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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USA/PC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 136

In the Matter of

GEORGIA POWER COMPANY, et al.

(Vogtle Electric Generating Plant,  
Units 1 and 2)

\*  
\* Docket No. 50-424-OLA-3  
\* 50-425-OLA-3  
\* Re\* License Amendment  
\* (Transfer to  
\* Southern Nuclear)  
\* ASLBP NO. 96-671-01-OLA-3

GEORGIA POWER COMPANY'S RESPONSE TO  
INTERVENOR'S REQUEST FOR A PROTECTIVE ORDER

I. INTRODUCTION

On April 21, 1993, the Licensing Board issued a Memorandum and Order (LBP-93-8) in this proceeding which, among other things, ordered counsel for the Intervenor to "make a good faith, earnest request for the return of Mr. Mosbaugh's copies of the tapes he has made from the Congressional committee to which he has given those tapes." Order at 16. The Board also ruled that fairness and efficiency dictate that depositions of Georgia Power Company ("GPC") witnesses not be conducted until after the audio tapes become available in discovery. Order at 13. With these two noted exceptions, the Board ruled that discovery (including document discovery) could proceed at its normal pace. Order at 15.

On May 14, 1993, counsel for Intervenor provided a response to the Board's April 21, 1993 Scheduling Order and a "request for a protective order." That filing requests that the Board not require (1) the disclosure of six tapes made by Intervenor on the

grounds that they constitute the work product of Intervenor's counsel, and (2) the release of any tape recording relevant to this case until after Intervenor has had an opportunity to depose the witnesses of GPC who have been taped (in effect, a reversal of the Board's April 21, 1993 Order).

Intervenor's May 14, 1993 filing constitutes, in effect, both a motion for a protective order relative to an outstanding GPC request for production of documents and an untimely motion for reconsideration of the Board's April 21, 1993 Order. In response to such request, GPC submits that the Board should (1) compel the production of tape recordings in the custody, or under the control, of Intervenor or his counsel, including the six (6) tape recordings referred to in Paragraph 1 of Intervenor's May 14, 1993 filing [hereinafter referred to as the "Six Tapes"], and (2) deny Intervenor's motion to reconsider the Board's April 21, 1993 Order.

## II. FACTUAL BACKGROUND

Intervenor allegedly made 277 tape recordings between February 1990 and September 1990 when he was employed by GPC at Plant Vogtle. Intervenor's May 14, 1993 filing, at Paragraph 1, states:

In June 1990, Allen Mosbaugh's counsel had excerpts of certain tape recordings prepared. These tape recordings constitute counsel's work product and are predicated on attorney-client communications. A total of six (6) such tape recordings were made in preparation of litigation pending before the U.S. Department of Labor. The recordings were also utilized by counsel to file a petition with the

Chairman of the U.S. Nuclear Regulatory Commission on September 11, 1990.

GPC interprets Intervenor's statement (that counsel "had excerpts. . . prepared") as meaning that Mr. Mosbaugh's counsel did not personally prepare the Six Tapes and GPC assumes that they were prepared, instead, by Mr. Mosbaugh.

In September 1990, during the discovery phase in Intervenor's first of three Department of Labor ("DOL") proceedings against GPC, Intervenor turned over his original tape recordings to NRC's Office of Investigations ("OI"). According to Intervenor's May 14, 1993 filing, Paragraph 2, Mr. Mosbaugh maintained possession of the Six Tapes. However, this statement directly contradicts Intervenor's response to one of GPC's October 15, 1990 interrogatories served on Intervenor in his DOL case (No. 90-ERA-58), wherein he represented that Intervenor was no longer in possession of the tapes and was unable to respond.<sup>1</sup>

Thereafter, NRC OI returned to Intervenor 201 of his original tape recordings and those tapes were then made available to GPC in the DOL case for copying on or about October 22, 1991. To date, OI has not returned 76 of Intervenor's original tapes as associated with its investigative efforts, which is now limited

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<sup>1</sup> See Respondent Georgia Power Company's First Interrogatories to Complainant Allen Mosbaugh, dated October 15, 1993, and Mr. Mosbaugh's Response to Respondent's First Set of Interrogatories, dated November 15, 1990, enclosed as composite Exhibit 1, at Response No. 1. Intervenor did not object to responding to the interrogatory on the basis of attorney work product privilege, an objection raised in response to other of GPC's interrogatories in the same set. Id. at Response No. 10.

to GPC's representations regarding the Plant Vogtle diesel generators. See NRC Staff Response to the Licensing Board Questions Regarding Scheduling and Discovery, dated April 13, 1993, at 4.

Intervenor represents that the Six Tapes and other relevant documentation were turned over to the House Subcommittee on Oversight and Investigations on July 29, 1992. Intervenor's May 14, 1993 filing at 2. Intervenor's filing indicates that those tape recordings were provided voluntarily, based on a request from Chairman Dingell.

On August 9, 1992, NBC News broadcast an interview of Mr. Mosbaugh.<sup>2</sup> A portion of a tape recording was aired during this NBC broadcast which must have come from the Six Tapes; both deal with Intervenor's allegation that GPC officials made willful, false statements to the NRC in an April 19, 1990 Licensee Event Report ("LER 1-90-06"). Intervenor has not explained how he provided the Six Tapes to both Congress and NBC in the same time frame.

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<sup>2</sup> See Transcript of NBC News "Focus" report, enclosed as Exhibit 2. The text of the report, which was not provided to GPC for review in advance of the broadcast, includes statements attributed to GPC officials which GPC contends are inaccurate.

### III. ARGUMENT

#### A. The Six Tapes Are Not Privileged Attorney-Client Communications And Cannot Be Protected From Disclosure Under The Attorney Work Product Doctrine.

Counsel for Intervenor cannot seriously contend that the Six Tapes are protected from disclosure because they constitute attorney-client communications. For such privilege to attach, the tapes would have to contain conversations between Mr. Mosbaugh and his attorney, made for the purpose of obtaining legal advice. See generally, Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1157-59 (1982). GPC understands the tapes are simply tape recordings made by Mr. Mosbaugh of statements made by GPC and Southern Nuclear employees, and possibly others, in the normal course of business at Plant Vogtle. For example, the tape segment played during the NBC broadcast on August 9, 1992 is attributed to a conversation among a number of GPC personnel concerning the Plant Vogtle diesel generators. Intervenor cannot protect such conversations, which also constitute statements of a party to this proceeding, from disclosure to GPC on the basis of the attorney-client communications privilege.<sup>3</sup>

Intervenor's position that the Six Tapes are protected from disclosure by the attorney work product doctrine is also

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<sup>3</sup>Intervenor bears the burden of establishing that such communications are entitled to the protection of the privilege. See Long Island Lighting Company, supra, 16 NRC at 1153, citing, In re Fischel, 557 F.2d 209 (9th Cir. 1977).

untenable for three reasons, as follows. The conversations on the Six Tapes contain statements which, according to Intervenor, directly go to the merits of his contention, i.e., statements made by GPC in LER 1-90-06. These underlying facts, which include statements of a party or parties to this proceeding, will likely be admitted as evidence at the hearing. The Licensing Board noted in its April 21, 1993 Order, at 13, that such tapes appear to be essential evidence. GPC has an absolute right to such prior statements. Federal Rule 26(b)(3) provides that "[a] party may obtain without the required showing [of substantial need] a statement concerning the action or its subject matter previously made by that party."<sup>4</sup> That right has been explained in the Advisory Committee Note to the Federal Rules of Civil Procedure, Rule 26(b)(3), which states, in part, that:

the [prior] statement is given at a time when he functions at a disadvantage [because he has no lawyer and does not understand the statement's legal consequence]. Discrepancies between his trial testimony and earlier statement may result from lapse of memory or ordinary inaccuracy; a written statement produced for the first time at trial may give such discrepancies a prominence which they do not deserve . . . .

If, as we believe, the Six Tapes were prepared by Mr. Mosbaugh, GPC submits that such tapes reflect only Mr. Mosbaugh's view of what was important to his allegation in June, 1990 and they do not reflect any analyses, opinions, mental impressions,

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<sup>4</sup> The privileges referenced in Federal Rule 26(b), as recognized by the Federal Courts, have been implicitly incorporated into 10 C.F.R. § 2.740(b). Long Island Lighting Company, supra, 16 NRC at 1157.



or legal theories of his counsel. Indeed, Intervenor's counsel has previously indicated that these Six Tapes were not work product prepared in anticipation of litigation in Mr. Mosbaugh's first DOL case. On September 11, 1990, during a deposition of Mr. Mosbaugh, Intervenor's counsel stated that most of the Six Tapes "have been provided in relation to my representation of Mr. Mosbaugh for the NRC [with respect to the 2.206 petition filed by Messrs. Hobby and Mosbaugh on September 11, 1990], and not in this [DOL] proceeding."<sup>5</sup> Such statement directly conflicts with Paragraph 1 of Intervenor's May 14, 1993 filing, quoted in Section II, supra.

Not only has Intervenor failed to establish that the Six Tapes are entitled to be protected from disclosure under the attorney work product doctrine, but he also seeks to withhold the essence of his factual basis from this proceeding.

There is a further reason why Intervenor cannot prevent disclosure of the Six Tapes to GPC under the attorney work product doctrine or the attorney-client communication privilege. Intervenor has disclosed the contents of such tapes to third parties in a manner which has destroyed any protection Intervenor may have had from such doctrine or privilege.

Intervenor provided the original tape recordings, from which the Six Tapes were copied, to the NRC and thereby succeeded in

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<sup>5</sup> See Deposition of Allen L. Mosbaugh in Mosbaugh v. GPC, DOL Case No. 90-ERA-58, at pp. 22-24, attached hereto as Exhibit No. 3.

avoiding compliance with a DOL order to disclose such tapes to GPC.<sup>6</sup> Intervenor also delivered the Six Tapes voluntarily to the Subcommittee on Oversight and Investigations on July 29, 1992. Additionally, on information and belief, Intervenor provided at least a portion of such tapes to NBC Nightly News which broadcast such portion on national television on August 9, 1992. These disclosures have destroyed any protection which Intervenor may have had as a result of the attorney-client communication privilege. Moreover, because such disclosures were made without any assurance of confidentiality, Intervenor has waived any protection he may have had under the attorney work product doctrine.

**B. Intervenor's Request For Reconsideration Of The Board's April 21, 1993 Order Is Untimely And Should Be Denied.**

On April 15, 1993, the Licensing Board held a telephonic scheduling conference during which each party to this proceeding argued its case concerning the schedule for discovery. Tr. 117-151. The Board's April 21, 1993 Scheduling Order ruled on the discovery schedule, holding, *in* *ex* *alio*, that "fairness and efficiency both dictate that depositions not be conducted until after the tapes [made by Intervenor] become available" and GPC officials "have access to the tapes and transcripts of their prior conversations." Order at 13-14.

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<sup>6</sup> See the February 19, 1991 Order of Administrative Law Judge Bernard J. Gilday, Jr. in Mosbaugh v. GPC, DOL Case No. 90-ERA-58, enclosed as Exhibit 4.



Intervenor's May 14, 1993 filing, at 3, includes a "request for a protective order" which states that GPC should not be granted access to any tape recordings relevant to this case until Intervenor and the NRC Staff have an opportunity to depose relevant GPC employees and managers. This, in effect, is a request for reconsideration of the Board's April 21, 1993 Scheduling Order. Such a request is untimely under the NRC's rules applicable to petitions for reconsideration. "A petition for reconsideration of a final decision may be filed by a party within ten (10) days of the date of the decision." 10 C.F.R. § 2.771(a). Intervenor failed to comply with the ten-day time limit for filing such a petition. Therefore, his "request for a protective order" should be denied.

Notwithstanding the untimeliness of Intervenor's request for a protective order, GPC observes that Intervenor's legal argument is flawed. Intervenor's counsel represents that "it is well settled, as a matter of law" that depositions of witnesses should go forward prior to giving the deponent access to prior statements. In support of this assertion, counsel cites three cases, including an Advisory Committee Note to the Federal Rules of Civil Procedure, Rule 26(b)(3). A review of these authorities demonstrates that, notwithstanding protection generally provided attorney work product material under Rule 26(b)(3), a party has an absolute right to his or her own statement. See quotation of the Note in Section III.A, supra.

The Board's April 21, 1993 Scheduling Order, in scheduling depositions after production of tape recordings, was consistent with NRC practice and established precedent. First, absent a Licensing Board's directions to the contrary, the sequence of discovery methods is unrestricted. 10 CFR 2.740(d). This NRC regulation is patterned after Federal Rule of Civil Procedure 26(d), which was adopted in 1970. As observed in Advisory Committee Notes for Rule 26(d):

The principal effects of the new provision [Rule 26(d)] are first, to eliminate any fixed priority in the sequence of discovery, and second, to make clear and explicit the court's power to establish priority by an order issued in a particular case.

Thus, 10 CFR 2.740(d) grants the Board considerable discretion to fashion discovery schedules in individual cases in the interests of fairness and justice, as it did in this proceeding.

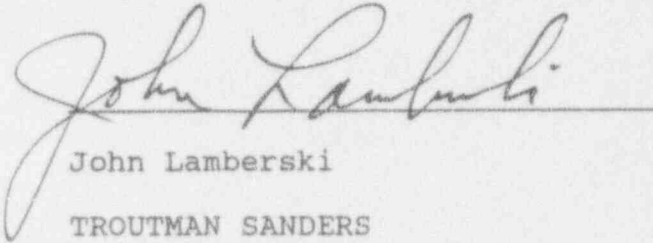
Second, the Board's reasoning for ordering disclosure of the prior statements of GPC's witnesses is consistent with the balancing of interests of the parties which has been applied by judicial tribunals applying Rule 26(d). See United States v. Bartsch, 110 FRD 128, 130 (N.D. Ill., 1986) (extensive passage of time, alone, increases the appropriateness of disclosure prior to deposition). Implicit in the Board's determination is that the Intervenor's interest in determining the extent of the present unrefreshed recollection of GPC witnesses is outweighed by the interest of such witnesses in examining their previously recorded statements so that they may honestly address the subject matter and explain any inaccuracies or errors between their prior

statements and present positions. Many of these recordings are over three years old and, as the Board has correctly observed, discrepancies between real-time tape recordings and subsequent depositions undoubtedly will occur. Tr. 132. In consideration of the passage of time and the fact that Mr. Mosbaugh, in essence, engaged in informal discovery by deposition in making the tape recordings, the Board's April 21st Order was grounded in an appropriate balancing of fairness considerations.

#### IV. CONCLUSION

The Licensing Board should deny Intervenor's May 14, 1993 filing, including its request for a protective order, and should order Intervenor to produce the tape recordings in its possession or control in accordance with GPC's First Request for Production of Documents, dated April 30, 1993.

Respectfully submitted,

A handwritten signature in cursive script, reading "John Lamberski", written over a horizontal line.

John Lamberski

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Counsel for Georgia Power  
Company

DATED: May 27, 1993

DOCKETED  
5/27/93

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

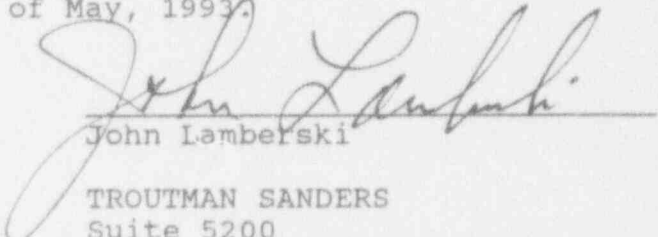
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	*	
	*	
GEORGIA POWER COMPANY,	*	Docket Nos. 50-424-OLA-3
<u>et al.</u>	*	50-425-OLA-3
	*	
(Vogtle Electric	*	Re: License Amendment
Generating Plant,	*	(Transfer to Southern
Units 1 and 2)	*	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 Response to Intervenor's Request for a Protective Order" were served on all those listed on the attached service list by depositing same with an overnight express mail delivery service.

This is the 27th day of May, 1993.

  
John Lamberski

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(404) 885-3360

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

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

SERVICE LIST

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Suite 1252  
Atlanta, Georgia 30334



UNITED STATES DEPARTMENT OF LABOR  
BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

ALLEN MOSBAUGH,	)	
	)	
Complainant,	)	
	)	90-ERA-58
v.	)	
	)	
GEORGIA POWER COMPANY,	)	
	)	
Respondent.	)	

RESPONDENT GEORGIA POWER COMPANY'S FIRST  
INTERROGATORIES TO COMPLAINANT ALLEN MOSBAUGH

Respondent Georgia Power Company ("GPC") by and through its undersigned counsel and pursuant to Fed. R. Civ. P. 26 and 33 and the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges ("Rules of Practice"), 29 C.F.R. §§ 18.14 and 18.18 (1989), hereby requests Complainant Allen Mosbaugh to respond to these interrogatories.

INSTRUCTIONS

Each interrogatory shall be responded to separately and fully in writing, shall be verified under oath, and shall be served on GPC's undersigned counsel at the address listed below within thirty (30) days of service. Responses shall contain all information known to Complainant, his employees, investigators, representatives, agents, or attorneys, or ascertainable by them by reasonable inquiry.

These interrogatories are deemed continuing, and the responses to them shall be supplemented or amended if any new, different, or any additional information is acquired by

Complainant or his attorneys or agents between the time responses have been served and the time of trial.

If the answer to the whole of an interrogatory is not known or if part of an interrogatory is objected to, so state and answer the part known or the part not subject to the objection.

If any interrogatory is objected to in whole or in part, please state the legal basis for the objection, why that doctrine is applicable, and describe the reason for the objection with sufficient particularity to allow the Court to determine the merits of that objection.

#### DEFINITIONS

The following definitions apply to this entire request, including the Instructions and Definitions:

1.

The terms "Georgia Power Company," "GPC," or "Respondent" mean Respondent Georgia Power Company and any of its officers, employees, agents, representatives, attorneys, or any person acting on GPC's behalf.

2.

The terms "Complainant," "Mosbaugh," "you," or "your" shall refer to Complainant Allen Mosbaugh and any and all of his agents, servants, representatives, employees, assignees, successors-in-interest, investigators retained by him, or any other person acting on his behalf or obtaining information for him, including his attorneys.

3.

The terms "document" or "documents" mean all items and tangible things within the scope of Fed. R. Civ. P. 34(a) and Rules of Practice, 29 C.F.R. § 18.19(a)(1) (1989), including all written, printed, or typed material, or drawings, graphs, charts, ledgers, or any other sort of graphic matter however produced or reproduced; films, microfilms, photographs, videotapes, audio tapes, or recordings of any sort; disks, computer tapes, print-outs, or any other type or manner of data compilation whether stored electronically or by any other means; ALL DRAFTS, NOTES, OR PREPARATORY MATERIALS RELATED TO ANY OF THESE DOCUMENTS; any copies of documents which contain commentaries, notations, marks, or changes of any sort which do not appear on the original of the document; and any summaries of these documents. These terms should be construed to mean FULL AND COMPLETE originals, or if originals are not available, true copies of the originals.

4.

The terms "person" and "persons" shall include all natural persons, corporations, sole proprietorships, unincorporated businesses, professional corporations, partnerships, associations, governmental agencies, and all other organizations or entities.

5.

The terms "identity," "identification," or "identify" mean a person's full legal name and current whereabouts; their address

and telephone number; and in the case of a natural person, his or her business address, business telephone number, and job title as well as his or her residence address and phone number. When used in conjunction with documents, these terms mean a general description of the form of the document, the identity of its author or maker, a general description of its subject matter, the identity of the custodian of the original document, its date, its present location, and the identity of each person receiving the document or possessing a copy of it.

6.

The terms "protected activity" or "whistleblower activity" mean any incident, document, or any other thing or event which Complainant or anyone else alleges constitutes a safety concern, a regulatory concern, or a possible infraction of any state or federal statute or regulation; anything constituting "protected activity" under any federal statute or regulation, including but not limited to the Energy Reorganization Act, 42 U.S.C. § 5851(a); and any other thing or event allegedly not comporting with Nuclear Regulatory Commission (NRC) regulations which Complainant or anyone else claims to have engaged in, identified, or described and for which Complainant or anyone else claims to have been subjected to discrimination, retaliation, or any other adverse action.

7.

The terms "tape" or "tapes" mean any and all cassettes, audio tapes, or other tape recordings made by Complainant of conversations or communications with or by himself or someone else; including, but limited to, employees, officers, and agents of GPC, the NRC, the Department of Labor (DOL), and his attorneys. This definition includes, but is not limited to, all tapes discussed during Complainant's deposition on September 11, 1989; which tapes are also the subject of several motions and orders in this matter.

#### INTERROGATORIES

1.

Identify, by tape and by each conversation on each tape, each and every person whose voice appears on the tapes, in order of appearance.

2.

Identify the location where each conversation appearing on the tapes took place; also identify each and every person in the room at the time such conversations took place, or within hearing distance of such conversations if such conversations did not occur in a room.

3.

For each conversation on the tapes, identify the type of activity recorded (i.e. telephone conversation, meeting, person-to-person conversation, multiple-person conversation, etc.).

4.

Identify each and every person who has given you a statement, whether written, recorded, or oral, regarding your allegations in this matter; identify who has custody of any written or recorded statements.

5.

Identify each and every person you have interviewed in relation to your allegations in this matter.

6.

Identify each and every person whose name you have supplied to the Department of Labor as an individual who might support or confirm your claims.

7.

Identify each and every person whose name you have supplied to the Nuclear Regulatory Commission as an individual who might support or confirm your claims.

8.

Identify each and every attorney you have contacted regarding any potential employment-related and "whistleblower" claims or allegations concerning GPC which you have considered, or regarding any potential representation of you for any employment-related and "whistleblower" claims or allegations concerning GPC which you have considered. Describe when and how such contact with each such attorney was initiated.



9.

Identify each and every attorney you have contacted regarding any allegations you have made or have considered making to the NRC; or regarding any advice or potential representation of you before or in any way concerning the NRC.

10.

Identify and describe each and every conversation you have had with Marvin B. Hobby since December 31, 1989. For each such conversation, describe:

- (a) The date and time of each conversation;
- (b) The place of each conversation;
- (c) The length of each conversation;
- (d) The substance of each conversation; and
- (e) Identify any other participants in each conversation.

11.

Identify each and every person or entity to whom have you provided information that supports claims you have made before the DOL or the NRC. Please exclude from your answer Franklin Pierce, your attorneys, and your immediate family members. For each such person or entity, please state the following:

- (a) The date and time of each conversation;
- (b) The place of each conversation;
- (c) The length of each conversation;
- (d) The substance of each conversation; and
- (e) Identify any other participants in each conversation.

12.

Name all areas of activity or inquiries at GPC from which you allege you were excluded because of your participation in alleged protected activity.

13.

Identify each and every other employer you have had who has employed you in any occupation related to the nuclear field; and for each such employer describe:

- (a) The dates of your employment;
- (b) Each position or job you held with each employer;
- (c) The tasks you performed in each position or job;
- (d) Your immediate supervisor in each position or job;
- (e) Your salary in each position or job;
- (f) The number of persons reporting to you in each position or job; and
- (g) The reasons for leaving each position or job.

14.

Identify and describe each and every parcel of real property you own or in which you have an interest. Identify all co-owners or all other persons having an interest.

15.

Identify and describe all stocks, bonds, or other financial instruments you have owned in the past 5 years. Identify the value of each, the number of shares owned, the dates purchased and sold, and the price of each purchase and sale.

16.

Describe any and all assets held or owned by you or in which you have claimed an interest at any time in the past 5 years.

17.

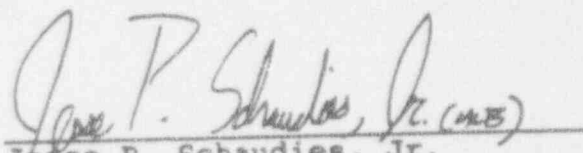
Identify all accountants, stockbrokers, realtors, and financial consultants of any sort who you have retained, utilized, or with whom you have consulted in the past 5 years.

18.

Identify and describe each and every bank account you have had in the past 5 years; describe the type of account, identify the bank, and give the account number and the account's current balance, including any transactions occurring within 45 days preceding the date of your response.

This 15<sup>th</sup> day of October, 1990.

TROUTMAN, SANDERS, LOCKERMAN  
& ASHMORE

  
Jesse P. Schaudies, Jr.

Attorneys for Respondent  
Georgia Power Company

1400 Candler Building  
127 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1810  
(404) 658-8054

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing RESPONDENT GEORGIA POWER COMPANY'S FIRST INTERROGATORIES TO COMPLAINANT ALLEN MOSBAUGH upon opposing counsel by causing a true copy of the same to be deposited with an overnight courier, addressed as follows:

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

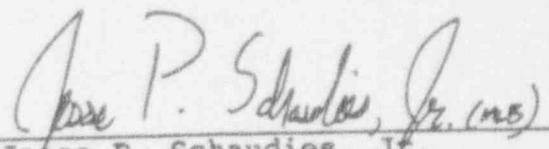
And by causing a true copy of the same to be deposited in the United States mail with adequate first-class postage affixed thereto, addressed as follows:

Sandra Michaels, Esq.  
1720 First Federal Building  
40 Marietta Street  
Atlanta, Georgia 30303

And upon the Office of Administrative Law Judges by depositing a true copy of the same in the United States mail with adequate first-class postage affixed thereto, and addressed to:

Office of Administrative Law Judges  
525 Vine Street, Suite 900  
Cincinnati, Ohio 45202

This 15<sup>th</sup> day of October, 1990.

  
Jesse P. Schaudies, Jr.

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

EXHIBIT 1B

ALLEN MOSBAUGH

Complainant,

V.

GEORGIA POWER COMPANY

Defendant.

90-ERA-58

RESPONSE TO RESPONDENT'S FIRST SET OF INTERROGATORIES

OBJECTION TO INSTRUCTIONS:

Complainant objects to the continuing nature of the request, complainant is under no legal obligation to supplement or amend these answers.

Response No. 1

Complainant is no longer in possession of the tapes and is therefore unable to respond to this request.

Request No. 2

See the response to No. 1 above.

Request No. 3

See the response to No. 1 above.

Request No. 4

Complainant is not in possession of any statements concerning this matter. Complainant is unsure who may have provided any statements to government agencies or whether these statements concern Mr. Mosbaugh's allegations of discrimination.

Response No. 5

Complainant has not interviewed anyone in relation to his allegations in this matter.

Request No. 6

Other than the individuals identified in the statement complainant provided to the Department of Labor, no other individuals were identified.

Request No. 7

Complainant objects to this request on the grounds that information provided to the NRC is limited to Mr. Mosbaugh's safety allegations and is therefore beyond the scope of this proceeding.

Request No. 8

Complainant objects on the grounds that this information is irrelevant and infringes on his attorney-client relationship.

Request No. 9

Complainant objects on the grounds that the information sought is completely irrelevant to the instant case.

Request No. 10

Complainant objects on the grounds of relevance and on the grounds that these conversations are covered under the attorney-client and work product privilege. As respondent is more than aware, Mr. Mosbaugh and Mr. hobby are joint petitioners before the U.S. Regulatory Commission. All conversations are limited to discussions related to these



filing before the NRC. Most of these conversations were participated in by counsel.

Response No. 11

Other than individuals employed by the DOL and NRC, complainant has not contacted any other entities concerning his discrimination claim in this matter. Complainant objects to providing information concerning who he contacted at the NRC for the reasons set forth in Response No. 7 above.

Response No. 12

All relevant information concerning prior employees is contained in Mr. Mosbaugh's application for employment contained in files maintained by respondent.

Response No. 13

The information requested is irrelevant to this proceedings and is already in the hands of respondent via Mr. Mosbaugh's application for employment.

Response No. 14

See the response provided to Request No. 6 of Complainant's Responses to Respondent's First Request for Documents.

Response No. 15

See the response to No. 14 above.

Response No. 16

See the response to No. 14 above.

Response No. 17

See the response to No. 14 above.

Response No. 18

See the response to No. 14 above.

Respectfully submitted,



---

Michael D. Kohn

KOHN, KOHN & COLAPINTO, P.C.  
517 Florida Avenue, N.W.  
Washington, D.C. 20001  
(202) 234-4663

November 15, 1990

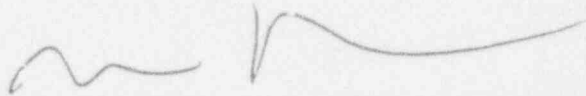
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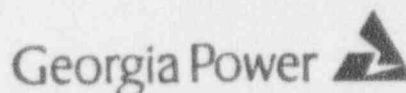
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Respondent's First Request for Documents and First Set of Interrogatories were served by first class mail, postage prepaid, this 15th day of November, 1990, upon:

Jesse P. Shaudies, Jr.  
Troutman, Sanders, Lockerman  
& Ashmore  
Suite 1400 Chandler Building  
127 Peachtree Street, N.E.  
Atlanta, GA 30043-7101

By:

  
\_\_\_\_\_  
Michael D. Kohn



NBC Nightly News  
SUNDAY FOCUS  
(WXIA-TV, Channel 11)  
August 9, 1992  
6:45 p.m.

GARRICK UTLEY: And on Focus this evening, the story of a whistle blower and a nuclear plant where he used to work.

(Later same  
broadcast)

On Focus this evening, we look at a special kind of person in our society -- the whistle blower. Someone who sees something wrong being done and speaks up. When it happens in government or in business, it can bring risks and retribution. And we have now the story of one man who lost his job when he blew the whistle. Here's Linda Vester.

ALLEN  
MOSBAUGH:  
Former Support  
Manager (GPC)

Let's start with the twentieth. This is the first one.

LINDA VESTER:

Allen Mosbaugh is a former manager at the Vogtle nuclear plant in Waynesboro, Georgia. He says he has proof certain officials from Vogtle and its parent company, Georgia Power, lied to the Nuclear Regulatory Commission. His story involves an accident at the plant on March 20, 1990.

And what happened here?

TAL WRIGHT:  
GPC Spokesperson      A truck backed into a pole and shut off  
off-site power to Unit 1.

LINDA VESTER:      That caused a blackout. Engineers tried to  
restore power through two back-up diesel  
generators. But...

TAL WRIGHT:      One of them was off line for maintenance.  
The second one started -- but then tripped.

LINDA VESTER:      It took thirty-six minutes to restore power.  
There was no immediate danger, but the  
incident focused attention on a different  
problem -- the diesel generator. Why didn't  
it start or stay on? The next day, engineers  
began testing both generators.

ALLEN  
MOSBAUGH:      In the course of starting them after the Site  
Area Emergency, failures continued to occur.

LINDA VESTER:      Mosbaugh says there are control logs that  
document the failures. For example, on  
March twenty-second -- the logs say one  
generator tripped, shut down, the next day it  
tripped again. Yet, Georgia Power in an  
April ninth letter asking the NRC for  
[excerpt from letter] permission to return the plant to full power  
claimed, '*No problems have occurred during any  
of these starts of the diesel generators.*'  
Mosbaugh's reactions.

ALLEN  
MOSBAUGH:      Yes, I believe plant management knew there  
had been both problems and failures.

LINDA VESTER:

[excerpt from letter]

Georgia Power refused our request for an on-camera interview on all of this. But in a written statement, the company said it *'never attempted to mislead the NRC with regards to any aspect of the incident.'* Allen Mosbaugh says he can prove that Georgia Power did intend to mislead. The evidence? The secretly recorded tape of a telephone conference call involving senior management of the plant and of Georgia Power. Mosbaugh says he was on the call from an office at the plant.

TAPE RECORDED  
CONFERENCE  
CALL:

"Let's see what other questions have we got. We got the start thing straightened out?"

[wording on video;  
(portions of audio  
unintelligible)]

"The other question we had Bill, was the..."

"We got the starts...so we didn't have, didn't have no trips?"

"No, not, not..."

"I'll testify to that." "Just disavow." "What else did we have?"

LINDA VESTER:

[excerpt from letter]

Mosbaugh claims his recording was made on April nineteenth. That is the day Georgia Power was drafting another letter to the NRC repeating its claim that, *'No failures or problems have occurred during any of these starts of the diesel generators.'* When the April nineteenth letter went out to the NRC, did plant management know about the problems with the diesel generators?

ALLEN  
MOSBAUGH:

Absolutely.



LINDA VESTER: How do you know?

ALLEN  
MOSBAUGH: I told them.

LINDA VESTER: Five months after the original incident, Georgia Power wrote the NRC to admit a mistake -- to say that the information on the diesel generators it had sent before was in error. But by then, Mosbaugh had blown the whistle. He'd contacted the NRC. The whole affair is now the subject of a federal grand jury investigation. And Congress is interested as well.

REP. JOHN  
DINGELL: The matter does not appear to have been  
House Comm. handled well -- either by the company or by  
Energy & Commerce the NRC -- in the time since the event  
occurred.

LINDA VESTER: And how do things stand now? The Vogtle plant is operating at full power. The diesel generators, reportedly, have been repaired. Allen Mosbaugh was fired for making secret recordings. He's gone to court to get his job back and is suing for damages. Linda Vester, NBC News, Washington.

EXHIBIT 3

1

IN THE UNITED STATES OF AMERICA  
BEFORE THE UNITED STATES DEPARTMENT OF LABOR

ALLEN MOSBAUGH,

Complainant,

vs.

GEORGIA POWER COMPANY,

Respondent.

CIVIL ACTION

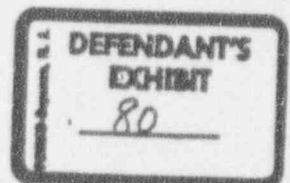
FILE NO. 90-ERA-58

- - -

Excerpt of the deposition of ALLEN L.  
MOSBAUGH, taken on behalf of the Respondent,  
pursuant to Notice, before Frances Buono, Certified  
Court Reporter, at the First Union Bank Building,  
Augusta, Georgia, on the 11th day of September,  
1990, commencing at the hour of 10:30 a.m.

- - -

BROWN REPORTING, INC.  
1100 SPRING STREET, SUITE 750  
ATLANTA, GEORGIA 30309  
(404) 876-8979



1 Q. The tape, the one tape that you have  
2 provided me, you have told me is a copy of the  
3 original that is in your possession, right?

4 A. That's correct.

5 Q. And, this tape has been partially  
6 played. Is this selected from -- the tape is kind  
7 of halfway wound rather than rewound one way or the  
8 other. Is there one conversation that has been  
9 called from a longer tape? How did it get to be the  
10 way it is, physically? What did you to? What did  
11 you put on there and how did you manage to do it and  
12 who did it?

13 A. The conversation that is on that tape is  
14 a conversation that is recorded off of a  
15 microcassette onto that tape. And, what is on that  
16 tape is just the conversation that is indicated on  
17 the label.

18 Q. And, who made the rerecording?

19 A. Myself.

20 Q. With anyone else's assistance?

21 A. No.

22 Q. When?

23 A. Yesterday.

24 Q. That is the first I have -- the first  
25 time you made the rerecording?

1 A. Yes.

2 Q. Have you rerecorded any of the other  
3 tapes?

4 A. I have rerecorded some segments and  
5 provided them to my attorney.

6 MR. KOHN: For the record, those tapes,  
7 most of them have been provided in relation to my  
8 representation of Mr. Mosbaugh for the NRC, and not  
9 in this proceeding.

10 Q. What tapes have you provided to your  
11 attorney?

12 MR. KOHN: We will object under  
13 attorney/client privilege and work product.

14 MR. SCHAUDIES: Are you going to instruct  
15 the witness not to answer?

16 MR. KOHN: That question, yes.

17 MR. SCHAUDIES: Please certify the  
18 question.

19 Q. Can you tell me the category of tapes you  
20 have provided to your attorney? Can you describe  
21 it?

22 MR. KOHN: Let me object to the form of  
23 the question, are they tapes provided in relation to  
24 this proceeding or to the -- or to his proceeding  
25 before the NRC?



For a second time, when confronted with an Order To Produce and his back literally against the wall, Complainant has trotted to the Nuclear Regulatory Commission for comfort, relief and solace. On September 12, 1990, two hundred seventy-seven tape recordings, the existence of which was hidden until he was deposed by Respondent, were delivered to the Nuclear Regulatory Commission. To protect an on-going investigation, the Commission had no choice but to intervene, seek and obtain, on September 13, 1990, a stay of execution of an Order Compelling Production. On January 29, 1991, the date when Complainant faced compliance with another Order to Produce, he delivered approximately twenty boxes of documents, which were subject to this Order, to Region II OI Headquarters. It appears that some of the delivered documents had not even been disclosed to the Nuclear Regulatory Commission, though Complainant well knew of and had contributed to the Commission's investigation. Complainant's actions raise serious questions, not only about his true motives and goals, but also about the quality of the techniques which have been employed. If early on had any semblance of openness and fair play been exhibited, substantial effort, expense and time, on the part of many, would have been saved. As Respondent appears to suggest, Complainant has affixed to his case a brand he personally

designed. Be that as it may, the merits of the Commission's motion must be addressed.

Movant maintains that release of seventeen documents delivered by Complainant to NRC Investigator Robinson could seriously compromise the investigation of alleged violations of NRC regulations, some of which could or may be criminal in nature. It is also appropriately noted that a Memorandum of Understanding between the Nuclear Regulatory Commission and the Department of Labor provides for cooperation so that administrative efficiency and sound enforcement policies will be maximized. Respondent's absence of privilege argument, thusly, is non-persuasive. Additionally, delay in providing discovery to Respondent is not tantamount to withholding discovery. However, Respondent's right, hereafter, to claim and establish prejudice because of Complainant's actions is fully reserved. I find, therefore, that the Motion For Partial Stay Of Execution of the January 22, 1991 Order Compelling Production is well taken and must be granted.

WHEREFORE, IT IS ORDERED that each and all of the documents numbered 1 through 17 and described in Exhibit 1 which is attached hereto, made a part hereof and incorporated herein as fully and completely as if rewritten, be and they are hereby exempt from the January 22, 1991 Order Compelling Production until the Nuclear Regulatory Commission notifies the Parties and this Tribunal that release of said documents would not compromise the Nuclear Regulatory Commission investigation and/or possible referral to the Department of Justice. Upon release of any or all of said documents to Complainant, an exact copy of every document returned to Complainant shall, forthwith, be delivered by Complainant to Respondent.

  
BERNARD J. GILDAY, JR.  
ADMINISTRATIVE LAW JUDGE



EXHIBIT 1

1. Copies of Transcript of Interview of Allen Mosbaugh by the United States Nuclear Regulatory Commission, at Augusta, Georgia, on July 18, 1990 (pages 1-97), and July 19, 1990 (pages 98-255).
2. One-page handwritten note, headed "PRB- + Cliff & Ramsey 2-7-90"
3. One-page handwritten note, dated 8-14-90, headed "9:30 Parton"
4. Copy of one-page SPC Interoffice Correspondence, dated August 29, 1990, Re: Classification of Safeguard Documents
5. One-page document titled, "Alternate Radwaste Building Liquid Radwaste System Failure Offsite Dose Analysis"
6. Six-page document, untitled, first line reads, "The Georgia Power Company has made two material false...."
7. Three-page document titled, "Operation outside the Design Basis Fire plus LOBP Defeats Safe Shutdown Design Capability"
8. Two-page document, addressed: To: Larry Robinson, NRC DI. The first sentence begins, "During my interview with you on 2-8-90, you had asked....."
9. Five-page document entitled, "Uncontrolled Safeguards Documents in SONDPCO....."
10. Two-page document entitled, "Failure to Perform Adequate Shutdown Margin Calculations....."
11. Two-page document entitled, "Sequencer out of service places Plant in TS 3.0.3 Action Statement"
12. Three-page document addressed to the Nuclear Regulatory Commission. The first line reads, "On 10-13-88 at approximately 10:30 and again at 1240 CST....."
13. One-page document addressed to the Nuclear Regulatory Commission. The first line reads, "On 2-26-90 around 10:00 the NRC's resident inspector at....."
14. One-page document, untitled. First line reads, "Suddenly it has become a popular argument at plant....."
15. Three-page document, untitled. First line reads, "On the evening of 2-28-90 Operations personnel at Plant....."
16. Six-page document, untitled. First line reads, "Georgia Po has made an additional material false....."
17. One-page document entitled, "Vogtle Procurement Policy Apply 10 CFR Part 21 requirements....."



SERVICE SHEET

A copy of the foregoing document was served on the following parties:

Allen Mosbaugh  
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Grovetown, GA 30813

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Employment Standards Administration  
Wage and Hour Division  
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Room 668  
Atlanta, GA 30367

A. William Dahlberg,  
President & CEO  
Georgia Power Company  
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Nuclear Regulatory Commission  
Office of Enforcement  
Washington, D.C. 20555

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Deputy Administrator/ESA  
Wage and Hour Division, USDOL  
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Director, Enforcement & Investigation Coordination Staff  
US NRC, Region II  
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101 Marietta Street, N.W.  
Atlanta, GA 30323

Honorable John Vittone  
Office of Administrative Law Judges  
Suite 700  
1111 20th Street, N.W.  
Washington, DC 20036