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May 6, 1994UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Peter B. Bloch, Chair
Dr. James H. Carpenter
Thomas D. MurphyOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

GEORGIA POWER COMPANY)
et al.,)(Vogtle Electric Generating)
Plant, Unit 1 and Unit 2))Docket Nos. 50-424-OLA-3
50-425-OLA-3Re: License Amendment
(transfer to Southern Nuclear)

ASLBP No. 93-671-01-OLA-3

INTERVENOR'S STATEMENT OF GOOD CAUSE TO FILE
INTERROGATORY QUESTIONS CONCERNING ILLEGAL TRANSFER OF CONTROL
AND TO CONVENE DEPOSITIONS CONCERNING ILLEGAL TRANSFER OF CONTROLI. INTRODUCTION

At the May 3, 1994 prehearing conference, the Licensing Board requested Intervenor to advise the Board why good cause exists to allow depositions and interrogatory questions pertaining to the illegal transfer of control contention.

II. FACTUAL BACKGROUND

On January 27, 1994 the Licensing Board convened a prehearing conference. Intervenor explained during this conference that Intervenor had not conducted much of the discovery on the issue of alienation of control and that Intervenor would need to conduct both depositions and written discovery. Hearing Transcript at p. 160 (the contention concerning alienation of control "remains, and that would require

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depositions and discovery. We have not really engaged in any discovery on that contention to date"). After some discussion, Judge Bloch inquired whether Intervenor could complete depositions by April 15, 1994. Hearing Transcript at p. 217, 223. The Board eventually chose April 29, 1994 as the last date to complete depositions. Hearing Transcript at p. 231. At that point Intervenor's counsel advised the Board that Intervenor needed additional time after April 29th to put together other discovery documents (i.e., interrogatory requests and requests for admissions). The Board agreed with Intervenor's counsel and determined that Intervenor would have no less than 30 days after the completion of depositions to file written discovery related to the illegal transfer of control issue. Hearing Transcript at p. 231-232 ("Mr. Kohn: I generally object to the time frame of all of this . . . the concept of completing the depositions, waiting for them to come back and have transcripts in hand, digesting the contents of the depositions and putting together the other documents is probably -- certainly more than not -- Judge Bloch: So what date do you propose? Mr. Kohn: I would propose 30 days after conclusion of the deposition[s]. Judge Bloch: So the last day in May is what you propose? Mr. Kohn: Yes. Judge Bloch: Make it May 31..."). On February 1, 1994, the Board issued a Memorandum and Order (Prehearing Conference Order: Schedule), which denotes at paragraph 4 that depositions concerning the illegal transfer issue needed to be completed by April 29, 1994.

The next scheduled status conference was originally schedule for April 11, 1994. This status conference, at the request of all the parties, was rescheduled for a date to be agreed upon during an April 11th telephone call the parties were to place with Judge Bloch. See Board Memorandum and Order (Rescheduling of Status Conference) dated April 4, 1994 ("the status conference of April 11 is hereby postponed. A telephone conference will be held at 2:00 pm on April 11, for the purpose of rescheduling the status conference"). Contrary to the agreement between the parties, rather than utilize the April 11th date to rescheduling the status conference, counsel to Licensee used the opportunity to hold a status conference rather than set a date for a conference. As a result, Intervenor was placed at a great disadvantage: 1) his counsel was out of his office and was in Atlanta conducting depositions and did not have access to transcripts of the last conference session to counter assertions being made by Licensee's counsel about the scheduling matters that were previously discussed, nor did he have access to the Board's earlier scheduling orders; 2) Intervenor's counsel had been totally absorbed preparing for depositions that he was not in a position to respond to scheduling matters without prior notice; 3) Intervenor's counsel had been away from his office for seven days and was unable to adequately factor newly arising scheduling difficulties occurring in his office while out of town (Licensee's counsel did not have these problems because the depositions were occurring in their law offices and the call to

Judge Bloch was placed from the office of Troutman Sanders.

But perhaps most troubling at this point is that, because this was not a scheduled conference, there was no court reporter present to record the event (Intervenors recollection of the discussion of the conference was that Intervenor stated that he foresaw a need to conduct some follow-up depositions and would file interrogatory questions upon his return to Washington, D.C., and believes he advised everyone that it appeared he would have to attend a hearing when he returned to Washington which could effect his ability to meet the April 29th date discussed during the conference. On April 12, 1994 Judge Bloch issued Memorandum and Order (April 11 Status Conference Results). The April 12th Order required the parties to complete the remaining depositions and follow-up interrogatories "by April 29, 1994." The Order goes on to specifically note that "Deadlines may be extended on motion for good cause shown" (Intervenor interpreted this to reflect Intervenor counsel's statement of potential scheduling conflict in meeting the April 29th deadline). The April 12 Order further provided that Intervenor would have an opportunity to conduct additional interrogatories after April 29th based on a disputed discovery issues that arose during the testimony of Mr. Dahlberg. See April 12, 1994 Order at paragraph 2 ("By April 29, 1994, Mr. Mosbaugh shall file a motion covering all disputed discovery issued related to the testimony of Mr. Dahlberg. this motion shall contain interrogatories or request for documents that Mr Mosbaugh plans to make on these issues").

The next conference before the Board occurred on April 22, 1994. At that time counsel to Licensee indicated that he was upset over Mr. Mosbaugh's contact with NRC-OI about matters directly pertaining to Mr. Lamberski. Mr. Lamberski admitted that he was "upset by the personal attack" that he confronted Mr. Kohn when he was upset and accused Mr. Kohn of "instigating" Mr. Mosbaugh's contact with OI and told him that this conduct was "unprofessional" and that Mr. Lamberski did not want things to get "ugly" should Intervenor "attack Georgia Power's counsel and try to knock them out of this case somehow so we don't have to deal with them" and Mr. Lamberski "took this to be an underhanded tactic that I didn't think was very professional." Hearing Transcript at p. 262-263, 264-265. Mr. Kohn had and has a vivid recollection of Mr. Lamberski stating to him that it was his opinion that Mr. Kohn was responsible for the OI filing and indicated to Mr. Kohn that "blood would be spilled [sic-spilt]" should he continue to pursue the matter further before NRC's Office of Investigations.

Whatever occurred on the Friday prior to the commencement of the depositions, the effect of Mr. Lamberski's emotional outburst caused Intervenor's counsel great stress and interfered with his ability to adequately represent Intervenor. Hearing Transcript at p. 272 (observation of Judge Bloch). Without objection, the Board postponed further discussion of discovery matters and suspended the April 29th deadlines established in the Board's April 12, 1994 scheduling order, Hearing Transcript at p. 283,

and the Board would "try to work everything out if possible on May 3", Hearing Transcript at p. 287. At the last moment, Mr. Lamberski "presumed" that the outstanding dispute between the parties on whether Mr. Dahlberg's deposition should go forward, and the Board advised that the Board would like to keep that particular provision in effect" and that the Board's Chairman also indicated that Mr. Kohn should attempt to complete as many of the tasks as he could under the circumstances." Hearing Transcript at p. 289. Intervenor counsel interpreted this to mean that leeway would be given in accordance with Mr. Kohn's subjective state of mind about his ability to again focus on the licensing proceeding rather than a perceived (real or otherwise) collateral issues

III. ARGUMENT

1. Interrogatories concerning alienation of control were timely filed and Intervenor should not be required to establish "good cause" to file these Interrogatories.

The record in this matter indicates that prior to the April 12, Board Order, there was no indication that any party would be prohibited from filing interrogatory questions about matters pertaining to illegal transfer of control. To the contrary, Intervenor's counsel was under the impression that he would have until the end of May, 1994 to file interrogatory requests and was concerned when the Board implemented an April 29th deadline on the filing of interrogatory questions. See The Order of April 12. The fact remains that Intervenor was not the only party to believe that interrogatories could still be timely filed. In

this respect, counsel to Licensee filed interrogatories and a request for documents on NRC Staff limited to the transfer of control issue on April 28, 1994.¹

The record indicates that the April 29th filing deadline for interrogatory questions was suspended until at least May 3, 1994. Intervenor's interrogatory questions were filed on GPC on May 2, 1994 -- before the May 3rd deadline. These interrogatory questions were timely filed and, as such, Intervenor should not have to demonstrate good cause for this filing.

Nonetheless, if the Board required Intervenor to establish good cause, he clearly can. Interrogatory questions numbers 1-5, 7, 9, 11-13, 30-31, 33 concern the area of inquiry Intervenor was prohibited from questioning Mr. Dahlberg about (i.e. refusal to allow questioning related to Southern Company Board Politics and Control over GPC's Board; see Intervenor's Motion to Compel Licensee to produce A.W. Dahlberg. Similarly, Licensee refused to allow Intervenor to complete deposition questioning about the budget process. see Intervenor's Motion to Compel Licensee to produce A.W. Dahlberg. Interrogatory questions 12-28 are limited to budgeting matters. Intervenor was not in a position to fashion interrogatories about budgeting related matters until after the depositions of GPC's executives with budgeting information were concluded and the extent of gaps in the

¹ GPC's interrogatory questions concern Mr. Hobby's contact with NRC in 1990 and 1991. GPC could have asked questions about Mr. Hobby's contact with NRC at any time and did not have to wait until April 28th to do so.

information sought could be determined. In this respect, Mr. Hairston was a principle player in the budgeting process and it is uncontested that Intervenor was prohibited from completing Mr. Hairston's deposition and Licensee acknowledged that it was obligated to reproduce Mr. Hairston for this purpose. See March 1, 1994 letter from John Lamberski.

2. Good cause exists to conduct additional depositions.

On April 20, 1994, Intervenor advised Licensee's counsel that Intervenor planned to conduct additional depositions on April 27-29 and asked that Licensee reserving the week of May 2nd to complete any depositions not completed by April 29, 1994. Thus, out of the 11 individuals noticed, Intervenor could have completed nine without requiring leave from the Board to extend the April 29th deadline. Therefore, Intervenor believes that good cause exists to allow nine additional depositions to go forward. Of these nine, it is reasonable to believe that a substantial reduction in number could be accomplished after Licensee responds to the May 2, 1994 Interrogatory requests filed by Intervenor. Intervenor would commit to reducing the maximum number of additional depositions to four (excluding Mr. Dahlberg and Mr. Hairston²).

² Both Mr. Dahlberg and Mr. Hairston will undoubtedly be deposed with respect to the diesel generator issue. Intervenor proposes that he be allowed to conclude Mr. Hairston's and Mr. Dahlberg's deposition concerning illegal license transfer at that time. It would be an undue expense and hardship to have to depose both gentlemen on two separate occasion in the future, particularly inasmuch as Intervenor's counsel was prepared and attempted to complete their depositions in April but was unable to do so.

The additional depositions intervenor seeks are as follows:

1. Bob Scherer - Mr. Scherer was the president of GPC at the time the SONOPCO project was established. Mr. Baker was unable to provide sufficient information during his deposition to adequately explain the transition (Mr. Baker was the number two executive at GPC under both Mr. Scherer and Dahlberg and it was hoped he could adequately explain matters relating to the SONOPCO project reporting structure but he indicated that he could not.

2. K. Adams - Mr. Adams is a member of GPC Management Council. Intervenor was unable to ascertain from the witnesses who were deposed matters pertaining to the Management Council's involvement and oversight over the SONOPCO project.

3. Louis Long - Mr. Long's reporting relationship could not be adequately determined after completing the depositions of Mr. McDonald and Mr. Farley.

4. Addison - Mr. Farley testified that he had conversations with Mr. Addison about his role over the management of SONOPCO, but Mr. Farley was unable to adequately recall these events.

5. Tom Peacock - Mr. Peacock was identified as attending meetings related to GPC's budget process and is needed to fill in gaps in testimony presented by Mr. Farley and others concerning SONOCPO's budgeting process.

6. Jeff Wallace - Mr. Hobby testified at his deposition that he had conversations with Mr. Wallace concerning the Management Council's review of SONOPCO's nuclear budget.

Intervenor seeks to confirm Mr. Hobby's recollection of the events.

7. Warren Jobe (same as K. Adams). In addition, Mr. Jobe has direct management responsibility for budgeting matters at GPC.

8. Al Franklin - Mr. Franklin was identified by Mr. Farley as attending meeting Intervenor believes to constitute de facto SONOPCO board of director meetings while SONOPCO was unincorporated.

9. John Meier - (same as Tom Peacock).

10. Fred Williams - Inasmuch as Licensee has not identified Mr. Williams as a witness concerning illegal transfer, Intervenor does not need to depose Mr. Williams unless Licensee intends to call Mr. Williams as a rebuttal witness to Mr. Hobby. Intervenor requests that the Board instruct Licensee to determine whether it intends to call Mr. Williams as a rebuttal witness to the matters Mr. Hobby testified to during the course of his deposition conducted by Troutman Sanders on April 9, 1994 so Intervenor can adequately determine whether he needs to depose Mr. Williams at this time.

11. George Head - (see response to Fred Williams).

Intervenor believes that the individuals identified above are highly relevant. To the extent Intervenor determines that information set out in responses to pending interrogatory responses would duplicate the testimony Intervenor seeks from the

above proposed deponents, he will voluntarily cancel as many depositions as possible.

3. Intervenor withdraws his
Motion to compel tape transcripts

Intervenor voluntarily withdraws his motion to compel tape transcripts. He nonetheless asks Licensee to consider the motion to constitute an informal request to produce relevant materials in the hope that production would help expedite the proceedings in the future. Because the tape transcripts are relevant to the phase II issues, there would appear to be no need to request these documents during this phase of the proceeding.

Respectfully submitted,

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REMARKS:

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