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September 20, 1994

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '94 SEP 21 P4:23

Before the Atomic Safety and Licensing Board

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

GEORGIA POWER COMPANY'S MOTION FOR  
RECONSIDERATION OF THE LICENSING BOARD'S  
AUGUST 30, 1994 MEMORANDUM AND ORDER

Pursuant to 10 C.F.R. § 2.771, Georgia Power Company ("Georgia Power") moves for reconsideration of one limited aspect of the Board's Memorandum and Order (Motion to Compel: Fourth Set), dated August 30, 1994 (the "Board's Order"), concerning Document Request No. 17.<sup>1</sup> Because of the way Intervenor's Document Request No. 17 is drafted, addressed to multiple persons with multiple subparts, the Board may not have recognized that two of the subparts -- subparagraphs (2) and (3) -- lack reasonable time limits. These subparagraphs would require production of documents related to diesel reliability through the present, despite the fact that current diesel performance has no bearing on the understanding or intent of persons in 1990. The subparagraphs

<sup>1</sup> GPC considers this motion for reconsideration to be appropriate under the principles for such motions adopted by the Board in its Memorandum and Order (Motion for Reconsideration: Admissions: Second Order), dated September 9, 1994, at 2-3.

would therefore subject Georgia Power to an unduly burdensome and expensive task of searching for and producing documents that bear no reasonable connection to the communications between Georgia Power and the NRC in 1990 which are addressed in the OI Report or the May 9, 1994 Notice of Violation ("NOV"). To avoid this result, Georgia Power requests that subparagraphs (2) and (3) of Document Request 17 be limited to 1989 and 1990 (i.e., to documents which have some relation or could lead to the discovery of admissible evidence relevant to the alleged false Georgia Power statements to NRC in 1990 addressed in the OI Report and NOV), consistent with other rulings in the Board's Order<sup>2</sup> and with the Board's June 2, 1994 Memorandum and Order (Scope of Discovery).

The Board's August 30 Order directed the parties to negotiate concerning any logistical problems involved in responding to Document Request No. 17. Georgia Power has attempted to discuss this matter with Intervenor but has been unable to obtain his attention.<sup>3</sup> By telephone call at about 1:15 p.m. on September 14, the Licensing Board extended the period in which Georgia Power might file this motion for reconsideration, in order to allow Georgia Power to continue to pursue a negotiated resolution of this issue. Georgia Power has been unsuccessful in reaching Intervenor since then.

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<sup>2</sup> See the Board's Order at 4 (accepting the period of 1989 to 1990 as sufficient for Document Request Nos. 8 and 9).

<sup>3</sup> GPC has telephoned Intervenor's counsel a number of times since September 1. GPC spoke to Intervenor's counsel twice during the week of September 5 but he had been unable to locate and review the pleadings at that time.

## I. Background.

On June 29, 1994, Intervenor served its Fourth Interrogatory and Document Request to Georgia Power ("Intervenor's Fourth Request"), containing the following Document Request 17:

With respect to the following individuals a) KEN HOLMES; b) PAUL KOCHERY; c) KENNETH STOKES; d) TOM WEBB; e) RICK ODOM; f) SKIP KITCHENS; g) GUS WILLIAMS; h) GEORGE BOCKHOLD; i) JAMES BAILEY; j) WILLIAM SHIPMAN; k) PAUL RUSHTON; l) LOUIS WARD; m) CLIFF MILLER; n) MARK AJLUNI; o) DAVID LISENBY; p) C.K. MCCOY; q) GEORGE HAIRSTON; r) R.P. McDONALD; s) JOSEPH FARLEY; t) A.W. DAHLBERG; u) JOHN AUFDENKAMPE; v) MICHAEL HORTON; w) GEORGIE FREDERICK; x) JACK STRINGFELLOW; and y) TOM GREENE:

Produce documents responsive to the following [categories]:

- (1) documents which contain the handwriting, thoughts, or impressions of the witness with respect to:
  - (a) LER 90-006, dated April 19, 1990;
  - (b) the April 9, 1990 GPC presentation to the NRC;
  - (c) the April 9, 1990 GPC confirmation of action response submitted to NRC;
  - (d) any issues identified in NRC December 20, 1993 OI Report (Case No. 2-90-020R) or the May 9, 1994 Notice of Violation issued by the NRC to Georgia Power Company;
- (2) documents that contain information which directly or indirectly relates to the reliability of the Plant Vogtle diesel generators or the air quality of the said diesel generators with respect to air quality or reliability problems occurring between 1989 and present;
- (3) documents transmitted between the Plant Vogtle site and/or the SONOPCO/GPC Birmingham corporate offices that in any way concerns the diesel generators or Site Area Emergency;
- (4) all personal notes, log books, notebooks, personal calendars, taped memos, tape recordings or other documentation prepared by the witness or which includes the thoughts or impressions of the witness for the time period of January 1, 1990 through December 31, 1990;

(5) all log books or notebooks any of the witnesses maintained or viewed or relied upon when performing any business function related to the start-up of Plant Vogtle after the March 20, 1990 Site Area Emergency.

Georgia Power objected to this document request on the grounds that it was redundant, unduly burdensome and expensive, oppressive and overbroad.<sup>4</sup> Citing Georgia Power Company's Objections to the Document Requests in Intervenor's Notice of Depositions, dated July 1, 1994 ("GPC's Objections"), Georgia Power stated that it had previously objected to a request for documents virtually identical to Document Request 17 which was contained in a notice of deposition filed by Intervenor with respect to 20 of the 25 individuals listed above.<sup>5</sup> Additional Response at 6.

GPC's Objections, incorporated by reference into the Additional Response, stated objections to all five items of the document request. General Objections at 3-5. With respect to items (1), (3), (4) and (5), Georgia Power objected on the grounds that the documents requested included those that did not

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<sup>4</sup> Georgia Power Company's Additional Response to Intervenor's Fourth Interrogatory and Document Request, dated July 29, 1994 ("Additional Response"), at 5. GPC's Additional Response generally stated that a number of the document requests "are objectionable as overbroad in that Intervenor seeks information beyond the scope of discovery established by the Board's Memorandum and Order (Scope of Discovery), dated June 2, 1994" and it incorporated by reference the General Objections stated in Georgia Power Company's Response to Intervenor's Fourth Interrogatory and Document Request, dated July 20, 1994. Additional Response at 1-2.

<sup>5</sup> See Intervenor's Notice of Deposition of Kenneth Holmes; Paul Kochery; Kenneth Stokes; Tom Webb; Rick Odom; Skip Kitchens; Gus Williams; George Bockhold; James Bailey; William Shipman; Paul Rushton; Louis Ward; Cliff Miller; Mark Ajluni; David Lisenby; C. K. McCoy; George Hairston; R. P. McDonald; Joseph Farley; and A. W. Dahlberg, dated June 27, 1994 ("Intervenor's June 27 Notice of Deposition").

relate to the diesel generator reliability issue in this proceeding. For example, GPC's Objections stated that item (3)

is not limited to documents related to the diesel generator reliability issue in this proceeding. Under the Board's June 2, 1994 Memorandum and Order, questions directed to discovering what different individuals learned during the site area emergency is permissible only if it may be expected to relate directly or indirectly to whether Georgia Power told the whole truth about its diesel generators.

With respect to item (2) of Document Request 17, GPC's Objections stated that "[t]he request is overbroad because no time limits are provided."<sup>6</sup>

On August 9, 1994, Intervenor filed its Motion to Compel Responses to Intervenor's Fourth Interrogatory and Document Request ("Intervenor's Motion"), which sought to compel Georgia Power to produce documents responsive to Document Request 17, among others. With respect to items (3), (4) and (5) Intervenor stated that the request could be limited to documents related to the reliability of the diesel generators, matters pertaining to diesel air quality, and matters related to the issues addressed in the OI Report and NOV. Intervenor's Motion at 9-10. As for Georgia Power's objection that item (2) of Document Request 17 had no time limits, Intervenor asserted that the request had been redrafted to include the time limits of "1989 to present."

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<sup>6</sup> In connection with Intervenor's June 27 Notice of Deposition, without waiving its objections, GPC agreed to bring to each of the depositions those documents previously produced by GPC in this proceeding that were provided by such deponent. GPC also agreed to ask each deponent to bring relevant portions of additional personal documents if they contain information relating to the diesel generator reliability issue in this proceeding. GPC's Objections at 5.

Intervenor also stated that the same time period of 1989 to present could be applied to item (3). Intervenor's Motion at 9.<sup>7</sup> In its response, Georgia Power again pointed out that Document Request 17 was redundant, unduly burdensome, oppressive and overbroad (beyond the scope of discovery). Georgia Power Company's Answer to Intervenor's Motion to Compel Responses to Intervenor's Fourth Interrogatory and Document Request, dated August 24, 1994, at 8.

The Board's Order held that Document Request 17 should be limited to "matters pertaining to the reliability of the diesel generators, to diesel air quality, to the OI Report and to the Notice of Violation," but did not impose any time limit. Order at 6. The Board required Georgia Power to determine whether it had previously asked its personnel to produce documents responsive to Document Request 17 and, if not, to make such a request now. Order at 7.

## II. Discussion.

Even as modified by the Board's Order, Document Request 17 will place an undue burden on Georgia Power because the request covers a large number of documents which Georgia Power has not previously requested from its personnel. To demonstrate this point, discussion of Intervenor's first document request is necessary.

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<sup>7</sup> With respect to item (1) of Document Request 17, Intervenor only stated that it could not comprehend how documents related to the four documents identified in item (1) could be outside of the scope of the proceeding. Intervenor's Motion at 8-9.



Intervenor's First Request for Production of Documents by Georgia Power Company, dated May 4, 1993, Request 35, at 11, requested Georgia Power to produce "[a]ll documents pertaining to the reliability of the Plant Vogtle diesel generators." Georgia Power's Response to Intervenor's First Request for Production of Documents, dated June 2, 1993 ("Intervenor's First Document Request"), Request 35, at 27, stated

GPC objects to this request as overbroad and unduly burdensome and expensive. There are thousands of documents which pertain to the reliability of the Plant Vogtle diesel generators. Without waiving such objection, documents responsive to this request, consisting of documents related to the reliability, operability and testing of the Vogtle Unit 1 diesel generators during the period March 20, 1990 through November 30, 1990, are available for inspection at the GPC Records Center in Atlanta.

The documents referred to in Georgia Power's response to Document Request 35 above comprise approximately 55,000 of approximately 60,000 pages of the documents which Georgia Power has made available to Intervenor to date.

The documents produced in response to Document Request 35 of Intervenor's First Document Request covers a time period of just over eight months. In contrast, the documents sought in Document Request 17 of Intervenor's Fourth Request covers a period of five years and eight months. Even when this request is limited to 25 specific individuals, this large discrepancy in time will result in a substantial effort by these individuals to review and identify responsive documents -- a review not unlike the initial review conducted which was used to identify documents responsive to Document Request 35 of Intervenor's First Document Request.

In its Additional Response, at 6, Georgia Power stated that

GPC believes that the information sought by Intervenor, to the extent relevant to the diesel generator reporting matter at issue in this proceeding, is contained among the over 60,000 pages of documentation previously produced by GPC in response to Intervenor's prior discovery requests. (emphasis added.)

This statement is based on Georgia Power's understanding that the scope of discovery on the diesel reporting issue is limited to the communications addressed in the OI Report, pursuant to the Board's June 2 Order. The Board's June 2 Order limited the diesel generator reporting issue in this case to "communications to the NRC that are an object of concern in the final report of the Office of Investigations (Case No. 2-90-020R)" and "[a]ny questions related to whether the representations to the NRC were the whole truth." The communications addressed in the OI Report, and the NOV for that matter, are limited to the April 9, 1990 Georgia Power presentation and letter, the April 19, 1990 Georgia Power LER, the June 29, 1990 Georgia Power letter transmitting the revised LER, and the August 30, 1990 Georgia Power letter. These communications all concern statements that Georgia Power made to the NRC concerning the condition of the Vogtle diesel generators prior to April 19, 1990.

Even as modified by the Board's Order and limited to the specific individuals identified, Document Request 17 is substantially broader in scope than the documents which Georgia Power has previously requested from its employees and which Georgia Power has previously interpreted as within the scope of this proceeding pursuant to the Board's June 2, 1994 Memorandum and



Order (Scope of Discovery). For example the revised request, item (2), would cover documents which relate to diesel generator reliability or air quality problems for the period 1989 to present as opposed to problems which had occurred prior, and were therefore relevant, to the alleged false Georgia Power statements to NRC in 1990, which were cited in the June 2 Order. Item (3) would include internal Georgia Power correspondence from 1989 to present that "in any way concerns the reliability of the diesel generators [or] diesel air quality ..." as opposed to correspondence which was related to any of the alleged false Georgia Power statements in 1990, or the subject matter of those statements. As a result, Georgia Power would be required to conduct a burdensome search for additional documents which, even when limited to the 25 listed individuals, could produce a large number of documents that have no reasonable bearing on the matters addressed in the Board's June 2, 1994 Order.

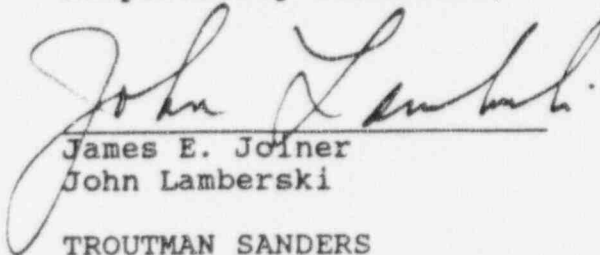
It is unreasonable to require Georgia Power to search for and produce additional documents which in some way relate to diesel generator reliability or air quality but which have no reasonable connection with the 1990 statements at issue. Prior Board rulings are consistent with this position. For example, in its Memorandum and Order (Intervenor's Seventh Set of Interrogatories), dated August 8, 1994, at 2, the Licensing Board held that "[w]e shall not require Georgia Power to respond to interrogatories concerning diesel generator problems 'up to the present day' (Seventh Set at 6) nor to provide a summary of

information about dryers-out-of-service during all of calendar year 1990 (Seventh Set at 9). We hereby authorize Georgia Power to limit its responses to events occurring prior to the last alleged misrepresentation." Similarly, the Board's August 30 Order agreed with Georgia Power's position to limit Intervenor's requests for certain diesel generator documentation to calendar years 1989 and 1990. Board Order at 4, Document Requests 8 and 9. One of those document requests (No. 8) had no time limits and the other (No. 9) was limited to 1989 to present. See Intervenor's Fourth Request at 4.

### III. Conclusion.

For the reasons stated above, Georgia Power Company requests that the Licensing Board reconsider its August 30, 1994 Order with respect to Document Request 17. Georgia Power requests that Document Request 17 be limited, consistent with the Board's June 2, 1994 Order and other rulings, to 1989 and 1990 documents (i.e., documents which have some relation to the alleged false Georgia Power statements to NRC in 1990 addressed in the OI Report and NOV).

Respectfully submitted,



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Dated: September 20, 1994

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
OF ENERGY  
REGULATORY & SERVICE  
BRANCH

In the Matter of

GEORGIA POWER COMPANY,  
et al.

(Vogtle Electric Generating  
Plant, Units 1 and 2)

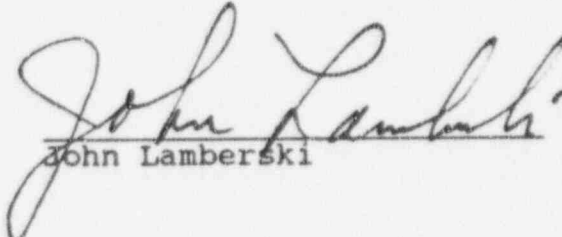
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) Re: License Amendment  
) (Transfer to Southern  
) Nuclear)  
)

) ASLBP No. 93-671-01-OLA-3  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Georgia Power Company's Motion for Reconsideration of the Licensing Board's August 30, 1994 Memorandum and Order," dated September 20, 1994, were served by express mail, or where indicated with an asterisk by facsimile, upon the persons listed on the attached service list, this 20th day of September, 1994.

  
John Lamberski

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

In the Matter of  
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