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

OFFICE OF SECRETARY
DOCKETING & SERVICE

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

In the Matter of)	
GEORGIA POWER COMPANY)	Docket Nos. 50-424-OLA-3
<u>et al.</u> ,)	50-425-OLA-3
(Vogtle Electric Generating)	Re: License Amendment
Plant, Unit 1 and Unit 2))	(transfer to Southern Nuclear)
)	ASLBP No. 93-671-01-OLA-3

INTERVENOR'S MOTION TO COMPEL RESPONSE FROM NRC STAFF TO
INTERVENOR'S FIRST REQUEST FOR ADMISSIONS FROM THE NRC STAFF

Allen L. Mosbaugh, Intervenor in the above captioned case, pursuant to 10 C.F.R. § 2.720(h)(2)(ii), moves this Honorable Licensing Board to compel the Nuclear Regulatory Commission ("NRC") Staff to respond to Intervenor's First Request For Admissions to NRC Staff, filed on May 17, 1994.

I. ARGUMENT

The Staff responded to Intervenor's First Request for Admission to NRC Staff by objecting on the basis that answering the request would not serve the purpose of 10 C.F.R. § 2.742(a). The Staff refers to Fed.R.Civ.Pro. 36, as being comparable to this regulation. Intervenor agrees that the purposes cited by Staff, "to facilitate proof with respect to issues that cannot be eliminated from the case, and...to narrow the issues by eliminating those that can be", are the purposes underlying Rule

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36. Staff's Response at p. 2, (citing Moore's Federal Practice paragraph 30.01[5]). Intervenor contends that answering the request for admissions would accomplished exactly what the rule intends because it would narrow the issues in dispute and thereby facilitate proof with respect to the remaining issues. In providing a response to this request for admissions the Staff would be establishing that certain material facts are true and accurate and thus eliminate the need to litigate them. Keen v. Detroit Diesel Allison, 569 F.2d 547, 554 (10th Cir. 1978). Licensee has already answered a similar request for admissions. If the Staff's position in regard to the OI Investigation is that of the Vogtle Coordinating Group Analysis than it is all the more important to the parties that the Staff clarify its position by admitting to the sections which it believes are true and accurate. Additionally, by providing its rationale in denying the others sections it would clarify which issues remain in controversy.¹

The Staff also objects on the basis that its response to the request for admissions would not establish any facts relevant to the proceedings. Staff's response, p. 3. In stating this objection Staff refers to Fed.R.Evid. 401. Id. Rule 36(a) states that a party may serve upon any other party a written

¹ Intervenor understands that new and significant factual information was unearthed during the course of Intervenor's depositions of GPC and Southern Nuclear personnel. Responses to this discovery is particularly important inasmuch as NPC Staff could view this new discovery as impacting on the viability of the Coordinating Group Analysis in favor of the NRC OI report.

request for the admission...of the truth of any matters within the scope of Rule 26(b). Advisory Committee Notes. Rule 26 "encompasses any matter that bears on, or that reasonably could lead to other matters that would bear on, any issue that is or may be in the case." Golden Valley Microwave Foods v. Weaver Popcorn, 132 F.R.D. 204, 212 (N.D. Ind. 1990) (citing Oppenheimer, infra.). Relevance is not to be measured by the precise issues set out in the pleadings but by the "general relevance to the subject matter and the legal issues present in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978); See also Transcontinental Fertilizer Co. v. Samsung Co. LTD., 108 F.R.D. 650, 652 (E.D. Pa. 1985) and Marker v. Union Fidelity Life Ins. Co., 125 F.R.D. 121, 124 (M.D.N.C. 1989). The request for admission is relevant and necessary to this proceeding in that they will provide information as to the factual basis and reasoning employed to reach the conclusions set forth in the OI Report, the direct technical information related to the underlying safety issues recited in the OI Report and the viability of the position taken by the Office of Investigations which will enable Intervenor to determine the validity of the OI Report.

The Staff also argues that Intervenor, by filing this request for admissions, is attempting to get the Staff to do his work for him. On the contrary, Intervenor is merely attempting to narrow the issues to determine which issues will remain in controversy. A basic principle of the discovery rules is that a

"reasonable burden may be imposed on the parties when its discharge will facilitate preparation for trial and ease the trial process." Fed.R.Civ.P. 36, Advisory Committee Notes. The answering party must make a reasonable inquiry and "secure such knowledge and information as are readily obtainable...and state that he has taken these steps." id. The burden on NRC Staff is no different then the burden placed on every other party with who have already filed responses to admissions based on the OI and Coordinating Group Analysis reports.²

As a party to this proceeding the Staff has a responsibility to respond to discovery in good faith. The Commission in its Statement of Policy on Conduct of Licensing Proceedings states:

fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations.

Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1), LBP-88-24, 28 NRC 311, 364 (1988). While Intervenor understands that the Board cannot demand that the Staff answer this request for admissions, the Board can penalize the Staff for failure to respond in good faith. If the Staff continues to refuse to respond to this request fairness requires that the Board exclude the Coordinating Group Analysis report from the record and preclude NRC Staff from relying on said report, and should enjoin NRC Staff from contesting the findings set forth in

² Intervenor does not oppose providing NRC Staff with additional time to respond and would consent to any reasonable request for an extension.

the NRC OI report. this course of action would preserve the principle of fundamental fairness and due process of Intervenor.

IX. CONCLUSION

For the forgoing reasons Intervenor respectfully request that this Board compel NRC Staff to respond to the request for admissions or if the Staff continues to refuse to respond to bar NRC Staff from relying on the Coordinating Group Report and further enjoin NRC Staff from contesting the findings set forth in the NRC OI report.

Respectfully submitted,



Michael D. Kohn
Mary Jane Wilmoth
KOHN, KOHN AND COLAPINTO
517 Florida Avenue, N.W.
Washington, D.C. 20001-1850
(202) 234-4663

Attorneys for Intervenor

Dated: August 1, 1994

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ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Motion to Compel Response From NRC Staff to Intervenor's First Request For Admissions From the NRC Staff has been served this 1st day of August 1994, by first class mail upon the persons listed in the attached Service List, with a curtesy copy by facsimile as indicated by "**".

By:

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

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SERVICE LIST

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

Administrative Judge
James H. Carpenter
933 Green Point Drive
Oyster Point
Sunset Beach, NC 28468

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

*Charles A. Barth, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

John Lamberski, Esq.
Troutman Sanders
Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216

Ernest L. Blake, Jr.
David R. Lewis
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037

*Office of the Secretary
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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