UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

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

GEORGIA POWER COMPANY'S BRIEF IN SUPPORT OF ITS MARCH 4, 1993 NOTICE OF APPEAL

John Lamberski
Counsel for
Georgia Power Company

March 4, 1993

TABLE OF CONTENTS

TABLE OF AUTHORITIES

COURT CASES

ADMINISTRATIVE DECISIONS

STATUTES

REGULATIONS

FEDERAL REGISTER NOTES

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

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

GEORGIA POWER COMPANY'S BRIEF IN SUPPORT OF ITS MARCH 4, 1993 NOTICE OF APPEAL

I. Introduction.

By memorandum and order dated February 18, 1993, the Atomic Safety and Licensing Board (the "Board") admitted Petitioner Allen L. Mosbaugh as a party to this proceeding and admitted one contention reconstituted by the Board. Georgia Power Company ("GPC") appeals this Order, pursuant to 10 C.F.R. § 2.714a, on the ground that Mr. Mosbaugh's petition should have been wholly denied because Mr. Mosbaugh lacks standing and has pleaded no admissible contentions.

Specifically, GPC submits that the Board erred in finding that (1) Mr. Mosbaugh had demonstrated that he will sustain an injury in fact if the proposed license amendments

are issued, (2) the harm of which Mr. Mosbaugh complains will be abated if the proposed licensing amendments are denied, (3) Mr. Mosbaugh has satisfied the NRC's requirements for admission of contentions, and (4) this license amendment proceeding is an appropriate forum to address Mr. Mosbaugh's concerns. Therefore, GPC requests the Commission to reverse the Board and wholly deny Mr. Mosbaugh's petition to intervene.

This appeal raises several major issues with far-reaching significance for licensed facilities, including proper adherence to the Commission's requirements for intervention pleading and for standing, and will determine whether licensees may improve their corporate organizations without becoming subject to costly and subjective adjudications of "character."

II. Factual Background.

On September 18, 1992, GPC, acting for itself and as agent for Oglethorpe Power Corporation, the Municipal Electric Authority of Georgia and The City of Dalton, Georgia (collectively, the "Owners")[1/] filed with the Nuclear Regulatory Commission ("NRC" or "Commission") an

---

[1/] Presently, GPC is the sole licensed operator of Plant Vogtle acting for itself and the other Owners which are licensed to possess, but not operate, Plant Vogtle.

application to amend the operating licenses of Plant Vogtle, Units 1 and 2, to allow Southern Nuclear[2/] to become the exclusive licensed operator of Plant Vogtle (the "Application"). Notice of the Application and an initial finding of no significant hazards considerations was published in the Federal Register on October 14, 1992. 57 Fed. Reg. 47127, 47135-36. On October 27, 1992, the NRC Staff issued an "Environmental Assessment and Finding of No Significant Impact" in connection with the proposed Plant Vogtle license amendments. In that Environmental Assessment, the Commission, through authority delegated to the Staff, concluded that the proposed license amendments would result in no radiological or nonradiological environmental impact.

The proposed license amendments would not change the ownership of Plant Vogtle. GPC and the other Owners would continue to own the assets of Plant Vogtle in the same percentages as they do now. The Owners would remain NRC licensees, licensed to possess, but not operate, Plant Vogtle.

The change that would occur by virtue of the proposed license amendments is the identity of the corporate entity

---

[2/] Southern Nuclear, like GPC, is a wholly owned subsidiary of The Southern Company.

with exclusive authority to operate Plant Vogtle. However, the change in the actual personnel in control of licensed activities will be insignificant.

As stated in the Application, precisely the same on-site personnel operating Plant Vogtle today would continue to control licensed activities after the proposed license amendments are issued; the Plant Vogtle on-site organization consisting of GPC employees would be administratively transferred intact to the personnel ranks of Southern Nuclear.

Presently, offsite support services related to licensed activities are provided to Plant Vogtle primarily from Southern Nuclear,[3/] pursuant to a Nuclear Services Agreement, including licensing, engineering, maintenance, fuel, procurement, administrative and other technical support services.[4/] This too will not change.

The Plant Vogtle offsite line management currently responsible for Plant Vogtle consists of four GPC officers,

---

[3/] Plant Vogtle also receives support services from offsite GPC personnel, Southern Company Services, Inc. and other non-affiliated companies, such as Bechtel and Westinghouse Electric Corporation.

[4/] Southern Nuclear also provides support services to Plant Hatch, owned by GPC and the other Owners. Since November 22, 1991, Southern Nuclear has also been the exclusive licensed operator of Plant Farley, owned by Alabama Power Company.

who are, in ascending order: Mr. C. K. McCoy, Vice President; Mr. W. G. Hairston, III, Senior Vice President; Mr. R. P. McDonald, Executive Vice President and; Mr. A. W. Dahlberg, President.[5/] Messrs. McDonald, Hairston, and McCoy, are also officers of Southern Nuclear.[6/] Upon issuance of the proposed license amendments, Messrs. McDonald, Hairston and McCoy will continue to be responsible for the operation of Plant Vogtle, although they will cease serving as GPC officers and will continue to be officers of Southern Nuclear only.

The only change in line management personnel responsible for licensed activities at Plant Vogtle, on-site or offsite, that will occur when the proposed license amendments are issued is that Mr. McDonald will no longer report to Mr. Dahlberg, GPC's President. Instead, he will report to the Board of Directors of Southern Nuclear. Even this change is insignificant given that (1) Mr. Dahlberg is a member of the Board of Directors of Southern Nuclear, and (2) Southern Nuclear will continue to be answerable to GPC,

---

[5/] The President of GPC, Mr. Dahlberg, reports to the GPC Board of Directors.

[6/] The practice of having the same individuals serve as officers of two separate entities, referred to as "double-hatted," is a common practice within the nuclear industry. See GPC's Brief in Response to the Board's January 15, 1993 Request for Information and Briefs ("GPC's February 4, 1993 Brief") at 17-18.

acting for itself and as agent for the other Owners, pursuant to a Nuclear Operating Agreement.[1/]

III. Procedural History.

On October 22, 1992, Messrs. Allen L. Mosbaugh and Marvin B. Hobby filed a "Petition to Intervene and Request for Hearing" with respect to GPC's Application (the "Petition"). The Petition asserted that Southern Nuclear management does not have the character, competence or integrity to become the licensee of Plant Vogtle. GPC filed an answer opposing the Petition on November 6, 1992 on the grounds, among others, that both Mr. Hobby and Mr. Mosbaugh lacked standing to intervene. The NRC Staff's answer, dated November 2, 1992, similarly argued that Mr. Hobby lacked standing and should be dismissed but that a decision on Mr. Mosbaugh should await the filing of an amendment to the Petition.

By memorandum and order dated November 17, 1992 (LBP-92-32), the Board dismissed Mr. Hobby for lack of standing and deferred its decision on Mr. Mosbaugh pending receipt of an amended petition and the answers thereto by GPC and the NRC Staff.

[1/] A draft copy of the Nuclear Operating Agreement, which will not become effective until the proposed amendments are issued, was provided to the NRC Staff by GPC on October 7, 1992.

On December 9, 1992, Mr. Mosbaugh filed an "Amendment to Petition to Intervene and Request for Hearing" (the "Amended Petition"), which included four contentions and a number of allegations which were identified as the "factual bases" for the contentions. The allegations serving as the factual bases of the contentions are a subset of the allegations which Mr. Mosbaugh and Mr. Hobby had previously submitted to the NRC in a petition, dated September 11, 1990, and supplemented on July 8, 1991.[8/]

[8/] Among other things, the September 11, 1990 petition requested the Commission to institute licensing proceedings to determine whether GPC "[h]as the character, competence, fundamental trustworthiness and commitment to safety to operate a nuclear facility."

The NRC treated the September 11, 1990 petition as one submitted pursuant to 10 C.F.R. § 2.206. GPC provided the NRC with detailed responses to the petition and its supplement, denying all allegations of willful misconduct, on September 28, 1990, April 1, 1991 and October 3, 1991. After initial review, on October 23, 1990 the NRC Director of the Office of Nuclear Reactor Regulation concluded that "no immediate action by the NRC, other than certain actions already undertaken [investigations and reviews], is necessary regarding the matters raised in the petition." 55 Fed. Reg. 46114 (November 1, 1990).

While the NRC has not yet issued a decision on that petition, the NRC has closed the vast majority of the specific allegations of willful failure to comply with NRC technical requirements raised in the petition. To GPC's knowledge, to date, the NRC has found no willful misconduct associated with these closed allegations. However, the NRC continues to investigate certain of the petition's allegations and has referred at least one of those outstanding allegations to the Department of Justice ("DOJ"). See "NRC Staff Response to Allen L. Mosbaugh's Amendments to Petition to Intervene and Request for Hearing and Contingent Motion to Defer the Staff's Reply to Contentions and Rulings of Contentions," dated December 31, 1992, at pp. 6-7.

On December 22, 1992, GPC filed its "Answer to the December 9, 1992 Amended Petition of Allen L. Mosbaugh," which requested that the Board deny the Amended Petition on the grounds that (1) Mr. Mosbaugh had failed to establish standing, (2) Mr. Mosbaugh failed to proffer at least one admissible contention, (3) Mr. Mosbaugh had submitted false information in his pleadings concerning his residence, and that of his family, and (4) the license amendment proceeding was not the appropriate forum to address the allegations initially raised by Mr. Mosbaugh with the NRC Staff over two years ago. The NRC Staff, in its answer dated December 31, 1992, also opposed the Amended Petition on grounds that the Amended Petition had not been timely served on the NRC Staff and that Mr. Mosbaugh lacked standing because he failed to demonstrate any injury in fact that he would sustain as a result of the proposed license amendments. However, due to the pending DOJ investigation, the NRC Staff declined to comment on the proffered contentions and moved that the Board, if it was inclined to grant Mr. Mosbaugh standing, defer the proceeding until the completion of the DOJ investigation.

The Board held a prehearing conference on January 12, 1993, at which there was an evidentiary hearing on the issue of Mr. Mosbaugh's residence and a discussion of the issue of

standing including (1) whether Mr. Mosbaugh would sustain an injury in fact as a result of the proposed license amendments, and (2) whether the injury of which Mr. Mosbaugh complains would be redressed or abated if the license amendments were denied. Because the NRC Staff took the position that it could not discuss the contentions submitted in the Amended Petition,[9/] there was no discussion at the prehearing conference of whether the contentions in the Amended Petition met the NRC requirements for contentions at 10 C.F.R. § 2.714(b)(2).[10/]

By memorandum and order dated February 18, 1993 (the "Board's Order"), the Board ordered, among other things, that (1) Mr. Mosbaugh be admitted as a party to this case, (2) one contention reconstituted by the Board be admitted, and (3) discovery commence immediately.

[9/] See January 12, 1993 prehearing conference transcript ("Tr.") at 90-91.

[10/] The Board did not specifically address the NRC Staff's request to delay the proceedings, but stated that "there is no indication that the materials forwarded by this agency for potential criminal prosecution would be relevant to the adequacy of the basis provided by Mr. Mosbaugh for his contentions." Board's Order at 24.

IV. Argument.

A. THE BOARD ERRED IN CONCLUDING THAT MR. MOSBAUGH HAD DEMONSTRATED HE WOULD SUSTAIN AN INJURY IN FACT AS A RESULT OF THE PROPOSED LICENSE AMENDMENTS SUFFICIENT TO ESTABLISH STANDING.

1. Legal Standards.

It is well established that in order for a person to establish standing to intervene in a license amendment proceeding before the Commission, he or she must demonstrate that the proposed action will cause an "injury in fact" to his or her interests and that such injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. Public Service Company of New Hampshire ("PSNH") (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991). "In making this showing, the petitioner must establish that he or she will suffer a distinct and palpable harm that constitutes the injury in fact, that the injury can be traced fairly to the challenged action, and that the injury is likely to be redressed by a favorable decision in the proceeding." Id. at 266-67 citing Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988).

In Florida Power & Light Co. ("FP&L") (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325 (1989), the Commission denied a petition to intervene filed by a full-time resident who lived approximately 40 miles

from the facility. The Commission held that the case before them was not a case involving the construction or operation of the reactor itself, or a major alteration of the facility "with a clear potential for offsite consequences." The Commission then stated:

> Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific "injury in fact" that will result from the action [to be] taken . . . ."

Id. at 329-30 (emphasis supplied). Proximity alone is insufficient.

2. Mosbaugh's Basis for Standing.

As his alleged basis for standing, Mr. Mosbaugh initially asserted that he resided at property he owned within fifty miles of Vogtle, and that he and his family live, work, recreate and travel in the environs of Plant Vogtle. Petition at 3. These assertions were shown to be inaccurate. Mr. Mosbaugh has moved his family to Ohio, where his children attend school and his wife works. Tr. at 33, 39. Neither Mr. nor Mrs. Mosbaugh are employed in the vicinity of Plant Vogtle. GPC's Answer to the Petition, dated November 6, 1992, at 13. A change of address form had been filed with the U.S. Post Office forwarding the Mosbaugh's mail to Ohio. GPC's Answer to the Amended Petition, dated December 22, 1992, at 6.

Mr. Mosbaugh subsequently clarified that he resides at the Georgia property approximately one week per month. He added that he voted in Georgia in the 1992 elections. Amended Petition at 2. This assertion too was false. In 1992, Mr. Mosbaugh registered and voted in Ohio, including signing a statement under oath that he was a resident of Ohio.[11/]

In his Petition, Mr. Mosbaugh further alleged that he would be affected by normal and accidental releases of radioactive material, but he made no allegation or showing that the risk of such release would be increased by the amendments. Despite the Board's admonition that he demonstrate how the amendments would cause an increased risk to his health and safety (LBP-92-32, slip op. at 5-6), Mr. Mosbaugh provided no further elaboration, indeed no discussion whatsoever, of risk in his Amended Petition.

At the January 12, 1993 prehearing conference, counsel for Mr. Mosbaugh articulated the harm to Mr. Mosbaugh from the proposed license amendments, as follows:

> And what is the harm to Mr. Mosbaugh? You have to look at the harm back before the plant was reconfigured

---

[11/] On December 31, 1992, after Mr. Mosbaugh's standing was challenged in this proceeding and after he had submitted his Amended Petition, he contacted the Grovetown, Georgia post office and requested that his Georgia mailing address be reactivated. Also, on December 31, 1992, Mr. Mosbaugh re-registered to vote in Georgia.

> into this [present organizational] shape. Mr. Mosbaugh was Assistant General Manager, had the highest regard and believed that plant was one of the safest run plants in the United States.
>
> Today, he has the opposite view. The harm to Mr. Mosbaugh is that he had confidence in the management structure and that confidence led him to believe that an accident would not occur. Today he no longer has that confidence and believes that an accident -- and, in fact, advised the NRC in writing that an accident was imminent.

Tr. at 109. This statement shows that Mr. Mosbaugh's concern is with Vogtle's current management, not with any change that might occur as a result of the license amendments.

3. The Board's Ruling.

The Board's February 18, 1993 Order held, based on the allegations of Mr. Mosbaugh, that "the exposure that Mr. Mosbaugh has to Vogtle is sufficient to sustain the claim for standing." Board's Order at 20. This holding was predicated on Mr. Mosbaugh's ownership of a house located approximately 35 miles from Vogtle, his representations that he lived there "about seven days of every month," and the possibility that Mr. Mosbaugh might obtain a job in Georgia in the future. Id. at 19-20.

4. Analysis.

The Board's ruling above amounts to a finding that mere proximity (intermittent at that) is sufficient to establish standing without any particularized showing that the amendment will expose Mr. Mosbaugh to increased risk. As such, the Board's ruling is inconsistent with the Commission's FP&L decision, supra, 30 N.R.C. at 329, requiring allegation of a specific injury in fact that will result from the action. It is similarly inconsistent with current judicial concepts of standing, which require a "concrete and particularized" injury - - one that is "actual and imminent," not "conjectural or hypothetical." Lujan v. Defenders of Wildlife, _____ U.S. _____, 112 S.Ct. 2130, 2135 (1992). And, where standing is advanced on the basis of occasional visits to an area and speculative future plans, even greater immediacy is required to demonstrate that the injury is "certainly impending." Id. at 2138.

The Board inappropriately sidestepped these requirements by concluding:

> Where the contention raised, alleges, as here that Southern Nuclear officials have intentionally withheld material safety information from the NRC, the issue is one which affects the safety of the entire plant. The risk of non-safety conscious management is as great as many other risks that could be adjudicated in an operating license case. For this reason, we are considering a significant amendment involving "obvious potential for offsite consequences."

Board's Order at 19-21. The Board's conclusion that the proposed license amendments involve "an obvious potential for offsite consequences" is unsupported and, we submit, incorrect. No evidence or other basis exists in the record to support such a broad supposition. It is unreasonable to equate a license amendment proceeding involving little more than a name change with an initial construction permit or operating license proceeding. Nor is such an assumption appropriate as a matter of policy. Corporate restructurings such as this which lead to the consolidation of expertise and authority in a single organization are improvements that have been consistently advocated since the TMI accident. They should not be deterred by subjecting the applicant to wide-ranging hearings at the whim of any person who owns real property within 50 miles of the plant.

Contrary to the conclusion in the Board's February 18, 1993 Order, this is not a proceeding with an "obvious potential for offsite consequences."[12/] The change in risk

---

12/ It was not "obvious" in the Board's November 17, 1992 Order. There, the Board observed that in the case of an operating license amendment, residence, as in this case, at 35 miles from the plant, with some additional contacts, does not automatically establish standing. November 17 Order at 7 citing Boston Edison Company (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99, aff'd on other grounds, ALAB-816, 22 NRC 461 (1985). The Board also observed that:

of offsite consequences as a result of the license amendments is nonexistent. That is because the change in personnel who will be in control of licensed activities at Plant Vogtle when the license amendments are issued is, to quote the Board (Tr. 64), "very small." Mr. Mosbaugh's standing, on the other hand, is clearly based solely on allegations he has made concerning the existing GPC personnel who have been in control of operations at Plant Vogtle since 1988.

The Board appears to have lost sight of the change being proposed by the license amendments. The Board based its finding of "injury in fact" on Mr. Mosbaugh's allegations concerning the existing GPC management of Plant Vogtle, who, in some cases, also serve as officers of Southern Nuclear. However, this disregards the change being proposed by the license amendments. A proper analysis would have started with the actual change sought by the licensee, and only thereafter considered allegations of injury flowing

---

> Mr. Mosbaugh will have the difficult task of demonstrating a basis for his belief that this proposed amendment -- the transfer of operations to Southern Nuclear -- would cause an increased risk to his health and safety.

November 17 Order at 5 (emphasis in original) citing, inter alia, FP&L, supra.

from those changes.[13/] The allegations raised by Mr. Mosbaugh as a basis for standing, and as a basis for contentions, do not follow from the changes involved with the proposed Vogtle license amendments.

In reaching its conclusion that Mr. Mosbaugh has demonstrated injury in fact, the Board drew an analogy between this case and the case of Northeast Nuclear Energy Company ("NNEC") (Millstone Nuclear Power Station, Unit No. 2), 35 NRC ___, LBP-92-28 slip op. (September 30, 1992). However, there is a clear distinction between this case and NNEC.

In NNEC, the licensing board granted a petition to intervene in a license amendment proceeding concerning an application to amend the Millstone 2 operating license. The licensee sought to amend its license to preclude the possibility of a criticality accident in the plant's spent fuel pool. The need for this license amendment arose from the discovery by the licensee of a calculational error which

---

[13/] The Board may have been influenced by the NRC Staff's position that the character and competence of Southern Nuclear, as a whole, is a relevant consideration for the agency in determining whether to issue license amendments. See Board's Order at 7-9. However, as discussed in Section IV.C., infra, the NRC has never conducted any review of character in license amendment proceedings involving corporate restructuring. Instead, reviews have addressed only technical qualifications and have been limited to examination of personnel changes.

caused a reduced margin of safety. Thus, as the Board in this case has observed (Board's Order at 22), the NNEC license amendment sought would have "made things safer" than the pre-amendment condition. That raised a question, which the NNEC board addressed, as to whether the petitioner could meet an essential element of standing, i.e., that the action complained of would result in an increase in risk (injury in fact) to the petitioner. The NNEC board concluded that

> [t]he potential for reduced safety here (injury in fact) is both the prior calculational error and an amendment which does not redress that error but permits operation of the spent fuel pool according to its terms. The two concepts are logically inseparable.

Slip op. at 21-22.

The important distinction between NNEC and the instant case is that, in NNEC, the license amendment was predicated upon (indeed its sole purpose was to correct) a calculational error discovered by the licensee which caused the actual margin of safety to be less than that of the original design. It follows that, were the proposed license amendment (i.e., changes intended to restore the design margin of safety) somehow deficient, as the petitioner contended, then the post-amendment result could have been a spent fuel pool with an inadequate margin of safety, i.e., a margin of safety below the original, licensed design. In sharp contrast, the Vogtle license amendments are not

intended to correct a deficient condition or a margin of safety. Moreover, unlike the NNEC amendment, a denial of the proposed Vogtle license amendments will not result in a condition prohibited by NRC requirements. Therefore, the proposed Plant Vogtle license amendments are not analogous to the NNEC case.

Nor do Mr. Mosbaugh's allegations that GPC has illegally transferred control to Southern Nuclear somehow bring this case within the factual setting analogous to NNEC. Mr. Mosbaugh's allegations have not been proven[14/] (and, in GPC's view, are meritless) and the proposed license amendments are not intended to cure any managerial deficiency.

Mr. Mosbaugh also lacks standing because he has not established a causal connection between any injury and the proposed license amendments; i.e., that his injury "fairly can be traced to the challenged action...." Lujan, supra, 112 S.Ct. at 2135; Dellums, supra, 863 F.2d at 971. The fact that the officers and employees in control of licensed activities will be essentially the same after the license amendments as they are now precludes a finding of any causal connection between Mr. Mosbaugh's allegations of historic

---

[14/] The pre-amendment deficiency in NNEC was uncontroverted.

willful violations and the change proposed by the license amendments.

In sum, the proposed Plant Vogtle license amendments do not present an obvious potential for offsite consequences with respect to Mr. Mosbaugh. Nor is there any causal connection between actual changes resulting from the amendments and any injury that one might posit. Therefore, because Mr. Mosbaugh has failed to allege specific injury in fact that he will incur as a result of the license amendments, the Board should have denied Mr. Mosbaugh's petition to intervene due to lack of standing.

B. THE BOARD ERRED IN CONCLUDING THAT THE INJURY OF WHICH MR. MOSBAUGH COMPLAINS IS LIKELY TO BE REDRESSED BY A DECISION WHICH IS FAVORABLE TO MR. MOSBAUGH.

1. Legal Standards.

As previously discussed and as the Board acknowledged (Board's Order at 18), in order to establish standing, Mr. Mosbaugh is required to show that the injury of which he complains "is likely to be addressed by a favorable decision in this proceeding." Lujan, supra, 112 S.Ct. at 2135; Dellums, supra, 863 F.2d at 971. PSNH, supra, cited by the Board, illustrates the principle.

In PSNH, the Commission affirmed a licensing board order denying standing to the petitioner, SAPL, because SAPL failed to demonstrate that the harm it alleged would be abated if the relief it requested was granted. SAPL had challenged a proposed license amendment to transfer ownership of Seabrook from PSNH to North Atlantic Energy Corp. ("NAEC") but did not challenge a separate license amendment to transfer operating authority from PSNH to NAESCO, an affiliate of NAEC. The Commission focused on the redressability requirement of standing stating: "in order to establish its standing, SAPL bears the burden of showing that, but for the particular action it challenges, its injury would abate." 34 NRC at 267 citing Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38, 96 S. Ct. 1917, 1925 (1976); Dellums, supra, 863 F.2d at 971.

2. The Board's Ruling.

In its February 18, 1993 Order, the Board held that Mr. Mosbaugh had demonstrated that his alleged injury "may be addressed by a favorable decision in this proceeding," but did not explain how.[15/] Board's Order at 20 (emphasis

---

[15/] The Board's Order lacks analysis in support of this conclusion, and the Board appears to rely primarily on the holding in NNEC, supra, LBP-92-28, discussed infra. Elsewhere in the Board's Order, the Board stated that, if the single, admitted contention were sustained, the Board

added). The Board apparently relied on NNEC, LBP-92-28, discussed supra, for its conclusion on redressability, which it quoted as follows:

> Assuming that the record of the proceeding were to demonstrate that the risk from the calculational error is not abated by [the proposed] Amendment 158, interested persons may have redress by a denial of that amendment.* True, as Licensee states, that action would not correct the prior calculational error, but it would remove the authority to operate the spent fuel pool under an inadequate amendment.
>
> ---
>
> * In the real world of NRC adjudications, applicants for licenses and amendments to licenses accept modification as a condition of issuance. Seldom are NRC adjudicators faced with an up or down choice.

Board's Order at 23, quoting NNEC, slip op. at 22.

---

might direct "that the amendment be denied or conditioned on changes in the structure and personnel of Southern Nuclear." Board's Order at 12-13, 15. However, it is not clear that such statements were made in support of its conclusion on repressibility since such statements appear in the preceding section discussing contentions.

3. Analysis.

The Board's conclusion[16/] is inconsistent not only with PSNH[17/], but also with in the Board's November 17, 1992 Order, which stated:

> Petitioner must show that he has a basis to believe that if we prohibit the change he will be better off -- presumably because the new arrangement is less safe than the existing one.

November 17 Order at 5-6 (footnote omitted). In the present case, contrary to the explicit instructions of the Board's November 17 Order, Mr. Mosbaugh's Amended Petition did not

---

16/ GPC notes that the Board used the word "may" in its conclusion rather than the words "is likely to," as used in Dellums and PSNH. The Board's phraseology suggests that it was not convinced that Mr. Mosbaugh had made a greater showing such that his injury "is likely to be redressed by a favorable decision...."

17/ The Board's Order cites the Commission's decision in PSNH for support stating that PSNH "appear[s] to suggest that petitioner [in that case] would have had standing to challenge the transfer of operating authority over the Seabrook plant on the grounds of character.... " Board's Order at 23. However, GPC submits that the Board has misread the Commission's decision in that case. In PSNH, the Commission stated in a footnote: "As indicated in the notice, however, the reorganization plan contemplates that the transfer of managerial authority will be accomplished by transferring existing Seabrook staff and contractor to NAESCO for the management and operation of Seabrook." Id. at 267 n. 9 (emphasis in original). By this footnote, the Commission apparently suggested that petitioner might not have been able to establish standing to challenge the transfer on grounds of character because the existing personnel in control of licensed activities would continue to be in control of operations after the transfer of operating authority.

plead, let alone establish, how he will be "better off" if the proposed license amendments were denied. The only discussion by Mr. Mosbaugh of the redressability requirement occurred at the prehearing conference, but that discussion totally missed the mark. During the prehearing conference, the following exchange occurred:

> CHAIRMAN BLOCH: We would be ruling that the petition has no merit.... Because there's no redressable grievance.
>
> MR. REIS [NRC Staff]: That's right.
>
> CHAIRMAN BLOCH: What [the petitioner] really wanted to do was to stop the people who are running the plant from running it, and we have no authority to do that. Only the [NRC] staff does.
>
> MR. REIS: That's right. That's essentially the arguments we made in our answer to the amendment at Pages 4 and 5.
>
> MR. KOHN: Your Honor, I would like to address that issue. What you're looking at. . . .
>
> . . . .
>
> MR. KOHN: What you're looking at, the harm to the public is the question. The harm to the public is that the industry and people at [GPC] in the lower levels of management will see that when the pressure is put on, maybe you should listen to what your supervisors are saying because there are no licensing effects.
>
> CHAIRMAN BLOCH: Suppose we deny the amendment, and so the same people are in charge of the plant who did these allegedly horrendous things anyway. What difference does that make to the public?
>
> MR. KOHN: A great difference. First, it alerts the public to the problem that exists. Second, it alerts the public to the fact that their current management structure is potentially liable for criminal conduct during the course.

> When additional amendments are filed and other acts are taken, the public may be more inclined to intervene in future proceedings based on the events.

Tr. at 105. The statement of Mr. Kohn, Mr. Mosbaugh's counsel, fails to demonstrate redressability. Instead, it underscores the vagueness and generality of Mr. Mosbaugh's grievance and its lack of connection with the proposed amendments. These vague assertions fail to satisfy the requirement for standing. See Simon, supra, 426 U.S. at 39-40, 96 S. Ct. at 1925.

Perhaps reflective of Mr. Mosbaugh's total failure to demonstrate a redressable injury, the Board did not rely on any argument or assertion advanced by Mr. Mosbaugh. Instead, the Board posited its own theory of redressability which GPC submits is unsupported by the facts of this case or legal precedent.[18/]

It is clear that if the Vogtle amendments are denied, Mr. Mosbaugh's allegations concerning past actions of GPC employees, which form the bases for his contentions, will

---

[18/] The Board's attempt to infer a basis to satisfy the redressability requirement which was not pleaded by Mr. Mosbaugh is clearly inappropriate. See Arizona Public Service Co. (Palo Verde Nuclear Generating Stations, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155 (1991) (the licensing board erred by inferring a basis for petitioner's contention); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 417 (1990) (it is the responsibility of the intervenor to provide the necessary information to satisfy the basis requirement for the admission of its contention).

not be abated and Mr. Mosbaugh will not be "better off." In essence, Mr. Mosbaugh alleges that certain GPC employees (1) allowed Southern Nuclear officers to control licensed activities at Plant Vogtle, and (2) willfully made false statements to the NRC. See n. 11, supra. If the proposed license amendments are denied, these same GPC employees will remain in control of licensed activities at Plant Vogtle and, therefore, Mr. Mosbaugh's concerns will not be abated.

The Board's theory on redressability, on the other hand, appears to be based on the grounds that Mr. Mosbaugh's concerns could be abated if the Board were to condition the approval of the license amendments on "changes in the structure and personnel of Southern Nuclear." Board's Order at 12-13, 15.[19/] This speculates that the Board could fashion conditions which would be acceptable to all the parties. However, it is very possible that GPC would, instead, not accept such conditions since it can continue operating Plant Vogtle under the current organizational

---

[19/] GPC notes that the Board's allusion to such conditions is inconsistent with the Board's November 17 Order, which stated, at 5:

> Since Georgia Power Company already has an operating license, we have no authority in this proceeding to revoke that license or to stop the plant from operating. The only authority we have is to stop the change of the responsibility for operations from one subsidiary to another. (footnotes omitted)

structure.[20/] Speculative possibilities are inadequate to support a finding of redressability. Simon, supra, 426 U.S. at 44-46, 96 S. Ct. at 1927-28. Indeed, the Commission's holding in PSNH, supra, is consistent with this reasoning since it requires a finding that but for the particular action it challenges, its injury would abate. Id. at 267 citing Simon, supra, 426 U.S. at 38, 96 S. Ct. at 1925 (1976); Dellums, supra, 863 F.2d at 971.

In the case of the proposed Plant Vogtle license amendments, Mr. Mosbaugh cannot satisfy the PSNH requirement for redressability. That is, Mr. Mosbaugh's complained-of injury would exist regardless of the proposed Plant Vogtle license amendments. Moreover, Mr. Mosbaugh never suggested that the relief he sought was anything but denial of the proposed license amendments.

Mr. Mosbaugh has not borne his burden of showing that if the particular action he challenges (i.e., transfer to a different corporate entity of operational responsibility by the same individuals) is denied, his injury would be abated.

[20/] In this regard, it is undisputed that GPC has kept the NRC Staff fully informed of organizational changes since 1988 (see GPC's February 4, 1993 Brief at 10, Appendix A) and that the NRC Staff has concluded that the present organizational structure is not a violation of any law or any NRC regulation or policy, and the NRC Staff is not concerned about the current structure. Tr. at 75-76, 85, 98.

Therefore, the Board should have denied Mr. Mosbaugh's Petition for lack of standing.

C. THE BOARD ERRED IN CONCLUDING THAT MR. MOSBAUGH SATISFIED THE COMMISSION'S REQUIREMENTS CONCERNING THE ADMISSION OF CONTENTIONS.

1. Legal Standards.

The NRC's pleading requirements for contentions, contained in 10 C.F.R. § 2.714(b), are relatively new, having been revised on August 11, 1989. 54 Fed. Reg. 33168-82. They were designed to "raise the threshold for the admission of contentions to require the proponent of the contentions to supply information showing the existence of a genuine dispute with the applicant on an issue of law or fact." 54 Fed. Reg. 33168. The Statement of Consideration for the new rule further explains that the rule

> will also require intervenors to submit with their list of contentions sufficient information. . . to show that a genuine dispute exists. . . . This will require the intervenor to read the pertinent portions of the license application. . . state the applicant's position and the petitioner's opposing view.
>
> . . . .
>
> The Commission believes it to be a reasonable requirement that before a person or organization is admitted to the proceeding it read the portions of the application. . . that address the issues that are of concern to it and demonstrate that a dispute exists between it and the applicant on a material issue of fact or law.

54 Fed. Reg. at 33170-71 (emphasis added).

The Commission requires strict compliance with these new pleading requirements. See Arizona Public Service Company (Palo Verde Nuclear Generating Stations, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155-56 (1991), in which a contention was rejected where the petitioner failed to "explain the basis for the contention and read the relevant parts of the license application and show where the application is lacking." Long Island Lighting Company ("LILCO") (Shoreham Nuclear Power Station, Unit 1), LBP-91-39, 34 NRC 273 (1991), further illustrates the importance of meeting the specific pleading requirements. There, the petitioner contended that a Possession Only License ("POL") could not be issued before an environmental impact statement was prepared to consider the impact of the proposal to decommission Shoreham. The contention was held inadmissible because the petitioner did not

> spell out how the POL amendment is an interdependent part of the decommissioning process and how that amendment is unjustified except as part of that process. . . Further, the Commission has made it clear that the new pleading requirements of section 2.714(b) are to be enforced rigorously and that we are not free to assume any missing information in a contention.

Id. at 279 citing Arizona Public Service, 34 NRC 149.

2. The Board's Ruling.

The Board concluded that Mr. Mosbaugh's contentions 1, 2 and 3 satisfied the requirements of 10 C.F.R. § 2.714(b)(2). Board's Order at 13, 16. The Board's Order, at 25, admitted the following single contention redrafted by the Board:

> The license to operate the Vogtle Electric Generating Plant, Units 1 and 2, should not be transferred to Southern Nuclear Operating Company, Inc., because it lacks the requisite character, competence and integrity, as well as the necessary candor, truthfulness and willingness to abide by regulatory requirements.

GPC submits that the Board erred in concluding that Mr. Mosbaugh had plead at least one admissible contention.

3. Lack of Basis for Mr. Mosbaugh's Contentions.

Mr. Mosbaugh's contentions lacked both factual and legal basis. Mr. Mosbaugh failed to identify any portion of GPC's application which is lacking and he failed to identify any regulation which required GPC to elaborate on its "character" in the Application. Where a petitioner fails to show that there is any error or omission in the [license amendment] application, his contentions must be rejected. See Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 530 (1990).

In the case at bar, the Board stated:

> We note that 10 C.F.R. § 2.714(b)(2)(iii) requires the specification of how the application fails to contain information that it should contain. In this instance, Mr. Mosbaugh has alleged material facts that are relevant to the application. The omission of these facts from the application is not surprising, since they are adverse to the interest of the applicant. Consequently, Mr. Mosbaugh fulfills the requirements of this section because the omission from the application of the facts he has alleged is material to the proper consideration of the amendment.

Board Order at 13.[21/]

The Board's suggestion that GPC should have included Mr. Mosbaugh's allegations in its Application is unreasonable, especially when such allegations were under review by the NRC Staff at the time. In fact, as mentioned earlier herein, in response to the Staff's requests, GPC had provided the NRC Staff with detailed responses to each and every one of Mr. Mosbaugh's allegations. GPC submits that the Board erred in concluding that Mr. Mosbaugh had satisfied the requirement to identify an error or omission in GPC's Application.

Nowhere in the regulations is there any requirement that an applicant for a license transfer elaborate on its "character." The NRC's regulations at 10 C.F.R. § 50.80(b),

---

[21/] GPC notes that there is no evidence that Mr. Mosbaugh identified any error or omission in GPC's Application. Rather, it is the Board that is inferring a basis for Mr. Mosbaugh's compliance with this requirement. Such an inference is inappropriate. See Arizona Public Service Co., supra, 34 NRC at 155; Public Service Company of New Hampshire, supra, 32 NRC at 416-17.

which govern the content of such applications, only require such information on the "technical and financial qualifications" of the proposed transferee as would be required in an initial license application. As interpreted and applied in hundreds of licensing proceedings, "technical qualifications" consists of the staffing levels, education, experience, and training of personnel. It is simply not the practice or requirement of the NRC that an applicant for an initial license include further information to demonstrate character.[22/]

Nor do the regulations relied upon by Mr. Mosbaugh - - 10 C.F.R. §§ 50.54(c)[23/] and 50.34(b)(6)(i)[24/] referred to in

---

[22/] Mr. Mosbaugh has not raised any issue as to the technical qualifications of the transferee's personnel, nor has he alleged any financial weakness. Even had he raised such contentions, and were those subject matters within the Board's review, a technical competence or financial qualifications review would not, a fortiori, include a review of the "character" of the transferee's management. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 244 n. 23 (1989).

[23/] 10 C.F.R. § 50.54(c) provides, in pertinent part:

> Neither the license, nor any right thereunder . . . shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions and the [Atomic Energy Act] and give its consent in writing.

the Board's Order at 10-11 - - require an inquiry into character. Neither of these regulations requires that Southern Nuclear provide any specific information on character before GPC transfers operating authority of Plant Vogtle to Southern Nuclear. Such a failure to provide a reference to the legal authority under which the license amendment application should be judged (i.e., the "legal basis") has been held to be grounds for rejecting contentions. See Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2), LBP-91-21, 33 NRC 419, 422 (1991), appeal dismissed, CLI-92-03, 35 NRC 63 (1992).

In the "Legal Background" section of the Board's Order, separate from the section discussing contentions, the Board stated: "[w]e are convinced that the granting of the requested amendment legally requires that Southern Nuclear have the character and competence to operate a nuclear power plant." Board Order at 7. While GPC disagrees with this conclusion,[25] even if it were true, the Board erred in

---

[24] 10 C.F.R. § 50.34(b)(6)(i) requires that an applicant for an initial operating license include, with its application, a Final Safety Analysis Report ("FSAR"), which FSAR shall include the following: "The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements."

[25] The Board's conclusion in this regard is discussed in detail in Section IV.D., infra.

supplying a legal basis for Mr. Mosbaugh's contentions which was not pleaded by Mr. Mosbaugh. Arizona Public Service Co., supra, 34 NRC at 155; Public Service Company of New Hampshire, supra, 32 NRC at 416-17.

In any event, the Board's conclusion is inconsistent with the longstanding NRC practice concerning review of license amendments which propose a transfer of operating authority to a new legal entity. In every case of which GPC is aware (including transfers of operating authority which the NRC Staff approved in connection with Plant Farley, Wolf Creek and Grand Gulf), the NRC Staff, in reviewing the technical competence of the proposed transferee, considered only the proposed changes in operating personnel that would occur if the license amendments were granted. See GPC's February 4, 1993 Brief at 19-21. Had the Board recognized NRC's longstanding practice, it should have concluded that Mr. Mosbaugh's contentions were inadmissible because the factual bases for his contentions do not raise any concern with the changes in personnel who operate Plant Vogtle that will occur when the proposed license amendments are issued.[26/]

[26/] None of Mr. Mosbaugh's factual allegations involve personnel who will be in control of licensed activities, as Southern Nuclear employees, other than those who are currently in control of licensed activities as GPC employees. Much of Mr. Mosbaugh's allegations involve a

4. Lack of Nexus Between the Contentions and this Proceeding.

Mr. Mosbaugh has also failed to establish that there is any genuine dispute on an issue of law or fact which is material to this license amendment proceeding. Stated concisely, the petitioner has not shown or plead any credible, rational nexus between the change proposed by the license amendments and his contention that such license amendments will result in an increased risk to public health and safety. Such a nexus is an essential element to establishing an admissible contention. See Florida Power and Light, supra, 31 NRC at 526, 527, 535 (1990) (contentions were not admissible where the petitioner failed to show any significant safety concern or that the proposed license amendment made any substantive change in prior operations).

Furthermore, the Board's ruling directly conflicts with the controlling precedent of Detroit Edison Company (Enrico Fermi Atomic Power Plant Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978). In that case, the board found that the issue of whether the licensee violated NRC

---

dispute as to whether former Southern Nuclear officer, Mr. Joseph M. Farley or GPC's President, Mr. A. William Dahlberg, was in control of licensed activities at Plant Vogtle in 1990. Mr. Farley retired in the fall of 1992.

regulations (by transferring an ownership interest in advance of NRC action on the license amendment at issue) was outside the scope of its jurisdiction. Likewise, in this case, the Board should have rejected Mr. Mosbaugh's contentions which seek to litigate historical allegations concerning GPC's current management. See also Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-91-35, 34 NRC 163, 168 (1991) (in the context of a license amendment proceeding concerning security plan amendments, the licensing board refused to admit a contention inviting an inquiry into the adequacy of the previous security plan or the licensee's performance under the previous version of the security plan).

The responsibility for determining whether a license was violated rests with the NRC Director of Nuclear Reactor Regulation pursuant to the provisions of 10 C.F.R. Part 2, Subpart B, of the NRC's regulations. In this case, such a review has already been initiated as a result of the allegations submitted to the NRC by Mr. Mosbaugh in September 1990.[27/]

Based on the foregoing, it is clear that Mr. Mosbaugh's contentions, as explained by their bases, fail to establish

---

[27/] For a discussion of Mr. Mosbaugh's September 11, 1990 petition, see n. 8 and accompanying text, supra.

that a genuine dispute exists on a material issue of law or fact and such contentions should have been found inadmissible by the Board.

D. THE BOARD ERRED IN CONCLUDING THAT THE PLANT VOGTLE LICENSE AMENDMENTS PROCEEDING IS AN APPROPRIATE FORUM IN WHICH TO ADDRESS MR. MOSBAUGH'S ALLEGATIONS.

1. The Board's Ruling.

The Board, adopting some general observations of the Staff, held that (1) Commission precedent indicated that the character of an applicant "may be considered in appropriate licensing actions," and (2) the issuance of an operating license or amendment requires an affirmative finding of (a) compliance with the Atomic Energy Act and the Commission's regulations, and (b) reasonable assurance of health and safety of the public, citing 10 C.F.R. § 50.57. Board's Order at 7-9. The Board went on to state:

> If personnel who will be involved in the operation of the facility lack character to operate the facility, then the request of the operating license or amendment may not be issued.

Id. at 9 citing Houston Lighting & Power Company, (South Texas Project Units 1 and 2), LBP-84-13, 19 NRC 659, 669, 831; Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-9, 21 NRC 1118, 1137 n. 37. These general observations by the Board set the Board's own

jurisdictional limits for this proceeding and, relative to the request of the amendment, led the Board to the conviction that allegations about character and competence[28/] to operate a nuclear plant were properly before the tribunal.

2. Issue Presented.

GPC does not deny that the Commission has the authority to consider, in appropriate circumstances, the character of a licensee. The question presented to the Commission in this appeal is who reviews these traits, and when. More specifically, does a license amendment proceeding involving a corporate restructuring long after initial licensing require a complete reassessment of the licensee's integrity? Or, is the proper time for "character" reviews appropriately limited to initial license issuance, with subsequent agency measurements of character assigned to the inspection and enforcement functions of the agency, as well as special circumstances determined by the Commission itself? GPC submits that a proper allocation of the Commission's finite resources, a recognition of the effectiveness of the

---

[28/] Nowhere among the bases of Mr. Mosbaugh's contentions does he allege specific acts of technical incompetence. Rather, his allegations attack the "character" of GPC employees.

Commission's inspection and enforcement programs, and the precedent already established by the Commission are forceful, controlling reasons for the Commission to select the latter approach. The licensing boards, we submit, are not the proper forum for these highly subjective deliberations, except in special circumstances in which those deliberations are expressly delegated by the Commission itself.

3. Legal Standards.

The Board, in adopting the Staff's general observations, observed that the Commission has enacted no regulations in regard to the "character" of an applicant.[29/] Section 182 of the Atomic Energy Act (42 U.S.C. § 2232) authorizes the Commission "by rule or regulation," if it so chooses, to have applicants specify information in each application for a license which it determines to be necessary to decide technical qualifications, financial qualifications, "the character of the applicant" or any other qualifications as the Commission may deem appropriate for the license. Significantly, 10 C.F.R. § 50.57 predicates the issuance of an operating license (or

---

[29/] The Board's conclusion supports GPC's argument, discussed in Section IV.C, supra, that no "legal basis" exists to support Mr. Mosbaugh's contention.

provisional operating license) upon finding that, among other things, the applicant is technically and financially qualified to engage in activities authorized by the operating license. The omission of "character," or similar trait, suggests that the Commission reserved character reviews for cases where the Commission specifically determined such reviews were appropriate. Consistent with this approach, the Commission's practice has been to personally review and approve the ultimate issuance of operating licenses.

An examination of the limited cases in which the "character" of licensees has been addressed demonstrates firm and continuous Commission control over licensing boards' review of such matters. Indeed, the case law shows that the Commission has permitted such wide-ranging inquiries only in exceptional cases in which substantiated violations involving character preceded the licensing boards' inquiries. It is noteworthy that such cases were enforcement actions, not licensing proceedings.

In Houston Lighting & Power Company (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281 (1980), the Commission, after observing that the licensing board would be expeditiously reviewing quality control-related issues (including allegations of false statements in the Final

Safety Analysis Report for the South Texas Project), ordered that board to "look at the broader ramifications of these charges in order to determine whether, if proved, they should result in denial of the operating license application." Id. at 291-92. As observed in the resulting ASLB decision (Houston Lighting & Power Company (South Texas Project, Units 1 and 2), LBP-84-13, 19 NRC 659, 669 (1984)), the licensing board dutifully undertook the specific evaluation entrusted to it. This, then, was not a situation where the licensing board commenced a "character" review without Commission direction based on unsubstantiated allegations prior to this entrustment; significant construction-related deficiencies had previously resulted in an order to show cause (an enforcement action) issued by the agency. The Commission itself found a sufficient justification to commence a broader, enforcement-related inquiry.

Similarly, in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-79-8, 10 NRC 141 (1979), the Commission specifically directed a licensing board to evaluate whether the licensee had sufficient management capability and resources to operate the facility safely upon restart. In a subsequent order, the Commission gave the licensing board specific guidance on areas to be

addressed in determining whether management had sufficient competence to operate the facility. (See, generally, Metropolitan Edison Co., supra, 21 NRC at 1135, "Introduction"). Among the matters the Commission directed the licensing board to examine in 1980 was "Issue 10": whether the actions of the licensee revealed "deficiencies in the corporate or plant management that must be corrected" before plant restart. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-5, 11 NRC 408, 409-10 (1980). Thereafter, the Commission on September 11, 1984 took review of several issues, including the matter of a statement from a licensee officer to an NRC commissioner alleged to be false. See, generally, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 285-289 (1985). The appeal board had held that the licensing board should have pursued the alleged matter. Nevertheless, the Commission affirmatively determined that, as a matter of policy, it would allow the licensing board to render a decision on that matter. The Commission emphasized that its decision to permit the Board to proceed was based on public policy considerations and that "accordingly, [it] need not decide whether these hearings are legally required." Id. at 289. Thus, this Commission action, in essence, was to direct the licensing board to look into a

matter of "character" -- even though the appeal board had directed the licensing board to do the same thing. In other words, as a matter of Commission policy or, as GPC views it, prerogative of applying its retained authority under Section 182 of the Atomic Energy Act, the licensing board had commenced an exceptional inquiry. Thereafter, in the ultimate decision on the TMI restart, the Commission itself passed final judgment on the licensee's character. Metropolitan Edison Co., supra, 21 NRC at 1136-1140.[30/]

In conclusion, the Board failed to appreciate the context of "character" reviews undertaken at the direction of the Commission. Absent specific direction from the Commission in enforcement proceedings,[31/] an applicant for a

---

[30/] The Appeal Board decision in Three Mile Island, generally cited by the Licensing Board in the present proceeding, contains further insightful statements as to the relationship between the Commission and the licensing board assigned with a specific management review. As the appeal board observed, the "special" nature of the task assigned to the licensing board in that enforcement proceeding devolved into review of the "integrity" of the licensee's management as well. The appeal board viewed the Commission as having directed the licensing board to "apply its own judgment in developing the record and forming its conclusions on these questions" concerning the integrity of licensee's management. It appears, then, the administrative law judges at all levels, as well as the Commissioners, understood the special, subjective nature of the character or "integrity" review in the context of that enforcement proceeding.

[31/] The Commission precedent which addresses "character" of licensees also establishes that the current character of a licensee, as contrasted with historic attributes, is the relvant inquiry. Metropolitan Edison Company, supra, 21 NRC

license transfer need only demonstrate financial and technical qualifications. 10 C.F.R. § 50.80(b), discussed in Section IV.C, supra.

V. Conclusion.

For the reasons stated herein, GPC requests that the Commission reverse the February 18, 1993 order of the

---

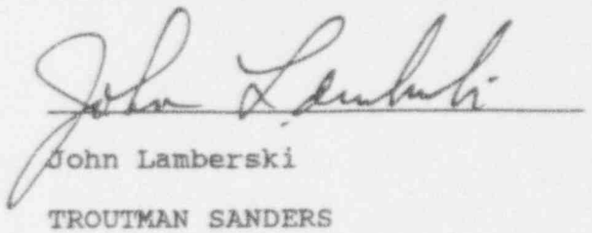
at 1139. Mr. Mosbaugh's allegations concern historical actions of GPC management, albeit involving some individuals who continue to manage Plant Vogtle. In sharp contrast to Mr. Mosbaugh's allegations, the most recent Systematic Assessment of Licensee Performance (SALP) for Plant Vogtle, issued March 1, 1993, addresses the current mangement of the plant. The SALP concluded

> The performance of your Vogtle facility was evaluated in the functional areas of Plant Operations, Radiological Controls, Maintenance/Surveillance, Emergency Preparedness, Security, Engineering/Technical Support, and Safety Assessment/Quality Verification. Overall performance has improved substantially during this period. Management involvement in plant evaluations and attention to detail has resulted in significant improvements in many of the functional assessment areas. Five of the functional areas were assessed as superior performers, with the other two areas assessed as good. Further, it is encouraging to note that in general, management's response to issues - - both NRC and licensee identified - - has been prompt and effective. The increase in performance indicates enhanced teamwork and communications between the plant departments and the corporate organizations. Your entire staff is to be commended for their efforts which have resulted in the improved performance.

NRC Inspection Report 50-424/93-01 and 50-425/93-01 at 1.

Licensing Board in this proceeding and deny the October 22, 1992 Petition to Intervene and the December 9, 1992 Amended Petition to Intervene of Allen L. Mosbaugh.

Respectfully submitted,



John Lamberski

TROUTMAN SANDERS
Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3360

Ernest L. Blake, Jr., Esq.
David R. Lewis, Esq.

SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, NW
Washington, DC 20037

(202) 663-8084

Counsel for Georgia Power Company

DATED: March 4, 1993

'93 MAR -5 A11:45

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA POWER COMPANY, et al.	*	Docket Nos. 50-424-OLA-3 50-425-OLA-3
	*	
	*	
(Vogtle Electric Generating Plant, Units 1 and 2)	*	Re: License Amendment (Transfer to Southern Nuclear)
	*	
	*	ASLBP No. 96-671-01-OLA-3

CERTIFICATE OF SERVICE

This is to certify that copies of the within and foregoing "Georgia Power Company's Notice of Appeal of the Licensing Board's February 18, 1993 Memorandum and Order Admitting a Party and Georgia Power Company's Brief in Support of Its March 1, 1993 Notice of Appeal" were served on all those listed on the attached service list by depositing same with an overnight express mail delivery service.

This is the 4th day of March, 1993.

John Lamberski

TROUTMAN SANDERS
Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA POWER COMPANY, et al.	*	Docket Nos. 50-424-OLA-3 50-425-OLA-3
(Vogtle Electric Generating Plant, Units 1 and 2)	*	Re: License Amendment (Transfer to Southern Nuclear)
	*	ASLBP No. 96-671-01-OLA-3

SERVICE LIST

Ivan Selin, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

E. Gail de Planque, Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Kenneth C. Rogers, Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

James R. Curtiss, Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Forrest J. Remick, Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA POWER COMPANY, et al.	*	Docket Nos. 50-424-OLA-3 50-425-OLA-3
(Vogtle Electric Generating Plant, Units 1 and 2)	*	Re: License Amendment (Transfer to Southern Nuclear)
	*	ASLBP No. 96-671-01-OLA-3

SERVICE LIST

Ivan Selin, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Kenneth C. Rogers,
Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

James R. Curtiss,
Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Forrest J. Remick,
Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

E. Gail de Planque,
Commissioner
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Md. 20852

Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Stewart D. Ebneter
Regional Administrator
USNRC, Region II
101 Marietta Street, NW
Suite 2900
Atlanta, Georgia 30303

Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555
ATTN: Docketing and Services
Branch

Charles Barth, Esq.
Office of General Counsel
One White Flint North
Stop 15B18
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555