

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-24-OLA-3
GEORGIA POWER COMPANY, <i>et al.</i>)	50-425-OLA-3
)	
(Vogtle Electric Generating Plant)	Re: Licensee Amendment
Units 1 and 2))	(Transfer to Southern Nuclear)
)	

AFFIDAVIT OF FREDERICK R. ALLENSPACH AND DARL S. HOOD
REGARDING GEORGIA POWER COMPANY'S MOTION FOR
SUMMARY DISPOSITION OF THE ALLEGED ILLEGAL LICENSE TRANSFER

We, Frederick R. Allenspach and Darl S. Hood, having first been duly sworn,
hereby state as follows:

1. I, Frederick R. Allenspach, am a Senior Operations Engineer in the Quality Assurance and Maintenance Branch of the NRC's Division of Technical Support. My educational and professional qualifications are set forth in Appendix A of this Affidavit.

2. I, Darl S. Hood, am a Senior Project Manager within the NRC's Division of Reactor Projects for nuclear reactors located in Regions 1 and 2. I serve as Project Manager for the Vogtle Electric Generating Plant, Units 1 and 2 (the Vogtle facility). My educational and professional qualifications are set forth in Appendix B of this Affidavit.

3. The purpose of this Affidavit is to respond on behalf of the NRC Staff to "Georgia Power Company's Motion For Summary Disposition Of Intervenor's Illegal Transfer Of Licenses Allegation," dated August 24, 1994 (Motion).

4. We have read the Georgia Power Company (GPC) Motion with its attached supporting documents which include numerous affidavits, deposition transcripts, joint stipulations among the parties, GPC's statement of material facts as to which there is no genuine issue to be heard, and GPC's response to the Board's questions concerning the illegal license transfer issue. We find no error in the factual assertions of GPC.

BACKGROUND OF THE ISSUES

5. On October 22, 1992, Messrs. Allen Lee Mosbaugh and Marvin B. Hobby filed a petition to intervene in GPC's application for amendments to the operating licenses for the Vogtle facility to transfer operating responsibility to Southern Nuclear Operating Company, Inc. (Southern Nuclear or SONOPCO). That petition alleged that Southern Nuclear lacked the character, competence and integrity to operate the Vogtle facility. On December 9, 1992, Messrs. Mosbaugh and Hobby filed an amendment to that petition. There they alleged, *inter alia*, that GPC "effectuated transfer of control of the operation of the Vogtle Electric Generating Plant from the licensees to a *de facto* corporation, known as Southern Nuclear or SONOPCO, without the knowledge or consent of the co-owners of plant Vogtle." LBP-93-5, 37 NRC 96 (1993). The amended petition states that Messrs. Joseph M. Farley and R. Patrick McDonald, on behalf of SONOPCO, selected Mr. Charles Kenneth McCoy as Southern Nuclear's "plant Vogtle project vice

president." The allegation of Intervenor is that the Southern Company and its subsidiaries decided in the late 1980s to create a corporation whose sole purpose would be to operate the system's nuclear power facilities. Before the new corporation was chartered, the "SONOPCO Project" was formed, with Mr. Farley, then an officer of the Southern Company and later the President of Southern Nuclear Operating Company, Inc., as the head of the SONOPCO Project. Mr. Farley is alleged to have given directions to Mr. McDonald, Executive Vice President, Nuclear, GPC, for the operation of the Vogtle facility, and, through Mr. McDonald, to Mr. McCoy, GPC's vice president for the Vogtle facility. This history is more fully set forth in DD-93-8, 37 NRC 314 (1993). Much of the amended petition refers to Department of Labor proceedings in which Mr. Hobby and Mr. Mosbaugh alleged that GPC had treated them unlawfully. These same illegal transfer issues were litigated there although in a different context.

6. On February 18, 1993, the Licensing Board issued an Order admitting Mr. Mosbaugh as a party, denying Mr. Hobby leave to intervene, and admitting a contention that Southern Nuclear lacked integrity to operate Vogtle based, in part, upon the contention that "control of the operation of the Vogtle...Plant from the licensees to...Southern Nuclear" had taken place without NRC approval. LBP-93-___, 37 NRC ___ (1993). These same allegations were made in a petition by Messrs. Mosbaugh and Hobby dated September 11, 1990, treated by the NRC as a filing pursuant to 10 C.F.R. § 2.206. On April 23, 1993, a Partial Director's Decision Pursuant to 10 C.F.R. § 2.206 was issued, DD-93-8, 37 NRC 314 (1993). There the Staff concluded that no illegal *de facto* transfer of operating licensees to Southern Nuclear had occurred.

37 NRC at 317-22, 345. On July 14, 1993, the Commission in CLI-93-15, 38 NRC 1 (1993), vacated the Partial Director's Decision upon grounds other than the Staff's position regarding the illegal transfer issue. The issue addressed in this Affidavit is the alleged illegal transfer of the operating license from the Vogtle facility to Southern Nuclear.

STAFF POSITION

7. The Staff concluded in DD-93-8, 37 NRC 314, 322, 345 (1993) that no illegal transfer of the operating licenses for the Vogtle facility had occurred. That part of DD-93-8, 37 NRC 314-15, 317-22, 345, which deals with the illegal license transfer issue still remains the Staff position and is attached as Appendix C to this Affidavit. We, Frederick Allenspach and Darl Hood, performed the Staff analysis that appears in DD-93-8. Since GPC filed its Motion on August 24, 1994, we have examined the Motion and supporting papers, other evidence disclosed in discovery in this proceeding which might modify the Staff's position stated in DD-93-8. The Staff has found no information which would adversely affect our prior decision and, indeed, there is additional evidence to support it.

8. The GPC's Motion for Summary Deposition and Statement of Material Facts as to Which There is Not Genuine Issue, in general, are principally directed to refuting Mr. Mosbaugh's allegation that Mr. Farley, for Southern Nuclear, controlled the operation of the Vogtle facility. The Staff's prior position supports this refutation. 37 NRC at 319, 320. Since the Intervenor provided a supplement to his § 2.206 petition

on October 1, 1990, to the best of our knowledge, no new substantive facts that would cause us to change our position have come to light.

9. On April 7, 1994, GPC deposed Mr. Mosbaugh regarding the illegal transfer issue. Some of Mr. Mosbaugh's statements made there under oath are relevant. Although not made in response to a specific question, Mr. Mosbaugh stated, "I'm aware that Georgia Power's operating license for plant Vogtle was not transferred to Mr. Farley or to a management chain headed by Mr. Farley. I'm aware of that." Tr. 29, 30.

Later in the deposition, the following exchange occurred (Tr. 86):

Q: [Mr. Lamberski, counsel for GPC] Prior to your separation from Georgia Power Company in 1990, did you have occasion to observe or were you otherwise aware of the day-to-day interaction between Mr. McDonald [GPC Executive Vice President] and Mr. Dahlberg [President of GPC]?

A: [Mr. Mosbaugh] No, I didn't have the opportunity to observe that.

10. Messrs. Farley and McDonald were both located in Birmingham, Alabama. Mr. Mosbaugh never traveled to the Birmingham office (Mosbaugh Deposition Tr. at 87) and never was in a position to himself observe any interaction between Mr. Farley and Mr. McDonald, the Southern Nuclear participants in this alleged activity. In "Intervenor's Response To The First Request For Documents By Georgia Power Company," dated June 2, 1993, at page 44, Mr. Mosbaugh stated in a response to Interrogatory 21, "His [Mr. Mosbaugh's] opinion that the license had been transferred was based upon his personal observations of how business was conducted." At his April 7, 1994 deposition, Mr. Mosbaugh repudiated this interrogatory answer, stating,

in part "but the reference here is to knowledge of the first hand...[that] knowledge at [of] certain events is not my first hand knowledge." Tr. 93.

11. Based upon our reading of the transcript, we believe that no information was adduced at the deposition from Mr. Mosbaugh by his counsel that supported his allegations.

12. Mr. Marvin Hobby was the sponsor of the illegal transfer matter in the § 2.206 petition. Mr. Hobby was deposed by GPC on April 9, 1994 and his deposition, in pertinent part, reads:

Q: And do you consider yourself to be an expert in NRC licensing matters?

A: No sir.

Q: Do you consider yourself to be an expert with regard to NRC regulations insofar as they might affect the transfer of an operating license for a nuclear power plant?...

A: The Witness: I don't consider myself a licensed expert at all. [Tr. 20]

.....

Q: Mr. Hobby, I believe we had established in the Department of Labor proceeding that you do not have personal knowledge, personal knowledge of a single instance in which Mr. McDonald received his management direction from Mr. Farley with respect to the operation of the Hatch and Vogtle plants; is that correct?

A: That's correct. [Tr. 50]

.....

Q: Are you aware of any instances where Mr. Farley reported to the Georgia Board of Directors regarding the operations at Plant Vogtle?

A: No.

Q: Are you aware of any instances where Mr. Farley reported to the nuclear operations overview committee of Georgia Power concerning the operation of Plant Vogtle?

A: No.

Q: Other than the one instance that you referenced earlier, are you aware of any instance where Mr. Farley visited a Georgia Power Nuclear Plant?

A: I just don't know.

Q: You can't recall any other instance?

A: No, no.

Q: Did you ever visit Plant Vogtle in 1988, '89 and 1990 time period?

A: I don't know.

Q: You don't recall doing so?

A: 1988, 1989, or 1990?

Q: Yes, sir.

A: I may have. I don't know. I don't know. [Tr. 150-51]

13. The following statements during Mr. Hobby's deposition are also illustrative:

Q: Could you identify for us the day-to-day effects in your last year at being at Georgia Power of having the two licensees at the Vogtle Facility controlled by SONOPCO as verses Georgia Power Company?

A: I don't think I can answer that question.... [Tr. 168-69]

...

Q. Do you have personal knowledge of any changes in the management of the Vogtle facilities from Mr. Bochhold [the Vogtle facility's General Manager in the 1988-1990 time frame] which resulted from SONOPCO's appearance on the scene?

A. No. [Tr. 169]

Q. Do you have any other experience in being on a nuclear site and assisting or operating the plant in any kind of way?

A. In operating a plant?

Q. Yes

A: No. [Tr. 170]

In sum, no new information was disclosed during the deposition of Mr. Hobby that would support the illegal transfer allegation. Mr. Hobby did not recall ever visiting the Vogtle facility in the time period of 1988-1990 to discuss or observe any activities related to this allegation.

14. The claim that the operation of the Vogtle facility was illegally transferred from GPC to Southern Nuclear is not supported by any evidence. Mr. Mosbaugh testified that the license was transferred (Mr. Mosbaugh's Deposition Tr. at page 14) and that the license was not transferred (Tr. 30). Mr. Mosbaugh further testified that he knew nothing of the personal interactions between the corporate officers involved that allegedly controlled the transfer of the operation of the Vogtle facility to Southern Nuclear (Mosbaugh April 7, 1994 deposition, Tr. 87, 88), and, in effect, repudiated his interrogatory response that he had personal knowledge of the alleged license transfer. Mr. Hobby testified that he has no expertise in licensing nuclear power plants, that he has no personal knowledge of any instance when Mr. McDonald took instruction for operation of Vogtle from Mr. Farley, that he (Mr. Hobby) does not know if he visited Vogtle, that he cannot identify changes in the operation of Vogtle with the appearance

of SONOPCO and, lastly, that he has no experience in the operation of a nuclear power plant. *See* paragraphs 12-13, above.

15. Based upon the Staff's previous assessment, GPC's motion and supporting papers, and the lack of new facts offered by Messrs. Mosbaugh and Hobby during discovery, it is clear that no illegal transfer of the operating licenses for the Vogtle facility has taken place.

16. The Staff has also considered information disclosed at the depositions of Southern Nuclear and GPC employees. Intervenor deposed Mr. Farley on April 14, 1994. I, Frederick Allenspach, have reviewed the transcript of that deposition and I, Darl Hood, was present when that deposition was taken. Intervenor's questions went to the formation of the SONOPCO project and how it was prompted by various officers of the Southern Company and its subsidiaries. Intervenor failed to show any action or activity at the Vogtle facility that was controlled, directed, or influenced by Mr. Farley himself, or through anyone subject to Mr. Farley's influence. Mr. Farley testified that he attended only one Board of Director's meeting of Georgia Power Company and this engagement was almost entirely social. Tr. 107. He testified that after he left Alabama Power Company as its president and went to Southern Nuclear, he did not give directions to either Mr. Dahlberg or Mr. McDonald, officers of Georgia Power Company. Tr. 109. He testified he gave no directions to Mr. McDonald to follow for the operation of the Vogtle facility. Tr. 110.

17. Mr. McDonald, the former Executive Vice President of GPC for its nuclear operations, was deposed by the Intervenor on April 14, 1994. Mr. McDonald testified as follows:

Q: On a weekly or day-to-day basis, were you informed as to the condition of the Hatch and Vogtle Facilities?

A: We...and I use this word figuratively speaking, we religiously reported every morning to Mr. Dahlberg's [Pres. GPC] office and frequently to him directly the status of the plants and problems involved. And I reported to him again religiously when anything worthy of note, by that I mean a feeling of the seriousness of it or the impact, I would get in touch with him where ever he might be. Tr. 97.

Q: Who gave you this information sir?

A: What information?

Q: The information about the status of the Vogtle and Hatch facilities.

A: The information would generally come from one of two sources. It would come from George Hairston who was basically a senior vice president in charge of those two projects or if George Hairston was not present, then it would come from the so called duty manager from either of the two projects.

Q: And you on a daily basis informed Mr. Dahlberg of this information?

A: Yes, yes. It was a ritual, a daily ritual. Tr. 98.

Q: Did Mr. Dahlberg report to the Board of Directors regarding the operations of the nuclear facilities at Hatch and Vogtle?

A: He generally had me report to the Board of Directors... And if I were not present, Mr. Hairston would report to the Board of Directors. Tr. 100.

18. Mr. McDonald testified that he took his directions for the operation of the GPC facilities from Mr. Scherer and then Mr. Dahlberg, Chief Executive Officers of GPC.

Q: Did you [Mr. McDonald] ever receive any directions regarding the actual operation of the Vogtle facilities from anyone except Mr. Dahlberg or the board of directors of Georgia Power Company?

A: I don't recall the nature of that. I did receive some direction which would be called direction from Bob Scherer who I reported to before Mr. Dahlberg became CEO. But subsequent to Mr. Dahlberg becoming CEO, I never took any direction nor, as far as I know, my organization from anyone other than Mr. Dahlberg. The board of directors did not give general -- or specific directions and bypass Mr. Dahlberg. McDonald Tr. 100.

19. Mr. McDonald testified that Mr. Hairston reported to him and, in Mr. Hairston's absence, Mr. McCoy, Vice President-Nuclear of GPC for the Vogtle facility, reported to him.

Q: Mr. Hairston reported to you?

A: Yes

Q: And if he was on the road or traveling, I assume Mr. McCoy took his place, reported to you?

A: That's correct. If Mr. McCoy wasn't there for some reason, the so-called duty project manager would report to me. Tr. 101

20. Mr. McCoy was deposed by Intervenor on April 6, 1994. He testified that in 1990 Southern Nuclear employees were at the Vogtle site and that they performed their work subject to Mr. McCoy's approval. Tr. 81.

21. Mr. Hairston, the former Senior Vice President of GPC was deposed by Intervenor on July 27, 1994. I, Darl Hood, was present during this deposition. Mr. Hairston described the reporting structure during the 1988, 1989, and 1990 time frames. He confirmed that Mr. McCoy reported to him and he [Mr. Hairston] reported to Mr. McDonald. All three were officers of GPC.

22. Mr. A.W. Dahlberg, President and Chief Executive Officer (CEO) of GPC in the 1990s time period, was deposed by Intervenor on April 6, 1994. Mr. Dahlberg testified that SONOPCO personnel were at the Vogtle site in 1989 and 1990 and that they functioned subject to the control of GPC. Tr. 108. Mr. Dahlberg further testified that Mr. McDonald reported to Robert Scherer, CEO of GPC, until June 1988 and then reported to Mr. Dahlberg when he became GPC's CEO in June 1988 [Tr. 111] and further testified that the operation of the Vogtle facility is [1994] subject to the control and direction of GPC officials. Tr. 115. He also testified that the corporate officers of GPC responded to the general direction and constraints of the Board of Directors of GPC and that the GPC Board of Directors, of which Mr. Dahlberg is a member, has not in any way suggested that the Vogtle facility be controlled by Southern Nuclear. Tr. 116.

23. Summarizing the depositions taken by Intervenor and cited above, the officers of GPC (Messrs. McCoy, Hairston, McDonald, and Dahlberg) uniformly testified that the operation of the Vogtle facility is, and has been, subject to the control and direction of GPC. Intervenor did not impeach this testimony. The depositions of Messrs. Mosbaugh and Hobby make clear that they have no personal knowledge of any significant facts that demonstrate that GPC did not control the operation of the Vogtle facility. Thus, no information or evidence proffered by Mr. Mosbaugh in anyway impugns or contradicts this testimony.

24. Chapter 13 of the Updated Final Safety Analysis Report (UFSAR) sets forth the organizational structure and responsibilities for the operation of the Vogtle facility, including organizational charts (Figures 13.1.1-1, 13.1.1-2, and 13.1.2-1) See

Appendix D. It has been updated through April 1994 (Rev. 4). I, Frederick Allenspach, have reviewed Chapter 13 of the UFSAR, Rev. 4. Southern Company Services, a subsidiary of Southern Company, and Southern Nuclear are identified in Chapter 13 and their roles are defined. All reporting and activity is made subject to approvals of the General Manager Nuclear Plant and Vice President Nuclear, both of whom are employees of GPC (Figure 13.1.1-2 and 13.1.2-1). Section 13.1.2.2.1 states:

"The GPC general manager-nuclear plant (Vogtle) (GMNP) is responsible for the direct management of the plant, including industrial relations, planning, coordination, direction of operation, training, maintenance, refueling, and technical activities. The GMNP is responsible for compliance with the requirements of the operating license, Technical Specifications, and quality assurance program."

25. This describes GPC's responsibility with respect to day-to-day operations.

No information or evidence has been provided by Intervenor or anyone else that would suggest that this is not correct.

26. In addition to reviewing information revealed in discovery, on September 28, 1994, we visited the Vogtle site and, on September 29, 1994, we visited the corporate headquarters in Birmingham, Alabama. The purpose of our visit was to verify personally the paper descriptions set forth in the UFSAR and determine if GPC continues to be in charge of the operation of the Vogtle facility. At both locations, we met with numerous managers of GPC, Southern Nuclear, and Southern Company Services and discussed their organizational responsibilities and structure, including details of their respective employments and their involvements with respect to the Vogtle facility. While at the Vogtle site, we also met with the NRC's Resident Inspectors stationed full

time at the Vogtle facility and discussed their observations of the day-to-day control of the facility by GPC managers and the support provided to the facility by Southern Nuclear and Southern Company Services employees. Our review at these sites convinces us that the positions described in UFSAR Chapter 13, Figures 13.1.1-1, 13.1.1-2 and 13.1.2-1 do exist at the Vogtle facility, that they are occupied (except for the position of Assistant General Manager, Plant Operations), that the reporting chain of command is as set forth in the cited UFSAR figures, and that control of the operation of the Vogtle facility is by GPC employees. We found no evidence that anyone other than GPC controls the operation of the Vogtle facility.

27. The Staff is satisfied that the separation of responsibility is maintained and that neither Southern Nuclear nor Southern Company Services control the day-to-day operation of the Vogtle facility. The contract for services at the Vogtle facility between GPC and Southern Nuclear has been reviewed. This contract adequately provides that GPC officials shall direct and control work performed at the Vogtle facility.

28. The Staff concludes, based upon GPC's Motion, the supporting papers, and other information available to the NRC, that there has been no transfer of the operation of the Vogtle facility to SONOPCO.

The foregoing and attached statements of professional qualifications are true and correct to the best of our knowledge and belief.

Frederick R. Allenspach
Frederick R. Allenspach

Darl S. Hood
Darl S. Hood

Subscribed and sworn to before me in
Rockville, Maryland this 3rd day of October 1994

Heinrich J. Zorn
Notary Public
My commission expires: March 1, 1998

EDUCATION AND PROFESSIONAL QUALIFICATIONS OF FREDERICK ALLENSPACH

June 1952

- Graduate of Polytechnic Institute of Brooklyn. Degree in Bachelor of Mechanical Engineering

September 1956
to June 1968

- Employed by the Brookhaven National Laboratory, Reactor Division. Approximately two years as operating shift supervisor in charge of an operating shift on the Brookhaven Graphite Research Reactor (BGRR). Approximately three years as BGRR day shift supervisor responsible for various reactor support activities.
- Approximately six years as BGRR Assistant Operations Group Leader primarily responsible for the temperature monitoring and reactor fuel management programs.

June 1968
to June 1974

- Employed by the Atomic Energy Commission, Directorate of Licensing, Operational Safety Branch. My responsibilities include (as assigned); review and evaluation of applicants organizational structure, technical and administrative qualifications of applicants proposed reactor operating organization, including emergency plans and industrial security plans; development of guides and codification of present and proposed practices with respect to administrative procedures for the operation of licensed reactors; the review of operating reports from licensed reactors for safety related items; and the preparation of reports relative to operating experiences at licensed reactors.

June 1974
to May 1980

- Employed by the AEC/NRC, Division of Project Management, Quality Assurance Branch. My responsibilities include review and evaluation of applicants organizational structure, technical and administrative qualifications of applicants proposed reactor operating organization, development of standards, codes and guides with respect to administrative procedures for the operation of licensed reactors; and the development of uniform acceptance criteria for subjects

required to be addressed by license applicants relating to operational safety matters.

May 1980
to November 1985

- Employed by the NRC, Division of Human Factors Safety, Licensee Qualifications Branch. My responsibilities include establishing requirements and qualification standards for licensee management and plant personnel; review and evaluate the technical and managerial qualifications of applicants and licensees; and the development and review of administrative controls for the operation of licensed reactors.

November 1985
to April 1987

- Employed by NRC, Division of PWR-B Facilities Operations Branch. My responsibilities include review and evaluation of the Administrative Controls aspects of Technical Specifications, and evaluated performance data and SALP input for licensed reactors.

April 1987
to Present

- Employed by NRC, Division of Licensee Performances and Quality Evaluation, Performance and Quality Evaluation Branch. My responsibilities include the review and evaluation of Administrative Controls to Technical Specification with respect to management organization and staffing (since transferred to HFEB) and operational safety reviews, and review and evaluation of quality assurance programs for advanced reactors.

In 1987-1989 time frame, provided support in the area of management, technical support and plant staffing for the Operating License review for Vogtle Unit 2. This included support for the review of the Administrative Controls of the Vogtle Plant Technical Specifications. In the 1969-1975 time frame, I reviewed the management, organization and staffing to support the licensing of Edwin I. Hatch Units 1 & 2.

**EDUCATION AND PROFESSIONAL QUALIFICATIONS OF
DARL S. HOOD**

June 1962

Graduated from North Carolina State University, Raleigh, North Carolina. Bachelor of Science degree in Nuclear Engineering

June 1962

to November 1963

Design Engineer with Norfolk Naval Shipyard, Portsmouth, Virginia

Signal Corps, U.S. Army. Began as a Second Lieutenant and finished as a Captain.

November 1963

to February 1965

Aeronautical Engineer, Nuclear Propulsion and Power, George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Huntsville, Alabama. Analyze radiation hazards to crew during planned space flights using nuclear propulsion and radioisotopic power sources.

February 1965

to August 1966

Nuclear Quality Control Engineer, Electric Boat Division of General Dynamics, Groton, Connecticut

August 1966

to June 1969

Nuclear Safety and Radiation Analysis Engineer, Nuclear Division of Martin Marietta Corporation, Baltimore, Maryland. Analyze the hazard potential of nuclear systems for space applications.

June 1969

to August 1976

Assistant Project Manager, Nuclear Power Systems Division of Combustion Engineering, Inc., Windsor, Connecticut. Responsible for licensing support for Duke Power Company's proposed Cherokee Units 1, 2, and 3 and Thomas L. Perkins Units 1, 2, and 3.

Project Engineer, Safety and Licensing Department, Combustion Engineering, Inc., Windsor, Connecticut. Responsible for licensing support of nuclear power plants.

August 1976
to present

Project Manager, U. S. Nuclear Regulatory Commission. Principal plant assignments in this capacity have been for Westinghouse's standard reference design RESAR-414; Midland Plant, Units 1 and 2; McGuire Nuclear Station, Units 1 and 2 (from late December 1984 to August 1990); and Vogtle Electric Generating Plant, Units 1 and 2 (from August 1990 to present).

Case no 37 NRC 314 (1993)

DO-83-8

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Frank J. Miraglia, Acting Director

In the Matter of

Docket Nos. 50-321
50-366
50-424
50-425GEORGIA POWER COMPANY, et al.
(Vogtle Electric Generating Plant,
Units 1 and 2; Hatch Nuclear
Plant, Units 1 and 2)

April 23, 1993

The Acting Director of the Office of Nuclear Reactor Regulation concludes that the petition filed by Messrs. Marvin B. Hobby and Allen L. Mossbaugh (Petitioners) raised no substantial health or safety concern to call into question the continued safe operation of the Vogtle and Hatch nuclear facilities operated by Georgia Power Company (GPC) and the Southern Nuclear Operating Company (SONOPCO). In addition, the Acting Director concluded that no unauthorized transfer of the Vogtle operating licenses occurred, and that, based on the NRC Staff's review of information available to date, none of the issues decided call into question GPC's character, competence, fundamental trustworthiness, and commitment and safety with respect to the operation of its nuclear facilities.

Certain concerns raised by Petitioners were partially substantiated. Violations of regulatory requirements have occurred in the operations of the Vogtle and Hatch facilities. Notices of Violation and a civil penalty have been issued to GPC for certain of these violations.

Certain other issues have not yet been addressed by the Acting Director and will be the subject of a Final Director's Decision.

PARTIAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

On September 11, 1990, Michael D. Kohn, Esquire, filed with the U.S. Nuclear Regulatory Commission (NRC) a "Request for Proceedings and Imposition of Civil Penalties for Improperly Transferring Control of Georgia Power Company's Licenses to the SONOPCO project and for the Unsafe and Improper Operation of Georgia Power Company Licensed Facilities" (Petition) on behalf of Messrs. Marvin B. Hobby and Allen L. Mosbaugh (Petitioners). The Petitioners are former employees of the Georgia Power Company (GPC or Licensee), which operates and is part owner of the Vogtle Electric Generating Plant and the Hatch Nuclear Plant. The Petition was referred to the Office of Nuclear Reactor Regulation (NRR) for the Director of NRR to prepare a Director's Decision in accordance with section 2.206 of Title 10 of the *Code of Federal Regulations* (10 C.F.R. § 2.206). The NRC received exhibits to support the Petition on September 21, 1990, and a supplement to the Petition on October 1, 1990.

The Petitioners made a number of allegations about the management of the GPC nuclear facilities. Specifically, the Petitioners alleged that (1) GPC illegally transferred its operating licenses to Southern Nuclear Operating Company (SONOPCO); (2) GPC knowingly included misrepresentations in its response to concerns of a Commissioner about the chain of command for the Vogtle facility; (3) GPC made intentional false statements to the NRC about the reliability of a diesel generator whose failure had resulted in a Site Area Emergency at Vogtle; (4) a GPC executive submitted perjured testimony during a U.S. Department of Labor (DOL) proceeding under section 210 of the Energy Reorganization Act; (5) GPC repeatedly abused Technical Specification (TS) 3.0.3 at the Vogtle facility; (6) GPC repeatedly and willfully violated Technical Specifications (TSs) at the Vogtle facility; (7) GPC repeatedly concealed safeguards problems from the NRC; (8) GPC operated radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements; (9) GPC routinely used nonconservative and questionable management practices at its nuclear facilities; and (10) GPC retaliated against managers who made their regulatory concerns known to GPC or SONOPCO management. The Petitioners requested the NRC to institute proceedings and take swift and immediate action based on these allegations.

On October 23, 1990, I acknowledged receiving the Petition and concluded that no immediate action was necessary regarding these matters. I made

¹ Southern Nuclear Operating Company is more commonly known today as "Southern Nuclear." However, to be consistent with the Petition, "SONOPCO" will be used throughout this Partial Director's Decision.

with regard to those issues that are capable of final resolution now. For all issues not addressed herein, I intend to issue a supplement to this Decision when the considerations by the NRC Staff and DOL are complete. My discussion and decision regarding issues for which final conclusions have been reached follow.

II. DISCUSSION

A. Alleged Illegal Transfer of Licenses (Petition § III.1 with Supplemental Filing of October 1, 1990; July 8, 1991 Supplement § IV)

The Petitioners allege an illegal transfer to SONOPCO of the NRC licenses currently held by GPC that authorize operation of GPC nuclear facilities. Specifically, the Petitioners allege that GPC improperly transferred control of its nuclear licenses to SONOPCO. The Petitioners contend that Mr. Joseph M. Farley — who was an officer of GPC's parent company, The Southern Company, and its subsidiary, Southern Company Services — was really the Chief Executive Officer (CEO) of SONOPCO and was, in fact, responsible for operating the GPC nuclear facilities, beginning with the first of three phases in the planned transition to SONOPCO.

A review of the history and background of the formation of SONOPCO is necessary to understand this issue.

The Southern Company is the parent firm of five electric utilities: Alabama Power Company (APC); GPC, Gulf Power, Mississippi Power, and Savannah Electric. Two of these utilities are associated with nuclear facilities at three different sites. GPC is the principal owner and the holder of licenses from the NRC to operate the Vogtle nuclear facility near Augusta, Georgia, and the Hatch nuclear facility near Baxley, Georgia. APC owns the Farley nuclear facility near Dothan, Alabama. The Southern Company also includes Southern Company Services, Incorporated, a wholly owned service organization.

In 1988, The Southern Company established the SONOPCO project for the long-term purpose of establishing an operating company to eventually operate the nuclear power generating plants that were then operated by GPC and APC. The establishment of a single operating company was to be accomplished in three phases. During Phase 1, SONOPCO — which had not yet received the approval of the Securities and Exchange Commission (SEC) — was formed by The Southern Company as a "project" to provide support services to the operating companies (GPC and APC). In Phase 2, which is now in effect for the Vogtle and Hatch facilities, SONOPCO continues to provide support services to the operating companies, but has become a legal entity, having obtained the approval of the SEC, and thereafter being incorporated by The Southern Company. Phase 3 will begin for the Vogtle and Hatch facilities (and is currently

in effect for the Parley facility), once SONOPCO acquires NRC licenses to operate the nuclear facilities.

Because of delays, the transition occurred more slowly than first anticipated, and Phase 1 of the project lasted for approximately 2 years (1989 and 1990). During this phase, Mr. Joseph M. Parley was responsible for the administrative aspects of forming the new operating company. On February 24, 1989, Mr. Parley was elected Executive Vice President-Nuclear, of The Southern Company and Executive Vice President of Southern Company Services, Incorporated. Before this appointment, he had been President and Chief Executive Officer (CEO) of APC for almost 20 years.

Until SONOPCO acquired the NRC licenses, the GPC nuclear facilities were to remain under the direction of GPC President, Mr. A.W. Dahlberg, with a reporting chain downward of Executive Vice President-Nuclear Operations (Mr. R.P. McDonald), Senior Vice President-Nuclear Operations (Mr. W.G. Hairston, III), and the vice presidents for the Vogtle and Hatch facilities (Messrs. C.K. McCoy and T.J. Beckham, respectively). The APC plants were to remain under the direction of the APC President, with a similar chain downward of Mr. McDonald, Mr. Hairston, and the vice president for the Parley facility. Mr. McDonald and Mr. Hairston were officers of both APC and GPC.

During Phase 1, which began on or about November 1, 1988, technical support was provided to all three nuclear facilities by a common Technical Services group under a Vice President of Southern Company Services, Incorporated, who reported to the Executive Vice President, Mr. McDonald. Administrative support to all three facilities was provided by a common Administrative Services Group under another Vice President of Southern Company Services, Incorporated, who also reported to Mr. McDonald. This phase was to be effective until the SEC approved the creation of SONOPCO. Mr. Parley was not identified as having any responsibility for operating the GPC nuclear facilities during this phase. He was responsible for providing administrative services through Southern Company Services, Incorporated, and was also responsible for the formation of SONOPCO. Although not effective during Phase 1, Mr. Parley had been designated to become the President and CEO of SONOPCO when it was established.

Phase 2 began near the end of 1990 with the approval of SONOPCO as a legal entity by the SEC. Specifically, on December 14, 1990, the SEC approved The Southern Company's request of June 22, 1988, to form SONOPCO. SONOPCO was incorporated on December 17, 1990, and its officers were elected December 18, 1990. As part of Phase 2, GPC's Executive Vice President and Senior Vice President, Nuclear Operations (Messrs. McDonald and Hairston) became officers of SONOPCO and reported administratively to the President and CEO of SONOPCO, Mr. Parley. The Vice Presidents of each nuclear facility also became officers of SONOPCO. The Vice President of Technical Services and the

Vice President of Administrative Services, respectively, for Southern Company Services, Incorporated, became officers of SONOPCO, rather than officers of Southern Company Services, Incorporated. During this phase, GPC and APC retained their NRC licenses and the responsibility for operating their respective nuclear facilities.

Phase 3, during which SONOPCO was to have operating responsibility, was planned to begin for GPC nuclear facilities when the NRC licenses had been transferred to SONOPCO. The NRC-approved license amendments on November 22, 1991, that authorized the transfer of licenses for the Farley facility from APC to SONOPCO. The amendment for the Farley facility was implemented within 90 days thereafter. GPC filed applications for similar amendments to transfer the licenses for operation of the Vogtle and Hatch facilities on September 18, 1992, and the NRC is currently reviewing these applications.

The Petitioners contend that during Phase 1 of the transition to SONOPCO, GPC, in effect, transferred control of its NRC licenses to the SONOPCO project. They base their claim, in part, on their having witnessed the daily operation of GPC's nuclear facilities at the site and at GPC's corporate offices. The Petitioners state that

the actual chain of command was General Plant Manager George Bodchold (Vogtle) to SONOPCO Vice President McCoy, McCoy to SONOPCO's Senior Vice President, George Hairston, Hairston to SONOPCO's Executive Vice Presidents and Chief Operations Officer, R. Patrick McDonald, McDonald to SONOPCO's Chief Executive officer, Mr. Farley.

In the supplementary filing of October 1, 1990, the Petitioners further contend that Mr. Farley "chose the GPC Corporate Officers which would be staffing the SONOPCO project even though he is not an officer or employee of GPC." In the July 8, 1991, Supplement (at 20), the Petitioners assert that Mr. McDonald has reported to Mr. Farley on administrative matters since the formation of the SONOPCO project.

In March 1988, GPC and APC met with NRC to discuss their plans to form a separate operating company, SONOPCO. On July 25, 1988, NRC met with GPC to discuss the corporate organization of SONOPCO and GPC, including the generic activities and initiatives involving the Vogtle and Hatch facilities. Enclosure 3 to the meeting summary prepared by NRC Region II, August 11, 1988, a Nuclear Operations-Transition Organization chart, shows the Vice President-Nuclear (Hatch), and the Vice President-Nuclear (Vogtle) reporting to Mr. W.G. Hairston, the Senior Vice President-Nuclear Operations and Mr. W.G. Hairston reporting to Mr. R.P. McDonald, the Executive Vice President-Nuclear Operations. On March 1, 1988, Mr. McDonald was elected a senior officer of GPC and named Executive Vice President-Nuclear, effective April 25, 1988.

On May 4, 1988, Mr. W.G. Harrison was elected Senior Vice Presidents--Nuclear Operations of GPC and Mr. C.K. McCoy was elected Vice President--Nuclear of GPC (GPC Submittal, April 1, 1991, Attach. 1, Exh. 4).

During December 19 through 21, 1988, with Phase 1 of the SONOPCO transition in effect, the NRC conducted an inspection of the corporate organization, responsibilities, and functions of SONOPCO at Birmingham, Alabama (Inspection Report Nos. 50-321/88-41, 50-366/88-41, 50-424/88-60, 50-425/88-77, 50-348/88-33, and 50-364/88-33). Part 3 of this report states:

In preparation for combining the management of Vogtle, Hatch, and Farley into one organization, GPC has reorganized and moved the corporate nuclear operations to Birmingham. . . . Currently, the Executive Vice President and Senior Vice President for Nuclear Operations are officers of both GPC and APC. . . . The Vice Presidents for each of the three projects (Vogtle, Hatch, and Farley) report to the Senior Vice President of Nuclear Operations.

The transcript of the DOL proceeding³ on the discrimination complaints of Mr. Hobby indicates that GPC President, Mr. Dahlberg, stated that the operation of GPC's nuclear facilities is his direct responsibility; that Mr. McDonald takes his management direction from Mr. Dahlberg regarding the operation of GPC's nuclear plants; and that Mr. McDonald reports to Mr. Dahlberg for management operations dealing with GPC plants (Proceeding Transcript at 305, 307, and 309). Mr. Farley stated that he does not have any responsibility for operating GPC's nuclear facilities and that Mr. McDonald does not report to him with respect to the operation of Hatch and Vogtle (*id.* 567 and 568). Mr. McDonald stated that he reports to Mr. Dahlberg regarding the operation of GPC's nuclear facilities (*id.* at 613 and 614).

In a deposition of May 5, 1990, taken in the same Hobby DOL proceeding, at pages 13 and 14, Mr. McDonald stated that he has no reporting responsibilities to Mr. Farley. In a Memorandum, to Mr. H.B. Hobby of May 15, 1989, Mr. Fred D. Williams, the GPC Vice President for Bulk Power Markets, stated

Mr. R.P. McDonald reports to A.W. Dahlberg for operation and support activities of Plants Vogtle and Hatch. I have attached a copy of the most recent published organization chart showing the reporting. Mr. George Harrison reports to Mr. McDonald.

The Petition (at 5 and 6) states that Mr. Hobby's claims regarding control of operating the nuclear facilities are based upon his having witnessed the day-to-day operation at GPC's corporate offices. Other than Mr. Hobby's observations of day-to-day operation, no direct evidence was offered to support the claim that Mr. McDonald reported to Mr. Farley regarding the operation of the Hatch or Vogtle nuclear facilities. Mr. Hobby acknowledged that he had no personal

³ *Marvin B. Hobby v. Georgia Power Co.*, Case No. 90-ERA-30.

knowledge that Mr. McDonald received his direction from Mr. Farley (Hobby DOL Proceeding Transcript at 239). He does, however, relate observations or assertions that he believes strongly suggest that SONOPCO was in control:

- (1) In his Memorandum of April 27, 1989 (Exh. A of the September 21, 1990 Supplement to the Petition), Mr. Hobby refers to a specific concern with regard to control that was expressed by one of the joint owners of the Vogtle facility, the Oglethorpe Power Corporation.
- (2) Page 4 of Mr. Hobby's letter of June 8, 1989, to Mr. D. Wilkinson (Attach. 4 to the July 8, 1991 Supplement to the Petition) refers to coaching of the GPC corporate staff regarding the organizational reporting and control issue.
- (3) Mr. Hobby states that on October 25, 1989, GPC's counsel advised him that statements in certain contractual documents should be reworded to avoid any accusation that SONOPCO was in control (October 1, 1990 Supplement to Petition at 3).
- (4) In the October 1, 1990 Supplement (at 1 and 2), the Petitioners state that Mr. Farley was responsible for selecting GPC vice presidents associated with the SONOPCO project and also decided whether to transfer GPC employees from the SONOPCO project located in Birmingham, Alabama, to GPC Headquarters, in Atlanta, Georgia, even though he was not a GPC employee.
- (5) Mr. Hobby was advised that "[i]t was Mr. Farley who would be making the call about the staffing of all GPC nuclear positions. . . ." (October 1, 1990 Supplement to Petition at 4).
- (6) The Petitioners state that Vogtle project management assumed that Mr. Farley, and not Mr. Dahlberg, controlled Vogtle's operation, citing two reasons for this assertion: a statement by Mr. McCoy during a meeting on Vogtle Unit 1's Cycle 4 refueling outage that the outage philosophy was created by Mr. Farley and others; and a taped comment by a former SONOPCO manager stating his belief that in case of a significant event at a GPC facility, the corporate duty manager would call Mr. Farley rather than Mr. Dahlberg (October 1, 1990 Supplement to Petition at 4 and 5).
- (7) The Petitioners assert that Mr. McDonald has reported to Mr. Farley on administrative matters since the SONOPCO project was formed (July 8, 1991 Supplement to the Petition at 20).

The NRC Staff has reviewed the materials submitted by the Petitioners to support their claims. With regard to Items (1), (2), and (3) previously described, the Petition contains expressions of concern that, both within and outside of GPC, SONOPCO might be perceived as being in control of GPC nuclear operations. Such concerns would not necessarily be unusual during a transitional phase when, by necessity, the responsibilities of GPC and SONOPCO could

closely coincide. As is discussed in the following paragraphs, the NRC Staff has concluded that GPC retained control of its nuclear facilities during this transitional phase.

With regard to Items (4) and (5) above, the DOL depositions and testimony do provide some support for the contention that Mr. Parley participated to some degree in personnel decisions affecting both SONOPCO and GPC employees, including some who were elected as GPC corporate officers. Mr. Parley was Executive Vice President--Nuclear of The Southern Company (parent company of APC, GPC, and Southern Company Services) and was expected to become President and CEO of the SONOPCO project upon its formation. Therefore, his involvement in personnel decisions for employees transferring into or out of the SONOPCO project is not unreasonable. Further, Mr. Parley's consultation with GPC on other GPC employees does not conflict with any NRC requirements. Both Mr. Parley and GPC have provided sworn statements and depositions that the ultimate responsibility regarding decisions on assignment of GPC employees rested with the authorized GPC management structure (i.e., Dahlberg, McDonald, *et al.*). In fact, GPC vice presidents, as officers of GPC, were approved by the GPC Board of Directors. On the basis of this information, the NRC Staff concludes that the Petitioners' assertions about Mr. Parley's decisionmaking with respect to GPC employees constitute an insufficient basis for NRC action in this matter.

With regard to Items (6) and (7), above, the Petitioners express a specific concern that the Executive Vice President--Nuclear Operations was taking guidance and direction from the SONOPCO organization, as opposed to taking this guidance and direction from the GPC CEO.

The NRC Staff has reviewed the Vogtle Final Safety Analysis Report, the Vogtle licenses, records of an NRC Special Inspection conducted to review the SONOPCO management organization, and testimony of key officials taken under oath. The NRC Staff concludes that this information established that the responsibility for decisions affecting the operation of the GPC plants rests with the GPC's Senior Vice President--Nuclear Operations, Mr. Hairston. While Messrs. Hobby and Mosbaugh express concerns in this area, these concerns do not warrant a conclusion that SONOPCO was in control. Rather, the NRC Staff finds that throughout Phases 1 and 2 of the SONOPCO project, the chain of command was from the respective vice presidents for the Vogtle and Hatch facilities to Mr. Hairston. Mr. Hairston reported to Mr. McDonald, who reported to Mr. Dahlberg, President of GPC. Each of these individuals is an elected officer of GPC, and the reporting chain progresses up to the President of GPC. Therefore, the NRC Staff concludes that there has been no illegal transfer of responsibility from GPC to SONOPCO for the Vogtle or Hatch facilities.

the openness of discussions at PRB meetings. However, further discussions with PRB members indicated the reason for the lack of dissenting opinions was that items are discussed and reviewed until all members were comfortable with their decisions.

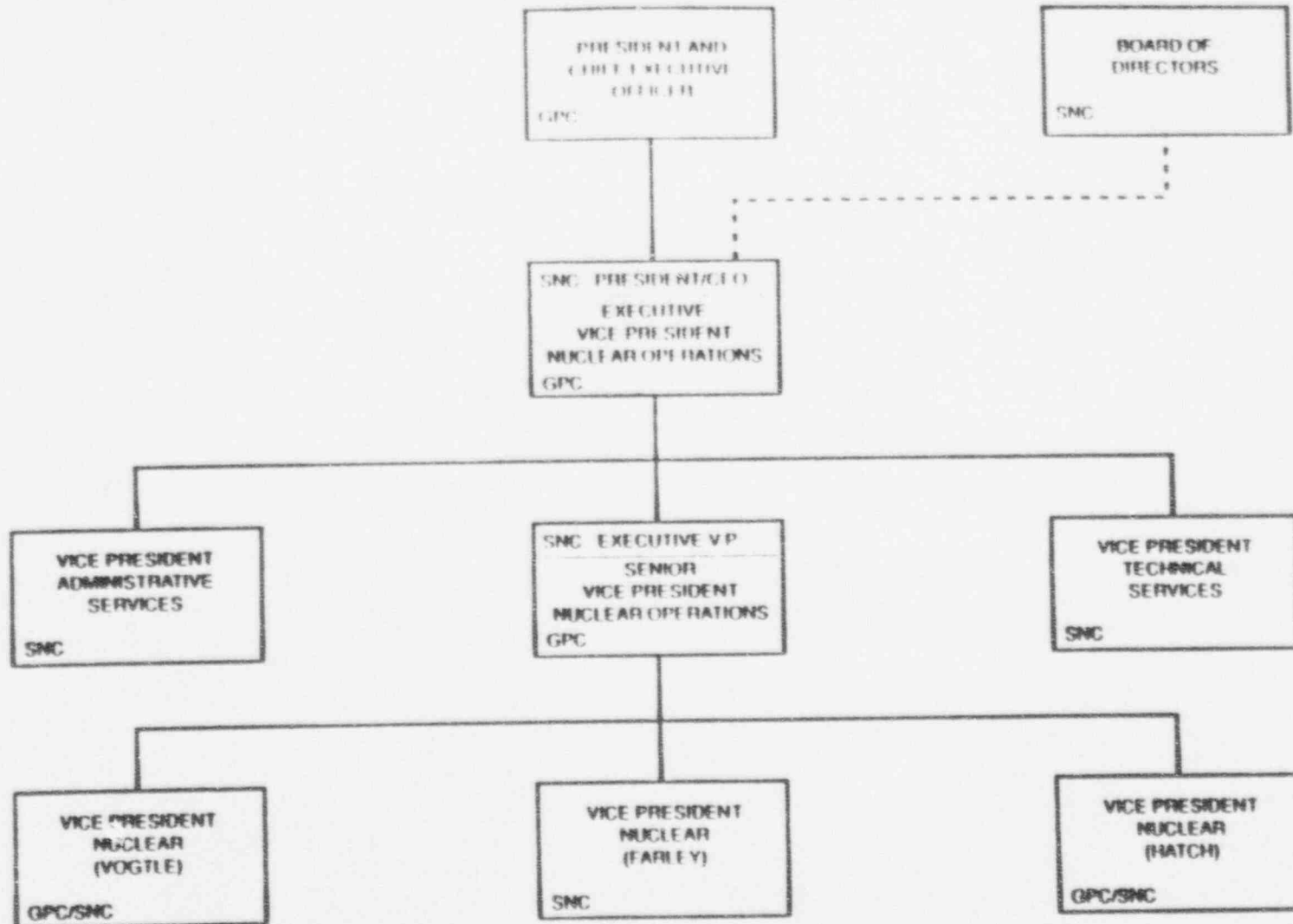
NRC resident inspectors at Vogtle frequently attend PRB meetings and have found that the subjects are candidly discussed and the issues resolved without intimidation or fear of retribution. Consequently, the allegation that Vogtle's General Manager intimidated members of the PRB when they attempted to determine whether the use of the waste system should be resumed, could not be substantiated.

III. CONCLUSION

As discussed above, certain concerns raised by the Petitioners were partially substantiated. Violations of regulatory requirements have occurred in the operations of the Vogtle and Hatch facilities. Notices of Violation and a civil penalty have been issued to the Licensee for certain of these violations. To this extent, the Petitioners' request for action pursuant to 10 C.F.R. § 2.206 is granted.

However, on the basis of the NRC Staff's review, I conclude that no unauthorized transfer of the Vogtle operating licenses occurred, and that the GPC nuclear facilities are now being operated in accordance with NRC regulations and do not endanger the health and safety of the public. Additionally, based on the NRC Staff's review of information available to date, I conclude that none of the issues decided in this Partial Director's Decision call into question the Licensee's character, competence, fundamental trustworthiness, and commitment to safety with respect to the operation of its nuclear facilities.

The institution of proceedings in accordance with section 2.206, as requested by the Petitioners, is appropriate only where substantial health and safety issues have been raised. See *Consolidated Edison Co. of New York* (Indian Point Units 1, 2 and 3), CL1-75-8, 2 NRC 173, 175 (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). As previously discussed, there is reasonable assurance that the Vogtle and Hatch facilities now operate with adequate protection of the public health and safety. Therefore, I decline to take any further action with respect to the issues decided in this Partial Director's Decision. To this extent, the Petitioners' request for action pursuant to 10 C.F.R. § 2.206 is denied. As provided in 10



----- SNC MATTERS ONLY

Georgia Power



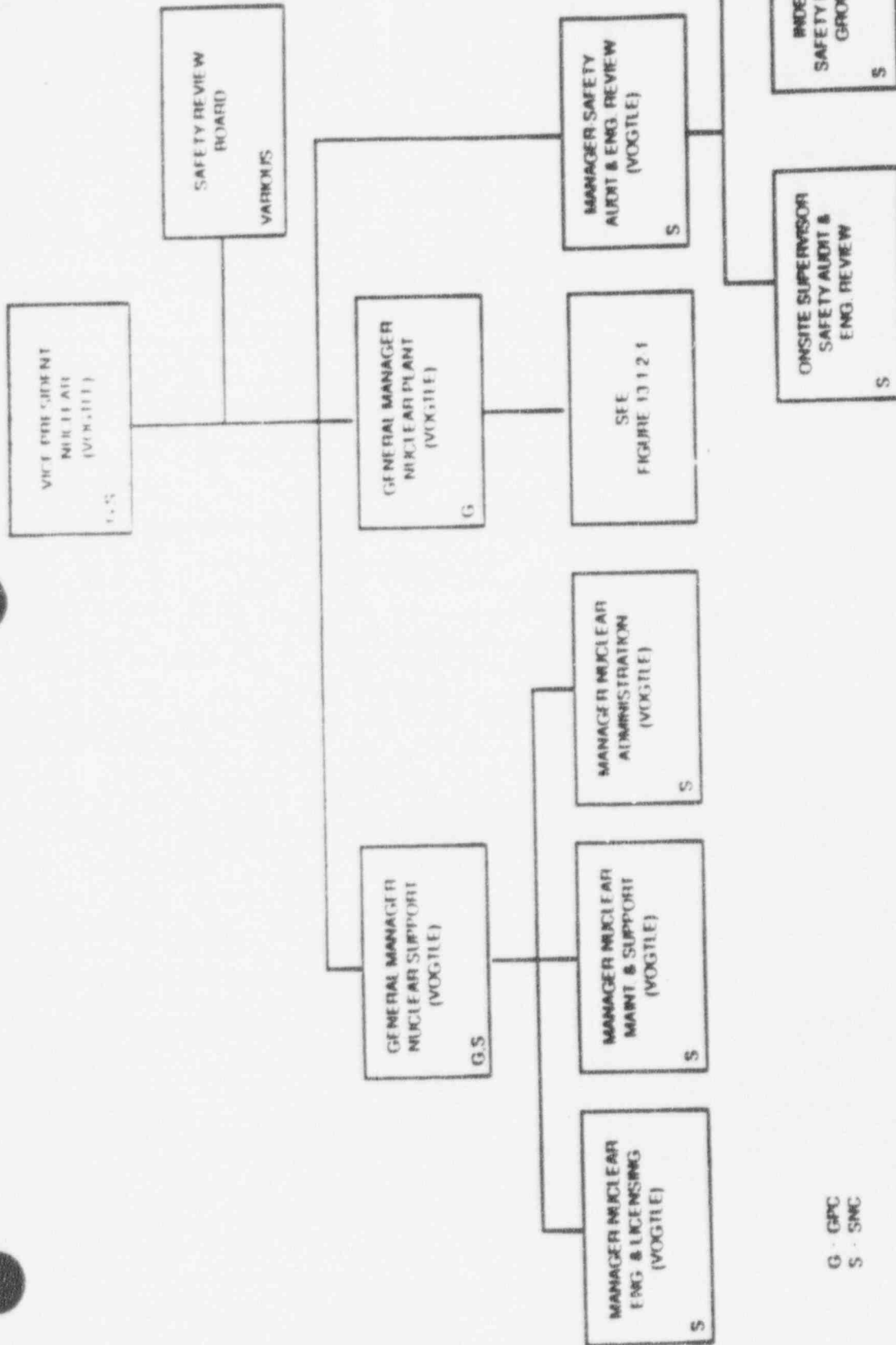
VOGTLE
ELECTRIC GENERATING PLANT
UNIT 1 AND UNIT 2

REV 4 4/84
REV 1 3/91

GPC NUCLEAR OPERATIONS ORGANIZATION
AND SNC SUPPORT ORGANIZATION
VEGP UNITS 1 AND 2

FIGURE 13.1.1-1

APPENDIX D

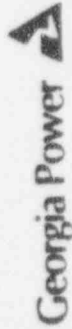


REV 4 4/94
REV 1 3/91

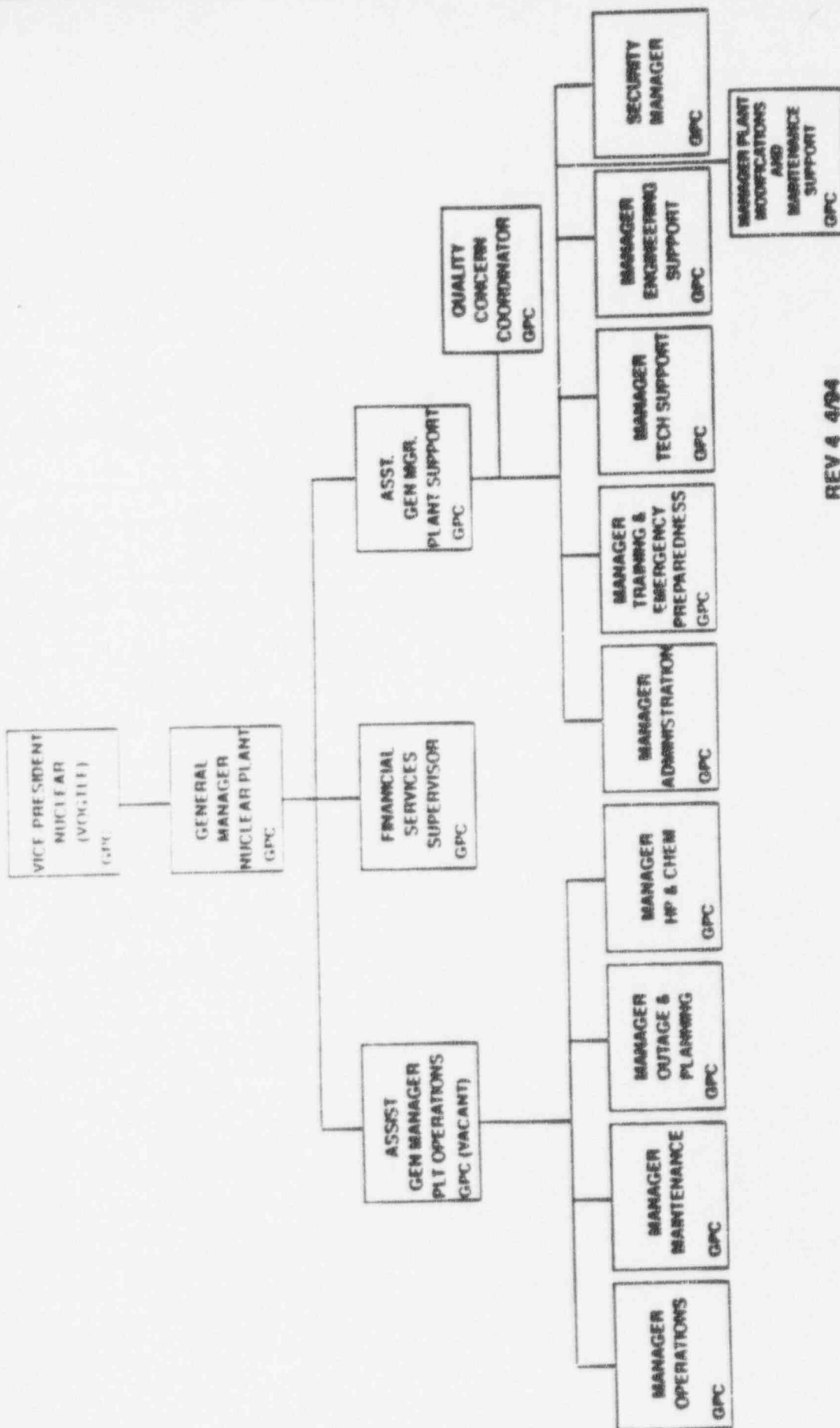
SNC TECHNICAL SUPPORT ORGANIZATION
VEGP UNITS 1 AND 2

FIGURE 13.1.1-2

VOGTLE
ELECTRIC GENERATING PLANT
UNIT 1 AND UNIT 2



G - GPC
S - SMC



REV 4 4/94
REV 3 12/92
REV 1 3/91

VOGTLE
ELECTRIC GENERATING PLANT
UNIT 1 AND UNIT 2

GPC NUCLEAR OPERATIONS ORGANIZATION
VEGP UNITS 1 AND 2

Georgia Power

FIGURE 13.1.2-1

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '94 OCT -3 P5:08

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	Docket Nos. 50-424-OLA-3
GEORGIA POWER COMPANY, <i>et al.</i>)	50-425-OLA-3
)	
(Vogtle Electric Generating Plant)	Re: License Amendment
Units 1 and 2))	(Transfer to Southern Nuclear)
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN SUPPORT OF GEORGIA POWER COMPANY'S MOTION FOR SUMMARY DISPOSITION OF THE ILLEGAL LICENSE TRANSFER ISSUE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk by facsimile this 3rd day of October 1994.

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