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USNRC  
August 26, 1994  
'94 AUG 29 P4:27

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

In the Matter of	)	OFFICE OF SECRETARY
	)	DOCKETING & SERVICE
GEORGIA POWER COMPANY	)	Docket Nos. 50-424-OLA-3ANCH
<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 RESPONSE TO NRC STAFF MOTION FOR  
PROTECTIVE ORDER REGARDING EXHIBITS TO THE OI REPORT

On August 11, 1994, NRC Staff filed a motion for protective order regarding the exhibits to the OI Report.<sup>1</sup> In this motion the Staff states that the exhibits were released before a review was made to determine if they contained information that was exempt from disclosure. Staff's motion at p. 2. Additionally, the Staff assumes that the information contained in the OI Exhibits has not been disseminated past the parties in this proceeding. Staff's motion at p. 2, fn 3. This assumption is irrelevant because the Staff made these exhibits public in May 1994, months before it filed them in the Public Document Room ("PDR") on August 15, 1994. Furthermore, between May and August

<sup>1</sup> The Staff requests in its motion that the parties replace the exhibits in question with the redacted versions that it supplied. In providing these replacements the Staff enclosed replacement pages for seven (7) of the exhibits and requested other exhibits be replaced in their entirety. Intervenor would like to point out that of the exhibits to be replaced in their entirety most only required a few pages to be replaced. Examples of this are demonstrated in exhibit 38 which consists of 251 pages only two (2) of which contained information which was redacted and exhibit 29 which consists of 141 pages only one (1) page of which contained information which was redacted.

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Staff made no attempt to file a protective order concerning the dissemination of these exhibits.

#### ARGUMENT

The regulation pertaining to obtaining a protective order does not apply to the situation at hand. The regulation in question, 10 C.F.R. § 2.740(c), applies to "a party or the person from whom discovery is sought." Discovery is not being sought from the Staff. In fact, it was the Staff who filed a copy of the exhibits, in unredacted form, with the Board. The Staff does not require protection from an unjust discovery request by the other parties. Hence, the motion for protective order should be denied.

If it is determined that § 2.740(c) does apply to this situation, Intervenor asserts that Staff's motion is untimely. The Staff has offered no explanation for its inordinate delay in requesting a protective order. The exhibits were made public on May 1, 1994 and filed with the Board on June 7, 1994, yet the Staff did not file a motion for protective order until August 11, 1994. This delay far exceeds any time limitations that exist when filing a motion for protective order in response to a request for discovery.<sup>2</sup> Furthermore, the Staff not only failed to inform the Board and the parties that the exhibits had been released "inadvertently" without redaction but it also failed to inform the Board and the parties that it would even be asserting

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<sup>2</sup> Depending on the form of discovery requested a response is required in fourteen (14) or thirty (30) days. 10 C.F.R. § 2.740b and § 2.741.

these privacy exemptions. In fact, the Staff had the opportunity at the August 12, 1994, status conference<sup>3</sup> to inform all involved that it had filed this motion and failed to do so.

Moreover, the Staff has waived its ability to redact any of the information contained in the exhibits to the OI Report because it has already released it by filing a copy of the exhibits with the Board and the parties. The Staff cannot retrieve, months later, information which it has previously released to the public. While most of the information the staff has redacted is of a personal nature and not relevant to this proceeding, Intervenor opposes this motion for a protective order because it would set an unacceptable precedent. If such a precedent were set the Staff would have the ability to withdraw information it has previously released to the public whether or not it meets the requirements for exemption set out in the regulations by claiming it was mistakenly released. Therefore, the motion for protective order should be denied.

Staff employs decisions to support its argument which are based on the FOIA exemptions. This case law does not apply in this situation because this information was not obtained through a FOIA request but instead through an order from the Board. These exhibits have also been filed, in unredacted form, with the Board. Additionally, because Intervenor did not acquire this information through a FOIA request, he is under no "burden of

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<sup>3</sup> Although the Staff's motion was filed August 11, 1994, it was served by first class mail and was therefore not received by the Board or the Intervenor before the status conference.

establishing that disclosure of personal information would serve the public interest," as the Staff suggests on page 3 of its motion.

The Staff requests that the information be redacted pursuant to 10 C.F.R. §§ 2.790(a)(6) and 9.17(a)(6).<sup>4</sup> These sections state that final NRC records and documents will be made available in the PDR, or publicly available, except that "Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" are exempt from disclosure. 10 C.F.R. §§ 2.790(a)(6), 9.17(a)(6). "Such records and documents do not include handwritten notes and drafts." 10 C.F.R. § 2.790(a) fn 8. Since the final version of the OI Exhibits was not sent to the PDR until August 15, 1994, these regulations do not apply to the copies in the possession of the Board and the parties for which the Staff filed a motion for protective order on August 11, 1994. Even assuming there was merit to Staff's privacy arguments, the Staff filed a copy of the exhibits, in unredacted form, with the Board on June 7, 1994. Hence, Staff was under the duty to serve the other parties with exact copies at that time. 10 C.F.R. §2.701(b); See also Memorandum and Order (Who Pays for the Copies?), August 26, 1994. Therefore, the regulations upon which Staff bases its privacy argument do not apply.

If the Board determines that the Staff's privacy argument does have merit it should note that the documents from which the

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<sup>4</sup> These sections adopt 5 U.S.C. § 552(b)(6).

Staff has redacted information are not personnel, medical files or similar files, but instead they are transcripts of OI interviews and audio tapes and thus do not come under this exemption.

Most of the information redacted from exhibits 14 and 38 was taken from handwritten notes in the desk calendars of the persons interviewed. Handwritten notes are specifically not included in this exemption. 10 C.F.R. § 2.790(a) fn 8. Furthermore, this information could have been redacted by Georgia Power, if it was felt to be private or embarrassing to the persons involved, before these documents were turned over to the NRC. It is a little puzzling to see the NRC second guessing GPC's counsel and in essence doing their job for them.

In at least five instances the Staff has redacted information pertaining to the university attended and/or the degree attained by the persons being interviewed. This is information that is relevant to the competence of the individual and obtainable through discovery. Therefore, it does not come within the exemption set forth by the above cited regulations.

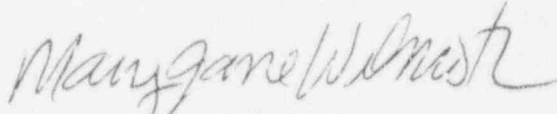
The remainder of the documents from which the Staff has redacted information are audio tape transcripts that were created from tape recordings supplied by the Intervenor, not personnel or medical files. In most instances where information is redacted the transcript refers to the speaker as "Voice". To discover the identity of these persons one would not only have to go back and listen to the tapes, but he/she would also have to be familiar

with the speaker's voice. The difficulty in discovering the identity of the speaker coupled with the type of information which the Staff now wishes to redact does not create a situation where the personal privacy of a private citizen will be invaded. Therefore, the motion for protective order should be denied.

#### CONCLUSION

For the forgoing reasons Intervenor requests this honorable Board to deny the NRC Staff Motion for Protective Order Regarding Exhibits to the OI Report.

Respectfully submitted,

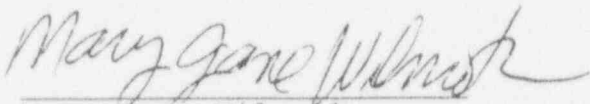


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#### CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Response to the NRC Staff Motion for Protective Order Regarding Exhibits to the OI Report has been served this 26th day of August 1994, by first class mail upon the persons listed in the attached Service List.

By:



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OFFICE OF SECRETARY  
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Docket Nos. 50-424-OLA-3H  
50-425-OLA-3

Re: License Amendment  
(transfer to Southern Nuclear)

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

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