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August 15, 1994

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

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

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

INTERVENOR'S MOTION TO COMPEL GPC TO PRODUCE BILL SHIPMAN

COMES NOW, Allen Mosbaugh, Intervenor in the above captioned matter and requests this honorable Board to compel Georgia Power Company, Licensee, to produce Mr. Bill Shipman for the completion of his deposition on or during the week of August 22, 1994. Additionally, Intervenor requests that if Mr. Shipman is never produced for the completion of his deposition that the appropriate adverse inferences be invoked against Licensee. These requests are made for the following reasons:

I. BACKGROUND

In the course of the August 12, 1994, status conference Licensee indicated that Mr. Shipman would not be available for the continuation of his deposition during the week of August 22, because he is undergoing major surgery on August 24. Intervenor's counsel, Mr. Stephen M. Kohn, Esq., asserted that this would be only time prior to Mr. Shipman's surgery that Intervenor is able to depose him because Mr. Michael D. Kohn, Esq., will be out of the country during the week of August 15.

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1994. Intervenor's counsel further asserted that there had been an understanding reached between the Board and the parties at the July 28, 1994 status conference that Intervenor would proceed with Mr. Shipman's deposition on August 5, and then reconvene it, if needed, on either August 25 or 26 when Mr. Mosbaugh would be available to assist his counsel. The Board then directed Intervenor to file this motion explaining his position as to why Mr. Shipman should be compelled to sit for a deposition on August 22.

II. ARGUMENT

Intervenor's counsel has indicated from the beginning of the deposition process that Mr. Shipman's deposition should take precedence over all other noticed depositions. Intervenor has tirelessly attempted to schedule Mr. Shipman for deposition and has faced countless roadblocks. On June 27, 1994, Intervenor noticed Mr. Shipman for deposition to take place on July 20. However, Licensee failed to inform Intervenor's counsel that Mr. Shipman was seriously ill until July 1, 1994. See Exhibit 1 (Letter dated July 1, 1994, from M. Kohn to D. Lewis regarding their in-person meeting of July 1). Upon learning of this illness Intervenor's counsel again requested to schedule Mr. Shipman to be deposed during the week of July 18.¹ Licensee's

¹ Intervenor's counsel has repeatedly asked for Licensee to provide an affidavit and/or to communicate in writing regarding Mr. Shipman's health, prognosis, or availability. Licensee has never accommodated Intervenor in this way. See Exhibit 2, *infra*, and Exhibit 3 (Letter dated July 14, 1994, from M. Kohn to J. Lamberski page 2 and FN 1).

counsel was at first unresponsive to attempts by Mr. Michael Kohn, to set a firm date for the week of July 18. Finally, on July 12, Mr. John Lamberski responded that Mr. Shipman would not be available that week because he would be in Houston on the 18th meeting with his doctors. See Exhibit 2 (Letter dated July 13, 1994, from M.Kohn to ASLB regarding Mr. Shipman's unavailability). On July 15, Mr. Lamberski also forwarded a letter to Intervenor's counsel from Mr. Shipman's personal counsel, Richard Hendrix, which states that Mr. Shipman would be unavailable because he would be meeting with his doctors on July 15 and 18. This letter also states that Mr. Shipman would be unavailable the week prior to the close of discovery, July 25 through August 1, because he was on vacation. See Exhibit 4 (Letter dated July 15, 1994, from J. Lamberski to M. Kohn, p. 2) and Exhibit 5 (Letter dated July 12, 1994 from R. Hendrix to J. Lamberski). This letter also states that Mr. Shipman would not be available until possibly the week of August 8.²

Mr. Michael Kohn was told that the first date Mr. Shipman would be available for deposition was August 5, 1994. Mr. Shipman was produced for deposition on that day for four hours during which Licensee initiated conference calls to the Board which eroded the time available. Licensee would only allow the

² The original date for the end of discovery was August 1. Therefore, Mr. Mosbaugh scheduled his family vacation to begin at this time. However, the discovery period was extended due to the fact that Licensee requested and received an extension in replying to written discovery from the Intervenor. Thus, Mr. Mosbaugh was unable to be present during the August 5 deposition to assist his counsel.

deposition to commence at 1 p.m. CST and insisted that it end by 5:30. Yet, the sign-in log demonstrated that counsel to Licensee arrived in or about 9:00 a.m. -- apparently to meet with the witness and prepare him for his deposition. Had this time been made available to Intervenor, Mr. Shipman's deposition could have been completed however it was not. Several areas of inquiry on significant issues remained untouched.

Moreover, Mr Shipman's counsel stated that Mr. Shipman may be scheduled for surgery on August 25th or 26th and that he might travel on the 24th and that the final date has not been scheduled. Intervenor suggested, given these plans, that Mr. Shipman's deposition reconvene on August 22nd. Nonetheless, Licensee did not inform Intervenor's counsel about his availability.

Additionally, and most disturbing, is Mr. Shipman's testimony during his deposition that he had returned to work for nine days during the last month. Licensee had to be aware of Mr. Shipman's return to work (he continues to serve as a GPC General Manager), yet choose to keep Intervenor's counsel in the dark.

Finally, at the July 28, 1994 Status conference, this Board indicated that it would allow Intervenor to recommence Mr. Shipman's deposition at a point in time when Mr. Mosbaugh would be available to attend and August 25th and 26th was proposed.³ On August 10th and again on August 11th, Mr. Michael Kohn spoke

³ Every date Intervenor noticed Mr. Shipman for deposition has been rejected to accommodate Mr. Shipman's scheduling to meet with his doctors.

with Messrs. Lamberski and/or Joiner and they indicated that they would advise him before the August 12, 1994, status conference about Mr. Shipman's availability on August 22nd. Counsel to Licensee failed to do so. In the interim and under the understanding that Mr. Shipman would be made available during the week of August 22, Mr. Michael Kohn made arrangements to be out of the country from August 14 through August 20.

Mr. Michael Kohn has conducted all of the depositions for Intervenor in this proceeding and he has in depth knowledge of the diesel generator issues. Intervenor considers Mr. Shipman to be a very critical witness to this proceeding.⁴ Therefore, it would put Intervenor at a unfair disadvantage for this critical deposition to be completed by anyone other than Michael Kohn.

If Mr. Shipman is not compelled by this Board to appear for deposition on or during the week of August 22, and is thereafter not available through the remainder of this proceeding, Intervenor requests that the appropriate adverse inferences be invoked against Licensee. Intervenor's counsel was affirmatively led to the impression Mr. Shipman would be available, yet he has

⁴ Mr. Shipman was the General Manager over licensing with whom Mr. Mosbaugh spoke on April 19, 1990 to advise him that the April 9, 1990 Corrective Action Response letter transmitted by GPC and the draft of Site Area Emergency Licensing Event Report (LER 90-006) contained materially false statements. Mr. Shipman also states on Tape 57 that he was going to meet with Mr. Hairston and advise him of this matter. On a later afternoon telephone conference, in response to a question by Mr. Hairston as to whether there were trips on the diesels, Mr. Shipman is alleged to have responded that management should just "disavow" knowledge of any trips.

not been. Intervenor's case will be significantly injured if Mr. Shipman is never produced for the completion of his deposition.

III. CONCLUSION

For the foregoing reasons, Intervenor requests that Mr. Shipman be made available for deposition on August 22, 1994, or during that week. Intervenor also requests that if Mr. Shipman is never produced for deposition then the appropriate adverse inferences be applied to Licensee.

Respectfully submitted,

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

Attorneys for Intervenor

Dated: August 15, 1994

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Exhibit 1

KOHN, KOHN, & COLAPINTO, P.C.
ATTORNEYS AT LAW517 FLORIDA AVENUE, NW
WASHINGTON, DC 20001-1850
(202) 234-4663 • FAX (202) 462-4145MICHAEL D. KOHN ***
STEPHEN M. KOHN ***
DAVID K. COLAPINTO ***OF COUNSEL:
E. COOPER BROWN -
ANNETTE R. KRONFELD -
DANIEL J. SHRYVER -* ADMITTED IN DC
* ADMITTED IN VA
* ADMITTED IN NJ
* ADMITTED IN PA

July 1, 1994

Via FacsimileDavid R. Lewis, Esq.
Shaw, Pittman, Pitts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037Re: Vogtle Electric Generating Plant, Units 1 & 2
License Amendment (Transfer to Southern Nuclear)
ASLBP No. 69-671-01-OLA-3
Docket Nos. 50-424-OLA-3; 50-425-OLA-3

Mr. Lewis:

I write you with respect to our in-person meeting today with respect to, inter alia, the notices of depositions transmitted to Licensee on June 27, 1994. With respect to these depositions, please be advised of the following:

- 1) The first witness noticed, Mr. Stokes, must commence as noticed, on July 6, 1994 at 10 a.m. He is an important witness who cannot be deposed at a later date without harm resulting to Intervenor's case. Intervenor objects to going forward with any depositions until Mr. Stokes is produced.
- 2) I advised you that I was making travel plans and needed to know if the first week of noticed depositions (everyone noticed for this week was believed to be physically stationed in Augusta) would commence in Augusta or elsewhere. You indicated to me that Licensee would agree to make everyone available in Atlanta as this would best suit your client's needs. I agreed to this arrangement. At the last minute you are changing the deposition location to Augusta -- after I have booked my airline tickets and made lodging arrangements. I request that you abide by your earlier commitments.

Page 2
Kohn to Lewis
July 1, 1994

- 3) You indicated to me that Mr. Shipman now suffers from life-threatening health problems. I extend my condolences and sincerely wish him the best. I will, of course, reschedule his deposition to accommodate his condition. Unfortunately, his condition makes it imperative that Mr. Shipman's deposition commence as soon as possible. I request that you attempt to schedule him for deposition during the week of July 18th.

Sincerely,



Michael D. Kohn

cc: Charles Barth, Esq.

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Exhibit 2

KOHN, KOHN, & COLAPINTO, P.C.
ATTORNEYS AT LAW

517 FLORIDA AVENUE, NW
WASHINGTON, DC 20001-1850
(202) 234-4663 • FAX (202) 462-4145

MICHAEL D. KOHN ***
STEPHEN M. KOHN ***
DAVID K. COLAPINTO ***

OF COUNSEL
S. COOPER BROWN *
ANNETTE R. KROGSTADT *
DANIEL J. COHEN *

* ADMITTED IN DC
* ADMITTED IN MA
* ADMITTED IN VA
* ADMITTED IN NJ
* ADMITTED IN PA

Via Facsimile

July 13, 1994

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

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

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

Re: In the Matter of Georgia Power Company,
et.al. (Vogtle Electric Generating Plant,
Units 1 and 2) Dockets Nos. 50-424-OLA-3 & 50-
425-OLA-3, ASLBP No. 93-671-01-OLA-3

Dear Honorable Judges:

Below-signed counsel wishes to place the Board on notice of a conversation held yesterday concerning the availability of an essential witness to this proceeding, Mr. William Shipman.¹ Mr. John Lamberski advised below-signed counsel that Mr. Shipman has scheduled a meeting with his surgeon for July 19, 1994 and that, based on this consultation, Mr. Shipman may undergo radical surgery.

¹ Mr. Shipman was the General Manager over licensing with whom Mr. Mosbaugh spoke on April 19, 1990 to advise him that the April 9, 1990 Corrective Action Response letter transmitted by GPC and the draft of Site Area Emergency Licensing Event Report (LER 90-006) contained materially false statements. Mr. Shipman also states on Tape 57 that he was going to meet with Mr. Hairston and advise him of this matter. On a later afternoon telephone conference, in response to a question by Mr. Hairston as to whether there were trips on the diesels, Mr. Shipman is alleged to have responded that management should just "disavow" knowledge of any trips.

Page 2
July 13, 1994
Letter to ASLB

This Honorable Board should take note that on June 27, 1994, Intervenor's counsel requested that Mr. Shipman be made available for deposition on July 20, 1994. See Intervenor's June 27, 1994 Notice of Deposition of various individuals. It was not until July 1, 1994, that Licensee's counsel, Mr. David Lewis, advised me that it was his understanding that Mr. Shipman was terminally ill. After our conversation on July 1, 1994, I transmitted a letter to Mr. Lewis which states in relevant part:

You indicated to me that Mr. Shipman now suffers from life-threatening health problems. I extend my condolences and sincerely wish him the best. I will, of course, reschedule his deposition to accommodate his condition. Unfortunately, his condition makes it imperative that Mr. Shipman's deposition commence as soon as possible. I request that you attempt to schedule him for deposition during the week of July 18th.

To this day, Licensee's counsel remains unresponsive to Intervenor's request to schedule Mr. Shipman for deposition on the first available date (Intervenor's counsel renewed this request on more than one occasion orally to counsel to Licensee). On July 12, 1994, in response to a renewed request to schedule Mr. Shipman for deposition during the week of July 18th,² Mr. Lamberski responded orally that it is his understanding that Mr. Shipman will not be made available for deposition because he plans to travel to Houston, Texas to meet with his surgeon.

² On July 12, 1994, counsel to Intervenor requested that Licensee submit an affidavit indicating Mr. Shipman's health status and to supply information as to why Mr. Shipman's health status would improve at a later date and why a delay in taking his deposition is necessary. Intervenor further sought to know whether Licensee anticipates that Mr. Shipman's health condition will prohibit him from testifying at the hearing.

Page 3
July 13, 1994
Letter to ASLB

Intervenor believes his case will be significantly impaired should he not be able to depose Mr. Shipman and to otherwise take testimony from Mr. Shipman in lieu of his appearing at the hearing itself.

Intervenor believes that he should be entitled to appropriate adverse inferences should Mr. Shipman never be produced for deposition. Intervenor requests guidance from the Board on this matter.

Respectfully,



Michael D. Kohn
Attorney for Intervenor

cc: John Lamberski, Esq.
Charles Barth, Esq.

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Exhibit 3

KOHN, KOHN, & COLAPINTO, P.C.
ATTORNEYS AT LAW

517 FLORIDA AVENUE, NW
WASHINGTON, DC 20001-1850
(202) 234-4863 • FAX (202) 462-4145

MICHAEL Q. KOHN ***
STEPHEN M. KOHN ***
DAVID K. COLAPINTO ***

OF COUNSEL
S. COOPER BROWN **
ANNETTE R. KRONSTADT *
DANIEL J. OSHTY ***

* ADMITTED IN DC
* ADMITTED IN MA
* ADMITTED IN NJ
* ADMITTED IN PA

July 14, 1994

Via Facsimile

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

RE: Vogtle Electric Generating Plant, Units 1 & 2
License Amendment (Transfer to Southern Nuclear)
Docket Nos. 50-424-OLA-3; 50-425-OLA-3

Dear Mr. Lamberski:

I am in receipt of your facsimile transmission of today setting forth the latest deposition schedule for the weeks of July 18th and 25th. Your letter accurately sets forth the schedule as we last discussed it. Nonetheless, I request that we discuss the following three things tomorrow:

1. Add to the afternoon of July 20th the following persons: Michael Duncan and Charles Coursey. I anticipate that Messrs. Duncan's and Coursey's depositions should last approximately half an hour each.
2. Please advise whether Mr. Kitchens' schedule will make him available for deposition in Atlanta on the morning of July 28th.
3. A developing conflict in my schedule may make it difficult for me to complete Mr. Dahlberg's deposition if we begin it at 3 p.m. on July 28th. Assuming this is the case, there may be a need to move Mr. Dahlberg's deposition to 1 p.m., or else we may have to agree on a different date and time convenient to Mr. Dahlberg.

I hope we can reach arrangement with respect to paragraphs 1 and 2 above by early afternoon tomorrow.

Page 2
July 14, 1994
Kohn to Lamberski

With respect to your observation about my correspondence with the Board dated July 12, 1994, my letter accurately sets forth my understanding. I do not suggest the information set out in your letter today is inaccurate; only that I do not recall any mention of a July 15th scheduled meeting between Mr. Shipman and his surgeon (my recollection is that our discussions only focused on events occurring on or after July 18th). To the extent you have additional information not contained in your letter of today about Mr. Shipman's health, prognosis, or availability, please communicate this information to me in writing to avoid further confusion on this matter.¹

Sincerely,



Michael D. Kohn

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¹ Full disclosure about Mr. Shipman's condition would allow Intervenor to adequately assess the current situation. Depending on Mr. Shipman's actual condition, Intervenor may wish to take his deposition in Houston prior to his surgery. I note that I requested in my 7-12 letter to Mr. Blake (which I faxed to you) that you submit an affidavit concerning Mr. Shipman's health status. I again request that such an affidavit be provided before Mr. Shipman undergoes any risky surgery.

Exhibit 4

TROUTMAN SANDERS
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

NATIONSBANK PLAZA
600 PEACHTREE STREET, N.E. SUITE 4200
ATLANTA, GEORGIA 30308-2218
TELEPHONE 404 885-3000
FACSIMILE 404 885-3800

DIRECT 404 885-3300

JOHN LAMBERSKI

July 15, 1994

VIA TELECOPY

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

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

Dear Michael:

Pursuant to our agreement of July 12, the following is GPC's preliminary response to Interrogatory No. 3 of Intervenor's Fourth Interrogatory and Document Request to Georgia Power Company, dated June 29, 1994:

GPC believes that a document, which is substantially similar to the document identified as Exhibit 13 during the deposition of John Aufdenkampe on June 14, 1994, was provided by GPC to the NRC Incident Investigation Team during the time period March 20, 1990 through April 14, 1990. That document (Bates Nos. 062499-502) is identified as IIT #143 in the bibliography of documents collected by the IIT. That document does not have on it the hand-written note which appears at the top of Exhibit 13.¹

GPC's final response to this interrogatory will be included in Georgia Power Company's Response to Intervenor's Fourth Interrogatory and Document Request, due to be served on July 20, 1994.

On July 12, 1994 I asked you to provide to GPC an affidavit supporting Intervenor's Response to Licensee's Request for Admissions, dated July 7, 1994. I have not received that affidavit and request that you serve it by facsimile by C.O.B. Monday, July 18, 1994.

¹ A copy of the IIT #143 document is attached hereto.

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TROUTMAN SANDERS
ATTORNEYS AT LAW
A TRUST COMPANY OF THE STATE OF FLORIDA

Michael D. Kohn, Esquire

July 15, 1994

Page 2

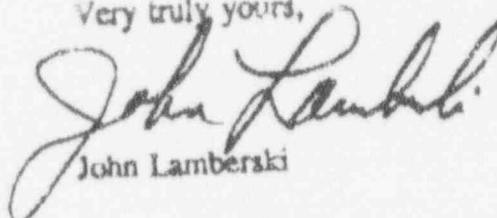
In response to your July 14 letter, which was faxed to my office today, I can confirm your requested changes to the deposition schedule. With those changes, the deposition schedule is as follows:

July 18: 10:00 a.m. - Miller; 12:30 p.m. - Lisenby; 2:00 p.m. - Ajluni
July 19: 10:00 a.m. - Bailey; 1:00 p.m. - Ward
July 20: 10:00 a.m. - Rushton; 2:00 p.m. - Dixon; 4:00 p.m. - Duncan; 4:30 p.m. - Coursey
July 21: 10:00 a.m. - Bockhold
July 22: 10:00 a.m. - Mosbaugh

July 25: 11:00 a.m. - Farley; 2:00 p.m. - McDonald²
July 26: 10:00 a.m. - McCoy
July 27: 10:00 a.m. - Hairston
July 28: 10:00 a.m. - Kitchens; 1:00 p.m. - Dahlberg
July 29: 2:00 p.m. - STATUS CONFERENCE

Your July 14 letter also asked that I provide you with an affidavit concerning the status of Mr. Shipman. In response to this request, I attach a letter from Mr. Shipman's attorney, Richard Hendrix, which sets forth everything I know about Mr. Shipman's status.

Very truly yours,


John Lamberski

cc: Charles A. Barth, Esq.
Carolyn Evans, Esq.

² Mr. McDonald will be returning from Pensacola on July 25 and will confirm, or propose a change to, the start time for this deposition within the next day or two.

Exhibit 5

LAW OFFICES

FINCH, MCCRANIE, BROWN & THRASH

225 PEACHTREE STREET, N.E.

1700 SOUTH TOWER

ATLANTA, GEORGIA 30303

404/658-9070

CHARLES E. MCCRANIE
 ELLIS RAY BROWN
 THOMAS W. THRASH
 RICHARD W. HENORIX
 DAVID E. RAYLOR
 ANDREW T. ROGERS
 BAXTER H. FINCH
 OF COUNSEL

July 12, 1994

FAX: 404/658-0648
 WATS: 1 800/228-9158

JONESBORO OFFICE
 801 CLAYTON FEDERAL BUILDING
 JONESBORO, GEORGIA 30238
 404/471-8477

MARIETTA OFFICE
 3014 SOUTHTRUST BUILDING
 181 LAWRENCE STREET, N.E.
 MARIETTA, GEORGIA 30060
 404/489-6648

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

Re: Bill Shipman

Dear John:

I'm writing with respect to the proposed deposition date of 7/29/94 for my client, Bill Shipman. Unfortunately, this date is not good for Bill and we will need to cancel the deposition. I spoke to Bill this morning and he advises me that he is scheduled to meet with his doctors on July 15 and 18 at the MD Anderson Center. He will not know until after meeting with his surgeons whether he is going to undergo surgery for removal of his stomach and pancreas. As I'm sure you are aware, he has cancer not only of the stomach, but also the liver. Unless the treatments being given to his liver are successful, surgery to the stomach may be contraindicated. All of these complexities will be discussed between Mr. Shipman and his physicians on the 18th and only at that time will Mr. Shipman know what his schedule is. In the meantime, in the event he does not undergo immediate surgery, in order to recuperate from all he has recently been through, Mr. Shipman had planned to rest and be on vacation during the week of July 25 through August 1. Speaking with Mr. Shipman, it is clear that he is not currently able to give a deposition, either physically or mentally, and I do not anticipate that he will be available for deposition before August 8. Of course, with his current situation, things could change daily. For the time being, however, this is the best information I have.

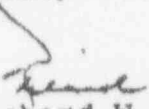
Mr. John Lamberski
July 12, 1994

Page Two

If you wish to discuss the matter with Mr. Kohn, I would suggest that you block off some dates during the week of August 8. If Mr. Shipman is able at that time to give a deposition, we will try to make him available.

Sincerely,

FINCH, MCCRANIE, BROWN & THRASH


Richard W. Hendrix

RWH/ln

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

DOCKETED
USNRC

'94 AUG 16 P4:51

In the Matter of

GEORGIA POWER COMPANY
et al.,

(Vogtle Electric Generating
Plant, Unit 1 and Unit 2)

Docket Nos. 50-424-OLA-3

50-425-OLA-3

Re: License Amendment
(transfer to Southern Nuclear)

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

CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Motion to Compel GPC to Produce Bill Shipman has been served this 15th day of August 1994, by facsimile upon the persons listed in the attached Service List, with the exception that it was served by first class mail 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

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

In the Matter of

GEORGIA POWER COMPANY
et al.

(Vogtle Electric Generating
Plant, Unit 1 and Unit 2)

Docket Nos. 50-424-OLA-3
50-425-OLA-3

Re: License Amendment
(transfer to Southern Nuclear)

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

SERVICE LIST

Administrative Judge
Peter B. Bloch, Chair
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

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

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

301\cert.lis

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

Charles A. Barth, Esq.
Office of General Counsel
U.S. N.R.C.
Washington, D.C. 20555

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