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

'94 AUG -1 P3:25

July 28, 1994

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

In the Matter of,

GEORGIA POWER COMPANY, et al.,

(Vogtle Electric Generating  
Plant, Units 1 and 2)

Docket Nos. 50-424-OLA-3

50-425-OLA-3

Re: License Amendment  
(Transfer to Southern Nuclear)  
ASLBP No. 93-671-01-OLA-3

INTERVENOR'S RESPONSE TO GEORGIA POWER COMPANY'S  
OBJECTIONS TO INTERVENOR'S JULY 7, 1994 DISCOVERY  
REQUESTS AND MOTION FOR A PROTECTIVE ORDER AND  
INTERVENOR'S CROSS MOTION TO COMPEL RESPONSES TO DISCOVERY

Intervenor Allen L. Mosbaugh, through counsel, hereby responds to licensee Georgia Power Company's ("GPC") July 18, 1994 objections to intervenor's July 7, 1994 discovery requests and motion for a protective order. Intervenor also cross moves for an order compelling licensee GPC to answer intervenor's July 7, 1994 discovery requests.

At issue is whether the licensee GPC must submit substantive responses to Intervenor's Third Request for Admissions to Georgia Power Company (July 7, 1994) (hereinafter, "Third Request for Admissions") and Intervenor's Fifth Request for Interrogatories and Document Request to Georgia Power Company (July 7, 1994) (hereinafter, "Fifth Request for Interrogatories").

Intervenor's Third Request for Admissions requested licensee to admit or deny to the accuracy of the 22 transcripts of tape recordings that were prepared by the NRC Office of Investigations

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Moreover, the fact that intervenor is already in possession of the 22 OI transcripts and the 148 tape recordings is not sufficient grounds to grant a blanket protective order that discovery be denied. See, 4A Moore's Federal Practice at para. 36.04[6]. In Al-Jundi the defendants moved for a protective order regarding requests for admission about the sworn testimony of the decedent that was already in the plaintiffs' possession. The court denied the defendants' motion and held that the plaintiff's possession of the information was irrelevant to the propriety of the request to admit since the purpose of the requests for admissions was to narrow the issues for trial.

It is not unduly burdensome for licensee to answer the Third Request for Admissions and the Fifth Request for Interrogatories. Accordingly, licensee's objections should be overruled and the motion for protective order should be denied.

**B. Intervenor's Requests Are Not Overbroad and Are Not Irrelevant.**

Licensee's objections 2 through 4 assert that the requests are overbroad, irrelevant and seek information outside the scope of these proceedings. Nothing could be further from the truth.

In this case the licensee denies intervenor's allegations that the licensee intended to deceive or mislead the NRC with material false statements. The licensee vehemently denies that its officials, most of whom were tape recorded by intervenor, engaged in any willful misconduct of any sort.

At the same time, the licensee attempts to improperly narrow the scope of discovery concerning intervenor's tape recorded

evidence to simply those statements made by licensee officials about the diesel generators. However, intervenor's tapes contain information about a number of issues that have a direct bearing on the licensee's alleged material false statements as well as the license transfer and control issues. In order for a tape recording to be relevant the intervenor need not demonstrate that the words "diesel generator" were uttered by someone. Indeed, many of the intervenor's tape recordings contain facts related to the number of starts of the diesel generators as well as information related to the cause of the diesel failures. Other tape recordings contain information about the licensee's outage philosophy, something that would be relevant to the issue of material false statements since the diesel generator failures and some of the alleged falsehoods occurred during an outage, and information related to the managerial chain of command, license transfer issues and control issues.

Intervenor's discovery should not be denied in its entirety on the blanket assertion that the discovery seeks information irrelevant or outside the scope of these proceedings. See, United States v. Exxon Corp., 94 F.R.D. 250 (D.D.C. 1981) (general conclusory statements are insufficient to support a motion for protective order). If licensee believes in good faith that the discovery requests information that is irrelevant or overbroad it should make specific rather than blanket objections. However, refusal to answer any discovery because some of it may be irrelevant is not grounds for a blanket protective order.

C. The Requests Do Not Seek Privileged Information.

Whether licensee admits or denies the accuracy of tape recorded evidence is not privileged information. Moreover, intervenor's substantive questions about the contents of the tapes is not privileged information.

With respect to transcripts that have been prepared by licensee and not produced to intervenor, the licensee should be required to produce any transcripts upon which it relies to contest the accuracy of any tape recording. The licensee, which is the only party that has transcribed the most recordings, cannot assert that a tape recording is not accurate and then withhold evidence to support its position.

On the one hand the licensee argues that it would be too burdensome for it to answer questions about the accuracy of the tapes. On the other hand, the licensee asserts that it has transcribed these tape recordings but it does not have to produce its transcripts on the basis of the work product doctrine. This begs the question, if the licensee has prepared transcripts of most if not all of the tapes, how can it be burdensome for it to answer the interrogatories.

Intervenor believes that any claim of work product privilege is outweighed by the need of the parties and this tribunal to have access to prepared transcripts. Obviously the transcripts prepared by licensee do not contain privileged information -- they contain what licensee purports to be the evidence contained on the tapes.

Accordingly, if licensee has transcripts of tapes that have not been produced to the other parties the licensee should be ordered to produce such transcripts. The sharing of such transcripts might assist the parties in reaching stipulations concerning the accuracy and substance of the tape recordings.<sup>1</sup> The withheld transcripts might also assist this tribunal in understanding the contents of the tapes if a dispute arises concerning the accuracy of recordings.

Accordingly, any claims of privilege are clearly outweighed by the needs of the parties and tribunal to obtain accurate evidence in this case.

**D. The Requests Are Not Harassment Nor Are They Oppressive.**

Licensee attempts to trivialize the seriousness of intervenor's discovery requests by characterizing them as requests for "busy work" and as "harassment". Intervenor fully understands that licensee is faced with other demands during the discovery schedule. Intervenor, too, is faced with several simultaneous demands for information in discovery requested by the licensee. The fact of time constraints does not, however, equate with lack of good faith or attempts at harassment.

If the licensee needs additional time to respond to these requests then it should say so rather than alleging that its adversary is engaging in harassment. The intervenor will not

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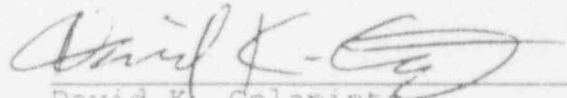
<sup>1</sup> Intervenor agrees that it would be preferable to have the parties stipulate to the accuracy of as many of the tapes as possible. If licensee were to produce transcripts of other tapes then it would only increase the likelihood of the parties reaching stipulations on these other recordings.

oppose a reasonable request for enlargement. However, the licensee's need to answer the NRC's May 9, 1994 Notice of Violation and Demands for Information do not justify a blanket protective order concerning intervenor's discovery requests.

CONCLUSION

For the foregoing reasons, Licensee's motion for protective order should be denied and Intervenor's motion to compel should be granted.

Respectfully submitted,



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July 28, 1994

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CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Response to Georgia Power Company's Objections to Intervenor's July 7, 1994 Discovery Requests and Motion for Protective Order and Intervenor's Cross-Motion to Compel has been served this 28th day of July, 1994, by first class mail upon the persons listed in the attached Service List, with the exception that it was served by facsimile as indicated by "\*\*".

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