated, would likely warrant Commission remedy (third criterion) -- albeit a remedy in the form of an enforcement proceeding requiring compliance with existing license conditions. (The comments submitted by both GPCo and MEAG oppose any reevaluation of the Director's Vogtle 2 Finding and suggest that the issues raised by Oglethorpe be addressed in the form of a compliance proceeding to determine whether the accusations raised by Oglethorpe have merit.)

The Vogtle 2 Finding has been reevaluated by the staff, as requested by Oglethorpe, and a determination has been made not to change the finding. The staff, however, will expeditiously pursue the concerns raised by Oglethorpe in its request for reevaluation and proceed with the procedures in place for addressing non-compliance with antitrust license conditions.

The Commission's Rules and Regulations (2.101(e)(3)) provide for a thirty day period in which the Commission can review a reevaluation of a "significant change" determination.

The Director has determined that he will not change his finding that "no significant change" has occurred. That finding will become final 30 days after publication in the Federal Register "and only in the event that the Commission has not exercised sua sponte review." Due to the exigencies of the instant situation, the Staff recommends that the Commission exercise its authority to permit the Director's determination to be considered final when the Director is authorized to issue a full power license.

Coordination:

The finding was concurred in by the Office of the General Counsel.


Victor Steblo, Jr.
Executive Director
for Operations

Enclosures:

Director's Finding of No
Significant Antitrust Changes
Director's Reevaluation Finding
Oglethorpe Power Corporation's "Request"
Municipal Electric Authority of
Georgia's "Comments"
Georgia Power Company's "Reply"

DISTRIBUTION:

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PLANT VOGTLE, UNIT 2
OPERATING LICENSE ANTITRUST REVIEW
FINDING OF NO SIGNIFICANT CHANGE

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Plant Vogtle Unit 1 operating license to Georgia Power Company, et al., the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the Plant Vogtle Unit 1 antitrust operating license review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in Georgia, the events relevant to the Plant Vogtle Unit 1 operating license review, as well as the events that have occurred subsequent to the Plant Vogtle Unit 1 operating license review.

The conclusion of the staff's analysis is as follows:

Section 105c of the Atomic Energy Act of 1954, as amended, provides for precensuring antitrust reviews of commercial power reactors at the construction permit and operating license stages of the licensing process. The antitrust operating license review is not intended as a de novo review but is focused only on those activities of the licensee(s) that have occurred since the completion of the construction permit review.

This concept of reviewing only significant changes in the licensee's activities at the operating license stage has been applied by the staff to reviews of multiunit plant applications. For those plants with multiple reactor licenses, the staff conducts separate antitrust reviews for each reactor when the reactors are licensed on a delayed or staggered schedule, i.e., when the reactors are scheduled to be licensed eighteen months or more apart.


As indicated supra, the antitrust operating license review of Unit 1 of Plant Vogtle was completed in November of 1986 and the reactor was licensed in March of 1987. Unit 2 of Plant Vogtle is scheduled to be licensed in March of 1989 and in light of the two-year lapse since the previous review of the licensees, the staff initiated a separate antitrust review of Unit 2 -- with the focus of the review on any significant changes in the licensees' activities since the completion of the previous review in 1986.

The changes in the licensees' activities since the previous antitrust review have been largely the result of policies and agreements that were initiated as a result of license conditions placed upon the principal licensee, Georgia Power Company, during the antitrust construction permit review. The staff noted in its operating license review of Unit 1 of Plant Vogtle, that the competitive process in the Georgia electric bulk power industry had improved markedly. Moreover, the staff attributed this positive change to the successful implementation of the antitrust license conditions imposed by the Commission. It was also noted that power systems throughout Georgia and adjacent states were better able to control their own power supply destinies by taking advantage of new power supply options and alternatives made available by a more competitive bulk power supply system.

The staff's review of changes in the licensees' activities since 1986 indicates that the procompetitive effects identified during the Vogtle 1 OL review are continuing. Various energy exchange agreements among industry players have been entered into and activated, thereby stimulating more efficient operations among a wide variety of industry players throughout the southeastern portion of the country. Georgia Power Company is providing power and energy transactions to various power systems in Georgia as well as Florida. The integrated transmission system that emerged from the Commission's antitrust construction permit review of plant Vogtle in the mid-1970's allows for ownership of portions of the Georgia transmission grid by all power systems in the state and this transmission arrangement has been cited by industry observers as a model for joint transmission agreements in other areas of the country.

The staff believes the competitive stimuli introduced during the antitrust construction permit review are continuing to promote competition and enhance the competitive process throughout the Georgia electric bulk power market. The staff does not believe that there have been any "significant changes" in the licensees' activities since the previous antitrust review and recommends that no affirmative significant change determination be made pursuant to the operating license for Unit 2 of Plant Vogtle.

Based upon the staff's analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.


Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

REEVALUATION AND AFFIRMATION OF
NO SIGNIFICANT CHANGE FINDING PURSUANT TO
PLANT VOGTLE, UNIT 2 OPERATING LICENSE ANTITRUST REVIEW

By letter dated March 17, 1989, Mr. Charles A. Patrizzia, counsel for the Oglethorpe Power Corporation (Oglethorpe), submitted comments on and requested a reevaluation (Request) of my "Finding of No Significant Antitrust Changes" (Vogtle 2 Finding) pursuant to the captioned antitrust review which was published in the Federal Register on March 2, 1989 (54 Fed. Reg. 8852). For the reasons set forth below, I have decided not to change my Vogtle 2 Finding of no significant antitrust changes.

BACKGROUND

Georgia Power Company (GPCo) underwent an antitrust review at the construction permit (CP) stage by the Atomic Energy Commission staff and the Department of Justice in accordance with Section 105c of the Atomic Energy Act of 1954, as amended. As a result of this review, the construction permit was issued with a set of antitrust license conditions designed to stimulate the competitive process in the Georgia electric bulk power market and to mitigate GPCo's alleged anticompetitive conduct.

Plant Vogtle is a two-unit reactor power station. Pursuant to Section 105c and Commission's Rules and Regulations, the Director of the Office of Nuclear Reactor Regulation issued a "Finding of No Significant Antitrust Changes" for Unit 1 of Plant Vogtle on November 21, 1986. The staff conducts separate

antitrust operating license reviews of multiunit production facilities when the second or successive unit is scheduled to be licensed eighteen months or more after the previous unit has been licensed. In light of the fact that the full power license for Plant Vogtle, Unit 1 was issued on March 16, 1987 and the full power license for Plant Vogtle, Unit 2 was scheduled to be issued in March of 1989, two years after the previous review, the staff conducted a separate operating license "significant change" analysis for Plant Vogtle, Unit 2.

The staff requested updated Regulatory Guide 9.3 information from all of the licensees and reviewed the data submitted in conjunction with previous antitrust reviews of nuclear plants owned by GPCo, i.e., Hatch 2 and Vogtle 1 construction permit and operating license reviews. After reviewing the record in these proceedings and other pertinent data, I have made the determination that none of the changes that were identified were significant in an antitrust context -- as envisioned by the Commission in its Summer decision (see DISCUSSION, infra). As a result of this review, I issued a "Finding of No Significant Antitrust Changes" on February 28, 1989. My Vogtle 2 Finding was published in the Federal Register on March 2, 1989. The notice provided for filing requests for reevaluation of my finding within fifteen days of its initial publication in the Federal Register. As indicated supra, Oglethorpe Power Corporation, represented by counsel, Charles A. Patrizia, filed a request to reevaluate my Vogtle 2 Finding. Mr. Glen L. Ortman, counsel representing the Municipal Electric Authority of Georgia (MEAG), also a co-owner of Plant Vogtle, filed comments (Response) opposing Oglethorpe's request for a reevaluation.

DISCUSSION

The Commission delegated its authority to make significant change findings to the staff and established a definite set of criteria the staff must follow in making the determination whether or not a significant change has occurred.¹ The change or changes, ". . . 1) must have occurred since the previous antitrust review of the licensee(s); 2) are reasonably attributable to the licensee(s); and 3) have antitrust implications that would likely warrant some form of Commission remedy." It is within this framework established by the Commission that I made my initial "Finding of No Significant Antitrust Changes" on February 28, 1989 and it is within this framework that I have analyzed Oglethorpe's request to reevaluate my Plant Vogtle, Unit 2 "Finding of No Significant Antitrust Changes".

In its letter requesting reevaluation of my Vogtle 2 Finding, Oglethorpe requested that I take the following actions:

1) ". . . correct the Finding to reflect accurately that the antitrust license conditions have not successfully and fully been implemented . . ." and 2) ". . . confirm and clarify that the antitrust license conditions entitle Oglethorpe and other co-licensees to immediate and equal access to the integrated transmission system, and require Georgia Power to implement such transactions."

¹The Commission delegated its authority to make significant change findings to the staff by memorandum dated September 12, 1979. In its Summer decisions (11 NRC 817 (1980) and 13 NRC 862 (1981)), the Commission outlined the criteria the staff must employ in making a finding as to whether or not there have been significant changes (with competitive significance) since the previous antitrust review.

A third "request" suggests that I change my Finding of no significant changes if the license conditions are not confirmed and clarified as requested.

The common thread running throughout Oglethorpe's Request is that the principal licensee, Georgia Power Company, is not complying with the antitrust license conditions attached to its Plant Vogtle and Plant Hatch, Unit 2 operating licenses. Oglethorpe cites several instances in my Vogtle 2 Finding that represent "factually incorrect conclusions" which have led me to conclude that the antitrust license conditions have successfully stimulated competition in the Georgia electric bulk power market. Even if Oglethorpe were correct in its assertions of "factually incorrect conclusions", which is an area not addressed in this reevaluation, the issues and examples Oglethorpe raises do not represent issues that are properly addressed in the Commission's "significant change" operating license review.

As I have indicated earlier, the Commission's antitrust review at the operating license stage focuses on changes since the construction permit review or, in this instance, since the previous review of the Plant Vogtle, Unit 1 operating license review. Oglethorpe's Request does not provide information of any changed activities by GPCo -- unrelated to the implementation of the antitrust license conditions -- since the previous antitrust review. Indeed, there may in fact be problems in the Georgia electric bulk power market as outlined in Oglethorpe's Request; however, the issues Oglethorpe has addressed involve the same general concerns relating to GPCo's transmission policies and practices

that caused the Atomic Energy Commission and the Department of Justice to recommend license conditions at the CP stage that would mitigate GPCo's market power and hopefully stimulate the competitive process in the market(s) in question. Oglethorpe has identified several instances where it alleges that GPCo has not complied with its antitrust license conditions. Such conduct does not trigger a second antitrust review at the operating license stage as envisioned by Section 105c of the Atomic Energy Act of 1954 , as amended, but such conduct, if substantiated, could form the basis for initiation of a compliance proceeding before this Commission -- a proceeding that would focus on GPCo's activities and responsibilities under the license conditions. The Commission has procedures in place for dealing with non-compliance with antitrust license conditions (cf., NUREG-0970, pp. 13-19). MEAG, also a co-owner of Plant Vogtle, agrees with this interpretation of Oglethorpe's request for reevaluation.

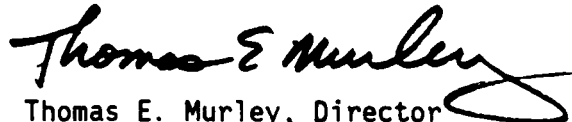
MEAG is a joint action agency comprised of primarily municipal electric systems in the state of Georgia. MEAG owns slightly more than twenty-two percent of Plant Vogtle -- ownership that was made available as a result of the antitrust license conditions attached to the nuclear units owned by GPCo. MEAG, at the time of the CP antitrust review, was faced with many of the same competitive problems that faced Oglethorpe and other bulk power systems in the state of Georgia, i.e., access to baseload generation and access to the transmission grid in Georgia. While MEAG apparently was not privy to the Ogethorpe request -- they both were filed on the same day, March 17, 1989 -- its response

addressed the principal issues raised by Oglethorpe. MEAG states at page three of its Response:

"While the Authority submits that any concerns with respect to transmission access should be noted, they do not require a reevaluation of the Director's finding of no significant change. It is consistent with the holdings of the Commission and with its rules of procedure that the interpretation and enforcement of the existing license conditions properly should be addressed in an enforcement proceeding."

The license conditions resulting from the antitrust CP review have been in place since 1976 and the Oglethorpe request indicates that Oglethorpe has been having compliance problems with GPCo since as early as 1984 (Request, p. 16). Oglethorpe has had ample time to come before the Commission to seek redress and compliance with the license conditions. Moreover, Oglethorpe concurred in both the 1986 and 1988 Regulatory Guide 9.3 submittals to the staff which specifically requested information from licensees with license conditions pursuant to, "... actions or policies which have been implemented in accordance with such conditions". (Regulatory Guide 9.3, Question B.2) Oglethorpe also had the opportunity to come before the Commission and respond to Notices published in the Federal Register in 1986 and 1988 requesting comments pursuant to any changed (competitive) activities by Georgia Power Company -- Oglethorpe was silent on all occasions. The staff will pursue Oglethorpe's concerns expressed in its Request, but not in the context of an operating license "significant change" review -- it is not the proper forum for compliance-related issues.

For the reasons stated above, I have decided not to change my "Finding of No Significant Change" pursuant to the antitrust operating license review of Plant Vogtle, Unit 2.


Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

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WRITER'S DIRECT DIAL NUMBER

OUR FILE NO

March 17, 1989

07995.41979

Mr. Thomas E. Murley
Director,
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Plant Vogtle, Unit 2, Docket No. 50-425A;
Antitrust Operating License Review--No Significant
Change Finding

Dear Mr. Murley:

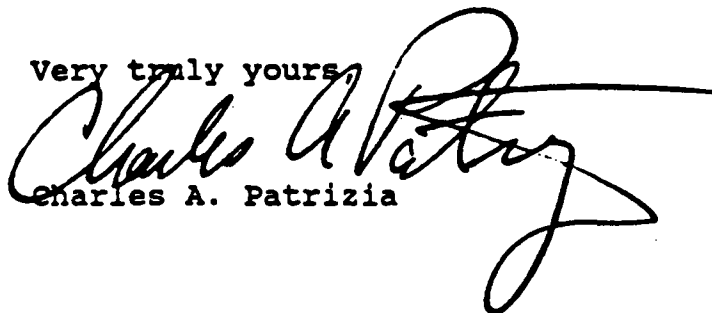
Pursuant to the Notice published in the Federal Register on March 21, 1989 relating to the above referenced Staff Finding, I am submitting comments and a request for reevaluation on behalf of Oglethorpe Power Corporation. The enclosed comments request the Staff to correct certain factual matters described in the Finding and, on the basis of the "complete picture", to confirm and clarify the Commission's understanding of the applicable license conditions. If such corrections and clarification are not made, the Staff could not properly determine that "no significant changes" had occurred since the last antitrust review.

By copy of this letter, I am providing a set of these comments to certain NRC staff and to Georgia Power Company.

Mr. Thomas E. Murley
March 17, 1989
Page 2

If the Staff would like additional information or documentation on the issues raised by the Comments, we will be pleased to respond.

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "Charles A. Patrizia".

Charles A. Patrizia

cc: F.F. Stacy, President
Oglethorpe Power Corp.

A.W. Dahlberg, Chief Executive Officer
Georgia Power Company

William M. Lambe, Sr.
Antitrust Policy Analyst
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NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-425A

PLANT VOGTLE, UNIT 2 -- ANTITRUST

OPERATING LICENSE REVIEW

OGLETHORPE POWER CORPORATION'S
COMMENTS AND REQUEST FOR CORRECTION
OF THE DIRECTOR'S NO "SIGNIFICANT CHANGES" DETERMINATION

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March 17, 1989

COMMENTS AND REQUEST FOR CORRECTION OF
THE DIRECTOR'S NO "SIGNIFICANT CHANGES"
DETERMINATION (DOCKET NO. 50-425A)

Oglethorpe Power Corporation ("Oglethorpe") submits these comments pursuant to the Federal Register notice announcing the proposed antitrust finding of the Director of the Office of Nuclear Reactor Regulation ("Director") in relation to Unit 2 of Plant Vogtle (the "Director's Finding"). Oglethorpe requests that the Director reexamine the factual and legal basis of the finding that no "significant (antitrust) changes" in the licensee's activities or proposed activities have occurred subsequent to the previous antitrust operating license review of Unit 1 of Plant Vogtle. The Director's Finding was published at 54 Fed. Reg. 8852 (March 2, 1989) (Docket No. 50-425A).^{1/}

PRELIMINARY STATEMENT

Oglethorpe requests the following specific actions:

1. The Director should correct the Finding to reflect accurately that the antitrust license conditions have not successfully and fully been implemented by the

^{1/} This submission is intended to constitute "comments" and a "request for reevaluation" in response to the Commission's March 2, 1989 Federal Register notice, pursuant to 10 C.F.R. § 2.101.

principal licensee, Georgia Power Company ("Georgia Power"), and that certain "procompetitive effects" identified during the Vogtle 1 operating license review have not been achieved.

2. In issuing the Vogtle 2 license, the Commission should confirm and clarify that the antitrust license conditions entitle Oglethorpe and the other co-licensees to immediate and equal access to the integrated transmission system for off-system transactions, and require Georgia Power to implement such transactions.

3. Absent this confirmation and clarification of the co-licensees' transmission rights, there is no adequate basis to determine that there have been no significant antitrust changes since the last antitrust review.

As described more fully below, recent and continuing events demonstrate that certain key Staff conclusions concerning Georgia Power's implementation of the existing antitrust license conditions do not reflect a comprehension of the "complete picture" of Georgia Power's activities. Georgia Power has, within the two weeks since the Director's Finding, contravened assurances it has repeatedly given regarding the rights of Oglethorpe and the other co-owners of the Georgia Integrated Transmission System ("ITS") to use the ITS for off-system transactions

with other power systems. Georgia Power's recent statements are contrary to the Staff's understanding and the Justice Department and Commission interpretations of the existing license conditions. If these statements in fact represent Georgia Power's position, serious antitrust concerns are now raised.

Oglethorpe submits that these and other events discussed in these Comments require reassessment of the statements in the Director's Finding that "the pro-competitive effects identified during the Vogtle 1 OL review are continuing," and, more generally, that "the competitive stimuli introduced during the antitrust construction permit review are continuing to promote competition and enhance the competitive process throughout the Georgia electric bulk power market." 54 Fed. Reg. at 8852, 8853. Oglethorpe requests that these findings be modified in light of the information provided herewith to reflect a "complete picture" of the licensee's activities, South Carolina Electric & Gas Co., 11 N.R.C. 817, 830 (1980), and, where necessary, to restate the legal effect of the Staff's factual determinations.

Moreover, it is now evident that the antitrust license conditions originally mandated by the Commission in 1974 are not being successfully implemented in certain key respects. Indeed, the very meaning of the conditions is

disputed among the licensees bound by them. As the Commission issues a new license, it should ensure that the parties clearly understand its requirements. The Commission should accordingly make explicit in any Section 105(c)(2) finding that the license conditions require Georgia Power to afford immediate access to the ITS by the co-licensees for off-system transactions with other power systems -- including bulk power purchases from out-of-state and other energy transactions with various power systems in Florida or other states in the region. The Commission should clarify that Georgia Power may not preclude the co-licensees' use of the ITS for such off-system transactions, and may not continue to use its control over scheduling of ITS usage (including the Georgia-Florida interface portion of the ITS) otherwise to restrict or limit the co-licensees' ability to enter into these transactions.

Assuming Georgia Power recognizes and adheres to this construction of the existing antitrust license conditions, as confirmed and clarified by the Commission, there would appear to be no need for a further antitrust review. In the event Georgia Power continued its present refusal to implement the conditions, following such confirmation and clarification, the Commission could then take appropriate action to ensure compliance.

Absent confirmation and clarification of the co-licensees' rights to immediate access to the ITS for off-system transactions, the Commission would not have a sufficient record basis to make the finding required by Section 105(c)(2) that no "significant changes" in the licensees' activities have occurred. The effect of leaving the meaning of these conditions unresolved would be to permit maintenance of a situation that would raise substantial questions as to the ability of the co-licensees to compete with Georgia Power for off-system transactions. Georgia Power's preclusion of these transactions would effectively frustrate the co-licensees' ability "to control their own power supply destinies by taking advantage of new power supply options and alternatives made available by a more competitive bulk power supply system." 54 Fed. Reg. at 8852 (March 2, 1989).

To assist the Director and his staff in this analysis, Oglethorpe is prepared to provide such further information, documentation or description as the Staff may need. Oglethorpe also hereby requests an opportunity to respond to submissions of Georgia Power and to be present at any meetings with Commission Staff at which Georgia Power purports to speak on behalf of all co-owners.

I. THE EXISTING ANTITRUST LICENSE CONDITIONS WERE
DESIGNED TO PROVIDE THE CO-LICENSEES WITH
"IMMEDIATE ACCESS" TO THE TRANSMISSION GRID
FOR COMPETITIVE CCF-SYSTEM TRANSACTIONS.

As the record reflects, Georgia Power underwent a full Section 105(c) antitrust review in connection with its construction permit applications for Plant Vogtle and the operating license for Plant Hatch. During that review, the Department of Justice and the Atomic Energy Commission ("AEC") identified several instances of anticompetitive activity by Georgia Power -- instances where Georgia Power had "abused its market position and its market power at the expense of smaller competing power systems in Georgia," including Oglethorpe's member systems. 51 Fed. Reg. 43253 (Dec. 1, 1986).

A principal concern of the Department of Justice related to the power of Georgia Power and its parent holding company, The Southern Company, to exercise control over all transmission facilities in the State of Georgia so as to grant or deny access to potential competitors and prevent or impede the development of competitive bulk power supply systems. See Department of Justice letter to the AEC, August 2, 1972, at pp. 3-9. Specifically included in the Justice Department concerns were Georgia Power's efforts to

restrict access for sales of power into Florida. Id. at 6-7.

After extensive negotiations involving Georgia Power, intervening power systems (including Oglethorpe's members), and the staffs of the Justice Department and AEC, Georgia Power agreed to a settlement and a "broad set of license conditions designed to mitigate [its] anticompetitive conduct" (Staff Review at 5) and to "stimulate the competitive process in the Georgia bulk power services market" (51 Fed. Reg. at 43253). This broad set of conditions provided Oglethorpe and the municipal electric power systems with ownership participation in Plant Vogtle and Plant Hatch, and with joint ownership of the integrated transmission system that previously had been controlled exclusively by Georgia Power. The joint ownership of the ITS and each co-owner's continuing investment in the ITS were designed specifically to afford Oglethorpe and the other ITS participants the capability of entering into bulk power supply arrangements with other electric systems and to provide alternative means for wheeling power of other systems.

The Integrated Transmission System Agreement between Oglethorpe and Georgia Power grants each party equal rights to use the ITS to transmit capacity and energy both supplied from their own generating plants and purchased from

other electric suppliers, for the separate distribution and sale by each party. (ITS Agreement § 3.01.) This Agreement was designed to implement and further the pro-competitive purposes of the Settlement Agreement and license conditions (id. § 5.20), providing the "immediate access to the transmission grid" necessary to engage in competitive bulk power transactions (letter from Department of Justice to NRC, April 9, 1976, at p. 3).

The Commission was specifically notified of this arrangement and its role in implementing the proposed license conditions prior to the grant of the construction permit, by an advice letter from the Attorney General dated April 9, 1976. As the Justice Department's letter to the AEC recommending the conditional grant of the Hatch and Vogtle licenses stated:

"MEAG and Oglethorpe, in addition to the purchase of ownership in the Hatch unit and Vogtle units, will purchase partial ownership of and the use of the high voltage transmission grid previously owned and controlled exclusively by the Georgia Power Company. As a result, they will have the capability of entering into bulk power supply arrangements with other electric systems. In addition, this immediate access to the transmission grid will provide alternative sources for wheeling arrangements for electric systems in Georgia."

Id. at 3 (emphasis added).

The co-licensees' rights to use this integrated transmission system must be consistent with these fundamental objectives of the original AEC settlement. The antitrust license conditions must preserve the co-licensees' capability to engage in wheeling and bulk power supply arrangements over the ITS and must prevent Georgia Power from exercising monopolistic control over transmission facilities used for off-system transactions to Florida and other markets. The Commission Staff has previously recognized that such off-system transactions by Oglethorpe provide a "competitive option" that was not open to Oglethorpe "prior to the settlement agreement and the accompanying ITS agreement."^{2/}

II. THE FACTS DO NOT SUPPORT THE STAFF'S CONCLUSIONS THAT THE ANTITRUST LICENSE CONDITIONS AND THEIR PRO-COMPETITIVE OBJECTIVES ARE BEING SUCCESSFULLY IMPLEMENTED BY THE PRINCIPAL LICENSEE, GEORGIA POWER.

The Finding recites events from which the Staff concludes that the antitrust license conditions are being successfully implemented and that the "procompetitive effects" of those license conditions are "continuing to promote competition and enhance the competitive process throughout the Georgia electric bulk power market." 54 Fed.

^{2/} Staff Review, App. A (Vogtle 1 Finding of No Significant Antitrust Changes) ("1986 Vogtle I Staff Review"), at 16.

Reg. at 8852-53. Oglethorpe urges the Staff to reexamine and correct this erroneous view. A fuller review of the overall facts and events occurring since the previous antitrust review demonstrates that the antitrust license conditions are not being successfully implemented by Georgia Power, nor are their procompetitive objectives being achieved.

A. Georgia Power Has Recently Contradicted Prior Assurances to Provide Transmission Access for Off-System Transactions.

On the very day the Director's Finding was signed, Georgia Power refused to recognize Oglethorpe's rights as a co-licensee to equal access to the integrated transmission system for off-system transactions. This position contradicts repeated prior assurances to the Commission Staff and Oglethorpe.

In its February 28, 1989 letter to Oglethorpe, Georgia Power now takes the position formally that, under the AEC settlement conditions incorporated in the ITS Agreement:

Oglethorpe does not have the right to use the ITS to transport power to off-system loads unless and until Oglethorpe Power has met all contractual conditions therefor, including owning generating resources in the state of Georgia

sufficient to satisfy the requirements of its customers.^{3/}

In addition, Georgia Power's letter states that, once Oglethorpe has satisfied these "conditions precedent to acquire the right to use the ITS for off-system transactions," Oglethorpe would only have the right to use essential interconnection points between the ITS and other systems on a "first come, first served" basis to be determined by Georgia Power.^{4/} As a result, Oglethorpe would not have equal access commensurate with its ownership share, and Georgia Power would continue effectively to control the use of the Georgia-Florida interface.

In a further letter to Oglethorpe on March 15, 1989, Georgia Power has purported to clarify any "misunderstanding" as to its position regarding the asserted "self-sufficiency" condition. Georgia Power now asserts that Oglethorpe "can become self-sufficient by acquiring reliable, firm bulk power in Georgia through contractual power purchases as well as through the actual ownership of

^{3/} Letter from A. W. Dahlberg, President, Georgia Power Company, to F. F. Stacy, President, Oglethorpe Power Corporation (Feb. 28, 1989) at p. 3.

^{4/} Id.

generating facilities."5/ Nonetheless, Georgia Power continues to assert that Oglethorpe has no right to use the ITS to sell power off-system until it attains "self-sufficiency" in the manner acceptable to Georgia Power. Moreover, Georgia Power's revised position would specifically preclude Oglethorpe from becoming "self-sufficient" by purchasing power from outside the State of Georgia -- a restriction that would resurrect one of the principal original antitrust concerns of the Department of Justice.

Georgia Power's recent statements are contrary to assurances previously made both to the Commission staff and to Oglethorpe on this subject. In October 1983, for example, Georgia Power told the NRC staff that "participants in the ITS use that system for delivery of power from the Company and power generated from self-owned resources, and can use the ITS for off-system transactions."6/ Georgia Power made the same representations to Oglethorpe immediately prior to Georgia Power's submission to the Commission. In an October 12, 1983 letter to Oglethorpe,

5/ Letter from A. W. Dahlberg to F. F. Stacy (March 15, 1989) at p. 2 (emphasis added).

6/ Georgia Power Response to Regulatory Guide 9.3 (Oct. 14, 1983) at pp. 16-17 (emphasis added).

Georgia Power expressly agreed that Oglethorpe "is not restricted by the PR-7 Tariff, or any contractual relationship between the parties, from making off-system sales, including Unit Power Sales, and that [Georgia Power] will work with [Oglethorpe] to resolve any operating, scheduling or dispatching arrangements required to facilitate such sales in a timely fashion."^{7/} On the basis of Georgia Power's assurances, Oglethorpe filed a response to Regulatory Guide 9.3 concurring in Georgia Power's statements regarding transmission access.

Georgia Power made similar assurances to the Commission staff and to Oglethorpe during the Vogtle Unit 1 operating license review in 1986. An August 11, 1986 letter from Georgia Power to the Commission staff specifically confirmed Oglethorpe's right to use the ITS for off-system transactions with Florida power systems:

Concerning Oglethorpe Power Corporation's sale to Seminole Electric Cooperative in Florida, I would like to confirm that access by Oglethorpe Power Corporation to transmission owned by Geor[g]ia Power Company is not an issue because of the Integrated Transmission System Agreement, which allows equal access by each party to

^{7/} Letter from A. W. Dahlberg to Stan Hill (Oct. 12, 1983) (emphasis added).

the transmission facilities of the other party.^{8/}

The Georgia Power letter enclosed a copy of the scheduling services agreement applicable to the Oglethorpe-Seminole transaction, and further represented that "Georgia Power Company has also committed to Oglethorpe Power Corporation to develop a scheduling services agreement that would be applicable to other off-system transactions."^{9/}

On the basis of these assurances, the Director issued the 1986 finding of "no significant (antitrust) changes" in the licensees' activities and issued the Vogtle Unit 1 license. See 51 Fed. Reg. 43253 (Dec. 1, 1986).

Georgia Power has not abided by these commitments. Georgia Power has now flatly stated that Oglethorpe has no present right to use the ITS for off-system transactions. Georgia Power's ongoing refusal to permit Oglethorpe access will effectively preclude Oglethorpe from competing fairly and effectively with Georgia Power and Southern for off-

^{8/} Letter from Robert P. Edwards, Jr. to William Lambe, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation, NRC (Aug. 11, 1986) (emphasis added).

^{9/} Id. The letter thus confirmed previous Georgia Power representations to the Commission in February 1986 plainly suggesting that execution of any "necessary" scheduling agreements regarding off-system transactions was imminent (Georgia Power Response to Regulatory Guide 9.3, Feb. 24, 1986, at p. 9). In fact, despite continuing efforts by Oglethorpe, Georgia Power has failed to conclude such an agreement. See pp. 16-23, infra.

system transactions to Florida and other markets. Georgia Power's refusal is inconsistent with Oglethorpe's rights to full and equal use of the ITS under the AEC Settlement Agreement and License Conditions and Oglethorpe's ITS Agreement with Georgia Power implementing those conditions.

B. The Staff's Specific Findings of Continuing "Procompetitive Effects" Are Not Supported By the Facts.

The Director's Finding concludes that there has been a successful implementation of the antitrust license conditions, such that "power systems throughout Georgia and adjacent states [are] better able to control their own power supply destinies by taking advantage of new power supply options and alternatives made available by a more competitive bulk power supply system." 54 Fed. Reg. at 8852. The Director has further found that "the pro-competitive effects identified during the Vogtle 1 OL review are continuing." *Id.* According to the Staff Review "[t]hese changes have involved allocation and transport of wholesale power and energy throughout the state of Georgia and adjacent states." (Staff Review at p. 6.)

These findings do not appear to be based on full and complete information concerning the actual extent of Georgia Power's implementation of existing antitrust license

conditions. In order to provide the Staff with a more complete picture of the events described in these findings, Oglethorpe provides the following additional information 10/:

1. Based on Georgia Power's assurances during the Vogtle Unit 1 licensing review, Oglethorpe made diligent efforts to negotiate a generic scheduling agreement to facilitate off-system transactions. However, Georgia Power has delayed and stymied these efforts since they began in early 1984. As a result, there have been only two off-system transactions by Oglethorpe -- to Seminole Electric Cooperative in Florida in 1986 and 1988 -- notwithstanding Georgia Power's apparent previous recognition of Oglethorpe's right to engage in such transactions over the ITS as far back as October 1983.

2. Georgia Power's persistent refusal to enter into a generic scheduling agreement has effectively precluded Oglethorpe from competing with Georgia Power for other off-system transactions. In a number of specific proposed transactions, Oglethorpe has determined from

10/ Oglethorpe is prepared to furnish further detailed information and documentary evidence of these events, at the Staff's request.

discussions with off-system customers and suppliers that the transactions could not be consummated without clear assurance of Oglethorpe's right to use the ITS for off-system transactions and the availability of an appropriate, generic scheduling agreement. As a result, Oglethorpe and its customers and suppliers have had to forego these commercially advantageous transactions. Thus, contrary to the Staff's assumption, Oglethorpe has been denied the opportunity successfully to "control its own destiny" in the competitive bulk power market.

3. The specific "wholesale power developments" reviewed by the Staff do not in fact represent pro-competitive effects of Georgia Power's implementation of the license conditions, when the complete circumstances are examined:

(a) Transactions between Oglethorpe and Seminole. There is, in fact, no energy exchange agreement ("EEA") currently in place between Seminole and Oglethorpe. Seminole and Oglethorpe have only engaged in two short-lived, distinct transactions, nearly two years apart. Both were extremely difficult to execute, largely due to Georgia Power's lack of cooperation in facilitating Oglethorpe's use of the ITS to deliver bulk power to Seminole.

Seminole initially contacted Oglethorpe regarding the first bulk power sale in early 1984. Oglethorpe actively pursued this opportunity, and an agreement in principle was eventually reached for Oglethorpe to sell power to Seminole.^{11/} However, Georgia Power did not execute the necessary scheduling agreement for the Seminole transaction until October 1986.^{12/} It took almost two years of discussions and negotiations with Georgia Power for Seminole and Oglethorpe to consummate this transaction, resulting in lost revenue to Oglethorpe and impairing Oglethorpe's customer goodwill and reputation as a reliable source of electric power.

In the second Oglethorpe transaction with Seminole, in 1988, Oglethorpe was also unable to complete the power sale successfully, due to Georgia Power's interruption of the transmission and delivery. The interruption allegedly due to operator error was contrary to Georgia Power's own

^{11/} Contrary to the Staff Review, TVA did not supply the power sold to Seminole in either the 1986 or 1988 Oglethorpe transactions; TVA was merely a wheeling agent for the 1988 transaction and was not involved at all in the 1986 transaction.

^{12/} Georgia Power also insisted on including language in the scheduling agreement to the effect that this limited transaction was not to serve as "a precedent concerning future sales or purchases of other capacity or energy outside the Georgia territory." (Scheduling Services Agreement between Georgia Power and Oglethorpe, Oct. 10, 1988, at p. 2 p .08.)

"first come, first served" position. In any event, to effect this transaction, Georgia Power insisted on an entirely new scheduling agreement, as well as a "back-down" provision which it later used to justify other interruptions of the Oglethorpe transmission. This second scheduling agreement has also expired, and has not been renewed.

Thus, contrary to the Staff Review, Georgia Power does not presently act as the scheduling agent for transmissions between Oglethorpe and Seminole, and does not "provid[e] the necessary transmission facilities to accommodate the power flows from Oglethorpe to Seminole." (Staff Review at p. 6.)^{13/} There is no scheduling agreement currently in place enabling Oglethorpe to deliver power and energy to Seminole in Florida, despite Oglethorpe's best efforts to obtain one.

(b) Energy Exchange Agreements with AEC and SMEPA. The Staff's reliance on energy exchange agreements between Oglethorpe and the Alabama Electric Cooperative ("AEC") and South Mississippi Electric Power Association ("SMEPA") is similarly misplaced. While these agreements are representative of Oglethorpe's interest and willingness

^{13/} In fact, Oglethorpe is already a co-owner of the "necessary transmission facilities," and needs only to obtain an adequate generic scheduling agreement with Georgia Power to accommodate such transactions.

to engage in off-system transactions, they are not representative of any "successful" implementation of the antitrust license conditions by Georgia Power. Georgia Power, despite its assurances to the Commission, has declined to enter into precisely the generic scheduling agreement which is necessary to "activate" the arrangements with AEC and SMEPA.

The Staff Review suggests that these agreements have not been activated only because Georgia Power "has not been asked to schedule power flows over its facilities" (Staff Review at pp. 6-7.) In fact, Oglethorpe has been unable to consummate off-system transactions under these agreements as a proximate result of Georgia Power's refusal to recognize Oglethorpe's right to use the ITS for off-system transactions and to enter into an appropriate generic scheduling agreement. One such proposed energy transaction had to be aborted in October 1987, for example, because Oglethorpe was unable to assure AEC that it could transmit the energy that AEC had purchased.

(c) Georgia Power Sales to Florida. There is no "procompetitive" effect from Georgia Power's own participation in additional unit power sales to Florida utilities, representing a 98 megawatt increase in service to Georgia Power's existing unit power customers (Staff Review

at 7). Rather, such a transaction will only further block Oglethorpe's access to the essential Georgia-Florida interface for competing off-system transactions, particularly given Georgia Power's recently asserted "first come, first served" position. These transactions will thus only increase Georgia Power's dominance of the Georgia-Florida interface and, consequently, its dominance in the supply of power and energy to Florida utilities.^{14/}

(d) Rocky Mountain Pumped Storage Project.

The Staff Review cites Oglethorpe's purchase of a majority interest in the Rocky Mountain Pumped Storage Project from Georgia Power as furthering Oglethorpe's goal of attaining "self-sufficiency" by the early 1990s.^{15/} While the purchase of Rocky Mountain demonstrates Oglethorpe's

^{14/} With the acquisition of the Savannah Electric & Power Co. ("SEPCO") in March 1988, The Southern Company (Georgia Power's parent) also can now transmit power from the Carolinas into Florida without using the ITS or the Georgia-Florida interface. Because SEPCO's transmission lines have not been dedicated to the ITS by Southern, the SEPCO acquisition has the potential for further reducing opportunities for competitive, off-system sales to Florida. (See generally Staff Review at 3, 6.)

^{15/} To clarify the record, Oglethorpe's plan for "self-sufficiency" is not limited to "generating" self-sufficiency (Staff Review at 7). Oglethorpe intends to become "self-sufficient" both through acquiring its own generating resources and through purchases of power from other sources.

continuing fulfillment of its commitments under the license conditions, Oglethorpe's ownership interest in such facilities alone -- without the benefit of the "marketing tools [i.e., transmission access] provided by the settlement agreement" (51 Fed. Reg. at 43254) -- cannot bring about the successful implementation of the antitrust license conditions. Under Georgia Power's construction of the license conditions, Oglethorpe is precluded from selling power generated from its own facilities (including Rocky Mountain) to off-system purchasers until it reaches energy "self-sufficiency" and is precluded from using off-system sources for pumping energy.

In sum, while the Staff asserts that "[v]arious energy exchange agreements among industry players have been entered into and activated, thereby stimulating more efficient operations among a wide variety of industry players throughout the southeastern portion of the country" (Staff Review at 9), in fact Georgia Power (and its parent, The Southern Company) are essentially the only players in the transmission of power and energy into Florida.^{16/} Georgia Power is using the ITS, which is owned by all the

^{16/} See, e.g., correspondence between Cajun Electric Power Cooperative, Inc. and the NRC regarding competitive concerns relating to The Southern Company (Cajun to NRC, June 15, 1988; NRC to Cajun, July 18, 1988).

parties and is an essential procompetitive mechanism under the Settlement Agreement, principally for its benefit in these off-system markets.

The energy exchange agreements cited by the Staff have not been activated. Nor has Georgia Power been willing to enter into a generic scheduling agreement to facilitate off-system transactions by its co-licensees. As a result, other "industry players" in the Southeast (including the co-licensees) have not had a fair opportunity to participate in competitive transactions in these markets, and customers wishing to purchase power and transmission services are deprived of competitive alternatives to Georgia Power and Southern.

III. GIVEN THE PRESENT CIRCUMSTANCES, THE DIRECTOR SHOULD CORRECT THE FACTUAL CONCLUSIONS IN THE § 105(c)(2) FINDING, AND THE COMMISSION SHOULD FURTHER CONFIRM AND CLARIFY THAT THE CO-LICENSEES ARE ENTITLED TO IMMEDIATE USE OF THE INTEGRATED TRANSMISSION SYSTEM FOR OFF-SYSTEM TRANSACTIONS.

The foregoing discussion demonstrates that the Director's Finding of No Significant Antitrust Changes contains erroneous factual assumptions and conclusions which are not supported by the record. If the Commission corrects these factual assumptions, clarifies the co-licensees' rights to immediate access to the ITS for off-system transactions, and obtains assurances from Georgia Power that

it will comply with those conditions, then the license may issue promptly. It is not in Oglethorpe's interest to delay the license, but rather to be sure the Commission is fully informed and properly exercises its authority.

The Commission plainly has the authority to take these steps. In the Virgil C. Summer Nuclear Station series of cases -- South Carolina Electric & Gas Company, 11 N.R.C. 817 (1980) ("Summer I"), South Carolina Electric & Gas Company, 13 N.R.C. 862 (1981) ("Summer II"), and Central Electric Power Cooperative, Inc., 14 N.R.C. 787 (1981) ("Summer III") -- the Commission denied a petition requesting a "significant changes" determination, while clarifying a licensee's transmission obligations, under circumstances similar to those presented here.

The petitioner in Summer (Central Electric) had requested that a "significant changes" determination be made, inter alia, on the basis of the license applicants' refusal to wheel power on a reasonable basis. In concluding that Central Electric had the right to wheel power over the applicants' transmission system on a reasonable basis, the Commission both: (1) construed a "Power System Coordination and Integration Agreement" between Central Electric and the applicants to permit Central Electric to wheel power over the applicants'

lines;^{17/} and (2) recognized that one of the applicants had stated in its submissions to the Commission that it "ha[d] given Central its assurances that it will wheel power."

Summer II, 13 N.R.C. at 870.

As a result of these specific assurances, the Commission Staff concluded that "the Agreement basically gives Central what it sought in its Petition," and that the criteria for a "significant change" requiring a second antitrust review were therefore not satisfied. Id. The Commission agreed and found no need for a further antitrust review, having successfully clarified and reaffirmed Central Electric's wheeling rights. Id. at 879.

Confirmation and clarification of Oglethorpe's rights under the license conditions and ITS Agreement here is similarly within the scope of the Commission's authority, and is the appropriate mechanism for resolving the current dispute between Oglethorpe and Georgia Power regarding transmission access. Moreover, the Commission Staff has the "obligation to comprehend the complete picture when it advises, or . . . initially determines, whether or not there have been significant changes." Summer

^{17/} The Commission later noted that, while this Agreement was in the form of a voluntary agreement between the parties, it was as broad in its remedial effect as any license conditions that the Commission might otherwise have imposed. Summer III, 14 N.R.C. at 791.

I, 11 N.R.C. at 830. Thus, to the extent that the Director's Finding is based on erroneous conclusions and incomplete factual information, the Staff is required to examine and describe the true situation.

As Oglethorpe has shown above, the antitrust license conditions and ITS Agreement are intended to grant Oglethorpe and the other co-licensees "immediate access" to the ITS, and to "stimulate the competitive process" in the bulk power services markets. Oglethorpe has also shown that, contrary to the Director's Finding, Georgia Power is not implementing the license conditions in a manner consistent with these purposes and objectives. Appropriate clarification of the license conditions and ITS Agreement, and correction of the erroneous factual conclusions underlying the Director's Finding, are therefore required.

IV. ABSENT APPROPRIATE COMMISSION ACTION ON
THE CO-LICENSEES' TRANSMISSION ACCESS RIGHTS,
THE STAFF WOULD LACK A BASIS TO DETERMINE THERE
HAVE BEEN NO SIGNIFICANT (ANTITRUST) CHANGES.

Absent confirmation and clarification by the Commission of the co-licensees' rights to full and immediate access to the ITS for off-system transactions, the Commission could not properly make a finding that no "significant (antitrust) changes" in the licensees'

activities have occurred. If the existing antitrust license conditions do not address Georgia Power's preclusion of the co-licensees' access to the ITS, a situation inconsistent with the antitrust laws would be maintained.

The existing license conditions were designed specifically to alleviate the Justice Department and AEC concerns "over Georgia Power's dominance in generation and transmission capabilities in the state of Georgia and the apparent abuse of this market power at the expense of and to the detriment of smaller power systems and the competitive process in the Georgia electric bulk power supply industry." (1986, Vogtle I Staff Review at p. 8.) The license conditions thus were designed to assure that Oglethorpe and the other co-licensees had immediate access to the ITS for the transmission of power for on- and off-system sales for both bulk power supply and wheeling. The Commission Staff specifically recognized this in its 1986 Vogtle I review:

An example of off-system usage of the ITS involves a proposal by Oglethorpe to transfer energy to the Seminole Electric Cooperative, Inc. (Florida) from Plant Scherer. Although this agreement has not been finalized, Georgia Power has agreed to schedule Oglethorpe's energy to the Georgia-Florida border where Florida Power Corporation will in turn transmit the energy to Seminole. This type of transaction was not a competitive option open to Oglethorpe prior to the settlement

agreement and the accompanying ITS agreement.

Id. at 16 (emphasis added).

The co-licensees would presently be foreclosed from this "competitive option" envisioned by the Commission in 1986 under Georgia Power's construction of the license conditions. As noted above, in its recent letters to Oglethorpe, Georgia Power has stated that: (1) Oglethorpe does not have the right to use the ITS for off-system sales unless and until Oglethorpe acquires generational or purchased power resources within the State of Georgia in excess of its own load requirements; and (2) even after Oglethorpe attains such "self-sufficiency," it will only acquire the right to use the ITS for off-system transactions on a "first come, first served" basis, contradicting Oglethorpe's equal access rights and ownership interest. These Georgia Power interpretations of the antitrust license conditions would deny Oglethorpe the "immediate access" to the ITS which the Department of Justice considered crucial to resolving its original antitrust concerns with Georgia Power's past monopolistic conduct, and thereby effectively preclude Oglethorpe from competing with Georgia Power for off-system transactions to Florida and other states.

Indeed, Georgia Power's construction of the license conditions, if left uncorrected, would stand on its head the fundamental procompetitive purpose of the antitrust license conditions. As the Commission has recognized, the "marketing tools provided by the settlement agreement" -- i.e., the ability to enter into bulk power supply and wheeling arrangements with other power systems -- are intended to assist Oglethorpe and the other co-licensees in attaining their goals of energy self-sufficiency. 51 Fed. Reg. at 43254 (Dec. 1, 1986). Energy "self-sufficiency" thereafter cannot be a precondition to using these marketing tools. Georgia Power's continuation of this restrictive position on ITS access would severely undermine the original procompetitive objectives of the AEC Settlement Agreement and license conditions.

Under established Commission precedent, a "change in the licensees' activities or proposed activities" is "significant," so as to require a second antitrust review, when it

(1) ha[s] occurred since the previous antitrust review of the licensee(s); (2) [is] reasonably attributable to the licensees; and (3) ha[s] antitrust implications that would likely warrant some Commission remedy.

Summer I, 11 N.R.C. at 824; see also Summer II, 13 N.R.C. at 864 n.3. Georgia Power's newly announced position

precluding transmission access by the co-licensees for competitive off-system transactions would clearly satisfy each of these criteria. Neither Georgia Power's February 28, 1989 position statement, nor the other facts regarding its frustration of ITS access, were before the Commission at the time of its previous antitrust reviews; these new positions and proposed activities are reasonably attributable to Georgia Power; and there is at the very least a "genuine likelihood that the outcome of antitrust review, were it to occur," would be a "greater than de minimis" license modification. Summer I, 11 NRC at 835.

Thus, absent confirmation and clarification of the co-licensees' transmission rights under the existing license conditions, the Commission could not properly conclude there have been no significant antitrust changes.^{18/}

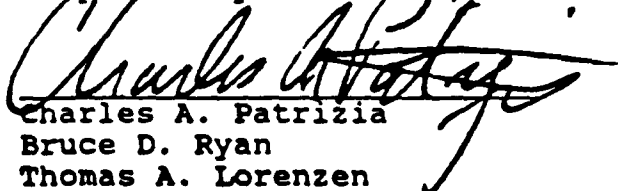
^{18/} The Commission clearly has remedies available to cure the antitrust concerns raised by Georgia Power's actions. As the Commission noted in Summer I, "in most cases it is to be presumed that the Commission will be able to tailor some relief." 11 N.R.C. at 839. No such presumption is necessary in the present case. The Commission has already indicated, by imposing the current license conditions on Georgia Power, that it fully intended to cure the antitrust concerns raised by Georgia Power's dominance in the Georgia electric bulk power industry by requiring Georgia Power to allow its co-licensees access to the ITS for alternative transactions. Any further remedial conditions would merely serve to confirm this intention.

CONCLUSION

For the reasons stated in these Comments, the Director should correct his Finding to reflect accurately that the antitrust license conditions governing Plant Vogtle have not been implemented successfully by Georgia Power Company, and that certain "pro-competitive effects" identified during the Vogtle Unit 1 operating license review have not been achieved. The Commission also should confirm and clarify that the antitrust license conditions entitle Oglethorpe and the other co-licensees to immediate and equal access to the integrated transmission system for off-system transactions, and require Georgia Power Company to implement and facilitate such transactions.

Absent such confirmation and clarification of the co-licensees' transmission rights, the Commission could not properly determine that "significant changes" of an antitrust nature have not occurred since the previous antitrust review.

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March 17, 1989

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March 17, 1989

BY HAND

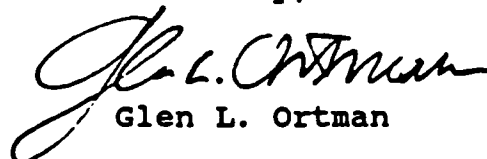
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Re: Georgia Power Co., et al.; No Significant
Antitrust Changes And Time For Filing Requests
For Reevaluation, NRC Docket No. 50-425A

Dear Mr. Chilk:

Enclosed please find the Response by Municipal Electric
Authority of Georgia to Comments by Oglethorpe Power Corporation,
submitted for filing today in the above-referenced proceeding.

Sincerely,


Glen L. Ortman

Enclosure
cc: All Parties

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Georgia Power Co., <u>et al.</u> ;)	
No Significant Antitrust)	NRC Docket No. 50-425A
Changes And Time For Filing)	
Requests For Reevaluation)	

RESPONSE BY MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA
TO COMMENTS BY OGLETHORPE POWER CORPORATION

The Municipal Electric Authority of Georgia ("Authority"), co-licensee of Unit 2 of Plant Vogtle, hereby submits this response to comments, expected to be submitted on March 17, 1989 in this docket by Oglethorpe Power Corporation ("Oglethorpe"), another co-licensee of such Unit. This response is submitted on March 17, pursuant to the Commission's notice of the finding of the Director of the Office of Nuclear Reactor Regulation ("Director") on February 28, 1989 that no significant antitrust changes in the licensees' activities or proposed activities have occurred subsequent to the previous antitrust operating license review of Unit 1 of Plant Vogtle by the Attorney General and the Commission. The Commission's notice as issued on March 2, 1989, 54 Fed. Reg. 8852, provides that any request for reevaluation of the Director's finding should be submitted within 15 days, or by March 17, 1989.

The Authority expects that Oglethorpe may submit comments on March 17, raising certain factual matters in connection with the competitive effects of licensees' activities since 1986. To

the extent that such comments are, in fact, submitted, Authority submits the following response in anticipation.

1. While the Authority cannot respond to the factual basis asserted by Oglethorpe in its comments, Authority strongly urges that the operating license for Plant Vogtle Unit 2 be issued by the Commission by the end of March, as expected, and not be unduly delayed or otherwise deferred due to the matters raised by Oglethorpe's comments.^{1/}

2. The Authority submits that concerns, if any, raised by Oglethorpe's comments be considered in the context of an enforcement proceeding of the existing license provisions for Plant Vogtle. A co-licensee may avail itself of an enforcement proceeding under the Commission's regulations and procedures. See 10 C.F.R. §§ 2.201, et seq., and Part 2, Appendix C, generally. It is the Authority's position that, with proper application and enforcement, the existing license provisions and conditions for Plant Vogtle are adequate at present to resolve Oglethorpe's concerns, and any alleged violation of such conditions should be treated in the context of a subsequent enforcement proceeding. Such enforcement proceeding would not, however, be the cause of a delay of the issuance of the operating

^{1/} We note that no antitrust review proceeding will be conducted at the operating license stage absent a finding that significant changes have occurred since the prior review, and such changes in order to be deemed significant must be reasonably apparent. In the Matter of South Carolina Public Service Authority, 13 N.R.C. 862 (June 26, 1981). Absent such showing, a second formal antitrust review by the Commission at the operating license stage is the exception rather than the rule. In the matter of Central Electric Power Cooperative, Inc., 14 N.R.C. 787 (October 16, 1981).

license, to the substantial detriment of all co-licensees of Unit 2.

3. Specifically, Oglethorpe may state that the conclusions relied on by Staff in support of the finding of no significant change do not accurately reflect the recent conditions pertaining between Oglethorpe and Georgia Power Company with respect to the right to transmission access for off-system transactions. Transmission access is an important and legitimate concern of the Authority as well. Authority, however, is of the position that the right to transmission access for off-system transactions is provided in the Integrated Transmission System Agreement (the "ITSA") among the co-licensees. The ITSA was entered into by the co-licensees in partial fulfillment of the existing license conditions.

While the Authority submits that any concerns with respect to transmission access should be noted, they do not require a reevaluation of the Director's finding of no significant change. It is consistent with the holdings of the Commission and with its rules of procedure that the interpretation and enforcement of the existing license conditions properly should be addressed in an enforcement proceeding.

4. The impact upon the Authority of any delay in the issuance of the operating license is readily apparent. The net increase in monthly fixed and variable costs (or net revenue requirement) to the Authority for each month of delay of commercial operation of Vogtle Unit 2 is estimated to be at least \$1.2 million. In addition, the increased financing costs to the

Authority to provide the required additional allowance for funds used during construction is estimated to be at least \$5.1 million for each month of delay of commercial operation of Vogtle Unit 2.

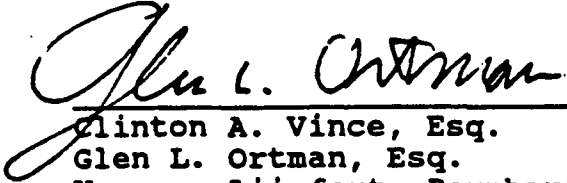
5. By this response, the Authority does not waive any rights in connection with the license conditions for Plant Vogtle Unit 2, and the application thereof to the ITSA. In addition, the Authority reserves the right to supplement its response here, based upon additional review of the matters in the comments by Oglethorpe.

WHEREFORE, the Authority urges that, to the extent matters raised in Oglethorpe's comments are deemed appropriate for consideration by the Commission, the Commission take such matters up in the context of a separate license enforcement proceeding and not delay the issuance of the operating license for Plant Vogtle Unit 2 as a result.

Respectfully submitted,

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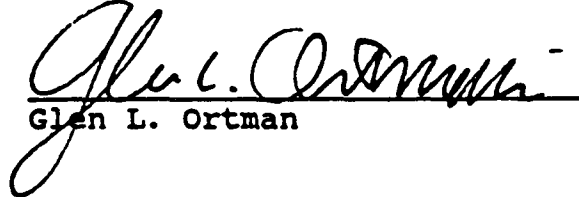
Special Counsel to the Municipal
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March 17, 1989
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Response by Municipal Electric Authority of Georgia to Comments by Oglethorpe Power Corporation, on each person listed on the official service list compiled by the Secretary in this proceeding.

Dated this 17th day of March, 1989 in Washington, D.C.



Glen L. Ortman

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March 21, 1989

Mr. Thomas E. Murley, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Vogtle Electric Generating Plant, Unit 2
Docket No. 50-425-A

Dear Mr. Murley:

On March 2, 1989, the Office of Nuclear Reactor Regulation published a Notice of Finding of No Significant Antitrust Changes in connection with the operating license for Unit 2 of the Vogtle Electric Generating Plant. Unit 2 is currently operating under a low power operating license issued on February 9, 1989. The unit will be ready for increased power operations on March 30, less than two weeks from now, and Georgia Power anticipates issuance of the full power operating license at that time.

The Notice provided that interested persons could comment on the NRC's finding within 15 days. On March 17, 1989, comments were filed by Municipal Electric Authority of Georgia (MEAG) and Oglethorpe Power Corporation (Oglethorpe). Both are co-owners and co-licensees of Plant Vogtle. Georgia Power is in agreement with MEAG's comments, which concur with the NRC finding that there have been no significant antitrust changes in the licensees' activities since the Commission's last antitrust review. Georgia Power joins MEAG in urging that no delay in the issuance of the full power operating license result from Oglethorpe's comments.

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Oglethorpe does not allege that the NRC's finding of no significant antitrust changes is incorrect. Nor does Oglethorpe seek to delay issuance of the license. Oglethorpe Comments at 24. Instead, Oglethorpe asks the Director to (1) "correct the Finding to reflect accurately that the antitrust license conditions have not successfully and fully been implemented by [Georgia Power], and that certain 'procompetitive effects' identified during the Vogtle 1 operating license review have not been achieved," and (2) "confirm and clarify that the antitrust license conditions entitle Oglethorpe and the other co-licensees to immediate and equal access to the integrated transmission system for off-system transactions."^{1/} Oglethorpe then asserts, not that there has been a significant change, but that absent such "confirmation and clarification of the co-licensees' transmission rights," the NRC does not have an adequate basis for its finding.^{2/}

Both in terms of the specifically stated purpose (as noted above) and the contents of Oglethorpe's comments, Oglethorpe is questioning Georgia Power's compliance with existing antitrust license conditions, not disagreeing with the NRC's determination of no significant changes. Indeed, Oglethorpe is not asserting that a significant change has occurred, and it has identified no such change. The issues raised by Oglethorpe's comments should more appropriately be considered in an enforcement proceeding, and are not germane to the instant matter. Accordingly, there should be no delay in the issuance of the full power license for Unit 2 resulting from the Oglethorpe comments.

Because a full antitrust review was conducted with respect to Plant Vogtle at the construction permit stage, another antitrust review now is not appropriate unless, under the proviso to Section 105(c)(2) of the Atomic Energy Act of 1954, as amended, "the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility."

The Commission has articulated three criteria for a determination of no significant antitrust change.^{3/} Under the third

^{1/} Oglethorpe Comments at 1-2.

^{2/} Id.

^{3/} Section 105(c)(2) "contemplates that the change or changes (1) have occurred since the previous antitrust review of the

Mr. Thomas E. Murley
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criterion, a "change" is significant only if it would "likely warrant and be susceptible to a greater than de minimus license modifications."^{4/} Oglethorpe has not suggested that it desires an antitrust review, and has certainly not suggested a need for a change, de minimus or otherwise, in the antitrust license conditions. To the contrary, Oglethorpe's request is for confirmation and clarification of existing conditions, not changes in conditions. Consequently, Oglethorpe's Comments should not affect the finality of the no significant changes finding.

The context of the current discussions between Oglethorpe and Georgia Power, the treatment of the subject matter by the current license conditions, and the insubstantial nature of Oglethorpe's quarrels with the Staff's discussion supporting the no significant changes finding each reinforce the conclusion that a delay in licensing because of antitrust issues would be inconsistent with both the intent of Congress^{5/} and the intent of the

(Continued)

licensee(s); (2) are reasonably attributable to the licensee(s); and (3) have antitrust implications that would likely warrant some Commission remedy." South Carolina Electric & Co. (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 N.R.C. 817, 824 (1980).

4/ South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-14, 13 N.R.C. 862, 864 n.3 (1981).

5/ The clear legislative intent underlying Section 105(c) was that the antitrust review not delay the licensing process. See H.R. Rep. No. 1470, 91st Cong., 2d Sess. (1970), reprinted in 1970 U.S. Code Cong. & Admin. News 4981, 4996:

The committee expects and will urge the Commission to make every reasonable effort to deal with the potential antitrust feature under subsection 105c of the bill fully but expeditiously. The committee anticipates that all the functions contemplated by these paragraphs would be carried out before the radiological health and safety review and determination process is completed, so that

(Continued next page)

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Commission's antitrust review procedures.^{6/}

Context of Current Discussions With Oglethorpe.

The focus of Oglethorpe's complaint that Georgia Power has not "successfully and fully . . . implemented" the antitrust conditions is the allegation that Georgia Power has taken the position that Oglethorpe has no "present right to use the [Integrated Transmission System] for off-system transactions."^{7/} While this is not the forum to debate Georgia Power's compliance with the antitrust conditions, a brief recitation of the underlying facts will place Oglethorpe's comments in their proper context and show that Oglethorpe's allegations are incorrect.

Although not identified by Oglethorpe, it is Paragraph 5(b) of the antitrust license conditions^{8/} which Oglethorpe asserts that Georgia Power is not properly implementing. Under Paragraph 5(b), Georgia Power must transmit power from Oglethorpe off of the Georgia Territory^{9/} under certain expressly stated

(Continued)

the entire licensing procedure is not further extended in time by reason of the added antitrust review function.

Georgia Power has been issued an operating license for Vogtle Unit 2. The only question remaining is removal of the low power restriction as scheduled.

- ^{6/} The procedures used by the NRC staff to implement antitrust review envision that "the antitrust OL reviews for a significant change finding may be completed 12 months or more before the operating license is issued." NUREG-0970, Procedures for Meeting NRC Antitrust Responsibilities (May 1985), Sec. 3.6.
- ^{7/} Oglethorpe Comments at 14.
- ^{8/} The antitrust license conditions (the "License Conditions") are currently appended to the Plant Hatch Unit 2, Plant Vogtle Unit 1 and Plant Vogtle Unit 2 operating licenses.
- ^{9/} The "Georgia Territory" is the area in the State of Georgia in which Georgia Power, Oglethorpe and other "entities" (as defined by Paragraph 1(a) of the License Conditions) operate.

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conditions. Oglethorpe asserts that it should be afforded, and has been denied, "immediate access" to transmission for off-system transactions and asks the NRC to "confirm and clarify" that such "immediate access" is mandated by the antitrust license conditions.^{10/}

The License Conditions, including Paragraph 5(b), resulted from a negotiated settlement of the antitrust licensing proceeding at the construction permit stage for Hatch Unit 2 and Vogtle Units 1 and 2. Oglethorpe's predecessor and its members were parties to this proceeding and settlement. As a result of the settlement, Oglethorpe and others obtained an ownership interest in Plant Hatch and Plant Vogtle, partial requirements service, and the transmission service rights stated in Paragraph 5.

The License Conditions were implemented in part by the filing of Partial Requirements and transmission service tariffs in 1975, tariffs which remain in effect today. For some time, at Oglethorpe's request, Georgia Power has been negotiating with Oglethorpe regarding potential power supply agreements that could supplement or replace the existing Partial Requirements tariff and transmission tariff. As these negotiations have evolved, Oglethorpe has asserted that the existing License Conditions require Georgia Power to deliver power from Oglethorpe to systems outside the Georgia Territory without regard to whether Oglethorpe has sufficient generating resources in Georgia to serve the requirements of its members. Oglethorpe has also asserted that Georgia Power should dedicate a certain portion of existing transmission capability to Oglethorpe's exclusive use.

In its Comments, Oglethorpe recasts these demands as a demand for recognition of a "present right"^{11/} to conduct off-system transactions and a related right to "access commensurate with its ownership share."^{12/} Oglethorpe characterizes these asserted rights as "equal access" rights.^{13/} Oglethorpe wants these asserted rights embodied in what it calls an "appropriate generic scheduling agreement."^{14/}

^{10/} Oglethorpe Comments at 2, 31.

^{11/} Oglethorpe Comments at 14.

^{12/} Id. at 11.

^{13/} Id. at 4.

^{14/} Id. at 17.

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A stumbling block in the negotiations for supplemental or replacement power supply agreements, including the "generic scheduling agreement," has been the two parties' differing interpretations of one of the conditions of transmission service for bulk power exports. Paragraph 5(b) of the License Conditions has a "self-sufficiency" requirement that limits an entity's use of transmission for purposes of exporting bulk power; transmission may be used to export only bulk power resulting from an entity's "excess capacity available from self-owned generating resources in the State of Georgia." Georgia Power has taken the position that the "self-sufficiency" requirement must be adhered to, while Oglethorpe has advanced positions that Georgia Power believes do not comply with that expressly stated license requirement.

The transmission tariff, which has been in place and operational since 1975, is in compliance with the License Conditions; Oglethorpe does not assert otherwise. There is no requirement for Georgia Power to renegotiate the present arrangements. Georgia Power nevertheless has been willing to renegotiate, and been more than cooperative toward that end. In particular, Georgia Power has agreed that the required self-sufficiency from "self-owned generating resources" can be satisfied by firm contractual commitments for power (as well as from ownership of generating facilities). Georgia Power has also gone out of its way to accommodate individual bulk transactions by Oglethorpe pending renegotiation. Oglethorpe's two Seminole Electric Cooperative transactions fall into this category.

Negotiating differences arising in connection with service arrangements developed under antitrust license conditions do not constitute "significant changes" justifying a second, full-blown antitrust review at the operating license stage. If the translation of negotiation positions into Comments on a no significant changes finding can threaten the timely issuance of an operating license, utilities will be deterred from negotiating with each other, and progress towards potentially beneficial relations will be stalled. Therefore, it is understandable that, to assure that negotiations are properly carried out, the Staff has previously relied on the adequacy of the enforcement process instead of withholding findings of no significant changes.

The Office of Nuclear Reactor Regulation has applied this principle on various occasions in reaching a finding of no significant changes. For example, in Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), Notice of Finding of No Significant Antitrust Changes, 51 Fed. Reg. 4547 (1986),

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CPL's sale of an ownership share in Harris to NCEMPA [North Carolina Eastern Municipal Power Agency] and the associated service arrangements [were viewed] as consistent with antitrust conditions contained in other nuclear power plant licenses, and the transmission service arrangements consistent with its Harris antitrust license conditions. Although negotiations for transmission service arrangements between CPL and the North Carolina Electric Membership Corporation (NCEMC) have not been completed, any subsequent problems that may arise therewith may be treated under the Commission's rules for enforcement of license conditions.

Id. (emphasis added).

Similarly, in Mississippi Power & Light Co. (Grand Gulf Unit 1), Notice of Finding of No Significant Antitrust Changes, 46 Fed. Reg. 51,682 (1981), even the possibility of unsuccessful settlement negotiations in connection with MP&L's apparent non-compliance with license conditions instituted at the construction permit stage did not constitute "significant changes" sufficient to warrant another antitrust review at the operating license stage:

MP&L's exercise of its market power in western Mississippi necessitated instituting license conditions at the CP stage of the Grand Gulf antitrust review. MP&L was continuing to foreclose competitive options to smaller power entities in the area at the time a notice of violation was issued by the NRC in May of 1980. In the notice of violation, the staff concluded that MP&L was not in compliance with its license conditions pertaining to transmission services, wholesale power services, and ownership participation in the Grand Gulf nuclear plant. However, all present indications are that MP&L has reversed its apparent policies that occasioned the notice of violation in May of 1980, has essentially reached a settlement agreement with the complaining parties, and is pursuing acceptance of rate schedules and agreements before FERC that would bring it

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into full compliance with its license conditions. In the unlikely event that the settlement negotiations or the rate schedule implementations are unsuccessful, these matters can be resolved before the NRC in the present compliance proceeding which will remain in effect until the matters are satisfactorily resolved.

No additional remedies will result from a formal operating license antitrust review.

Id. (emphasis added).

The foregoing situations illustrate that negotiation disputes arising in connection with existing antitrust license conditions do not satisfy a necessary criterion for "significant antitrust changes," since the "change" will not "likely warrant and be susceptible to a greater than de minimis license modification."

Georgia Power has expended enormous efforts in developing potential alternatives to the current tariffs and in discussing these alternatives with Oglethorpe. Georgia Power hopes that these negotiations will continue with each party examining and proposing power supply options that make operating and economic sense. Delaying the issuance of a full power license because of disputes arising in negotiations such as these would be contrary to the interests antitrust review is intended to foster.

The License Conditions Address Oglethorpe's Concerns.

Oglethorpe has asked that the NRC confirm and clarify that the antitrust conditions entitle Oglethorpe and other co-licensees to "immediate and equal access" to transmission for off-system transactions. Georgia Power submits that such a clarification is inappropriate in the context of a no significant changes finding, and properly belongs in the realm of an enforcement proceeding. In any event, it is not clear from Oglethorpe's comments precisely what is meant by "immediate and equal access;" if Oglethorpe believes, for example, that "immediate and equal access" means that it need not become generationally self-sufficient prior to exporting bulk power, then "immediate and equal access" would be directly contrary to an express requirement of the License Conditions.

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Oglethorpe's concerns are addressed by the existing License Conditions and no further antitrust review is required. Georgia Power's transmission obligations arise from License Condition Paragraph 5, which consists of two parts. The first part, subparagraph (a), establishes Georgia Power's obligation to transmit power to Oglethorpe and its constituent members:

5(a) Applicant shall transmit ("transmission service") bulk power over its system to any entity^{15/} or entities with which it is interconnected, pursuant to rate schedules on file with the Federal Power Commission which will fully compensate Applicant for the use of its system, to the extent that such arrangements can be accommodated from a functional engineering standpoint and to the extent that Applicant has surplus line capacity or reasonably available funds to finance new construction for this purpose. To the extent the entity or entities are able, they shall reciprocally provide transmission service to Applicant. Transmission service will be provided under this subparagraph for the delivery of power to an entity for its or its members' consumption and retail distribution or for casual resale to another entity for (1) its consumption or (2) its retail distribution. Nothing contained herein shall require the Applicant to transmit bulk power so as to have the effect of making the Tennessee Valley Authority ("TVA") or its

^{15/} The License Conditions define "entity" to encompass investor-owned, municipal, and cooperative utilities serving the public in the Georgia Territory. There is no doubt that Paragraph 5(a) of the License Conditions and the TS-1 tariff (discussed below) provide transmission for Oglethorpe to use should it purchase power outside of the Georgia Territory, whether it be to provide pumping energy for the Rocky Mountain project or for redistribution to Oglethorpe's members. There is no doubt therefore that Georgia Power's transmission service, and the resulting Integrated Transmission System, do enable Oglethorpe to engage in off-system transactions. There is no dispute concerning the right to import power to the Georgia Territory pursuant to Paragraph 5(a).

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distributors, directly or indirectly, a source of power supply outside the area determined by the TVA Board of Directors by resolution of May 16, 1956 to be the area for which the TVA or its distributors were the primary source of power supply on July 1, 1957, the date specified in the Revenue Bond Act of 1959, 16 USC 831 n.4.

Subparagraph 5(b) of the License Conditions addresses the obligation to provide transmission to transmit power from entities. Because the destination of such power is not restricted, 5(b) provides, within certain limits, for off-system transactions:

(b) Applicant shall transmit over its system from any entity or entities with which it is interconnected, pursuant to rate schedules on file with the Federal Power Commission which will fully compensate Applicant for the use of its system, bulk power which results from any such entity having excess capacity available from self-owned generating resources in the State of Georgia, to the extent such excess necessarily results from economic unit sizing or from failure to forecast load accurately or from such generating resources becoming operational earlier than the planned in-service date, to the extent that such arrangements can be accommodated from a functional engineering standpoint, and to the extent Applicant has surplus line capacity available.

Subparagraph 5(b) (emphasis added). Thus this section requires that an entity be generationally self-sufficient before Georgia Power is obligated to transmit bulk power off-system.^{16/}

^{16/} This provision ensures that one entity's exports will not create shortfalls in capacity which must be satisfied by other Georgia utilities. As reported to the staff in 1983, Georgia Power's Unit Power Sales into Florida are examples of "excess" capacity being exported from the Georgia Territory. Transactions such as these are undertaken by utilities, and approved by FERC, in order to lower the cost of utility service to consumers.

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A transmission services tariff (TS-1) filed with the Federal Power Commission (now the Federal Energy Regulatory Commission) embodies the transmission obligations imposed by the License Conditions.^{17/} That tariff includes a standard form contract pursuant to which the parties provide each other with equal access to their transmission facilities, thereby creating what is known as the Integrated Transmission System. Section 3.01 of the TS-1 Tariff establishes the extent to which the parties may use the Integrated Transmission System in a fashion that embodies the conditions of Paragraph 5 of the License Conditions:

3.01 Use. The parties shall utilize so far as practicable the Integrated Transmission System to transmit capacity and energy supplied from their generating plants and to transmit capacity and energy purchased from other electric suppliers under contract therefor, for the separate distribution and sale of such capacity and energy by the parties, respectively, each for its own account. After the Effective Date, each party shall have the right so to use the Integrated Transmission System without charge, provided, however, that the parties' use of such system shall not be in violation of the provisions of Paragraph 5 of the Proposed License Conditions attached to the Settlement Agreement between the parties relating to Atomic Energy Commission Docket Nos. 50-366A, 50-424A, 50-425A, 50-426A and 50-427A. (Emphasis added.)

Section 5.20 of the TS-1 Tariff provides that the transmission tariff is to be read within the boundaries of the License Conditions:

Section 5.20 Settlement Agreement. The parties have entered into a Settlement

^{17/} This tariff was approved by an Order issued by the Federal Power Commission on February 25, 1977, and has been in effect since without change. See Greensboro Lumber Co. v. Georgia Power Co., 643 F. Supp. 1345, 1353-54 (N.D. Ga. 1986), aff'd, 844 F.2d 1538 (11th Cir. 1988).

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Agreement, including Proposed License Conditions, relating to Atomic Energy Commission Docket Nos. 50-366A, 50-424A, 50-425A, 50-426A and 50-427A. This Agreement is entered into by the parties in partial implementation of and is to be construed within the boundaries of said Settlement Agreement, including proposed License Conditions, and nothing contained here shall be in violation of said Settlement Agreement, including Proposed Licensed Conditions.

Georgia Power's transmission obligations, therefore, are implemented by the FERC tariff which creates an Integrated Transmission System^{18/} among the parties who obtain transmission services from Georgia Power pursuant to this tariff.

Although Oglethorpe has contracted for transmission service pursuant to the TS-1 tariff, and thereby participates in the Integrated Transmission System, it has never contracted for power pursuant to the provisions of the Partial Requirements tariff. Instead, it has taken power pursuant to the Partial Requirements tariff on an instant by instant basis as such power is needed to supplement Oglethorpe's other resources. Oglethorpe states that it intends to purchase power to become self-sufficient, but it has not entered into any contract to purchase power and does not assert that it is self-sufficient now.^{19/} Oglethorpe could also become self-sufficient by contracting to purchase power outside the State of Georgia -- and Georgia Power would transmit such power pursuant to Paragraph 5(a) of the License Conditions.^{20/}

^{18/} These Tariff Sections 3.01 and 5.20 are the contract provisions cited by Oglethorpe in its Comments at 8.

^{19/} Oglethorpe Comments, at 21, fn. 14.

^{20/} With respect to Rocky Mountain, discussed in Oglethorpe's Comments at 21, Oglethorpe plainly can purchase pumping energy off-system. It can also become self-sufficient immediately by contracting for power, if it chooses, and thereby be poised to export power. Oglethorpe has the power to enter the Florida market under the License Conditions and therefore ought not urge a new antitrust review because it has not exercised that authority. If it claims it has exercised that authority and has been thwarted by Georgia Power, enforcement proceedings are appropriate.

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Off-system contingencies must not, however, impair the reliability of the purchase as the equivalent of a generating resource in the State of Georgia.

Georgia Power's interpretation of its transmission obligations under License Condition Paragraph 5(b) is based on the principle that each utility should bear the burden of its own planning mistakes. If a party exports resources off-system while refusing to accept the risk that its planning might be wrong, those risks must be borne not only by Georgia Power, but also by the other Partial Requirements customers. If exported resources prove to be needed on system, everyone's costs are increased and reliability may be impaired.

In summary, the existing License Conditions provide for off-system transactions by all entities, including Oglethorpe,^{21/} and are implemented by the existing transmission tariff. If Oglethorpe truly disagrees with Georgia Power as to the proper interpretation of the License Conditions, the appropriate forum is patently not another full-fledged antitrust review, but further negotiation between Oglethorpe and Georgia Power, and, if necessary, NRC Staff review of Georgia Power's compliance with the License Conditions.^{22/}

Even if, as Oglethorpe states, the "very meaning" of the License Conditions "is disputed among the parties bound by them,"^{23/} such issues do not constitute "significant changes"

^{21/} Oglethorpe's demand for dedicated transmission capacity also is inconsistent with the equality of access provided for by these License Conditions.

^{22/} See NUREG-0979, Procedures for Meeting NRC Antitrust Responsibilities (May 1985), Sec. 5.2.3. That section states that "[t]he staff will enforce such conditions consistent with the actual wording of the license conditions. If the meaning of the wording is subject to dispute, such dispute will be resolved through negotiation or hearing." Id., Sec. 5.2.3. See also Houston Lighting & Power Co. (South Texas Project, Unit Nos. 1 and 2), CLI-77-13, 5 N.R.C. 1303, 1311 (1977) ("the language in Section 186 [of the Atomic Energy Act] gives the Commission authority to initiate a postlicensing enforcement proceeding in the event of violation of specific antitrust licensing condition").

^{23/} Oglethorpe Comments at 3-4.

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under § 105(c)(2) of the Atomic Energy Act. The License Conditions have been before the Commission and the parties throughout the construction process. They do not represent "changes." Georgia Power has confirmed that Oglethorpe can export power as Georgia Power does. For example, the Unit Power Sales consist of capacity which is excess within the meaning of Paragraph 5(b). Oglethorpe forgets its planning and power supply responsibilities when, claiming "equal access," it seeks a right to export power when it has no excess resource available to export. The License Conditions and the related transmission and power supply tariffs are a coherent package of rights and responsibilities that make economic and operating sense. Parts of that package should not be cast aside piecemeal. No "confirmation" or "clarification" of the License Conditions is needed. Georgia Power recognizes that it is bound to the License Conditions and is absolutely committed to their faithful implementation.

The No Significant Changes Finding Is Effective And Properly Supported.

The filing of Oglethorpe's Comments should not affect the finality of the no significant change finding. While Oglethorpe quarrels with minor elements of the Staff's discussion, Oglethorpe does not dispute that the License Conditions have facilitated its evolution and the evolution of the other Partial Requirements customers as vigorous competitors of Georgia Power, and that the continued effectiveness of the License Conditions is in Oglethorpe's interest and in the public interest. Accordingly, while Oglethorpe states in a footnote that its pleading is a request for reevaluation, Oglethorpe does not in fact request that the Staff find that significant changes have occurred which warrant a new antitrust review.

The Staff Reports concerning the evaluation of the power supply market during the construction of Plant Vogtle Unit 1 and Unit 2 show a remarkable evolution. Oglethorpe and MEAG have emerged as suppliers of bulk power to the numerous rural cooperatives and municipal systems that once depended on Georgia Power. Oglethorpe, MEAG, and Dalton own interests not only in Plant Hatch and Plant Vogtle, but substantial interests in large, modern coal-fired plants. Oglethorpe's role as the lead owner for the Rocky Mountain Pumped Storage Project is a remarkable example of the emergence of new bulk power suppliers pursuant to the implementation of the License Conditions. The procompetitive effects of the emergence of the partial requirements customers as bulk power suppliers -- which have displaced Georgia Power as the supplier for approximately ninety municipal and cooperative

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systems -- is the central thrust of the Staff Reports. There is no doubt that these key procompetitive effects are continuing. Therefore, no correction need be made to the finding that the procompetitive effects identified during the licensing of Plant Vogtle Unit 1 are continuing.

Oglethorpe's exceptions to the Staff's discussion are insubstantial. With respect to absence of a concluded "generic scheduling agreement,"^{24/} Oglethorpe's subjective view of "equal access" and of Oglethorpe's present rights indicates why negotiations have been, and will be, time-consuming. Oglethorpe was more candid in its February 28, 1989 letter to Joseph Rutberg of the NRC's Office of the General Counsel, where Oglethorpe attempted to shape the NRC's Notice of Finding of No Significant Antitrust Changes so that the procompetitive effects of the License Conditions were minimized. Oglethorpe was unequivocal with regard to the absence of any significant changes requiring a new antitrust review:

We would suggest that no significant change has occurred, including no change related to implementation of the conditions resulting in further procompetitive environment. Therefore, . . . we do not believe that a new antitrust analysis is required (there having been no significant change)^{25/}

Id. at 2.

With respect to Oglethorpe's ability to "control its own destiny,"^{26/} Oglethorpe has always had the power to become self-sufficient, but has not accepted the planning risks associated with self-sufficiency. If Oglethorpe has permitted the development of the notion that it lacks control over its destiny, that is not attributable to Georgia Power. Also, Oglethorpe does not allege that it asked Georgia Power to assist in implementing transactions with AEC and SMEPA.^{27/} The alleged transaction that

^{24/} Oglethorpe Comments at 16.

^{25/} Id. at 2.

^{26/} Id. at 17.

^{27/} Id. at 19-20.

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fell through in October 1987 because Oglethorpe failed to provide adequate assurances shows that Oglethorpe has been aware for some time of the difficulties with its off-system transactions. Again, Oglethorpe's February 28, 1989 letter to the Staff is more candid than its Comments on the topic of significant changes.

The Seminole transactions in fact took place. Georgia Power disagrees with Oglethorpe's characterizations of Georgia Power's cooperation with Oglethorpe's Seminole transactions. Georgia Power has worked hard to facilitate the Seminole transactions. Georgia Power has discussed at length with Oglethorpe the causes of Oglethorpe's various disappointments. Oglethorpe should know that they did not result from anticompetitive animus. For example, Georgia Power agreed to back-up Oglethorpe's sales to Seminole from Plant Scherer, as shown by § 1.1(c) and § 3.2 of the April 30, 1986, Scheduling Services Agreement.

The staff accurately reported that Georgia Power made its transmission facilities available to facilitate Oglethorpe's Seminole transactions. Oglethorpe's assertion that "Oglethorpe is already a co-owner of the 'necessary transmission facilities'"^{28/} is false. The Integrated Transmission System is not a discrete, co-owned transmission network, but instead arises from a FERC tariff by which Georgia Power and Oglethorpe contract to provide each other with access to their facilities on equal terms. Neither ownership nor system size has anything to do with access. Oglethorpe and Georgia Power agreed that the transmission component of each Seminole transaction would be provided pursuant to Georgia Power's existing transmission service tariff (see the references to the Integrated Transmission System in § 5.5 of the April 30, 1986 Scheduling Services Agreement and § 2.5 of the June 14, 1988, Scheduling Services Agreement, both on file with the Staff). There was therefore no need^{29/} to negotiate a separate agreement to provide Oglethorpe with access to Georgia Power's transmission facilities to the Florida border,

^{28/} Id. at 19 n.12.

^{29/} Under Oglethorpe's misconstruction of "equal access," small utilities could not grow as rapidly as Oglethorpe has pursuant to the License Conditions. Under the Oglethorpe "ratio" method of allocating access, there could be a need to negotiate an increase in capacity dedicated to a small utility seeking to sell more than its transmission "ownership share" could accommodate from a plant.


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since the Integrated Transmission System Agreement provided for equal access to each party's facilities.^{30/}

In summary, Oglethorpe's quarrels with the Staff report do not attack the no significant change finding in a material way and fail to cure the fundamental flaw in Oglethorpe's Comments -- that of attempting to misuse the no significant change review process as a means to enforce Oglethorpe's interpretations of License Conditions. Oglethorpe's Comments do not affect the Staff's ability to recommend, and the Commission's ability to issue, the full power license on March 30 as planned.

For the foregoing reasons, we request issuance of the full power license as scheduled, notwithstanding Oglethorpe's Comments.

Respectfully submitted,


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cc: Joseph Rutberg
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Counsel for the Municipal Electric Authority of Georgia
Counsel for the City of Dalton, Georgia

^{30/} Oglethorpe does not complain of the expiration of the Seminole agreements by their own terms.