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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before Administrative Judges:  
Peter B. Bloch, Chair  
Dr. James H. Carpenter  
Thomas D. Murphy

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-3

Re: License Amendment  
(transfer to Southern Nuclear)

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

INTERVENOR'S MOTION TO COMPEL LICENSEE TO PRODUCE  
A.W. DAHLBERG; RECONVENE THE DEPOSITION OF GEORGE HAIRSTON  
AND SCHEDULE THE DEPOSITION OF THOMAS BECKHAM

I. INTRODUCTION

Intervenor hereby seeks an order of the Atomic Safety and Licensing Board to request Licensee to produce A.W. Dahlberg for a continuation of his deposition to respond to areas of questioning Licensee's counsel imprudently disallowed Intervenor to inquire into during the course of Mr. Dahlberg's deposition held on April 6, 1994.<sup>1</sup> Intervenor's attempted to inquire into areas that were reasonably calculated to identify the factual

<sup>1</sup> Intervenor believes that Mr. Dahlberg will have to be produced again with respect to the illegal transfer issue. Intervenor requests that Mr. Dahlberg be produced in Washington, D.C. (as the cost of reconvening Mr. Dahlberg's deposition should not be born by Intervenor). Nonetheless, to the extent Licensee would prefer that Mr. Dahlberg only be deposed one more time with respect to questions concerning both illegal transfer and all remaining issues, Intervenor's will voluntarily conduct that deposition at Mr. Dahlberg's corporate offices or the Troutman Sanders offices if Intervenor's counsel can schedule other depositions during the same time frame.

bases for and evidence related to Intervenor's allegations and to obtain information Licensee had in its possession, custody or control. With respect to Mr. Hairston, the record will establish that before intervenor concluded his deposition Mr. Hairston indicated that he would be unable to continue due to an unavoidable scheduling conflict and it was agreed between Licensee's counsel and Intervenor's counsel that his deposition would re-commence.

It is well established that discovery is to be liberally granted so the parties can ascertain facts in complex litigation, refine the issues and prepare for a more expeditious hearing at trial. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2) ALAB-613, 12 NRC 317, 322 (1980), quoting Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978). One of the purposes of discovery is allow all of the parties to obtain the fullest possible knowledge of facts relevant to an admitted contention. South Carolina Electric & Gas Co. (Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981), citing Hickman v. Taylor, 329 U.S. 495, 501 (1946). The Licensee has failed to adhere to the broad scope of discovery and has stymied Intervenor's ability to gain full knowledge of relevant facts.

## II. THE NEED TO RECONVENE A.W. DAHLBERG'S DEPOSITION

### 1. Matters pertaining to Budgeting

Control of an organization's budget is clearly relevant and central to whether GPC failed to maintain control over GPC's

nuclear plants. When Intervenor's counsel attempted to obtain information about GPC's budgeting process, Licensee's counsel blocked counsel for Intervenor from questioning Mr. Dahlberg about matters pertaining to the budgeting process employed at GPC. In this respect, Mr. Dahlberg testified that the Nuclear budget would have been consolidated with the other GPC budgeting matters and then reviewed by GPC's Management Council before it was presented to the Southern Company Management Council. Dahlberg Depo. Tr. at pp. 27-28. Yet, when Intervenor's counsel attempted to question Mr. Dahlberg about whether GPC's non-nuclear budget was, in fact, considered along with GPC's nuclear budget by GPC's management council, Licensee's counsel objected and required Intervenor's counsel to halt his questioning about budgeting matters. Dahlberg Depo. tr. at pp. 35-38.<sup>2</sup>

Licensee's refusal to allow Intervenor to inquire into such a key avenue of discovery from the outset of the deposition process foiled Intervenor's ability to adequately obtain information necessary to allow Intervenor to illicit un-rehearsed responses to deposition inquiries pertaining to GPC's budget.

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<sup>2</sup> Mr. Withrow on page 36 mentions that the court reporter was an hour late. This was not the fault of any party. The court reporter explained that there was an accident or other road obstruction and she physically unable to arrive sooner. Intervenor's counsel was the first to arrive for the deposition and was forced to wait an hour and a half before he could commence the deposition, during which time he placed calls to the reporting service to confirm her arrival. Moreover, the fact that the deposition was delayed as a result of the court reporter's absence made it impossible for Intervenor to conclude Mr. Dahlberg's deposition.

Intervenor believes there was no legitimate reason to foreclose intervenor's ability to inquire into such an important and essential area and that to do so constitutes an abuse of process.<sup>3</sup> Intervenor was prejudiced from the outset by Licensee's refusal to allow inquiry into this critical area. For this reason Intervenor respectfully requests that discovery on matters related to budgeting issues be re-opened altogether to rectify this prejudice.<sup>4</sup>

2. Questions Concerning Dahlberg's Knowledge of Nuclear Matters

Intervenor's counsel began questioning Mr. Dahlberg about his knowledge of the operating basis for GPC's nuclear plants and what safety issues were of greatest concern to Mr. Dahlberg. Licensee's counsel instructed Mr. Dahlberg not to answer. Dahlberg Depo. Tr. at p. 91. Again, when Intervenor's counsel attempted to learn whether Mr. Dahlberg knew the difference

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<sup>3</sup> Intervenor requests that the Board issue an order prohibiting Licensee or its counsel from communicating factual information concerning 1988-1992 GPC budgeting matters to Mr. Dahlberg. Without such a safeguard, the obstructing party will receive an undeserved tactical advantage. It should be noted that Intervenor was prohibited from conducting depositions by this Board of individuals who appeared on the Mosbaugh tape recordings to avoid undue prejudice to Licensee.

<sup>4</sup> Intervenor believes that responses to pending interrogatory questions could satisfy to a large extent the prejudice suffered but it may still be necessary to question Mr. Dahlberg on this matter or a few of the other individuals Intervenor sought to depose commencing on April 27, 1994 (i.e., members of GPC's Management Counsel and the individuals who officially came to be Southern Nuclear's Board of Directors after Southern Nuclear was incorporated (Intervenor contends that there were informal Board of Directors meetings during the SONOPCO project phase and that this Board of Directors controlled the project)).

between a level 1 or a level 5 violation, Licensee's counsel instructed Mr. Dahlberg not to answer. This line of questioning was critical to determine whether GPC's then President and CEO had the capacity to comprehend what was occurring at GPC's plants and whether he had the requisite competence to do so and, if not, whether the SONOPCO project de facto CEO (Mr. Farley) was the only executive above Mr. McDonald who had any involvement with nuclear-related corporate issues who had the competence necessary to adequately control GPC's nuclear plants.

3. Refusal to allow questioning related to Southern Company Board Politics and Control over GPC's Board

During the course of Mr. Dahlberg's deposition, Intervenor attempted to inquire into events surrounding the control and influence over the GPC Board and Board politics. Licensee's counsel specifically instructed the witness not to answer questions concerning past elections of Southern Company board members or officers of the company and about board politics in general. Dahlberg Depo at p. 128.

4. Miscellaneous Objections.

Licensee also objected to questions related to Marvin Hobby (Depo. Tr. 74); questions concerning GPC's corporate response to Mr. Mosbaugh's tape recording activity (Depo Tr. 97-98); questions concerning Mr. Mosbaugh's motives (Depo Tr. 103-104)

Intervenor believes that questions pertaining to Marvin Hobby are relevant to the illegal transfer of control issue as one of the factors Intervenor alleged in the 2.206 petition that Mr. Hobby was a member of GPC's management structure and that he

was intentionally alienated by the SONOPCO project which directly interfered with GPC's administrative control over its nuclear power plants.

Questions pertaining to GPC's corporate response to Mr. Mosbaugh's tape recording activity (Depo Tr. 97-98) are likewise relevant and are important to demonstrate GPC's corporate control after Mr. Hobby raised the allegation (this concern is born out in a portion of a Mosbaugh tape recording which includes observations of Mr. Chestnut that Mr. Dahlberg was not exercising control over GPC's nuclear plants, see Transcript pages attached hereto as Exhibit 1).

Questions concerning motivation of Mr. Mosbaugh and Mr. Dahlberg for that matter, see Depo Tr. 103-104 (Licensee's counsel acknowledged that questions concerning "motive" are a "different issue altogether" and affirmatively stated that Intervenor was not "foregoing the right to depose Mr. Dahlberg again" and, due to the shortage of time, Intervenor's counsel stopped questioning Mr. Dahlberg on that area and "reserved [his] right"] to depose Mr. Dahlberg on this area at a later date.), were not prohibited by GPC's counsel but the time allotted to conclude Mr. Dahlberg's deposition (in part due to the court reporter's absence which limited the time available; additionally, Mr. Dahlberg had indicated a need to attend to other business and resuming the deposition at a later point was inevitable) had elapsed. Moreover, Licensee agreed to make Mr. Dahlberg available after 3:00 p.m. on April 6th (see letter of

John Lamberski, dated April 4, 1994, attached hereto as Exhibit 2), but the parties were unable to conclude Mr. McCoy's deposition in time to allow for the continuation of Mr. Dahlberg's deposition.

With respect to the Board's request that Intervenor respond to matters pertaining to Mr. Dahlberg's deposition by April 29, 1994, good cause exists to extend the requirement for the following reasons:

First, Intervenor's counsel ordered the deposition be transcribed on the record at the conclusion of Mr. Dahlberg's deposition (Depo. Tr. at pp. 138-139). Intervenor's counsel anticipated that the transcript would be available in time to allow him an opportunity to respond by April 29th. Nonetheless, Mr. Dahlberg's deposition was only invoiced to Mr. Mosbaugh's counsel on April 27, 1994 and did not physically arrive until either April 28th or 29th (intervenor's counsel is checking with the reporting service to confirm the exact date of arrival).

Second, the only attorney who could adequately brief matters pertaining to Mr. Dahlberg was Michael Kohn, who was unable to focus sufficient on the task even had the transcript arrived sooner.

Third, the scheduling date of April 29th was accomplished by counsel for Licensee during the April 11, 1994 conference call which was not supposed to be a conference call at all and Intervenor's counsel was at a distinct disadvantage when Licensee's counsel managed to turn picking a future date for a

conference call into the conference call. This forced Intervenor's to argue scheduling matters off the top of his head without input from his client, input from co-counsel, and was not in a position to effectively argue scheduling matters or adequately assess the status of the discovery until he completed the depositions scheduled for April 12-15.

III. GEORGE HAIRSTON'S DEPOSITION SHOULD BE RECONVENED  
PURSUANT TO AGREEMENT REACHED BETWEEN GPC AND INTERVENOR

Mr. Hairston's deposition commenced on April 13, 1994. Both Intervenor's counsel and Licensee's counsel knew that there was a tight time constrain on Mr. Hairston due to scheduling conflicts existing in Mr. Hairston's calendar. Time expired due to no fault of the parties. Intervenor attempted to schedule Mr. Hairston for the last day of depositions (April 15, 1994) but his calendar would not allow it. It was agreed that Mr. Hairston would be made available at a latter time. Licensee's counsel essentially corroborated this arrangement in his letter of April 15, 1994, attached hereto as Exhibit 3. Therein, Mr. Lamberski stated that "Mr. Kohn was unable to complete his questioning of Mr. Hairston in the two hours which the parties had previously agreed upon" and that "[a]rrangements for the completion" of Mr. Hairston's deposition needed to be made." On April 20, 1994, Intervenor counsel's associate, Mary Jane Wilmoth, notified Mr. Lamberski that Mr. Kohn wished to reschedule depositions to begin on April 27, 1994 and, if necessary continue through the first week of May. See Letter of John Lamberski dated April 20, 1994. Intervenor intended to reconvene Mr. Hairston's deposition at

that time and Mr. Beckman's deposition in conjunction with the additional depositions he proposed to Licensee's counsel on that date. On April 22, 1994, the Board scheduled a conference to discuss the scheduling of these depositions and due to the unusual events discussed during that scheduling conference, matters pertaining to scheduling depositions were postponed until May 3, 1994. Intervenor understood that the Board's intent was to retain the status quo between April 22nd and May 3, 1994 to rectify an unavoidable disability of Intervenor's counsel stemming from events transpiring during the scheduling of depositions. These events include the alleged "blood would be spilled [sic]" comments<sup>5</sup> followed by a car which was stopped on the side of the street, at the corner of the Troutman Sanders office building, abruptly "jackrabbitting" directly at Intervenor's counsel as he crossed the street in a crosswalk during a green light.<sup>6</sup> Intervenor's understanding of the intent of the Board's resolution of the disability was to maintain the status quo until May 3, 1994, assuming Michael Kohn was sufficiently composed to recommence his role as lead counsel to

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<sup>5</sup> The transcript of the April 22, 1994 conference contains a repeated transcription error inasmuch as it indicates the comment Mr. Kohn attributed to Mr. Lamberski did not include the word "spilled" which, for accuracy, should be changed to "spilt".

<sup>6</sup> Based on Mary Jane Wilmoth's recollection (which corresponds to the specific recollection of Mr. Michael Kohn's wife), the car incident occurred on the afternoon of April 12, 1994 (after the April 11, 1994 conference call). See Affidavit of Mary Jane Wilmoth, attached hereto as Exhibit 4.

Intervenor.<sup>7</sup> Based on the action taken by the Board on April 22, 1994 which included suspending pending time constraints, good cause exists to allow Mr. Hairston's deposition to commence at a time convenient to the parties.<sup>8</sup>

IV. THOMAS BECKHAM'S DEPOSITION SHOULD BE RE-SCHEDULED PURSUANT TO AN AGREEMENT BETWEEN COUNSEL THAT INTERVENOR WOULD BE ALLOWED TO CONCLUDE THIS DEPOSITION.

On April 15, 1994, GPC's counsel acknowledged in a letter to the parties that Intervenor was within his rights to complete the deposition of Mr. Beckham. See Exhibit 5. The reasons for canceling Mr. Beckham's deposition are three fold. First, intervenor was concerned about completing his travel plans as scheduled and felt more at risk while in Birmingham than when in Atlanta and re-scheduling would allow Mr. Kohn to leave Birmingham a day earlier. Second, it was understood that Mr. Hairston's deposition would be re-convening at his offices in Birmingham, where Mr. Beckham's deposition would also reconvene; and third, an attorney in another matter had scheduled a deposition in Huntsville Alabama for Friday, April 15th for a hearing scheduled to commence that Monday, April 18, 1994 and it made more sense for Mr. Michael Kohn to attend that deposition


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<sup>7</sup> Mr. Michael Kohn has not yet resolved the disability and requests that Troutman Sanders attorneys voluntarily limit their telephonic communication to Stephen Kohn (this does not effect Mr. Blake or Mr. Lewis who are encouraged to communicate directly with Michael Kohn). Hopefully this cumbersome procedure can be eliminated in due course.

<sup>8</sup> Intervenor suggests that inasmuch as Mr. Hairston will be deposed with respect to Phase II discovery, that Intervenor be allowed to conclude questioning of Mr. Hairston on matters related to Phase I at that time.

that Mr. Stephen Kohn who was in Washington, D.C. at that time. Based on these factors, Intervenor requested that Mr. Beckham's deposition be postponed. Counsel to NRC Staff and Licensee agreed to accommodate Mr. Kohn's request. As such, good cause exists to allow Intervenor to take the deposition of Mr. Beckham.

Respectfully submitted,



Michael D. Kohn  
KOHN, KOHN & COLAPINTO, P.C.  
517 Florida Ave., N.W.  
Washington, D.C. 20001

(202) 234-4663

Dated: May 6, 1994

## EXHIBIT 1

Tape #260, side A , Tr. Pg. 8-11

Mosbaugh: Speaking of the duty manager, there was a funny comment made in that meeting down there this morning by McCoy about the shift supervisor calls the duty manager, the duty manager calls the corporate duty manager, and the corporate duty manager calls the president of the company.

Aufdenkampe: The VP calls the president.

Mosbaugh: He calls the VP? And the VP calls the president of the company.

Aufdenkampe: Yeah, I thought that was interesting.

Chestnut: The president of the company for Georgia Power or Alabama Power.

Aufdenkampe: [Inaudible]

Voice: Sure

Mosbaugh: I just-thought that-- I have been involved in the duty manager and I never-- and I think I was aware of what the communications path was and I just don't think that's what's happen-- what's happens. I just -- that was just real interesting to me.

Chestnut: That seems kind of surprising to me, too.

Mosbaugh: Who are they calling? I mean, if I call- If I call, you know --if I call--

[ Phone call interruption]

## TROUTMAN SANDERS

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATE ONE

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TELEPHONE 404-888-3000  
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JOHN LAMBERSKI

DIRECT: 404-888-3380

April 4, 1994

### VIA FACSIMILE

Michael D. Kohn, Esquire  
Kohn, Kohn & Colapinto, P.C.  
517 Florida Avenue, N.W.  
Washington, D.C. 20001

Re: Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2)  
NRC Docket Nos. 50-424-OLA-3, 50-425-OLA-3; License Amendment for  
Transfer to Southern Nuclear Operating Company

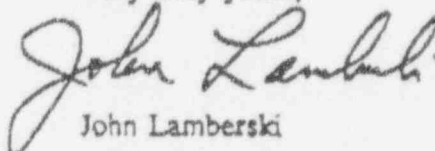
Dear Michael:

On April 1, 1994, we reached an agreement concerning the schedule for depositions with the assumption that you were satisfied with the amount of time I was able to confirm would be available for Mr. Dahlberg's deposition. Mr. Dahlberg will be available from 8:00 a.m. to 11:30 a.m. on April 6, 1994 and he will make himself available after 3:00 p.m. that day if need be. I trust this will be sufficient to satisfy your needs. With the latest changes to the deposition schedule, the schedule is now as follows:

April 6: 8:00-11:30 a.m. Dahlberg (SC offices); 2:00 p.m. McCoy (TS offices)  
April 7: 9:00 a.m. Johnson (TS offices); 2:00 p.m. Mosbaugh (TS offices)  
April 8: 9:00 a.m. G. Baker (TS offices); 2:00 p.m. W. Evans (TS offices)  
April 9: 9:00 a.m. Hobby (TS offices)

April 11: 9:00 a.m. Chesnut (TS offices)  
April 12: 10:00 a.m. L. Glenn (TS offices); 2:00 p.m. Dan Smith (TS offices)  
April 13: 11:00 a.m. Hairston (TS offices)  
April 14: 10:00 a.m. McDonald (B&B offices); 2:00 p.m. Farley (B&B offices)  
April 15: 9:00 a.m. Beckham (B&B offices)

Very truly yours,

  
John Lamberski

cc: Charles A. Barth, Esq.

EXHIBIT 1

Tape #260, side A, Tr. Pg. 8-11

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Mosbaugh: I just--thought that-- I have been involved in the duty manager and I never-- and I think I was aware of what the communications path was and I just don't think that's what's happen-- what's happens. I just -- that was just real interesting to me.

Chestnut: That seems kind of surprising to me, too.

Mosbaugh: Who are they calling? I mean, if I call- If I call, you know --if I call--

[ Phone call Interruption]

Aufdenkampe: [Inaudible]

Mosbaugh: I mean, if I call Shipman--

Voice: [Inaudible]

Mosbaugh: You know, if I call Shipman or something, Then Shipman usually will say--

:  
:  
:

[Interrupting phone call ends]

Mosbaugh: Anyway, You know, I call, I call Shipman and then Shipman will sometimes talk to McCoy or to Hairston

Chestnut: Um hum.

Mosbaugh: But that was the extent of --

Chestnut: There are alot of calls to Farley. I know they called Farley alot.

Mosbaugh: They who called Farley?

Chestnut: The VP.

Mosbaugh: Oh. They're calling Farley?

Chestnut: Yeah. A good bit. I know they call Farley alot. But it wasn't until recently I started hearing this thing about them calling-- about calling-- I can't imagine them calling Dahlberg because Dahlberg probably knows how many plants he has, but he doesn't know which ones are running and he's not involved-- Jim Miller paid attention to which plants were running and-- but I think Dahlberg is more concerned about the market.

Mosbaugh: Yeah.

Chestnut: How much power we sold.

## EXHIBIT 2

TROUTMAN SANDERS  
ATTORNEYS AT LAW  
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JOHN LAMBERSKI

DIRECT: 404-885-3360

April 4, 1994

VIA FACSIMILE

Michael D. Kohn, Esquire  
Kohn, Kohn & Colapinto, P.C.  
517 Florida Avenue, N.W.  
Washington, D.C. 20001

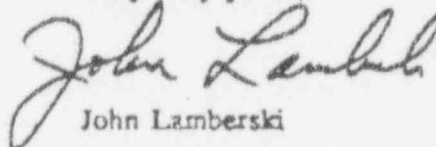
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NRC Docket Nos. 50-424-OLA-3, 50-425-OLA-3; License Amendment for  
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Very truly yours,

  
John Lamberski

cc: Charles A. Barth, Esq.

## EXHIBIT 3