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

'94 OCT -4 P3:42

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

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-3

Re: License Amendment  
(transfer to Southern Nuclear)

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

INTERVENOR ALLEN L. MOSBAUGH'S RESPONSE TO  
GEORGIA POWER COMPANY'S MOTION FOR SUMMARY DISPOSITION  
OF INTERVENOR'S ILLEGAL TRANSFER OF LICENSE ALLEGATION

I. INTRODUCTION

Intervenor hereby submits his response to Georgia Power Company's ("GPC" or licensee) Motion for Summary Disposition of Intervenor's Illegal Transfer of License Allegation ("GPC's Motion").<sup>1</sup> In support of this response, Intervenor relies upon and cites to information contained in documents and testimony identified below. The below listed abbreviated citations are utilized throughout the brief.<sup>2</sup>

<sup>1</sup> Intervenor believes that a careful analysis of the law and facts will rather demonstrate that summary decision should be granted in Intervenor's favor.

<sup>2</sup> Accompanying this brief is "Appendix of Exhibits in Support of Intervenor's Response to GPC's Motion for Summary Decision," which contains pertinent testimony and documents not previously submitted to the Board as exhibits to GPC's Motion or as exhibits to the Joint Stipulation.

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Testimony

Deposition of Edward L. Addison taken on June 9, 1994  
("Addison Dep.");

Deposition of A.W. Dahlberg taken on April 6, 1994  
("Dahlberg 4/6/94 Dep.");

Deposition of A.W. Dahlberg taken on June 10, 1994  
("Dahlberg 6/10/94");

Deposition of Louis Brian Long taken on June 8, 1994  
("Long Dep.");

Deposition of Charles K. McCoy taken on April 6, 1994  
("McCoy Dep.");

Deposition of Robert Scherer taken on June 8, 1994  
("Scherer 6/8/94 Dep.");

Deposition of Jeff Wallace taken on June 13, 1994  
("Wallace Dep.");

Deposition of H.G. Baker taken on April 8, 1994  
("Baker Dep.");

Deposition of Joseph Farley taken on April 14, 1994  
("Farley Dep.");

Deposition of George Hairston taken on April 13, 1994  
("Hairston Dep.");

Deposition of R.P. McDonald taken on April 14, 1994  
("McDonald Dep.");

Deposition of Marvin Hobby taken on April 9, 1994  
("Hobby Dep.");

Deposition of Dan Smith taken on April 12, 1994  
("Smith Dep.");

Deposition of Joseph M. Farley in Hobby v. GPC, DOL  
Case No. 90-ERA-30 ("Hobby"), taken on May 7, 1990  
("Farley DOL Dep.");

Deposition of H.G. Baker in Hobby, taken on May 23,  
1990  
("Baker DOL Dep.");

Deposition of William R. Evans in Hobby, taken on  
August 23, 1990  
("Evans DOL Dep.");



Deposition of Lee B. Glenn in Hobby, taken on August 23, 1990  
("Glenn DOL Dep.");

Deposition of A.W. Dahlberg in Hobby, taken May 8, 1990  
("Dahlberg DOL Dep.");

Deposition of Gerald Johnson in Hobby, taken October 2, 1990  
("Johnson DOL Dep.");

Deposition of R.P. McDonald in Hobby, taken on May 7, 1990  
("McDonald 5/7/90 DOL Dep.");

Deposition of R.P. McDonald in Hobby, taken on August 23, 1990  
("McDonald 8/23/94 DOL Dep.");

Deposition of Robert W. Scherer in Fuchko and Yunker v. Georgia Power Company, DOL Case Nos. 89-ERA-9 and 89-ERA-10 ("Fuchko") taken on December 21, 1988  
("Scherer 12/21/88 DOL Dep.");

Deposition of R.P. McDonald in Fuchko, taken on December 23, 1988  
("McDonald 12/21/88 DOL Dep.")

Trial testimony in Hobby  
("DOL Tr.");

Deposition of A.W. Dahlberg taken July 1994 (not transcribed)  
("Dahlberg Dep. (not transcribed)");

Deposition of Joseph Farley taken on July 25, 1994 (not transcribed)  
("Farley Dep. (not transcribed)").

#### Documents

Affidavit of Marvin B. Hobby dated October 3, 1994  
("Hobby Aff.");

April 19, 1990 entry from William Shipman's notebook; pertinent part at top of page  
("Shipman Notebook");

October 7, 1988 SCS Announcement  
("SCS Announcement");

Edward Addison's appointment schedule for February 14, 1989 and March 6, 1989 (reference to SONOPCO Board of directors Meeting)  
("Addison Calendar");

William Dahlberg's appointment schedule for March 6, 1989 (reference to SONOPCO Board Meeting)  
("Dahlberg Calendar");

Partial transcript of NRC proceeding dated March 30, 1989, containing handwritten comments of Dan Smith  
("Smith Notation");

June 8, 1989 letter from Marvin Hobby to Hon. Adm. Dennis Wilkinson  
("Wilkinson Let.");

Fourth Quarter 1989 On-Call Project Manager Telephone List  
("Corp. Mgt. List");

August 5, 1991 Southern Nuclear Board Meeting Minutes  
("SONOPCO Bd. Minutes");

Hand written notes of Corporate Secretary taken during the August 5, 1991 Southern Nuclear Board Meeting  
("SONOPCO Bd. Notes");

May 8, 1989 phone log of Marvin Hobby (entry at bottom of page)  
("Hobby Log");

October 25, 1989 memo from Bob Edwards to Marvin Hobby regarding Nuclear Operating Agreements  
("Edwards Memo");

Partial Transcript of Mosbaugh Audio, recorded on August 6, 1990  
("Mosbaugh Tape Tr.");

Affidavit of Allen Mosbaugh dated October 2, 1994  
("Mosbaugh Aff.");

Motion to Intervene, Comments, and Request for Hearing of Oglethorpe Power Corporation, The Southern Company et al. SEC Admin. Proc. No. 70-7530 ("Oglethorpe SEC Intervention")  
("Oglethorpe SEC Intervention");

Reply to The Southern Company's Response to Oglethorpe Power Company's Motion to Intervene, Comments and

Request for Hearing, The Southern Company et al. SEC Admin. Proc. No. 70-7530 ("Oglethorpe SEC Reply"); ("Oglethorpe SEC Intervention Reply");

The Southern Company's 1993 Annual 10-K Report Excerpt ("Southern Company 1993 10-K Report");

December 27, 1988 letter from Dahlberg establishing NOCA ("Dahlberg Let.");

Partial transcript of Mosbaugh Audio Tape No. 260, Side A, pp.8-11 ("Mosbaugh Tape 260A Tr.");

Joint Stipulation Exhibit ("Stip. Ex.") 10, September 21, 1988 announcement of Addison;

Joint Stipulation Exhibit 1, March 9, 1988 Summary of meeting held on March 2, 1988 between NRC and representatives of APC and GPC;

Joint Stipulation Exhibit 5, Georgia Power Company Minutes of Organizational Meeting of Directors May 18, 1988;

Joint Stipulation Exhibit 7, Agreement for Shared Employment of R.P. McDonald;

Joint Stipulation Exhibit 6, Securities and Exchange Commission Form U-1, Application or Declaration under the Public Utility Holding Company Act of 1935;

Joint Stipulation Exhibit 9 at enclosure 1, Meeting Summary-Nuclear Operations-Transition Organization;

Joint Stipulation Exhibit 33, April 26, 1989 memo from M.B. Hobby to F.D. Williams;

Joint Stipulation Exhibit 35, May 15, 1989 memo from F.D. Williams to M.B. Hobby;

Joint Stipulation Exhibit 19, at pp. 27-28; Official Transcript of NRC Proceedings on the Implementation of Southern Nuclear Operating Company, Docket Nos. 50-348, 50-364, 50-425, 50-321, 50-366;

Joint Stipulation Exhibit 17, December 6, 1990 letter from Hairston to U.S. Nuclear Regulatory Commission;

Joint Stipulation Exhibit 34, April 27, 1989 memo from Hobby to Williams.

Affidavit of Joseph Farley (accompanying GPC's Motion) ("Farley Aff.");

#### Documents Incorporated by Reference

- 1) Request for Proceedings and Imposition of Civil Penalties for Improperly Transferring Control of Georgia Power Company's Licenses to the SONOPCO Project and for the Unsafe and Improper Operation of Georgia Power Company Licensed Facilities, dated September 11, 1990, pp 2-8 and 13-16 ("Intervenor's 2.206 Petition").
- 2) Amendments to Petitioners Marvin Hobby's and Allen Mosbaugh's September 11, 1990 Petition; and Response to Georgia Power Company's April 1, 1991 Submission by its Executive Vice President, Mr. R.P. McDonald, dated July 8, 1991, pp. 7-26 ("Intervenor's Amendment to the 2.206 Petition").

## II. SUMMARY OF ARGUMENTS

Intervenor will show that GPC's Motion is without merit. First, GPC ignores applicable case law. This ignorance precludes a proper determination. Intervenor remedies this defect by setting forth applicable case law articulating the considerations and legal analysis governing transfer of control of a license. When analyzed under applicable case law, GPC's motion must fail. In this respect, a determination of whether the transfer of control of a license has occurred requires inquiry into all forms of control, including actual or legal, direct or indirect, negative or affirmative, and de facto as well as de jure control. Once the appropriate legal analysis is performed, the

overwhelming weight of factual evidence demonstrates that illegal transfer of the license has taken place.

Second, GPC fails to recognize that summary judgment cannot be granted where the credibility, truthfulness or candor of its witnesses are at issue. Intervenor provides examples of factors demonstrating that the credibility of GPC's witnesses is in serious question.

Third, GPC's Motion is defective because it uniformly seeks to interpret facts in favor of GPC and against Intervenor. It is a fundamental principle of law that the underlying facts and inferences to be drawn therefrom must be interpreted in Intervenor's favor.

### III. INTERVENOR'S STATEMENT OF FACTS

#### Overview

The Southern Company is a registered holding company under the Public Utility Holding Company Act of 1935; it is parent to five operating companies, including GPC and Alabama Power Company ("APC"). The Southern Company holds one hundred per cent (100%) stock ownership of both GPC and APC. In addition to operating companies, The Southern Company has formed wholly owned subsidiary corporations, including Southern Company Services ("SCS"), a service company that provides, at cost, specialized services to GPC, APC and other entities within the Southern system.

Congress has enacted laws pertaining to utility holding companies. The Public Utilities Holding Company Act of 1935, 15



U.S.C. §79, et seq. ("Holding Company Act"), applies to all holding companies, including The Southern Company and all its subsidiaries. See Southern Company 1993 10-K report p. I-13 (Exhibit 25).<sup>3</sup> Under the Holding Company Act, The Southern Company's establishment of subsidiary companies is regulated by the United States Securities and Exchange Commission ("SEC").

In 1987, The Southern Company began taking steps to form a new subsidiary for the purpose of operating all of the nuclear power plants within the Southern system. In the latter part of December 1990, The Southern Company obtained permission from the SEC to form a nuclear operating subsidiary known as Southern Nuclear Operating Company ("Southern Nuclear").<sup>4</sup> Between 1988

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<sup>3</sup> The Exhibit numbers refer to Exhibits contained in Intervenor's Appendix of Exhibits.

<sup>4</sup> It appears that the creation and operation of a Southern Nuclear Operating Company as a division of The Southern Company prior to incorporation violated the Public Utilities Holding Company Act of 1935. 15 U.S.C. §§ 79, et seq. Section 79m(b) of this Act prohibits contracts between subsidiary companies of any registered holding company:

After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract or by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such

(continued...)

and 1990, The Southern Company established, without SEC or NRC approval, an interim entity to function as a nuclear operating subsidiary. This entity is generally referred to as the "SONOPCO project." At the time Mr. Dahlberg served as GPC's Chief Executive Officer ("CEO"), he explained the purpose of the SONOPCO project as follows:

The SONOPCO project was originally envisioned as a separate corporation. However, now it operates without a corporate identity and operates in effect as a division of the company, or a division of the Southern Company.

It is divided now so that it has specific responsibilities for Georgia Power Company as we've indicated for the operation of the Georgia Units, and also has a separate responsibility for Alabama's units.

It is not yet a corporate entity and does as I say operate as in effect a division of The Southern Company.

DOL Tr. 305 (Dahlberg) (Exhibit 31).

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\*(...continued)

companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.

15 U.S.C. 79m(b).

The fact that SONOPCO project was not incorporated and there being no application under this Act to establish the SONOPCO project, would indicate that investors, consumers, and the public went unprotected from non-arm's-length dealings between Southern Company subsidiaries and the SONOPCO project. See Ohio Power Co. v. F.E.R.C., 880 F.2d 1400, 1402-1403 (D.C. Cir. 1989), reh den, en banc (U.S. App. 1989).

Intervenor asserts that the establishment of an unincorporated nuclear operating subsidiary without SEC or NRC written approval and the transfer of GPC's nuclear operations to SONOPCO project management resulted in the illegal transfer of GPC's nuclear operating license. Moreover, Intervenor asserts that the illegal transfer of control vested in the unincorporated nuclear operating subsidiary continued unabated even after Southern Nuclear was formally incorporated in December of 1990.

#### Factual Basis

GPC is a wholly owned operating company of The Southern Company, with approximately seventy per cent (70%) of its assets tied to its ownership of two nuclear plants. Dahlberg 5/8/90 DOL Dep. at p. 44. In 1987, two operating companies within the Southern system owned and operated all the nuclear power plants within the Southern system. APC was the sole owner and operator of Plant Farley; GPC was the co-owner and sole operator of Plants Hatch and Vogtle. The Southern Company is not licensed to operate any of these nuclear plants and is not subject to its provisions. As such, The Southern Company may not engage in any activity pertaining to the operation of GPC's nuclear plants.

Historically speaking, the relationship between GPC and APC within the Southern system was not good. Mr. Grady Baker, the senior executive vice president of GPC, stated that these two entities were in constant conflict. Baker Dep. at pp. 19, 122, 128 (Exhibit 1).

In or about 1983, Mr. Addison was elected president of The Southern Company. Addison's presidency led to increased interference in GPC's nuclear operations by The Southern Company. By 1986, for example, GPC was in the process of constructing Plant Vogtle. The construction project was experiencing problems and GPC's then president, Mr. Miller, and GPC's CEO, Mr. Scherer, hired the former president of the Institute of Nuclear Power Operations ("INPO"), Admiral Wilkinson, as a consultant to assess construction problems. See Hobby Aff. (Exhibit 2).<sup>5</sup> Based on this assessment, Mr. Miller and Mr. Scherer advised Adm. Wilkinson that they wanted him to take over managing the construction of Plant Vogtle. See Hobby Aff. (Exhibit 2). Admiral Wilkinson agreed, and Marvin Hobby (then executive assistant to GPC's president) was assigned to assistance Adm. Wilkinson in the transition. At this point in time Mr. Addison advised GPC's management that no change in management was to occur. See Hobby Aff. (Exhibit 2). This involvement by The Southern Company had direct influence on GPC's control of its construction permit and represents the an early rooting of improper control by The Southern Company over GPC's nuclear operations.<sup>6</sup>

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<sup>5</sup> Mr. Hobby's background is set forth on page 2 of Intervenor's 2.206 Petition (September 11, 1990).

<sup>6</sup> Other significant involvement by Southern Company management occurred in early 1988, when INPO indicated that the operation of Plant Hatch was experiencing difficulty. At this time Mr. Addison attended a closed executive session with INPO (in attendance was INPO's president, Addison, and Scherer). See Addison Dep. at p. 47.

The concept of a stand alone nuclear operating company was contemplated for a dozen or more years before it was established. Prior discussions were halted as a result of corporate rivalry between GPC and APC. Baker Dep. at pp. 19, 122, 128 (Exhibit 1). This changed in 1987, after The Southern Company board established a task force to consider the formation of a nuclear operating subsidiary ("Phase I Task Force"). At this juncture, Mr. Addison met in private with Joe Farley (then President and CEO of APC). They jointly agreed that Mr. Farley would emerge as the chief executive of a newly forming nuclear operating subsidiary under the control of The Southern Company. Addison Dep. at pp. 71, 67, 38, 45. They also agreed that the management of the subsidiary would be located in Birmingham, Alabama. Addison Dep. at p. 80. The fact is that GPC's CEO was not included in these discussions; had no idea of the process employed to select Mr. Farley as CEO of this emerging subsidiary; and was not told of the decision to locate Southern Nuclear in Birmingham. Scherer 6/8/94 Dep. at pp. 47-48, 77 (Exhibit 3).<sup>7</sup>

The Phase I Task Force reported to The Southern Company that establishment of a nuclear operating company should commence. At this point (November of 1987) The Southern Company established a "Phase II" Task Force with authority to commence forming a Southern Nuclear Operating Company. Mr. McDonald was appointed by The Southern Company to determine the organizational structure

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<sup>7</sup> At this time the newly forming subsidiary was designated as "Southern Nuclear Operating Company," or "SONOPCO."



of SONOPCO. Long Dep. at pp. 11, 14, 16 (Exhibit 4). Changes to the organizational structure of GPC's nuclear operations had to be effectuated to establish SONOPCO as the operator of GPC's nuclear plants.<sup>8</sup>

The first order of business was to place GPC's and APC's nuclear organizations under a single line of management. This was accomplished by naming Mr. McDonald as an executive vice president - nuclear of APC and GPC.<sup>9</sup> According to Mr. Farley, the decision to name McDonald as the chief operating officer over all The Southern Company's plants was based on discussions

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<sup>8</sup> The most significant changes had to occur were: 1) a chief operating officer ("COO") over all of the Southern system nuclear plants had to be selected (this was accomplished by placing Mr. McDonald over GPC's nuclear operations); 2) the internal structure over GPC's nuclear operations had to be realigned to coincide with APC's nuclear operations (at the time GPC's nuclear operations were structured in such a manner that one set of managers was involved in the operations of both nuclear plants, this was changed by segregating GPC's nuclear management into two separate projects, a Vogtle project and a Hatch project); and 3) the philosophical restructuring had to take place (this was accomplished by restructuring GPC's nuclear operations from an "overview" function to a "support" function). With respect to changes in philosophy, it should be noted that it was NRC staff who advised SONOPCO project management in December 1988 that GPC's FSAR has out of compliance with respect to the change in philosophy. Stip. Ex. 11 ("licensee committed to updating the FSAR to reflect this new philosophy"). Moreover, the GPC's "scheduling philosophy for outages" was revised by the SONOPCO project management, including Mr. Farley. See Mosbaugh Tape Tr., (Exhibit 21).

<sup>9</sup> On September 21, 1988 Mr. Addison issued an announcement which identifies the joining of GPC's and APC's nuclear operations as "first step" towards formation of nuclear operating subsidiary. See Stip. Ex. 10 ("first step" was "merging the nuclear management professionals of Alabama Power and Georgia Power").

between Farley, Addison and Dahlberg.<sup>10</sup> Farley DOL Dep. at p. 45. Conspicuously absent from these discussions is GPC's executive management.<sup>11</sup> In effect, Mr. McDonald became "an officer of GPC so that he could operate GPC's nuclear plants until such time as SONOPCO was formed." Baker Dep. at p. 45 (Exhibit 1).<sup>12</sup>

GPC's exclusion is not surprising based on testimony given by GPC's CEO before illegal transfer was an issue (i.e., before Hobby or Oglethorpe Power raised the issue). According to Mr. Scherer, responsibility to staff and reconfiguration of GPC's nuclear operations was left to the "executive management of the

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<sup>10</sup> Mr. Dahlberg thought that Mr. McDonald was also made an officer of SCS. DOL Tr. 304 (Dahlberg). Mr. McDonald testified that he was never an officer of SCS. McDonald 4/14/94 Dep. p. 67-68 (Exhibit 19).

<sup>11</sup> Mr. McDonald took over GPC's nuclear operations as of April 1988. On April 4, 1988, GPC formally named him a senior officer of GPC and on April 22, 1988, he was designated executive vice president, nuclear operations. In April of 1988 Mr. Dahlberg was not a GPC employee (he was the CEO of SCS; he did not become a GPC employee until June 1, 1988, see Stip. Ex. 5, May 18, 1988 GPC Board Minutes; Mr. Farley likewise had no involvement with GPC employees (he was the CEO of APC and de facto CEO of SONOPCO); and the third participant, Mr. Addison, likewise was not a GPC employee (at the time he was Southern Company's president). As such, the discussions concerning the selection of McDonald to head GPC's nuclear operations excluded GPC management.

<sup>12</sup> It was not until the Southern System reached agreement about the formation of SONOPCO that Mr. Farley agreed to allow Mr. McDonald to become a GPC employee. Baker Dep. at p. 97 (Exhibit 1). In fact, in the past, when Mr. Baker specifically asked Mr. Farley if Mr. McDonald could come to GPC, Mr. Farley refused to allow either McDonald or Hairston to leave. Baker DOL Dep. at p. 69 (Exhibit 6); Baker Dep. at pp. 14-15 (Exhibit 1).

SONOPCO operation."<sup>13</sup> Mr. Scherer's hold over nuclear operations was so remote that Mr. Addison, "los[t] track of whether Scherer or McDonald was [GPC's] CEO." Addison Dep. at p. 83.<sup>14</sup>

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<sup>13</sup> In 1988, Mr. Scherer provided deposition testimony in the Fuchko and Yunker v. GPC Section 210 proceeding (Exhibit 7). This testimony is highly significant because it was given before there was any accusation by Mr. Hobby or anyone else that GPC transferred its license to SONOPCO. In this respect, Mr. Scherer testified that the "executive management" of SONOPCO was actively functioning and had the responsibility to reorganize and staff GPC's nuclear operations:

A: ...That was left to the executive management of the SONOPCO operation to determine what disciplines were necessary and what talents and experience were required [to staff the corporate structure over GPC's nuclear operations].

Q: So you relied upon their consideration of who should be considered for what jobs?

A: That's right.

Q: Okay, did you ever talk to Mr. McDonald or anybody who was a part of that executive management as to what their criteria for SONOPCO jobs were?

A: No, I did not.

Q: Okay, and is Mr. McDonald, is he one of the people that you're talking about who was responsible for evalu--

A: He would be the chief person responsible for the overall operation of SONOPCO. I can't say as to whether he developed the job descriptions or someone within his organization -- I can't say that.

Scherer 12/21/88 DOL Dep. at pp. 15-16 (emphasis added) (Exhibit 7).

<sup>14</sup> That Mr. Scherer was no longer acting as the CEO over nuclear is exemplified by his testimony that he had no authority over the location of GPC's nuclear operations and that even if he voiced an objection the people in control of nuclear operations might not have changed their minds.

(continued...)

GPC recognized that the co-owners of Plants Vogtle and Hatch would not agree to the formation of SONOPCO. GPC further knew that Oglethorpe would intervene before the SEC unless they came to agreement about the organization of SONOPCO. Long Dep. at pp. 31-32 (Exhibit 4). In this matter, Oglethorpe was unwilling to approve the creation of SONOPCO until contractual arrangements between Oglethorpe and GPC were established to the transfer of operational control to SONOPCO. See Oglethorpe SEC Intervention at p. 3 (Exhibit 23). Without Oglethorpe's approval, the Southern Company could not create a wholly owned nuclear operating subsidiary.

Oglethorpe's initial objection to the formation of a nuclear operating subsidiary delayed the creation of the legal corporation The Southern Company wanted to create. Instead of forming such a corporation, The Southern Company turned to

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<sup>14</sup>(...continued)

Q: Now, with respect to Mr. McCoy and Mr. Beckham you were asked whether it was okay for them to relocate to Birmingham?

A: Well, it isn't a matter of whether it was okay. It was more a suggestion that they were going, and I guess it was an opportunity to object if I wanted to, but they didn't ask me, "Can we move them to Birmingham."

Q: Basically you were given an informational --

A: Yes, right.

Q: -- briefing that they were going over to Birmingham?

A: Right. And, I guess if I had said, "oh no," they might have changed their minds.

Scherer 6/8/94 Dep. at p. 77-78 (Exhibit 3).

another avenue to accomplish its objective. In May of 1988, the Southern system implemented a plan to establish a "SONOPCO project." Long Dep. at p. 32 (Exhibit 4).

Nonetheless Farley and McDonald decided to continue to make and implement SONOPCO staffing decisions. This included the SONOPCO project's senior vice president; vice president of Technical Services; and the vice president of Administrative Services. McDonald 5/7/90 DOL Dep. at pp. 12-13; Farley DOL Dep. at pp. 42-43. Mr. Farley's control over staffing decisions for the SONOPCO project was so well entrenched that, when it was time to tell Louis Long that he had been selected as the vice president of Technical Services position, Mr. Long was told that Mr. Farley wanted to see him although the reason why he was to meet with him was not disclosed. This would be the first time Mr. Long ever met Mr. Farley. At that meeting Mr. Farley notified Mr. Long of his promotion to vice president of SONOPCO's Technical Services division. Long Dep. at pp. 5-6, 20 (Exhibit 4). It is critical to note that, at the time he made the selection, Mr. Long had no reporting relationship to Mr. Farley.<sup>15</sup> Mr. Farley's selection of Mr. Long evidences Mr. Farley's authority to act as the de facto CEO of SONOPCO prior to its incorporation.

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<sup>15</sup> Mr. Long was, at the time, an SCS employee and had no reporting relationship to Mr. Farley, who at the time was APC's CEO and president.



Mr. Farley also participated in the selection of Ken McCoy as the Plant Vogtle project vice president. Farley DOL Dep. at p. 59.<sup>16</sup>

On March 2, 1988, Mr. McDonald (who then held the position of senior vice president at APC) and others met with the NRC to formally discuss the formation of SONOPCO. Stip. Ex. 1, Long Dep. at p. 25-30 (Exhibit 4). NRC Staff was advised that The Southern Company implementation would begin with the incorporation of SONOPCO, and there was no mention of the need to create a SONOPCO "project." Long Dep. at pp. 25, 30 (Exhibit 4). Nonetheless, on May 18, 1988 the boards of directors of The Southern Company, GPC and APC approved the formation of SONOPCO. Stip. Ex. 5. At the same time GPC formally elected Mr. Hairston as senior vice president, and Mr. McCoy as project vice president.<sup>17</sup>

On June 22, 1988, The Southern Company filed an application with the SEC to form SONOPCO as a subsidiary. Stip. Ex. 6. No mention of the interim formation of a SONOPCO project is discussed in the SEC filing, see Stip. Ex. 6, nor was the NRC or

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<sup>16</sup> Once Mr. Hairston was put in charge of GPC's nuclear operations, Mr. McDonald's main focus was no longer the day-to-day operation of GPC's nuclear plants, but activities associated with the formation of SONOPCO. See Hairston Dep. at p. 27 ("Between Pat McDonald and myself on a day-to-day basis, I was focused more on the plant operations; whereas, Pat worked on the formation activities") (Exhibit 8); and p. 54 ("issues that involve the transition period were handled by Pat on a day-to-day basis" while Hairston focused "on day-to-day plant operations") (Exhibit 8).

<sup>17</sup> Arrangements for McDonald's shared employment were not resolved until June of 1988. (Stip. Ex. 7).

the SEC informed at this point in time that The Southern Company and its subsidiaries were going establish a SONOPCO project in Birmingham, Alabama. Indeed, it appears that at no time did The Southern Company seek to obtain permission from the SEC or the NRC to establish a de facto nuclear subsidiary.<sup>18</sup> In any event, NRC never provided GPC with written consent to establish the SONOPCO project.

On July 25, 1988, SONOPCO project officials met with NRC Region II to advise the region that GPC was splitting its nuclear operations into two separate projects, a Hatch project and a Vogtle project. Stip. Ex. 9. NRC Region II was told that GPC's nuclear operations would remain in Atlanta until SEC approval for SONOPCO is obtained, and the location of SONOPCO would not be decided until after SEC approval. Stip. Ex. 9 at Enclosure 1. This information was inaccurate in three respects: 1) NRC was not advised that a "SONOPCO project" would be formed (although the transfer of GPC's nuclear operations was part of the creation of the project); 2) NRC stated that GPC's nuclear operations would not be moved until SEC approval was obtained whereas, in fact, GPC's nuclear operations were moved prior to SEC approval; and 3) the location of SONOPCO had not been selected whereas, in fact, Birmingham site had already been selected.

By this juncture, Mr. Farley had assumed full responsibility for briefing The Southern Company board about the status of GPC's

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<sup>18</sup> It appears that neither NRC, SEC nor Oglethorpe were apprised of this development. Long Dep. at p. 33 (Exhibit 4).

and APC's nuclear plant operations. Farley DOL Dep. at pp. 39-40. In this regard The Southern Company board minutes would typically include reference that "Mr. Farley report[ed] on nuclear performance and the status of SONOPCO." Farley DOL Dep. at p. 40.<sup>19</sup>

Mr. Farley's management over GPC's and APC's nuclear operations was so complete that Mr. Farley would not only attend, but he would initiate weekly SONOPCO project staff meetings. Long Dep. at pp. 48, 55 ("Mr. Farley would initiate it, and the first thing you would do is call on the presiding VP who had projects reporting to him and ask for plant status") (Exhibit 4). These weekly staff meetings constitute the pivotal management oversight mechanism over the nuclear plants where all emerging and existing developments concerning the management, operation, and administration of GPC's and APC's nuclear plants were discussed.<sup>20</sup>

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<sup>19</sup> Mr. Farley testified that he received oral reports from McDonald, Hairston, McCoy, Long and McCrary concerning the performance of GPC's and APC's nuclear units and that these reports provided him with the information he needed to brief The Southern Company Board. Farley DOL Dep. at pp. 49-40 ("I report to the Southern Board quarterly on...the performance of the units...I know the information [because]...I receive reports from Mr. McDonald, Mr. Hairston, Mr. McCoy, Mr. Long, Mr. McCrary...").

The fact of the matter is that Mr. Farley received a briefing at the end of the day on April 19, 1990 from Mr. Hairston (the date LER 90-006 was issued). According to Mr. Shipman, the last entry in his daily notebook for April 19, 1990 indicates that Mr. Hairston advised him that Mr. Farley was "briefed." Shipman Notebook (Exhibit 9).

<sup>20</sup> According to Mr. Farley, the purpose of these staff meetings was:

(continued...)

On or about October 1, 1988, GPC's nuclear operations were moved to Birmingham. Stip. Ex. 12.

By December of 1988, there can be no doubt that SONOPCO existed and had become the responsible agent for operating GPC's nuclear plants. This fact is established in Mr. Scherer's 1988 deposition in Fuchko and Yunker, where he testified as to the SONOPCO project's role in operating GPC's plants. In this respect, Mr. Scherer testified that SONOPCO, although not formally incorporated, would, in reality, manage the operation of all the nuclear plants owned by The Southern Company subsidiaries:

Q: What is the relationship between SONOPCO and Georgia Power?

A: What is the relationship?

Q: Yeah.

A: Right now the relationship is that SONOPCO will operate the generating plants, the nuclear generating plants, for the individual operating companies, Alabama and Georgia, that own nuclear power facilities.

Q: I don't know a lot about corporations and all, but what, what do you call what SONOPCO is?

A: SONOPCO at the present moment doesn't exist. It is, we -- there is a, a -- whatever it's called -- a petition

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<sup>20</sup>(...continued)

exchanging information and being sure that everybody was aware of what was going on in all of the various departments and organizations. That's where we would learn of anything of interest at Vogtle, including the status of the aftermath of the [Site Area Emergency].

Farley 4/14/94 Dep. at pp. 70-71 (Exhibit 5).

before the Securities and Exchange Commission to create SONOPCO as a subsidiary corporation of the Southern Company.

And, un -- but the formation of it, the actual configuration of it, exists in reality in Birmingham, because we have brought together the corporate general office staff of Alabama and Georgia, and also of Southern Company Services, into one central location, with the responsibility of operating the nuclear plants of the various operating companies.

Q: Okay.

A: And we're awaiting approval from the Securities and Exchange Commission.

Scherer 12/21/88 DOL Dep. at pp. 15-16 (emphasis added) (Exhibit 7).<sup>21</sup>

Thus, according to GPC's own CEO, by December of 1988, control over GPC's nuclear operations had changed and "responsibility of operating the nuclear plants" was transferred to the SONOPCO project.<sup>22</sup>

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<sup>21</sup> To place this statement in further context, it should be noted that Mr. Scherer volunteered that a separate entity, SONOPCO was in existence (i.e., at page 14 of his deposition the existence of SONOPCO is volunteered by Mr. Scherer, who explains the complainants in the Fuchko case "had not been offered a position in the Birmingham operation of SONOPCO" and that "whether they had a job in SONOPCO or within the existing Georgia Power Company remained to be determined." Scherer 12/21/88 DOL Dep. at p. 14-15 (Exhibit 7). Only after Scherer himself discussed the existence of SONOPCO was he asked to explain the current relationship between SONOPCO and GPC.

<sup>22</sup> The fact that SONOPCO would be staffed and commence operating as an unincorporated entity was also mentioned in two internal announcements. A letter was issued by The Southern Company's president, Mr. Addison, on September 21, 1988. Therein, Mr. Addison states that The Southern Company decided to move GPC's off-site nuclear management and support function to the SONOPCO project ("we have decided to move the off-site nuclear management and support"). See Stip. Ex. 10, (Addison announcement).

The second announcement came on October 7, 1988, through SCS. (Exhibit 10). This announced the existence of "an interim nuclear  
(continued...)



In December 1988, Mr. Dahlberg replaced Mr. Scherer as GPC's CEO. According to GPC's organizational chart, nuclear operations were to report to Dahlberg. In an attempt "to keep an eye on the nuclear company," Baker Dep. at p. 64 (Exhibit 1). Dahlberg decided to establish a Nuclear Operations Contract Administration group ("NOCA") in Atlanta. On December 27, 1988, Dahlberg issued a letter advising Farley and McDonald of the creation of NOCA. Dahlberg Let. (Exhibit 26). Dahlberg created NOCA to assist him in analyzing the performance of GPC's nuclear units and to review the budgets. DOL Tr. 328 (Dahlberg); 671 (Head) (Exhibit 31). Mr. Dahlberg, on the recommendation of two vice presidents (Grady Baker and George Head) named Marvin Hobby as, general manager of NOCA, reporting to GPC senior vice president George Head. SONOPCO project management, including Mr. Farley, objected to the continued operation of NOCA. Shortly after NOCA was formed, SONOPCO project management was instructed not to cooperate with NOCA. When George Head reported to Dahlberg that the SONOPCO project was refusing to cooperate with NOCA, Dahlberg advised Mr. Head that he could not resolve the matter until he met "with Mr. Farley." DOL Tr. at p. 652 (Head) (Exhibit 31).<sup>22</sup> On May 5,

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<sup>22</sup> (...continued)  
support organization known as the SONOPCO Project" that would be "staffed by employees from Alabama Power, Georgia Power and SCS," with SONOPCO's "[m]anagement" to be located in Birmingham; and that this arrangement would remain until "approval" from the SEC to "create a separate Southern Company subsidiary" was received.

<sup>23</sup> Dahlberg testimony during the Hobby proceeding was directly contradicted by Mr. Head. Where Head recalled his meetings with Dahlberg, Mr. Dahlberg denied that any such meetings  
(continued...)

1990 Dahlberg and Grady Baker met with Mr. Farley. Mr. Dahlberg advised Mr. Farley that he wanted to increase Hobby's staff. DOL Tr. 570, 587 (Farley) (Exhibit 31); Farley Dep. at pp. 58-60 (Exhibit 5). Mr. Farley responded that that would not be necessary because the SONOPCO project would perform whatever task Dahlberg had in mind. DOL Tr. 588, 594 (Farley) (Exhibit 31). Three days later, on May 8, 1990, Mr. Hobby received a call from William Evans, GPC's Corporate Concerns Coordinator, advising Hobby that "Farley was going to make the call" about matters related to NOCA. DOL Tr. 160-162 (Hobby) (Exhibit 31); Hobby Log

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<sup>23</sup> (...continued)  
transpired, including any meeting where Mr. Head requested to meet with Mr. McDonald to resolve the problem. DOL Tr. 317-318 (Dahlberg) (Exhibit 31). This contradiction calls into question Mr. Dahlberg's credibility. It should also be noted that Dahlberg's denial was also contradicted by a contemporaneous letter written by Mr. Hobby to Adm. Dennis Wilkinson. Therein, Mr. Hobby explained that Mr. Head:

went to Dahlberg and said there was one matter he wanted to get settled before he retired and that was our relationship with SONOPCO. Dahlberg responded that he knew there was a problem and he was going to meet with Farley and see if they could straighten it out. When George told me that, I said something like if McDonald report[s] to Dahlberg why in the hell can't Bill [Dahlberg] just tell him what to do and why does Bill have to go and straighten it out with Joe Farley. George said, "Well, I guess we have just got the answer as to who McDonald really reports to." George also said that Dahlberg said it was a waste of time for Dahlberg to talk to McDonald.

Wilkinson Let. at pp. 4-5 (Exhibit 14). The fact that Mr. Head's testimony is corroborated by statements contained in a contemporaneous letter by Mr. Hobby demonstrates that Dahlberg should not be believed. This contradiction calls Mr. Dahlberg's credibility into question.

(Exhibit 18). Also see Evans DOL Dep. at pp. 17-18 ("[Farley] would decide what to do with the transfer of those positions").

By 1989 a SONOPCO project de facto board of directors was functioning, with Mr. Farley, Mr. McDonald, Mr. Addison and the CEOs of GPC, APC and SCS constituting the board.<sup>24</sup> See McDonald 5/7/90 DOL Dep. at p. 69; Dahlberg 5/8/90 DOL Dep. at pp. 66-67.

Reference to SONOPCO project board of directors meetings are made in the appointment calendars of Addison and Dahlberg. The February 14, 1989 entry in Mr. Addison's appointment schedule states that a "SONOPCO PROJECT BD MEETING" occurred at 3:00 p.m. See Addison Calendar (Exhibit 11). Reference to additional SONOPCO project board of director meetings is contained in Mr. Dahlberg's and Mr. Addison's appointment calendar entries for March 6, 1989, both of which indicate that the SONOPCO project board met at 1:00 p.m. that day. See Addison Calendar (Exhibit 11); Dahlberg Calendar (Exhibit 12); also see Dahlberg 6/10/94 Dep. at p. 64-65; Addison Dep. at p. 53.<sup>25</sup> This de facto board

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<sup>24</sup> The configuration of the SONOPCO project Board came about "as a consensus of Mr. Addison, Mr. Dahlberg, Mr. Harris and [Mr. Farley]." Farley DOL Dep. at p. 85.

<sup>25</sup> Intervenor is greatly troubled by GPC's current denial of the existence of a SONOPCO project board of directors. It is difficult to understand how GPC can deny the existence of a de facto SONOPCO project board of directors after Mr. Dahlberg stated under oath that: "There was a board of directors for the SONOPCO project," Dahlberg 6/10/94 Dep. at p. 132, and later, during the same deposition, when asked whether prior reference to a board of directors was to the SONOPCO project board, Mr. Dahlberg again testified that he was referring to the existence of a SONOPCO project board ("Q: The board meetings you're referring to are the SONOPCO project board meetings? A: Yes"). Id., at p. 135.

met to discuss budget and operational matters pertaining to GPC's and APC's nuclear plants. In particular, Mr. Dahlberg recalled discussing 1) "the budget process," 2) the cost of replacing the "condenser tubes at the Hatch Plant," and 3) "the number of outages that would be planned." Dahlberg 5/8/90 DOL Dep. at p. 69.

At some point, apparently in March of 1989, Mr. Farley is given the formal title of executive vice president-nuclear. See Farley Aff. He is named executive vice president-nuclear of The Southern Company as well as Southern Company Services. Neither The Southern Company nor SCS had such a position in the past and the creation of it represents a fundamentally alteration of The Southern Company's involvement with and control over GPC's nuclear operations.

By this point, Oglethorpe was concerned that Mr. Farley's involvement with SONOPCO might constitute a violation of the nuclear licenses for Plants Vogtle and Hatch. Mr. Dan Smith was a high level Oglethorpe manager with responsibility for Plants Hatch and Vogtle in the 1987-90 time frame. By early 1989 Mr. Smith's observations led him to conclude that Mr. McDonald was reporting to Mr. Farley and that Farley's control over nuclear operations might violate the terms of the Vogtle and Hatch nuclear licenses. Mr. Smith reported his concern to GPC's

general manager of Nuclear Operations Contract Administration, Marvin Hobby. DOL Tr. 850-854 (Smith) (Exhibit 31).<sup>26</sup>

During the Plant Vogtle, Unit 2 full power license hearings before the Commission, Mr. McDonald was asked questions about the reporting structure at Plant Vogtle. In the official transcript of these proceedings, Mr. McDonald reportedly stated "I report to Dahlberg." When Mr. Smith obtained a copy of the hearing transcript and wrote this in the margin beside McDonald's statement that "I report to Mr. Dahlberg":

On paper only! In actuality McDonald appears to report to Farley who reports to Addison! Fact is GPC knows less about plants than we do! We provide GPC with daily reports!

See Smith Notation (Exhibit 13).

Oglethorpe was so concerned about the matter that its top two chief executives, Mr. Stacy and Mr. Kilgore, commented to Mr. Dahlberg that they were concerned about the reporting relationship at SONOPCO, in particular, from whom Mr. McDonald was getting his management direction. See Dahlberg 6/10/94 Dep. at p. 110 and pp. 95-99, 102, 109. Oglethorpe became so concerned that it requested GPC to formally state, in writing, to

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<sup>26</sup> Mr. Smith reported this concern on more than one occasion. Mr. Smith's concern was heightened when:

John Rogge made the comment to no one in particular but to our group that the NRC was having trouble figuring out who was in charge at Plant Vogtle [sic].

DOL Tr. 853 (Exhibit 31). Smith reported this concern to NOCA, who in turn reported it by way of a confidential memorandum to GPC executive management. See Stip. Ex. 34 at p. 7.

whom Mr. McDonald reported and where Mr. Farley fit into the picture. Therein, Oglethorpe requested an organizational chart explaining "how Farley fits into the picture and who he reports to up through the Board." See 4/26/89 Memo from Hobby to Williams, Stip. Ex. 33.<sup>27</sup> The fact remains, that executives at the SONOPCO project never received any organizational charts concerning their reporting relationships. As Mr. Long testified, "Frankly, we're not big on organizational charts, if you want to know the truth." Long Dep. at p. 56 (Exhibit 4).

On April 27, 1989, Mr. Hobby, GPC's general manager of NOCA, and his boss, senior vice president George Head, transmitted a confidential memorandum questioning the reporting relationship of McDonald and indicating that GPC could be in violation of the terms of its nuclear license. The memo, signed by both Hobby and George Head states:

A significant concern that a lot of people have is who does Mr. McDonald work for. ...Oglethorpe Power is so concerned that it has formally requested confirmation that Mr. McDonald receives his management direction from and reports to Mr. Dahlberg.

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<sup>27</sup> On March 31, 1989, Oglethorpe advised the SEC that:

GPC personnel with whom Oglethorpe Power dealt directly in relation to its interests are now subject to a separate authority and are located in Birmingham, Alabama" and that Oglethorpe's ability to obtain contractually required information is thus hindered, and its ability to fulfill its obligation as co-owner reduced... It is certainly not in the public interest to permit establishment of a structure that would impede proper oversight of nuclear plant operations.

Oglethorpe SEC Intervention Reply at p. 4 (Exhibit 24).



...Oglethorpe is very concerned about this issue and they feel NRC is concerned. A Region II NRC employee suggested to Oglethorpe that NRC was so concerned that they might seek to put a resident inspector in Birmingham to see what was going on.

Hobby memo at p. 7 (Stip. Ex. 34). Mr. Hobby was instructed to destroy the memo by GPC vice president Fred Williams. DOL Tr. 151-152 (Hobby) (Exhibit 31); Wilkinson Let. (Exhibit 14).

After Mr. Dahlberg became CEO of GPC he decided to initiate a company-wide management review. At the end of 1989, Mr. Dahlberg completed this company-wide review of management to "assure [himself] of the qualifications of the management of Georgia." Dahlberg excluded GPC's entire nuclear operations from review. See Dahlberg 4/6/94 Dep. at pp. 70-71; 122-124.<sup>28</sup>

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<sup>28</sup> In particular, Mr. Dahlberg testified as follows:

Q: Do you recall in 1989 the Georgia Power Company's rating of its management... in November of 1989... [when GPC's] management council met to discuss the performance of Georgia Power Company management, do you recall that?

A: Yes.

Q: Now, as I understand it, no nuclear people were discussed during that?

A: That's correct.

Q: Who was involved with the rating of the nuclear people?

A: The nuclear personnel themselves were -- nuclear operating people were not included in the review.

Q: Do you have any knowledge of how they ended up being rated?

A: They were not rated.

Q: And that would be everyone reporting to Mr. McDonald and below?

A: That's correct.

\* \* \*

A: ...When I became president, I wanted to assure myself of the qualifications of the management of Georgia Power Company. And we had an off-site review and we reviewed  
(continued...)

Further attesting to Dahlberg's loss of control is the fact that he did not prepare a separate GPC evaluation for Mr. McDonald. Rather, McDonald's evaluation was prepared by Mr. Harris, APC's president, and Dahlberg was only asked if he wanted input into this evaluation. Farley DOL Dep. at p. 15 (Exhibit 5). Moreover, the final evaluation was reviewed by Mr. Farley before it was approved. Id.

The handling of GPC's nuclear budgets changed with the formation of the SONOPCO project. GPC's nuclear operating budgets were prepared by the SONOPCO project and reviewed by Farley. Thereafter they were included in a presentation attended by the SONOPCO project board. GPC's and APC's nuclear budgets were then "approved for recommendation to the operating companies" by the SONOPCO project executive comprising SONOPCO project's de facto board of directors. Dahlberg 6/10/94 Dep. at p. 122.<sup>29</sup> As Mr. Farley explained: "the SONOPCO project and

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<sup>28</sup>(...continued)

every officer outside of the nuclear organization; we did a general assessment about their -- not their day-to-day performance, but about their potential performance, about their potential for advancement and a general assessment of their capability...

\* \* \*

Q: ...as I understand your testimony, [you] did not include the nuclear operations people, but [the review] was limited to the fossil and hydro people?

A: No. It would have been not just fossil and hydro people, it would have been all the organization except for the nuclear organization...

Id., pp. 70-71; 122-124.

<sup>29</sup> McDonald testified that he couldn't remember if he ever presented Mr. Scherer with a nuclear budget, who he allegedly (continued...)

later on Southern Nuclear for Georgia Power, we generated our recommendations on the budgets and sent them to Georgia Power Company." Farley DOL Dep. at pp. 56-57. In May of 1990, before SONOPCO was legally incorporated, Mr. Farley testified, "We've done the best we could in trying to manage the nuclear budget for each of the companies...If you ask, did I approve [the nuclear budgets]? Yes, it has my blessing..." Farley DOL Dep. at pp. 94-95. Significantly, Mr. Jeff Wallace, GPC's Manager of planning and budgeting, Wallace Dep. p. 5, testified that, with the exception of nuclear, his office issued budget guidelines to all of the other GPC departments. Wallace Dep. p. 11-12 (budget direction "not from the budget department as was the rest of the company" and that nuclear "did not receive the same direction as did the rest of Georgia Power"). Moreover, the 1990 nuclear budget was not put before GPC's management counsel as were all of the other GPC departmental budgets. Wallace Dep. 13 ("nuclear itself, I'm unaware of it being put specifically in front of the management counsel"). Moreover, Mr. Wallace testified that he never saw McDonald at a GPC management counsel meeting "talking about the budget." Wallace Dep. 17.

With respect to the 1990 nuclear operating budget, Mr. Hobby received calls from Oglethorpe as to whether the budget had been approved. In December of 1989, Hobby called Mr. Jeff Wallace, Manager of Resource Management, and asked him the status of the

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<sup>29</sup> (...continued)  
reported to between April-December of 1988. McDonald 4/14/94 Dep. at p. 21 (Exhibit 19).

nuclear budget. Mr. Wallace told him the budget had been approved at a meeting of The Southern Company management council and further that Dahlberg had disagreed with the proposed budget and Addison had said, "That's it. That's the budget." Hobby Dep. at 73-74.

Another NOCA employee, Mr. Gerald Johnson, had come out of GPC's budgeting department. Mr. Johnson testified that from talking to the GPC budgeting people he learned that the 1990 nuclear budget was approved by "the Board out of the Southern Company," that included all the operating company presidents and that the only GPC budget not approved by the GPC management council was the nuclear budget. Johnson DOL Dep. at pp. 41-42 (Exhibit 29).

It also appears that Mr. Farley oversaw the introduction of GPC's nuclear operating philosophy.<sup>30</sup> Mr. Farley specifically

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<sup>30</sup> One of the Mosbaugh tapes includes the following statement of Mr. McCoy that was made on August 6, 1990 at the plant Vogtle site:

Let me make a comment again and be sure that everybody understands this because -- there's been some discussions in some of the other plants of SONOPCO that were not adhering to this and so we had some discussion at the highest levels including Mr. Farley, McDonald, Hairston and the three VPs about our scheduling philosophy for outages...The conclusion of that discussion was that optimum means the basically shortest schedule that you are able to do something in -- everything goes right. That you do not put any contingency or extra time in there and after lots of discussion everybody agreed that that was the right way to do the scheduling.

See Mosbaugh Tape Tr. (Exhibit 21).

discussed his involvement with the establishment of a nuclear operating outage philosophy for the SONOPCO project, stating that the philosophy was developed during a SONOPCO project "retreat" headed by Farley that was attended by all SONOPCO project executives (Dahlberg was excluded). Deposition of Farley (not transcribed).

At the end of 1989, the SONOPCO project issued it's official "On-Call Project Manager" telephone list, proclaiming Farley as the head of GPC's nuclear management. See Corp. Mgt. List at p. 1 (Exhibit 15).

Farley's role was obvious to management at the SONOPCO project. In this respect, SONOPCO project managers observed that Farley rather than Dahlberg was controlling GPC's nuclear operations. For example, one of the highest level GPC employees within the SONOPCO project, Mr. Shipman (Plant Vogtle general manager of Nuclear Support) testified that it was his belief that on April 19, 1990, McDonald reported to Farley and that Mr. Hairston briefed Mr. Farley on April 19, 1990 as well. See Deposition of Shipman (not transcribed).<sup>31</sup> Moreover, another SONOPCO project manager, Mr. Steve Chestnut, made a similar observation (Chestnut was employed in the SONOPCO project organization between 1988 and April of 1989. Mosbaugh Aff.

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<sup>31</sup> At the time Mr. Shipman testified he had been in a position to observe the reporting relationship between Mr. Farley and Mr. McDonald for a number of years. That Mr. Shipman believed Mr. McDonald took management directive from Mr. Farley and that Mr. Hairston specifically reported to Farley on April 19, 1990 is highly significant given the importance of this date (i.e., the issuance of LER 90-006).

(Exhibit 22). According to Chestnut, SONOPCO project executives made "a lot of calls to Farley" and it was not until recently that he heard anything about calls to Dahlberg. See Mosbaugh Tape 260A Tr. (Exhibit 27).<sup>32</sup>

Southern Nuclear was incorporated on December 17, 1990. The incorporation of Southern Nuclear resulted in no real change. Indeed, the only change appears to be the formal establishment of a board of directors; the formal election of officers; transfer of Southern system employees to Southern Nuclear; and a change in who issues pay checks. The organizational structure remained intact.

In essence, by the time the formal incorporation of Southern Nuclear occurred, the SONOPCO project was already in control of GPC's nuclear operations and the incorporated entity did not alter the type and amount of control that existed prior to incorporation. Southern Nuclear's management continued to exercise control over GPC's nuclear operations in violation of the terms of its license. Evidence of this is contained in Southern Nuclear board minutes. For example, the August 5, 1991 Southern Nuclear board minutes reflect that: 1) Joe Farley made a periodic briefing to the board about the status of the Hobby and Mosbaugh Section 210 proceedings, as well as their filing of a

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<sup>32</sup> Mr. Chestnut was deposed during the course of this proceeding during which he listened to Mosbaugh tape no. 260 and confirmed that the above stated conversation occurred and that he made the above-identified statement to Mr. Mosbaugh. A copy of a hand-corrected transcript of a portion of tape no. 260 is attached hereto as Exhibit 27.



petition under 10 C.F.R. §2.206. Both the Hobby and Mosbaugh cases are internal GPC matters. Moreover it is Mr. Farley and not GPC's CEO, Mr. Dahlberg, who took responsibility for reporting on the development of these cases and the 2.206 petition. 2) Joe Farley briefed the Southern Nuclear board on developments occurring at NRC's August 19, 1991 Plant Vogtle enforcement conference. 3) The Southern Nuclear board discussed the preparation of GPC's nuclear budget, specifically GPC's preliminary Operation and Maintenance ("O&M") budget for Hatch and Vogtle.

Additionally, at the November 11, 1991 Southern Nuclear board meeting the following occurred: 1) the board reviewed a summary of proposed Hatch and Vogtle budgets; 2) the board discussed what procedures should be employed for formal budget approval; 3) the status of the Hobby and Mosbaugh litigation was again reported; and 4) the board reviews Plant Vogtle management changes. The discussions occurring in these two Southern Nuclear board meetings reflect that control over GPC's nuclear operations came from Southern Nuclear and not GPC.<sup>33</sup>

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<sup>33</sup> Perhaps the best evidence that Mr. Farley, as the CEO of Southern Nuclear, was in charge of GPC's nuclear operations is contained in the following statement of Mr. McDonald before NRC staff where he explained Mr. Farley's role over GPC's nuclear operations as follows:

[Mr. Farley] represents you might say the flow of individualized type leadership. Are those people who are manning those jobs, are they trained well enough. What are we looking for, for building people in the future. He gets on administrative things. When we get to budget and compare all  
(continued...)

Most troubling is the recent disclosure by Mr. Franklin that the Southern Nuclear board met to approve GPC's recent response to the NRC's NOV. Moreover, after counsel for NRC staff advised GPC's president and counsel that NRC staff expects the response to the NOV to be signed by GPC's president, GPC's president failed to do so.

In sum, the totality of the circumstances demonstrate that by 1988 The Southern Company had established a de facto nuclear operating subsidiary which controlled GPC's nuclear operations. This de facto subsidiary was formally incorporated in December of 1990 and continued to control GPC's nuclear operations.

#### IV. LEGAL STANDARDS PERTAINING TO TRANSFER OF CONTROL OF A LICENSE

Section 184 of the Atomic Energy Act<sup>34</sup> prohibits the

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<sup>33</sup> (...continued)

these budgets what we do is, we get the Alabama budget and the Georgia budget and we get all these people who are on the [Southern Nuclear] board together and have one big meeting and present the budget all at one time. Each of them can see what is happening. We had one of those meetings here about two months ago, and he gave some pointed comments, and the Southern Company President gave us some pointed comments. They can each see what is happening in the others and they can visually compare them. We think they think that it's promoting management all the way around.

Stip. Ex. 19, at pp. 27-28 (NRC Official Transcript of proceedings (Implementation of Southern Nuclear Operating Company), January 11, 1991, statement of R.P. McDonald.

<sup>34</sup> The Act states in relevant part:

No license granted hereunder...shall be transferred, assigned, or in any manner  
(continued...)

transfer of control of a license without first obtaining written and informed consent by the NRC.<sup>34</sup> Under Section 184, Congress purposefully included the most comprehensive prohibition ever enacted against any form of transfer of control of a license.

By section 184, Congress established a strong public policy prohibiting the 'transfer of control of any license' by every conceivable means, without the prior written and informed consent of the Nuclear Regulatory Commission. This broad and sweeping statutory language was clearly intended to proscribe the alienation in any manner or form of any license or right to utilize or produce special nuclear material, without the specified Commission action. The integrity of the regulatory process in this regard can only be maintained by the most scrupulous adherence to such statutory requirements, in reality as well as in form.

Safety Light Corp. (Bloomsburg Site), LBP-90-7, 31 N.R.C. 116, 129 (1990). Thus, considering factual and legal arguments concerning what constitutes transfer of control requires the most strict and harsh interpretation available under law. Such strict prohibition against transfer of control is consistent with Congress' recognition of public concern over nuclear power.

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<sup>34</sup> (...continued)

disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall...give its consent in writing.

42 U.S.C. §2234 (1982) (emphasis added).

<sup>35</sup> NRC has never approved, in writing the transfer control of any licensed activity to Southern Nuclear or its unincorporated predecessor, the SONOPCO project. Any assumption of control by either entity would constitute a violation of the Act.

The whole history of the commercial utilization of nuclear energy and materials in fraught with deep public concern over the possible effects of any exposure to radioactivity. The entire subject has produced intensely emotional reactions by a large segment of the population. Consequently, Congress has been very sensitive to the necessity of rigorous controls and close regulation of the entire nuclear industry. As a result, the regulatory framework it has established and charged the Nuclear Regulatory Commission with implementing is probably the tightest and most pervasive of any commercial or industrial activity in this country.

Against this background it is apparent that any person or corporation that chooses to engage in licensed nuclear byproduct material activities, is not completely free to conduct itself in a business-as-usual manner. There are substantial constraints upon unfettered business actions and forms resulting from a high degree of regulatory oversights, direct or consequential. Not surprisingly, such limitation apply to issues involving the direct or indirect transfer of licenses [or] significant changes in corporate and other licensees...

Safety Light Corp., (Bloomsburg Site), LBP-90-7, 31 N.R.C. 116, 122 (1990).

Without first obtaining the informed written consent of the Commission, the transfer of control in any form or manner is strictly prohibited regardless of business necessity or any other justification:

The strong public policy enunciated by Congress in barring unapproved transfers of control of licensees is controlling, and hence there can be no avoidance of such mandatory requirements by NRC acquiescence, delays, laches or equitable estoppel, notification of SEC or its own shareholders, alleged business reasons as justification, spinoffs, or the provisions of 10 C.F.R. Part 50.

Safety Light Corp. (Bloomsburg Site), LBP-90-7, 31 N.R.C. 116, 129 (1990).

A determination of the transfer of control requires the Board to inquire whether such a transfer occurred in any manner to any entity, even where such control was de facto in nature.

It is well settled that 'control,' as used in the [Federal Communications] Act and pertinent Commission rules, encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that the passage of de facto as well as de jure control demands the prior consent of the Commission."

Stereo Broadcasters, Inc., 55 F.C.C.2d 819, 821 (1975).<sup>36</sup>  
Also see S.W. Texas Public Broadcasting Council, 85 F.C.C.2d 713, 715 (1981); Lorain Journal Co. v. F.C.C., 351 F.2d 824 (1965), Cert. denied, 383 U.S. 967 (1966); WWIZ, Inc., 36 F.C.C. 561, 579, 2 R.R.2d 169, 191 (1964); Astrolines Communications Comp. Lim. Partnership v. F.C.C., 857 F.2d, 1556, 1563 (D.C.Cir. 1988).<sup>37</sup>

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<sup>36</sup> It has been noted that the "licensing provisions on the Atomic Energy Act were based on those contained in the earlier enacted Federal Communications Act." Safety Light Corp. (Bloomsburg Site), ALAB-931, 31 NRC 350, 364 (1990). Accordingly, recourse to federal case law interpreting Section 310(d) of the Federal Communications Act is appropriate.

<sup>37</sup> Similarly, the concept of control is broadly construed by the Securities and Exchange Commission. For example, in Myzel v. Fields, 386 F.2d 718, 738 (8th Cir. 1967), cert. denied, 390 U.S. 951 (1968) control was defined to include "indirect means of discipline or influence short of actual direction." Also see Richardson v. MacArthur, 451 F.2d 35, 41 (10th Cir. 1971) ("control" requires only some indirect means of discipline or influence short of actual direction). Moreover, Shell v. Hensley, 430 F.2d 819, 826 (5th Cir. 1970), the court noted that the definition of control included de facto control of the officers and directors of the corporation.

Federal Communications Commission case law identifies three principal indicia to determine whether control of a license was improperly transferred; they are matters pertaining to 1) finance; 2) personnel; and 3) station programming. See Southwest Texas Public Broadcasting Council, 85 F.C.C.2d 713, 716 (1981).

[T]he courts and the Commission have established certain guidelines. Generally, the principal indicia of control examined to determine whether an unauthorized transfer of control has occurred are control of policies regarding (a) the finances of the station, (b) personnel matters and (c) programming.

Also see Letter to Russo and Cohn, 5 F.C.C. Rcd. No. 26, at p. 7586 (1990) ("Generally, the principal indicia of control the Commission considers in determining whether an unauthorized transfer of control has taken place are station finances, personnel matter and programming"). Also see Shell v. Hensley, 430 F.2d 819, 826 (5th Cir. 1970) (Under SEC case law, factors concerning control vests in any person who has the de facto power to control the direction, management and policies of the corporation).

In the context of this case, indicia of the transfer of control should include 1) personnel matters, including the hiring and firing of staff;<sup>38</sup> 2) budgeting, including budget project; and 3) operational policy, including location of nuclear operations and outage philosophy.

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<sup>38</sup> In Safety Light Corp. (Bloomsburg Site), ALAB-931, 31 NRC 350, 364 fn. 46 (1990), the Board specifically indicated that "selecting management personnel" is indicative of control over the license.



**A. Indicia Demonstrating Transfer of Control**

**1. Selection of Farley to head SONOPCO**

In 1987 The Southern Company board was in the process of deciding whether to establish a nuclear operating subsidiary. At this juncture Mr. Addison met in private with Joe Farley (then President and CEO of APC). They jointly agreed that Mr. Farley would emerge as the chief executive of a Southern Company nuclear operating subsidiary. Addison Dep. at p. 71, 67, 38, 45. GPC's CEO was not included in the discussions about who would head SONOPCO. Scherer 6/8/94 Dep. at pp. 47-48, 77 (Exhibit 3).

**2. Location of SONOPCO**

In 1987, Addison and Farley made the decision as to where SONOPCO would be located. Addison Dep. at p. 80. Moreover, Mr. Scherer, GPC's CEO at the time, was never even asked where Southern Nuclear should be located (Scherer 6/8/94 Dep. at p. 48, Exhibit 3), and Mr. McDonald, who was heading up GPC's nuclear operations, testified that he had no idea who made the decision to locate GPC's nuclear operations to Birmingham. McDonald 4/14/94 Dep. at p. 39 (Exhibit 19). If McDonald and Scherer were not involved in the decision to move GPC's nuclear operations, the decision apparently rested with Farley and Addison. The transfer of a nuclear organization is an important operational decision. The fact that it was made by Farley and Addison demonstrates that GPC was not in control of its nuclear plants.

**3. Creation of SONOPCO Project Board**

By 1989 a SONOPCO project de facto board of directors was functioning, with Farley (Southern Company), McDonald (GPC & APC), Addison (Southern Company), Dahlberg (GPC), Harris (APC) and Franklin (SCS) constituting the board. Farley 5/7/90 DOL Dep. at p. 84. The first reference to a SONOPCO project board of directors meeting is noted in a February 14, 1989 entry in Mr. Addison's appointment schedule. Therein, it states that a "SONOPCO PROJECT BD MEETING" occurred at 3:00 p.m. See Addison Calendar (Exhibit 11). Reference to additional SONOPCO Project board of director meetings is noted in Mr. Dahlberg's and Mr. Addison's appointment calendar entries for March 6, 1989, both of which indicate that the SONOPCO project board met at 1:00 p.m. that day. See Addison Calendar (Exhibit 11) and Dahlberg Calendar (Exhibit 12); also see Dahlberg 5/8/90 Dep. p. 65; Addison Dep. p. 53.<sup>39</sup> This de facto board met to discuss budget and operational matters pertaining to GPC's and APC's nuclear plants. In particular, Mr. Dahlberg recalled discussing 1) "the budget process," 2) the cost of replacing the "condenser tubes at the

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<sup>39</sup> Intervenor is greatly troubled by GPC's current denial of the existence of the SONOPCO project board. It is difficult to understand how GPC can deny the existence of a de facto SONOPCO project board of directors inasmuch as Mr. Dahlberg unequivocally stated under oath that: "There was a board of directors for the SONOPCO project," Dahlberg Dep. at p. 132, and later, during the same deposition, when asked whether prior reference to a board of directors was to the SONOPCO project board, Mr. Dahlberg again testified that he was referring to the existence of a SONOPCO project board ("Q: The board meeting you're referring to are the SONOPCO project board meetings? A: Yes"). Dahlberg 6/10/94 Dep. at p. 135).

Hatch Plant," and 3) "the number of outages that would be planned." Dahlberg 5/8/90 DOL Dep. at p. 69.

**4. Farley heads weekly staff SONOPCO project staff meetings**

Mr. Farley's management over GPC's and APC's nuclear operations included his initiating weekly SONOPCO project staff meetings. Long Dep. at pp. 48, 55 ("Mr. Farley would initiate it, and the first thing you would do is call on the presiding VP who had projects reporting to him and ask for plant status") (Exhibit 4). These weekly staff meetings represent key a management oversight mechanism covering all emerging and existing developments concerning the management, operation, and administration of GPC's and APC's nuclear plants were discussed. Farley 4/14/94 Dep. at p. 70-71 (Exhibit 5). Moreover, Mr. Farley testified that he received verbal reports from McDonald, Hairston, McCoy, Long and McCrary concerning the performance of GPC's and APC's nuclear units and that these reports provided him with the information he needed to brief The Southern Company Board. Farley DOL Dep. at p. 49-40; also see, Shipman Notebook (Exhibit 9).

**5. Farley visits GPC's nuclear plants to address changes in personnel evaluation and compensation**

As the chief executive over nuclear, Mr. Farley went to the Plant Vogtle and Plant Hatch sites to discuss with plant management changes in personnel evaluation and pay that were going to be implemented. Smith Dep. at pp. 50-51 (Exhibit 30). Also see Mosbaugh Aff. ¶11 (Exhibit 22).

6. Farley's involvement with the Staffing of SONOPCO

a) Ken McCoy

In early 1988, Mr. Farley and Mr. McDonald determined that a Vogtle project vice president needed to be installed. Mr. McCoy was hired because Mr. Farley, Mr. McDonald and other project employees felt that the position should be created. Farley Dep. at p. 59 (Exhibit 5).

b) Louis Long

Key SONOPCO staff responsible for nuclear includes the vice presidents of Administrative Services and Technical Services. The selection of this position occurred without the knowledge of GPC's then CEO, Mr. Scherer. Scherer 6/18/94 Dep. at p. 81 (Exhibit 3). Moreover, Mr. Farley personally met with Mr. Long and personally told him that he would be named as a SONOPCO vice president. Mr. Farley's meeting with Mr. Long is significant because 1) Mr. Long did not report to Mr. Farley (Farley was at that point CEO of Alabama Power Company, and Long was a manager with Southern Company Services), 2) Mr. Long was specifically instructed to meet with Mr. Farley; and 3) this represents the first time Mr. Long ever met with Mr. Farley. Long Dep. at p. 20 (Exhibit 4).

c) Charles McCrary

In 1988, Charles McCrary was selected as vice president of Southern Company Services to serve as vice president of Administrative Services for SONOPCO project. Mr. Farley made the selection. Farley Dep. at pp. 80-81 (Exhibit 5); Farley DOL Dep.

at pp. 42-43. GPC's CEO had no involvement. In this respect, Mr. Scherer testified that all he knew was that Mr. McCrary "was an assistant to Mr. Farley at Alabama Power Company and was later named a vice president, I don't know in what role." Scherer 6/8/94 Dep. at 80 (Exhibit 3). Scherer had no role selecting McCrary as a SONOPCO project vice president and did not know if he was even involved with the SONOPCO project. Scherer 6/8/94 Dep. at pp. 80-81 (Exhibit 3).

**7. Farley controls nuclear operating negotiations with Oglethorpe**

In order for GPC to transfer its nuclear operations to SONOPCO, Oglethorpe and GPC had to implement an agreement on how they and the other co-owners of GPC's nuclear plants would reorganize their relationships. The key negotiations between GPC and Oglethorpe were conducted by Farley. Farley DOL Dep. at pp. 32, 97.

**8. Oglethorpe management observes Farley's involvement with GPC's nuclear operations**

The record supports the fact that during the critical SONOPCO "Project" takeover state, Oglethorpe management, noticed a change in the management structure. Concerns were raised directly to high level GPC management, including Mr. Dahlberg, by the chief executive of Oglethorpe. In this respect, Oglethorpe executive Dan Smith noted in writing that GPC's public statements as to who were running their nuclear facilities was not accurate.

**9. SONOPCO project managers identify Farley as head of GPC's nuclear operations**

Starting in 1988, Mr. Shipman was the general manager of Nuclear Support, reporting to Mr. McCoy. On August 5, 1994, counsel to Intervenor deposed William Shipman. At that time Mr. Shipman testified that Mr. McDonald reported to Mr. Farley. Mr. Shipman testified then that he had been in a position to observe the reporting relationship between Mr. Farley and Mr. McDonald for a number of years. The fact that Plant Vogtle's general manager of Nuclear Support testified that McDonald reported to Mr. Farley is dispositive evidence of the reporting relationship in place at the SONOPCO project.

An additional employee at the SONOPCO project was Mr. Steve Chestnut. Between 1988 and April of 1989 Mr. Chestnut was stationed at the SONOPCO project. Mosbaugh Aff. ¶10 (Exhibit 22). On August 17, 1990, Mr. Chestnut discussed the reporting relationship at the SONOPCO project concerning operations reports from the plant site. The following conversation occurred between Mr. Chestnut and Mr. Mosbaugh:

Mosbaugh: Okay, you know, I call , I call Shipman and then Shipman will sometimes talk to McCoy or Hairston.

Chestnut: Um hum.

Mosbaugh: But that was the extent of --

Chestnut: There are a lot of calls to Farley. I know they called Farley a lot.

Mosbaugh: They who called Farley?

Chestnut: The VP.

Mosbaugh: Oh. They're calling Farley?

Chestnut: Yeah. A good bit. I know they call Farley a lot...



Thus, not only was the reporting relationship obvious to Oglethorpe and NOCA, the SONOPCO project management confirmed the actual reporting structure.

**9. GPC's manager of NOCA identifies Farley as heading GPC's nuclear operations**

GPC's former manager of NOCA, Marvin Hobby, identified Mr. Farley as head of GPC's nuclear operations. This concern was shared, in part, by Mr. Hobby's supervisor, senior vice president George Head, who cosigned a confidential letter to GPC regarding this issue.

**10. Farley has input to McDonald's annual reviews**

During the course of the Hobby proceedings, Mr. Farley testified that Mr. McDonald's evaluation was prepared by Alabama Power Company's president, Mr. Harris, who then discussed it with Mr. Dahlberg. Before the evaluation was issued, it was given to Mr. Farley for comment. Farley 5/7/90 DOL Dep. at p. 15 ("Q: Who prepared Mr. McDonald's evaluation for this year? A: Mr. Harris and Mr. Dahlberg. Mr. Harris prepared it. The paperwork was basically discussed with Mr. Dahlberg. One of them, and I have forgotten which one, then called me and told me what they were proposing and asked me if I had any comments.")

**11. Dahlberg excludes nuclear personnel from company-wide review**

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<sup>40</sup> Mr. Chestnut was deposed during the course of this proceeding during which he listened to Mosbaugh tape No. 260 and confirmed that the above stated conversation occurred and that he made the above-identified statement to Mr. Mosbaugh.

At the end of 1989, GPC's president and CEO, A.W. Dahlberg, undertook a company-wide review of management to "assure [himself] of the qualifications of the management of Georgia." Yet, Mr. Dahlberg excluded the entire nuclear management from review. See Dahlberg 4/6/94 Dep. at pp. 70-71, 122-124. The exclusion of GPC's nuclear operations from Mr. Dahlberg's review is a strong indication that GPC's CEO was not involved or in charge of the Plant Vogtle and Plant Hatch nuclear operations.

**12. Dahlberg's inability to resolve GPC nuclear-related personnel matters without involving Farley**

When nuclear operations were transferred to the SONOPCO project's offices in Birmingham, Alabama, Mr. Dahlberg decided to establish NOCA to oversee the performance of GPC's nuclear plants. The manager Mr. Dahlberg selected to head NOCA was Marvin Hobby, who reported to GPC senior vice president George Head. Hobby advised Mr. Head and Mr. Baker that the SONOPCO project was under instruction from McDonald not to cooperate with NOCA. SONOPCO project's interference with NOCA caused Mr. Head to meet with Dahlberg on more than one occasion in an effort to resolve the matter. DOL Tr. 652, 669 (Head) (Exhibit 31). Dahlberg eventually advised Mr. Head that he could not resolve the matter until he, Dahlberg, met "with Mr. Farley." DOL Tr. 652 (Head) (Exhibit 31).<sup>41</sup> On May 5, 1990 Dahlberg and Grady

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<sup>41</sup> Dahlberg testimony during the Hobby proceeding was directly contradicted by Mr. Head. Where Head recalled his meetings with Dahlberg, Mr. Dahlberg denied that any such meetings transpired, including any meeting where Mr. Head requested to meet with Mr. McDonald to resolve the problem. DOL Tr. 317-318 (continued...)

Baker met with Mr. Farley. Mr. Dahlberg advised Mr. Farley that he wanted to increase Hobby's staff. Id.; DOL Tr. 570, 587 (Farley) (Exhibit 31). Mr. Farley advised Dahlberg that NOCA was no longer needed inasmuch as SONOPCO project's administrative services group would perform NOCA's function. DOL Tr. 588, 594 (Farley); 311-312 (Dahlberg) (Exhibit 31). A few days after the meeting (May 8, 1990) Mr. Hobby received a call from William Evans, GPC's corporate concerns coordinator. Mr. Evans advised him that "Farley was going to make the call" concerning matters related to the staffing of NOCA. See DOL Tr. 160-162 (Hobby) (Exhibit 31); Hobby Log (Exhibit 18) (Hobby's phone log with entry "Farley makes call"). Also see Evans DOL Dep. at pp.

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<sup>41</sup>(...continued)  
(Dahlberg) (Exhibit 31). This contradiction calls into question Mr. Dahlberg's credibility. It should also be noted that Dahlberg's denial was also contradicted by a contemporaneous letter written by Mr. Hobby to Adm. Dennis Wilkinson. Therein, Mr. Hobby explained that Mr. Head:

went to Dahlberg and said there was one matter he wanted to get settled before he retired and that was our relationship with SONOPCO. Dahlberg responded that he knew there was a problem and he was going to meet with Farley and see if they could straighten it out. When George told me that, I said something like if McDonald report[s] to Dahlberg why in the hell can't Bill [Dahlberg] just tell him what to do and why does Bill have to go and straighten it out with Joe Farley. George said, "Well, I guess we have just got the answer as to who McDonald really reports to." George also said that Dahlberg said it was a waste of time for Dahlberg to talk to McDonald.

Wilkinson Let. at pp. 4-5 (Exhibit 14). The fact that Mr. Head's testimony is corroborated by statements contained in a contemporaneous letter of Mr. Hobby demonstrates that Dahlberg should not be believed.

17-18 ("[Farley] would decide what to do with the transfer of those positions").

**13. Farley re-aligning GPC nuclear operations**

In a deposition, Mr. Farley admitted that a two-year effort was made, prior to any official approval of the SONOPCO Project, to realign the management structures of the nuclear plants licensed by APC and GPC. (See, e.g. Farley Dep. at p. 69, in which he states that "we spent two years trying to get a bit of commonality between those two projects on titles") (Exhibit 5).

**14. Farley blessed GPC's nuclear operating budget**

Mr. Farley admitted that he was given a copy of the 1990 draft GPC budget for nuclear operations and that he "blessed" the budget prior to its submission to GPC for formal approval. Farley DOL Dep. at 95. This "blessing" occurred without Mr. Farley having any legal authority over GPC's nuclear operations.

**15. Farley and Addison approve GPC 's portion of the SONOPCO budget**

After the creation of the SONOPCO project, all of GPC's nuclear budgets were reviewed by Farley and Addison. Dahlberg 6/10/94 Dep. at p. 122. As Mr. Farley explained: "the SONOPCO project and later on Southern Nuclear for Georgia Power, we generated our recommendations on the budgets and sent them to Georgia Power Company." Farley DOL Dep. at p. 56-57. In May of 1990, before SONOPCO was legally incorporated, Mr. Farley testified "we've done the best we could in trying to manage the nuclear budget for each of the companies...If you ask, did I

approve [the nuclear budgets]? Yes, it has my blessing..."

Farley DOL Dep. at p. 94-95.

In December of 1989, Hobby called GPC's budgeting office and spoke with Jeff Wallace, manager of Resource Management, and asked him the status of the nuclear budget. Mr. Wallace told him the budget had been approved at a meeting of the Southern Company management council and further that Dahlberg had disagreed with the proposed budget and Addison had said, "That's it. That's the budget."

#### **16. Farley directs plant outage philosophy**

On August 6, 1990, the Vogtle project Vice President visited the plant site. At that time Mr. McCoy made the following statement:

Let me make a comment again and be sure that everybody understands this because -- there's been some discussions in some of the other plants of SONOPCO that were not adhering to this and so we had some discussion at the highest levels including Mr. Farley, McDonald, Hairston and the three VP's about our scheduling philosophy for outages...The conclusion of that discussion was that optimum means the basically shortest schedule that you are able to do something in -- everything goes right. That you do not put any contingency or extra time in there and after lots of discussion everybody agreed that that was the right way to do the scheduling.

Mosbaugh Tape Tr. (Exhibit 21).

Moreover, Mr. Farley specifically discussed his involvement with the establishment of a nuclear operating outage philosophy for the SONOPCO project, at which time he indicated that the philosophy was developed during a SONOPCO project retreat

attended by all SONOPCO project executives. Farley Dep. July 25, 1994 (Not transcribed).

Mr. Farley's involvement in establishing the Plant Vogtle and Plant Hatch outage philosophy evidences his control over GPC's nuclear operations.

**17. Farley rather than GPC briefs The Southern Company Board on the performance of GPC's nuclear plants**

After deciding that Farley would head up all of GPC's and APC's nuclear operations, GPC executives no longer provide briefings to The Southern Company board about the status of GPC's nuclear operations. These briefings are rather conducted by Farley. Farley DOL Dep. at pp. 39-40; McDonald 4/14/94 Dep. at p. 29 (Exhibit 19). In this respect, The Southern Company board minutes would typically include references like "Mr. Farley report[ed] on nuclear performance and the status of SONOPCO." Farley DOL Dep. at p. 40. Significantly, Mr. Farley testified he had sufficient oral reports from McDonald, Hairston, McCoy, Long and McCrary concerning the performance of GPC's nuclear units to brief The Southern Company board about the status of GPC's nuclear operations. Farley DOL Dep. at p. 40 ("I report to the Southern Board quarterly on...the performance of the units...I know the information [because]...I receive reports from Mr. McDonald, Mr. Hairston, Mr. McCoy, Mr. Long, Mr. McCrary...").

**18. Farley is involved in GPC's rate case before the Georgia Public Service Commission with respect to nuclear issues**

Mr. Farley's control over GPC's nuclear operations extended to matters before the Georgia Public Service Commission ("PSC").



In this respect, Mr. McDonald apprised and discussed with Mr. Farley matters pertaining to GPC's filing responses to data requests coming from the PSC. McDonald 5/7/90 DOL Dep. at pp. 46-47. Moreover, Mr. Farley would review all the requests to determine whether the SONOPCO project would respond. Farley DOL Dep. at p. 119. And Mr. Farley was copied on rate case documentation while Mr. Dahlberg was not. See Farley Rate Case Memos (Exhibit 32). Finally, Mr. McDonald reached a point where he flatly refused to follow Mr. Dahlberg's instructions concerning a nuclear performance indicator the PSC was considering imposing on GPC's nuclear plants. DOL Tr. 927-928, 936 (Baker) (Exhibit 31); Johnson DOL Dep. at pp. 26, 29 (Exhibit 29). The matter was finally resolved by Farley. Johnson DOL Dep. at p. 39 (Exhibit 29).

**19. Farley identified as top executive to be contacted by on-call project manager of GPC's nuclear plants**

Periodically, the SONOPCO project prepared documentation concerning "on-call" management of GPC's nuclear plants. Basically the Vogtle duty manager was responsible for keeping the "on-call" project managers informed on a 24-hour-a-day basis concerning important events occurring at the plant site. Mosbaugh Aff. ¶3, (Exhibit 22). Documentation and procedures were implemented to ensure that proper management was contacted in the event of an emergency. GPC's former acting assistant general manager plant support, Mr. Mosbaugh, would periodically serve as the Plant Vogtle duty manager. In that capacity, Mr. Mosbaugh was provided information concerning the procedures to be used.

In this regard, typed lists were provided to Mr. Mosbaugh. One such list was entitled "Telephone List - On-Call Project Manager." Mosbaugh Aff. ¶6, (Exhibit 22). Mr. Mosbaugh was made aware that persons listed under Georgia Power Company Corporate Management were to be contacted in descending order from the top of the list. Mosbaugh Aff. ¶8, (Exhibit 22). The individual at the top of the list to be contacted was Joseph M. Farley. See Mosbaugh Aff., Attachment C thereto (Exhibit 22).

**20. GPC excludes listing nuclear operations managers from its 10-K form**

The SEC requires GPC to file an annual Form 10-K report. Part III, Item 10(b)(2) of the 10-K report requires GPC to identify all its executive officers. The fact is that GPC failed to identify the existence of any nuclear operations officers (i.e., McDonald, McCoy, Hairston, et al. are not listed). GPC's failure to identify all its nuclear officers demonstrates that it is neither in control of its nuclear operations or in touch with its nuclear operations.

**21. Farley named Southern Company executive vice president of nuclear**

At some point, apparently in March of 1989, Mr. Farley was named executive vice president, nuclear of The Southern Company, and executive vice president, nuclear of SCS. Neither The Southern Company nor SCS ever had such a position in the past. The creation of this executive position within The Southern Company demonstrates a fundamental realignment of The Southern Company's involvement with and control over GPC's nuclear

operations. This is particularly true because "a high level officer of the Southern Company typically goes any place he wants to." McDonald 4/14/94 Dep. at p. 31-32 (Exhibit 19).

B. Early Involvement by Farley Constitutes  
Illegal Transfer of Control

The se before this Board is has aspects that run parallel to FCC case law governing premature acquisition of control of a station license. In this respect, FCC prohibits prospective purchasers of broadcasting stations from becoming involved in the station's operations in such a way that they would assume control of the station before the Commission has approved their application. Phoenix Broadcasting Co., 44 F.C.C. 2d at 839. In Phoenix Broadcasting, the F.C.C. held that a prospective buyer could not be intimately involved in the day to day activities of station KPHX because it would constitute a premature assumption of control over the station's operating license. 44 F.C.C. 2d at 840. In this case the owner of the station and the prospective purchaser requested F.C.C. permission to implement an interim plan, while awaiting approval for the purchase, where the purchaser would furnish funds; be employed as a consultant to design and assist in the implementation of the change in programming format, sales and marketing; and would be involved with making recommendations in the hiring and firing of station personnel. Most importantly, in an attempt to guard against the transfer of control, the agreement provided that all recommendations made by the purchaser, including those related to

the hiring and firing of personnel, were to be "submitted to the owner in writing and his written approval must be obtained before any action is taken." 44 F.C.C. at 839.<sup>42</sup>

The Commission held that despite these assurances, the purchaser would be intimately involved in the programming and commercial operation of the station and the hiring and firing of personnel. The Commission concluded that "the realities of such a situation...would appear to constitute a premature assumption of control contrary to Section 310(b) of the Act." 44 F.C.C. at 840.<sup>43</sup>

The Commission arrived at a similar decision in Stereo Broadcasters, Inc. 87 F.C.C. 87.<sup>44</sup> This case involved a probational agreement between the owner of a station and a

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<sup>42</sup> Rather than prepare a document delineating Farley's involvement, GPC sought to include language in documents it intended to forward to Oglethorpe so as to "avoid accusation of license transfer." See Edwards Memo (Exhibit 20).

<sup>43</sup> Transfer of control cannot depend on labels given to the transaction by the parties; rather, it must turn on factual circumstances surrounding the transaction. Stereo Broadcasters, Inc., 87 F.C.C.2d 87, 93 (1981); Town and Country radio, Inc., 28 F.C.C. 129 (1960)

<sup>44</sup> In Stereo Broadcasters, Inc., 55 F.C.C. 819 (1975); modified on other grounds, 59 F.C.C.2d 1002 (1976), the Commission considered whether an employment agreement between the licensee and a general manager which provided that the licensee retain "absolute control of the station" and required the general manager to obtain prior authorization before entering into contracts or before making major purchases or instituting program changes. The Commission looked beyond the wording of the agreement to the actual state of affairs at the station, which included the licensee's absence for a significant period of time and his practice of referring all problems to the general manager, to determine that control had been transferred. Id.

prospective purchaser under which the purchaser had the right to operate and control the station as well as obtain profits from it. 87 F.C.C. 88 As in Phoenix Broadcasters, the agreement stated that the purchaser was to obtain approval from the owner before making major decisions affecting the operations of the station. The evidence presented established that the prospective purchaser had substantial control over the managing of the station's finances, personnel, programming and other miscellaneous affairs with a significant decrease of control from the owner. Therefore the Commission held that the agreement, and the purchaser's actions in implementing it, constituted an illegal transfer of control. 87 F.C.C. at 95-97.

These two cases are analogous to the case at hand. Indeed, the facts before this Board far exceed those found in either Phoenix Broadcasters or Stereo Broadcasters. For example,<sup>45</sup> with respect to financial matters, Mr. Farley: 1) headed key negotiations with GPC's co-owners concerning financial arrangements related to SONOPCO; 2) prepared testimony to the Georgia Public Service Commission with respect to matters pertaining to GPC's rate case; 3) "blessed" GPC's nuclear budgets; and 4) reported matters pertaining to GPC's nuclear plants to the board of The Southern Company rather than GPC's CEO who was a member of The Southern Company Board. Second, with

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<sup>45</sup> Further explanation concerning the examples outlined below, as well as additional facts relating to the transfer of control of GPC's nuclear operations are set out in Section \_\_, supra.

respect to hiring and firing determinations: 1) Mr. Farley's deposition testimony establishes that he advised Mr. Dahlberg to terminate Mr. Mosbaugh; 2) Mr. Farley "made the call" whether NOCA could be staffed; 3) Mr. Farley traveled to GPC's nuclear plants and advised the employees at the site about changes in compensation and evaluation of performance; 4) Mr. Farley was involved in selecting Mr. McDonald to head GPC's nuclear operations; 5) he was involved in the selection of most if not all of the SONOPCO executives, including Mr. Long, Mr. McCrary and Mr. McCoy; and 6) Mr. Farley was involved in preparing the performance evaluation of Mr. McDonald. Third, with respect to matters effecting operations, he was: 1) involved with the decision to relocate GPC's nuclear operations from Atlanta to Birmingham; and 2) he convened weekly meetings of the SONOPCO project's top management to discuss operational matters.

**V. GPC HAS NOT ESTABLISHED A LEGAL OR FACTUAL BASIS TO CLAIM THAT IT IS ENTITLED TO SUMMARY DECISION**

With respect to summary decision, Nuclear Regulatory Commission jurisprudence adopts federal case law interpreting Fed.R.Civ.P. 56.<sup>46</sup> As a legal matter, summary judgment is not to be granted lightly and must be limited only to the exceptional situation where there is not genuine issue as to any material fact or legal issue. In re Combs, 40 B.R. 148, 150 (1984) (citing Shahid v. Gulf Power Co., 291 F.2d 422, 423 (5th Cir. 1961)).

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<sup>46</sup> See Tennessee Valley Authority (Harstville Nuclear Plant, Units 1 and 2), ASLB-554, 10 N.R.C. 15, 20 n17 (1979); Alabama Power Co. (Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 A.E.C. 210, 217 (1974).

A. GPC's Summary Judgment Motion is Defective Because the Credibility of Its Witnesses is at Issue

It is well settled that summary judgment may not be granted where the credibility, truthfulness and candor of the movant's essential witnesses is in issue. 35B C.J.S. §1146.<sup>47</sup> See also, Hackley v. Roundbush, 520 F.2d 108, 157 (D.C.Cir. 1975) (fact-finder must hear testimony to evaluate credibility of decision maker where it is alleged that the defendant acted for impermissible reasons where the decision maker can escape liability by making self-serving statements); also see Stewart v. Credit Bureau, Inc., 734 F.2d 47, 54 fn. 12 (D.C.Cir. 1984); Lipschutz v. Gordon Jewelry Corp., 387 F.Supp 375, 385 (S.D.Tex. 1974). As explained below, GPC's Motion is wholly deficient because the credibility of its witnesses is central to the issues before this tribunal. In the same vein, Courts have likewise observed that "summary judgment should not be based on the deposition or affidavit of an interested party ... as to the facts known only to him -- a situation where demeanor evidence might serve as real evidence to persuade a trier of fact to reject his testimony." Weir V. Anaconda Co., 773 F.2d 1073, 1081

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<sup>47</sup> The Advisory Committee Notes to the 1963 Amendment to Fed.R.Civ.P. 56 state:

Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate.

See United States v. Canada, 425 F.Supp. 91, 93 (S.D.Ind. 1977) (quoting Advisory Committee Note to 1963 Amendment to Fed.R.Civ.P. 56).



(10th Cir. 1985), quoting Madison v. Desert Livestock Co., 574 F.2d 1027, 1037 (10th Cir. 1978). See also Moore's federal Practice ¶56.24, at 56-1434 to 56-1436 (2nd ed. 1985). Because the facts GPC relies upon are solely predicated upon self-serving affidavits and testimony of GPC's own CEO and other Southern Company system executives, summary decision cannot be granted as to do so would preclude the trier of fact from considering demeanor and other factors relating to credibility.

The contention this tribunal must resolve concerns, inter alia, whether the management over plant Vogtle lacks "integrity," "candor," and "truthfulness." Georgia Power Company, (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 N.R.C. 96, 110 (1993). The nature of the admitted contention requires this Board to evaluate the credibility of GPC's witnesses. But even without resort to the admitted contention, the facts at issue conclusively demonstrate that GPC's witnesses lack credibility. A few examples follow.<sup>48</sup>

- 1) **Credibility of GPC's witnesses is called into question with respect to the existence of the SONOPCO Project Board of Directors.**

Both Mr. Addison's and Mr. Dahlberg's appointment calendars include specific reference to date and times that a SONOPCO Project Board of Directors would meet. For example, Mr.

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<sup>48</sup> Intervenor contends that it is highly inappropriate for him to set forth all factual issues calling into question credibility issues related to GPC's witness. To do so would essentially force Intervenor to set forth his cross-examination plan to Licensee. This would severely prejudice Intervenor's ability to present an effective cross examination of witnesses.

Addison's appointment schedule for February 14, 1989 specifically mentions that a "SONOPCO PROJECT BD MEETING" was scheduled for 3:00 p.m. See Addison Calendar (Exhibit 11); also see Dahlberg 5/8/90 Dep. at p. 65 (acknowledging 3-6-89 SONOPCO Board meeting entry); Addison Dep. at p. 53 (acknowledging 3-6-89 SONOPCO Board meeting entry).<sup>49</sup> These calendar entries constitute sufficient evidence to question the credibility of GPC witnesses's denial of the existence of SONOPCO project board meetings. But there is more. Mr. Dahlberg testified that he attended SONOPCO project board meetings while serving as GPC's CEO. In this respect, on page 132 of Mr. Dahlberg's June 10, 1994 deposition, Mr. Dahlberg flatly stated that: "There was a board of directors for the SONOPCO project." Later during this same deposition Mr. Dahlberg again testified to the existence of a SONOPCO project board of directors:

Q: Has any document come across your desk after you became president of Georgia Power Company saying, you know, we've decided to change the SONOPCO project organization, or were there periodic updates of what was going on in written form?

A: During its formation we would get periodic reports like at board meetings talking about the development of the organization, and we hired a new human resources, VP or we added somebody in purchasing and those type things. But I don't know of a study Georgia Power did of the organization.

Q: The board meeting you're referring to are the SONOPCO project board meetings?

A: Yes.

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<sup>49</sup> Based on the date of these calendar entries alone, it appears that the SONOPCO Project Board had been meeting for almost two years before Southern Nuclear was incorporated.

See Dahlberg 6/10/94 Dep. at pp. 134-135.

Based on the above, GPC's denial of the existence of a SONOPCO project board is simply incredible.

- 2) Credibility of GPC's witnesses is called into question with respect to concerns raised by Oglethorpe.

During the course of this proceeding, Intervenor questioned Mr. Dahlberg about his knowledge of Oglethorpe's concern regarding the reporting relationship between McDonald and Farley. Specifically, Mr. Dahlberg's June 10, 1994 deposition, he states:

I knew of Oglethorpe's concern from direct conversations with Oglethorpe. And when I say Oglethorpe, my discussions would have been either with Mr. Stacey who at the time was their chief executive officer or Mr. Kilgore who was the number two person there.

Dahlberg 6/10/94 Dep. at p. 97. Also see Id. at pp. 95-99; 102-103.

At a later point, Mr. Dahlberg specifically states when and from whom he learned of these concerns. For example, Dahlberg knew about the reporting relationship concern before the Hobby and Mosbaugh litigation began and learned of it from Oglethorpe's executives:

Q: And when is the first time you became aware that the issue was raised? Was it before this litigation began?

A: Yes.

Q: And was it before all of the litigation you were referring to concerning Mr. Hobby and Mr. Mosbaugh?

A: Yes. They would have been raised during discussions I had with Oglethorpe Power with Mr. Stacey and Mr. Kilgore.

\* \* \*

A: I never knew from Oglethorpe that Mr. Hobby was concerned about it. I knew from Oglethorpe that there was a concern about the reporting relationship which I had some obligation to explain to them and did. There was a follow up as you have already shown me of another person at Oglethorpe, Mr. Smith, and you showed me that we responded to it.

Dahlberg 6/10/94 Dep. at pp. 109-110 (emphasis added).

Incredibly, at an earlier deposition in this case, Mr. Dahlberg testified to the opposite, i.e, 1) claiming that Oglethorpe never expressed such a concern to him and, 2) that he did not learn of such a concern until after litigation the Hobby and Mosbaugh litigation commenced:

Q: Were you aware that Oglethorpe Power raised concern to the nuclear operation contract administration group that there was a concern about the reporting structure and who was in control of Georgia Power Company's plants?

A: No.

Q: You were never aware of that?

A: No.

Q: Now, did you at some point become aware of this?

A: That Oglethorpe had expressed concern to --

Q: To Georgia --

A: I'm not sure I understand the question.

Q: That Oglethorpe had expressed concern to nuclear operation contract administration group that Georgia Power may have illegally transferred control of its license?

A: No. Oglethorpe never expressed any concern to me, as best I can recall with that concern.

Q: Did your management people reporting to you ever come and tell you that?

A: Mr. Kohn, in the proceedings that we're now in I became aware that that issue was raised, but I never was aware of it prior to that time.

Q: Prior to the time that Mr. Hobby was removed from Georgia Power Company, had you heard that Oglethorpe had a concern -- had you heard that Oglethorpe at any time had had a concern about the control of Georgia Power's nuclear plants?

A: Certainly none of the management at Oglethorpe ever expressed that to me.

Dahlberg 4/6/94 Dep. at pp. 38-40 (emphasis added).

Mr. Dahlberg's flip-flop testimony raises serious questions about his credibility. Summary judgment would not be appropriate given this conflicting testimony.

- 3) Credibility of GPC's witnesses is called into question as a result of Scherer's inability to testify about Addison's involvement in plant Vogtle management decisions

As explained in the attached affidavit of Marvin Hobby, GPC's management had determined that Adm. Wilkinson would oversee the construction of Plant Vogtle. However, when Southern Company's President, Mr. Addison, learned of this GPC decision, he vetoed it and overrode the authority of GPC (the legal licensee) to make such a fundamental decision. Scherer's credibility is called into question regarding this matter, as he testified that Adm. Wilkinson merely did not want to take the position. Scherer Dep. p. 89 (selection of Adm. Wilkinson "stopped immediately, aborted because he didn't have an interest").

- 4) Credibility of GPC's witnesses is called into question with respect to Dahlberg's knowledge of nuclear operations.

In his April 6, 1994 deposition, Dahlberg a near total lack of knowledge regarding GPC's nuclear operations.<sup>50</sup> This lack of knowledge demonstrates that a person of Mr. Dahlberg's intelligence could not have been involved with the day-to-day operation of GPC's nuclear operations, as GPC claims. Significantly, GPC's attorneys, when they realized at the deposition that Mr. Dahlberg had a near total ignorance of nuclear operations, improperly objected to the questioning of Mr. Dahlberg and instructed Dahlberg not to answer any additional questions concerning his ignorance. Dahlberg 4/6/94 Dep. at p. 94. Three months later, after GPC realized how ignorant their CEO was on nuclear matters, Mr. Dahlberg admitted that he was coached by GPC's counsel with respect to every detail concerning the Site

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<sup>50</sup> E.g., Dahlberg 4/6/94 Dep. at p. 45 (not sure if "Site Area Emergency" is a correct); p. 49 (no knowledge why diesel generator did not start or whether they did start during the Site Area Emergency); p. 52 (no knowledge that Shipman was alleged to be involved in submission of material false statement concerning LER 90-006); p. 53 (no knowledge that an allegation was raised about maternal false statement concerning the Site Area Emergency); p. 54 (not sure what a LER is); pp. 55 (unaware of Confirmation of Action Response); p. 56 (not sure whether a LER or Confirmation of Action response were filed concerning the Site Area Emergency or whether either was needed to restart the plant); p. 56-57 (not aware that an issue concerning the filing of LER 90-006 was raised); p. 89-90 (not aware that water is the "moderator" of the nuclear fission process at plant Vogtle); p. 90 (not aware of what purpose Boron plays in the operation of a nuclear reactor); p. 93 (ignorant of whether NRC violations are broken into levels).

Area Emergency.<sup>51</sup> When asked to explain how he came to learn so much about the issuance of LER 90-006 and other facts concerning knowledge of nuclear operations, Mr. Dahlberg testified that he had been "briefed" GPC's counsel. This admission calls into question the credibility of GPC's testimonial evidence.

5) **Credibility of McDonald is called into question with respect to testimony concerning the selection of SONOPCO project vice presidents.**

On December 23, 1988, Mr. McDonald testified as follows:

Q: Who selected the administrative and technical services vice presidents...What person selected those people, the people in those positions?

A: I don't know.

Q: So you did not select them.

A: No.

Q: Who are the vice-president for those services?

A: Charles McCrary and Lewis Long.

Q: And Charles McCrary is Vice-president for what?

A: McCrary? Administrative Services.

Q: Okay. How about Lewis Long, is technical services?

A: Yea. Now let me qualify my statement, in saying that I don't know. The selection of those people is under the authority and responsibility of the Southern Company Services. I imagine in the normal course of events that selection is officially made by the President of Southern Company Services. There may have been another arrangement that I am not aware of, but I think that that was true.

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<sup>51</sup> At this deposition, Mr. Dahlberg had detailed knowledge about the entire Site Area Emergency and responded to questions he was unable to answer at his April 6, 1994 deposition.



McDonald 12/23/88 DOL Dep. at pp. 12-13 (emphasis added) (Exhibit 28).

Incredibly, when deposed in the Hobby DOL case, Mr. McDonald testified under oath as follows:

Q: Were you involved in the selection of Mr. Long as vice president of Technical Services?

A: For that position, yes.

Q: Were you involved in the selection of Mr. McCrary for Administrative Services?

A: Yes.

Q: Other than the Board of Directors who else are you aware of who had a role in the selection of Mr. Long?

A: No one that I know of.

Q: Just you?

A: Well, I might have discussed it other people but I was the one who requested the he be considered for that position by the Board of Directors.

Q: And as to Mr. McCrary--

A: Same.

McDonald DOL Dep. at pp. 12-13.

The selection of SONOPCO project vice presidents is extremely important to the issue of control. Mr. McDonald's contradictory testimony calls his credibility into question.

VI. GPC MOTION IS DEFECTIVE BECAUSE IT IMPROPERLY ARGUES THE VALIDITY OF FACTUAL INFERENCES RELIED UPON BY INTERVENOR.

The legal standards governing Fed.R.Civ.P. 56 demonstrates that facts in question must be interpreted in the light most favorable to the party opposing the motion and must likewise give

that party the benefit of reasonable inferences to be drawn therefrom. Adickes v. S.H. Kress and Co., 398 U.S. 144, 157-59, 26 L.Ed.2d 142, 90 S.Ct. 1598 (1970).

Not merely must the historical facts be free of controversy but also there must be no controversy as to the inferences to be drawn from them. It is often the case that although the basic facts are not in dispute, the parties nevertheless disagree as to the inferences which may properly be drawn. Under such circumstances the case is not one to be decided on a motion for summary judgment.

In re Short, 16 B.R. 813, 815 (1982) (citing Phoenix Savings & Loan, Inc. v. Aetna Casualty & Surety Co., 381 F.2d 245, 249 (4th Cir. 1967) (quoting American Fidelity & Casualty Co. v. London & Edinburgh Insur. Co., 354 F.2d 214, 216 (4th Cir. 1965)).<sup>52</sup>

A review of GPC's Motion demonstrates that summary decision is nothing more than an attempt to argue that its interpretation of facts is more credible than Intervenor's. This provides an improper basis for summary decision.

The fact remains that GPC's Motion considers some of Intervenor's factual basis between pages 15-32. But, a review of these pages demonstrates that GPC Motion is frivolous because it only seeks to argue that the inferences Intervenor wishes to extrapolate from the underlying facts are unpersuasive. For example, on page 18 of its Motion, rather than admit that a

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<sup>52</sup> A review of GPC's Summary Judgment Motion will reveal that it is not well taken because it does nothing more than attempt to discount Intervenor's interpretation of facts and further discounts inferences drawn therefrom. This deficiency is addressed, *infra*, at p. \_\_\_\_.

factual inference can be drawn that Mr. Farley 's meeting with GPC nuclear employees stationed at its nuclear plants to discuss changes in personal evaluations and pay, GPC rather asserts that this involvement are "irrelevant to the issue of whether licensed activities at plant Vogtle were directed by Mr. Farley." There is no legal analysis or factual basis as to why this conclusion is sound. But most importantly, it does not refute the fact that a factual inference can be drawn that Mr. Farley's visit demonstrates that he rather than Mr. Dahlberg was in control over performance pay incentives.<sup>53</sup>

Another glaring example is GPC's assertion on page 21 that "there was no Board of Directors [of the SONOPCO project] prior to the incorporation of Southern Nuclear. Yet, Mr. Dahlberg testified at two separate points during his June 10, 1994 deposition that a board of directors for the SONOPCO project existed Southern Nuclear was incorporated and that the SONOPCO project board was functioning. The testimony of Mr. Dahlberg constitutes direct evidence of the existence of a SONOPCO project board of directors before Southern Nuclear was incorporated. Not only does a factual question as to the existence of a SONOPCO board exist, Mr. Dahlberg's testimony constitutes an admission by a party opponent.

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<sup>53</sup> Mr. McCoy's credibility is called into question when, as the plant Vogtle general manager, he testified that he had no knowledge that Mr. Farley had visited the plant to discuss changes in evaluating employee performance. McCoy Dep. at pp. 75-76.

Another example concerns GPC's handling of the assertion that Mr. Farley was involved with the establishment of the outage philosophy to be employed at GPC's nuclear plants. GPC is forced to acknowledge that one of Mr. Mosbaugh's tape recordings includes a statement by Mr. McCoy that Mr. Farley was involved in discussions about the outage scheduling philosophy.<sup>54</sup> GPC's argument is that Intervenor has misinterpreted the meaning of the recorded statement ("Mr. Mosbaugh's inference is simply wrong"). Clearly, there is a dispute as to the interpretation of the statement which cannot be resolved via summary decision.

Another glaring example concerns GPC's discussion about the "On-Call Project Manager" telephone list, which lists that Mr. Farley as the first member of management under the heading "Georgia Power Company Corporate Management". Corp. Mgt. List (Exhibit 15). The inference from this document is that Mr. Farley was the chief executive over GPC's nuclear plants. GPC's only counter is that Intervenor is reading too much into the document and that the person who prepared it was in error. Summary decision is not the proper vehicle to weigh evidence.

Still another example concerns GPC's assertion on page 26 that Mr. Farley's participation at the weekly SONOPCO project staff meeting where major plant issues and matters concerning the operation of the plants are discussed does not give rise to an inference that Mr. Farley was the chief executive of the SONOPCO

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<sup>54</sup> A copy of the transcription made by Intervenor is attached hereto as Exhibit 27.

project. First, GPC ignores the fact that those who attended the staff meetings testified that Mr. Farley chaired these meetings; that GPC SONOPCO project employees referred to these meetings as the "Farley staff meetings;" Xthatthese meetings consisted of the top management over GPC's nuclear plants getting together to discuss operational matters and other nuclear-related administrative and technical matters; and that Mr. Dahlberg was not in attendance. These weekly staff meetings are an integral part of the management over sight of the nuclear plants. Farley 4/14/94 Dep. at pp. 70-71 (Exhibit 5). To claim that Mr. Farley's participation is a non-issue ignores the clear and obvious inference to be drawn from his participation.

Another example concerns comments made by management of one of the co-owners of plant Vogtle, Oglethorpe Power. In this respect, Mr. Dan Smith, Oglethorpe's manager over nuclear matters, issued a formal request to GPC to explain "how Farley fits into the picture and who he reports to up through the Board." See 4/26/89 Memo from Hobby to Williams, Joint Stipulation Exhibit 33.<sup>55</sup> Mr. Smith also provided written

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<sup>55</sup> Mr. Smith's concern was set out in a confidential memo written by Mr. Hobby on April 27, 1989. Therein it states:

A significant concern that a lot of people have is who does Mr. McDonald work for. ...Oglethorpe Power is so concerned that it has formally requested confirmation that Mr. McDonald receives his management direction from and reports to Mr. Dahlberg. ...Oglethorpe is very concerned about this issue and they feel NRC is concerned. A Region II NRC employee suggested to Oglethorpe

(continued...)

comments concerning a statement Mr. McDonald made to the NRC during the plant Vogtle Unit 2 licensing hearing. Therein, Mr. McDonald stated to the Commission that "I report to Mr. Dahlberg." In response to this statement, Mr. Smith wrote that:

[Mr. McDonald reports to Mr. Dahlberg] [o]n paper only! In actuality McDonald appears to report to Farley who reports to Addison! Fact is GPC know less about plants than we do! We provide GPC with daily reports!

See Smith Notation (Exhibit 13).<sup>55</sup> Statements by co-owner management is probative and supports an inference that, from an organization prospective, GPC lost control of its nuclear plants. Any assertion to the contrary is simply argument over the inference to be drawn from the documentary evidence.

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<sup>55</sup> (...continued)

that NRC was so concerned that they might seek to put a resident inspection in Birmingham to see what was going on.

Hobby memo at p. 7 (Stip. Ex. 34).

<sup>56</sup> GPC failed to identify the existence of this document.

VII. EVANS TESTIMONY ABOUT FARLEY'S INVOLVEMENT IS NOT HEARSAY AND IS ADMISSIBLE UNDER THE FEDERAL RULES OF EVIDENCE FOR THE TRUTH OF THE MATTER ASSERTED

GPC asserts that Mr. Evans' statements to Mr. Hobby is not admissible evidence based on Fed.R.Evid. 801(d)(2)(D) because the statement was not made within the scope of Mr Evans' duties. See GPC's Motion at fn. 12. GPC's counsel is misleading the Board about the plain meaning of 801(d)(2)(D).<sup>57</sup> In pertinent part, this rule provides:

A statement is not hearsay if ... [t]he statement is offered against a party and is ... a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship...

A three-part test should be employed to determine whether a statement is not hearsay within the meaning of 801(d)(2)(D);

For a statement to be admissible under Rule 801(d)(2)(D), the offering party must make a three-part showing. [1] The party must establish the existence of the employment relationship independent of the declarant's statement offered as evidence. [2] The statement must be made during the existence of the declarant's 'agency or employment.' [3] The statement must concern a matter within the scope of the declarant's employment.

Boren v. Sable, 887 F.2d 1032, 1038 (10th Cir. 1989) (citations omitted).

All three parts to this test are easily satisfied. First, Mr. Evans was employed (and continues to be employed) by GPC as

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<sup>57</sup> Rule 801(d)(2)(D) "is not based on probability of trustworthiness but rather on the idea that a party cannot object to his failure to cross-examine himself." United States v. Chappell, 698 F.2d 308, 312 (7th Cir. 1983).



its Corporate Concerns program Coordinator. Second, Mr. Evans made the statement to Mr. Hobby that Farley would make the call in GPC's corporate offices in response to an inquiry he had received from Mr. Hobby. Third, Mr. Evans specifically had been given responsibility to investigate matters related to corporate concerns and, in particular, with respect to how GPC would respond to concerns raised by SONOPCO project employees. His statement, therefore, was made within the scope of Mr. Evans' employment.

The facts here are similar to those in United States v. Portsmouth Paving Corp., 694 F.2d 312, 322 (4th Cir. 1982), where the court held that a statement made by a secretary transmitting a message from a member of the company is not hearsay under Rule 801(d)(2)(D). In the matter before the Board, Mr. Evans was specifically relaying information he obtained from Mr. Glenn, his boss and manager of the corporate concerns program. Similarly, in Baughman v. Cooper-Jarrett, Inc., 530 F.2d 529, 532 (3rd Cir. 1976), the court held that the transmittal by a third person of a statement made by management to a prospective employee is not hearsay. Once again, Mr. Evans' transmittal of a statement attributable to Mr. Glenn and/or his boss, Grady Baker, may not be excluded on the basis of 801(d)(2)(D).

Finally, even if Mr. Evans' statement was considered nothing more than reiterating the statement of Mr. Baker through his chain of command, Fed.R.Evid. 805 provides:

Hearsay include within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

In this case, Mr. Baker's statement conforms to an exception within the hearsay rule as does the statement of MR. Glenn. There is no logical or legal reason to exclude Mr. Evans testimony for the truth of the matter asserted.

Conclusion

For the foregoing reasons, GPC's motion for summary disposition should be denied and the contention concerning improper transfer of control should be scheduled for hearing.

Respectfully submitted,



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Dated: October 4, 1994

October 4, 1994

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

CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Response to Georgia Power Company's Motion for Summary Decision with Appendix has been served this 4th day of October 1994, by hand-delivery persons listed in the attached Service List, with the exception that it was served by first class mail as indicated by "\*".

By: 

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

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

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APPENDIX OF EXHIBITS  
IN SUPPORT OF INTERVENOR'S RESPONSE  
TO GPC'S MOTION FOR SUMMARY DECISION

INTERVENOR'S APPENDIX OF  
EXHIBITS IN SUPPORT OF INTERVENOR'S  
RESPONSE TO GPC'S MOTION FOR SUMMARY DECISION

LIST OF EXHIBITS

- Exhibit 1- Excerpts from the deposition of  
H.G. Baker taken on April 8, 1994  
("Baker Dep.").
- Exhibit 2- Affidavit of Marvin B. Hobby dated  
October 3, 1994  
("Hobby Aff.")
- Exhibit 3- Excerpts from the deposition of  
Robert Scherer taken on June 8,  
1994.  
("Scherer Dep.")
- Exhibit 4- Excerpts from the deposition of  
Louis Brian Long taken on June 8,  
1994  
("Long Dep.").
- Exhibit 5- Excerpts from the deposition of  
Joseph M. Farley taken on April 14,  
1994  
("Farley Dep.")
- Exhibit 6- Excerpts from the deposition H.G.  
Baker in Hobby v. GPC taken on May  
23, 1990  
("Baker DOL Dep.").
- Exhibit 7- Excerpts from the deposition of  
Robert W. Scherer in Fuchko and  
Yunker v. GPC, DOL Case Nos. 89-  
ERA-9 and 89-ERA-10 ("Fuchko and  
Yunker v. GPC") taken on December  
21, 1988  
("Scherer 12/21/88 DOL Dep.").
- Exhibit 8- Excerpts from the deposition of  
George Hairston taken on April 13,  
1994  
("Hairston Dep.")
- Exhibit 9- April 19, 1990 entry from William  
Shipman's notebook (pertinent part  
at top of page)  
("Shipman Notebook").
- Exhibit 10- October 7, 1988 SCS Announcement.  
("SCS Announcement")

- Exhibit 11- Addison's appointment calendar for February 14, 1989 and March 6, 1989 (Addison Calendar").
- Exhibit 12- Dahlberg's appointment calendar for March 6, 1989 ("Dahlberg Calendar").
- Exhibit 13- Transcript of NRC proceeding dated March 30, 1989, on which Dan Smith made hand-written comments in the margin ("Smith Notation").
- Exhibit 14- June 8, 1989 letter from Marvin Hobby to Admiral Dennis Wilkinson ("Wilkinson Let.").
- Exhibit 15- Fourth Quarter 1989 On-Call Project Manager Telephone List ("Corp. Mgt. List").
- Exhibit 16- August 5, 1991 Southern Nuclear Board Meeting Minutes ("SONOPCO Bd. Minutes").
- Exhibit 17- Hand-written notes of Corporate Secretary taken during August 5, 1991 Southern Nuclear Board Meeting ("SONOPCO Bd. Notes").
- Exhibit 18- May 8, 1989 phone log of Marvin Hobby (final entry at bottom of page) ("Hobby Log").
- Exhibit 19- Excerpts from deposition of R.P. McDonald taken on April 14, 1994 ("McDonald Dep.").
- Exhibit 20- Excerpts of October 25, 1989 memo from Bob Edwards to Marvin Hobby regarding Nuclear Operating Agreements ("Edwards Memo").
- Exhibit 21- Partial Transcript of Mosbaugh Audio Tape of August 6, 1990 ("Mosbaugh Tape Tr.')
- Exhibit 22- Affidavit of Allen Mosbaugh dated October 2, 1994 (Mosbaugh Aff.').



- Exhibit 23- Motion to Intervene, Comments, and Request for Hearing of Oglethorpe Power Corporation, The Southern Company et.al. SEC Admin. Proc. No. 70-7530 ("Oglethorpe SEC Intervention").
- Exhibit 24- Reply to the Southern Company's Response to Oglethorpe Power Company's Motion to Intervene, Comments and Request for Hearing, The Southern Company et.al. SEC Admin. Proc. No. 70-7530 ("Oglethorpe SEC Intervention Reply")
- Exhibit 25- The Southern Company's 10-K Report for fiscal year ended December 31, 1993, p. I-13, III-4 to III-6 ("Southern Company 1993 10-K Report")
- Exhibit 26- December 27, letter from Dahlberg establishing NOCA ("Dahlberg Let.").
- Exhibit 27- Partial transcript of Mosbaugh Audio Tape No. 260, Side A ("Mosbaugh Tape 260A Tr.")
- Exhibit 28- Excerpts from the deposition of R.P. McDonald in Fuchko and Yunker v. GPC, Dept. of Labor Case Nos. 89-ERA-9 and 89-ERA-10 taken on December 23, 1988 ("McDonald 12/23/88 DOL Dep.").
- Exhibit 29- Excerpts from the deposition of Gerald Johnson in Hobby v. GPC taken on October 2, 1990 ("Johnson DOL Dep.").
- Exhibit 30- Excerpts from the deposition of Dan Smith taken on April 12, 1994 ("Smith Dep.").
- Exhibit 31- Excerpts from the trial testimony in Hobby v. GPC ("DOL Tr.").
- Exhibit 32- Memos from M.T. Brown to Farley, et al, dated September 19, 1989 and September 15, 1989 ("Farley Rate Case Memos")

# **EXHIBIT 1**

**In The Matter Of:**

*ATOMIC SAFETY AND LICENSING BOARD  
IN THE MATTER OF GEORGIA POWER COMPANY, et al*

---

*H. G. BAKER  
APRIL 8, 1994*

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*BULL & ASSOCIATES, INC.  
ATLANTA, FAYETTEVILLE  
4651 Roswell Road, NE, Suite F-504  
Atlanta, GA 30342  
(404) 256-2886*

*Original File CWS\_509\_CAT, 147 Pages*

**Word Index included with this Min-U-Script®**

1 Michael, I might have misunderstood  
2 your question. Did you say the board  
3 that he was chairing?

4 MR. KOHN: Yes.

5 MR. LAMBERSKI: I'm not aware of  
6 any --

7 MR. KOHN: Committee.

8 A I don't remember the sequence of  
9 events.

10 Q (By Mr. Kohn) You don't remember the  
11 sequence of events of Mr. O'Riley's departure  
12 and the formation of SONOPCO?

13 A No, except that the formation -- I  
14 don't remember whether any activities were  
15 undergoing -- going on about SONOPCO at that  
16 time or not.

17 Q And as I recall from your deposition  
18 testimony, you made the request once that  
19 Mr. McDonald or Mr. Hairston come to Georgia  
20 Power Company; is that correct?

21 A Yes, that's correct.

22 Q And you made that request to  
23 Mr. Farley?

24 A Yes, I did.

25 Mr. Farley and Mr. Addison and

1 Mr. Sherer and myself and Mr. Miller were in a  
2 meeting of some kind that was held at Georgia  
3 Power Company. And after the meeting I  
4 requested that they remain and I discussed the  
5 fact that Mr. O'Riley's performance was not  
6 acceptable and that I was going to have to  
7 terminate him and that I would like to -- and I  
8 thought that Mr. McDonald was probably the best  
9 nuclear operating man in the system and I would  
10 like to have him -- I'd like to know if he could  
11 be made available to Georgia Power Company to  
12 operate their plants. Failing that,  
13 Mr. Hairston was the next best.

14 Q And that request was denied?

15 A Denied in that no affirmative  
16 response was ever received by me.

17 Q And --

18 A Mr. Farley was not -- That would have  
19 left Mr. Farley with, you know, the job of  
20 finding somebody to run his plants.

21 Mr. Farley -- My impression was that  
22 Mr. Farley was not -- didn't really care to do  
23 that. He was very satisfied with Alabama's  
24 situation.

25 Q And then how -- what role did you

1 play after that to get Mr. McDonald at Georgia  
2 Power; were you involved in that decision?

3 A I don't remember who came -- I don't  
4 remember whether or not the committee that I  
5 chaired -- We simply came up with a  
6 recommendation that the nuclear operating  
7 company was -- would be the ultimate and best  
8 way to manage the nuclear plants.

9 And I do remember that we spent a  
10 great deal of time discussing individuals to  
11 head up this organization with the ultimate --  
12 and we ultimately recommended Mr. Farley be made  
13 the executive head of the organization.

14 But I don't remember if we -- I don't  
15 remember if we came up with the stepped process  
16 to bring SONOPCO about or not. My impression is  
17 that we did not. And if we did not then we  
18 would not have -- then Pat becoming an officer  
19 of Georgia Power Company as an interim measure  
20 was not one of our recommendations. I don't  
21 remember if that was the case or not.

22 Q Whose decision was it -- Do you know  
23 whose decision it was to have Pat McDonald  
24 report to the CEO rather than to you?

25 MR. WITHROW: To the CEO of

1 Georgia Power Company?

2 Q (By Mr. Kohn) Yes, when he joined  
3 Georgia Power.

4 A Well, no, I don't remember whose  
5 decision that was.

6 Q Did you ever know?

7 A I'd liked to.

8 Q I mean, were you consulted in that  
9 decision to the best of your recollection?

10 A It's very difficult to -- I don't  
11 remember being consulted. I was never, you  
12 know, it was -- but I don't -- No, I just don't  
13 remember whether I was consulted or not.

14 Q Do you recall when Mr. Miller left  
15 the company he was president of Georgia Power  
16 Company and you were the senior executive vice  
17 president, the No. 2 person at the company; is  
18 that correct?

19 MR. LAMBERSKI: At what time?

20 A I'm sorry?

21 Q (By Mr. Kohn) When Mr. Miller left  
22 you were the No. 2 executive at Georgia Power  
23 Company?

24 A Right.

25 Q And you were hoping to become -- be



1        named the president of Georgia Power Company; is  
2        that correct?

3            A        No.    No.

4            Q        You had no aspirations to become the  
5        president of Georgia Power Company?

6            A        That's true.    I so informed  
7        Mr. Addison some two years prior to this time  
8        that you're talking about I think or about this  
9        time.

10          Q        And why did you tell that to  
11        Mr. Addison?

12          A        Pardon?

13          Q        Why did you tell Mr. Addison you  
14        didn't want to be considered for a promotion?

15          A        Because I didn't want to put my name  
16        up to the board and then be embarassed when they  
17        turned it down.    And also, you know, I thought  
18        it was fair that, you know --

19          Q        Now, do you recall discussing with  
20        Mr. Hobby that you had decided to go to  
21        Birmingham and meet with Mr. Farley to discuss  
22        why you believed he would -- or try to find out  
23        why you thought he was blocking you for  
24        promotion?

25                    MR. WITHROW:    Wait --

1           A           I don't remember that.

2                   MR. WITHROW: He's already  
3 answered the question. But, Michael,  
4 we're really starting into some things  
5 here that have nothing to do with  
6 these proceedings.

7           A           Sounds like --

8           Q           (By Mr. Kohn) Do you recall meeting  
9 with Mr. Farley and asking him or in some way  
10 inferring whether he would support you for  
11 promotion or would -- had any reason to not  
12 support you for promotion?

13           A           I became aware at one time that  
14 Mr. Farley was not my biggest fan. And you know  
15 -- So I'm rather direct, so I went to Birmingham  
16 and asked Mr. Farley why that was so. And  
17 Mr. Farley informed me that it was not Grady  
18 Baker, it was Alabama versus Georgia and the  
19 fact that I was an officer of Georgia Power  
20 Company was my sole negative as far as he was  
21 concerned. And we discussed that to some  
22 extent.

23                   And, you know, let me state too that  
24 I frequently went to Birmingham to meet with  
25 people to discuss misunderstandings of that

1       role was to try to make SONOPCO a viable entity,  
2       bring about the formation of SONOPCO as a  
3       licensed operator of the three plants in the  
4       Southern electrical system.

5               Q       And did you have any direct  
6       relationship with Mr. Farley concerning  
7       administrative matters related to the operation  
8       of Georgia Power's nuclear plants?

9               A       No.

10              Q       So you did not take an oversight role  
11       of the administration of Georgia Power's nuclear  
12       plants?

13             A       No.

14              Q       After the formation at, I think it  
15       was in November of '88 the SONOPCO project was  
16       established in Birmingham -- physically  
17       established in Birmingham, do you recall that?

18             A       I don't remember the time frame. I'm  
19       not -- you know, but I do remember the SONOPCO  
20       project was formed and McDonald became an  
21       officer of Georgia Power Company.

22              Q       Was Mr. McDonald made an officer of  
23       Georgia Power Company to facilitate the  
24       formation of SONOPCO?

25                   MR. WITHROW:   What, formation of

1 SONOPCO corporation or the project?

2 MR. KOHN: SONOPCO project.

3 A He was made an officer of Georgia  
4 Power Company to -- so that he -- so that he  
5 could operate Georgia Power Company's nuclear  
6 plants until such time as SONOPCO was formed.

7 Q (By Mr. Kohn) Until such time as the  
8 SONOPCO project was formed?

9 A SONOPCO as a licensed entity.

10 Q Now, after Mr. McDonald became the  
11 senior -- the executive vice president over  
12 nuclear matters for Georgia Power company, did  
13 you play any oversight role in the  
14 administration of the nuclear plants?

15 A No.

16 Q Were you aware that Mr. Farley had a  
17 role concerning the administration --  
18 administrative matters concerning Georgia  
19 Power's nuclear plants?

20 A No.

21 Q Are you aware of Mr. McDonald ever  
22 telling you something you later believed to be  
23 untrue?

24 A I believe he's probably one of the  
25 few people that I can honestly say I don't have

1           Q       And on page 15 of your deposition you  
2 indicate -- we were talking about the nuclear  
3 operation contract administration, that the  
4 group was to be an administrative group which  
5 would try to keep -- which would try to keep  
6 aware of what was going on in SONOPCO -- and  
7 keep us informed of what was going on in  
8 SONOPCO. That was its basic function.

9                   Does that refresh your recollection  
10 as to what you envisioned the basic function of  
11 NOCA to be?

12           A       The basic function was what you just  
13 read. The basic reason was what I just said.

14           Q       Okay.

15           A       The function was Marvin to keep an  
16 eye on the nuclear company. The reason we  
17 formed it was because we didn't have anything  
18 else for Hobby to do. To put it another way, if  
19 we did not have Hobby, we would not have formed  
20 it.

21           Q       You also indicate in your prior  
22 deposition testimony on page 29 that it was your  
23 understanding that the nuclear operation  
24 contract administration would be, "a point  
25 source of information about SONOPCO and it's

1           Q           (By Mr. Kohn)   The question I'm  
2           looking to get answered is that once SONOPCO  
3           project -- once the decision -- Let me rephrase  
4           that.

5                       Once the corporate resolution within  
6           the Southern system had been reached that  
7           SONOPCO was going to be formed, it was at that  
8           time that Mr. Farley agreed that McDonald would  
9           go to Georgia Power Company?

10          A           Sounds about right.

11          Q           Now, you were aware that Mr. Farley  
12          did not want Mr. Hobby associated with SONOPCO?

13          A           I'm sorry?

14          Q           You were aware that Mr. Farley did  
15          not want Mr. Hobby associated with SONOPCO?

16          A           I was aware Mr. Dahlberg and I  
17          offered Mr. Hobby to Mr. Farley at one time and  
18          I think the answer consisted of no response,  
19          which was in fact an answer, I guess.

20          Q           Excuse me. Which was an answer?

21          A           Which did in fact constitute an  
22          answer.

23                       MR. KOHN:   Let's go off the  
24                       record.

25                       (Discussion held off the record)

1           Q           (By Mr. Kohn) As a result of  
2 Mr. Farley's answer to you with respect to  
3 Mr. Hobby, is it true that then Mr. Hobby was  
4 not -- Let me withdraw that.

5                       What was your understanding as to why  
6 Mr. Farley did not want Mr. Hobby at the SONOPCO  
7 project?

8           MR. WITHROW: Object to the form  
9 of the question to the extent it  
10 requires him to speculate about  
11 unexpressed opinions of Mr. Farley or  
12 subjective thoughts.

13                      Subject to that you can go ahead  
14 and answer.

15           A           I think Mr. Farley assessed Mr. Hobby  
16 in much the same manner as I had.

17                      I mean, you've got to understand,  
18 Mr. Farley had been a chief executive officer  
19 and had been dealing with managers and officers  
20 for many years and he understood the  
21 characteristics of the good and the bad, I'm  
22 sure, probably far better than I did.

23           Q           Well, do you believe that Mr. Farley  
24 ever observed Mr. Hobby's management or would  
25 actually know?



1 Mr. Farley to carry that position at that age  
2 and it resulted in Mr. Farley appearing to some  
3 people as being somewhat reserved and perhaps  
4 unfriendly.

5 Also Mr. Farley's wife, whom I  
6 believe he cared for deeply, died after a long  
7 extended illness, a kidney illness not too many  
8 years ago and since that time Mr. Farley has  
9 lived alone I think. And those things have to  
10 be taken into account when you associate with  
11 Mr. Farley.

12 I have always found him to be candid  
13 and upright and a splendid gentleman in every  
14 way.

15 On three occasions in my career he  
16 has lost his temper with me and has just really  
17 -- I mean, literally raised Cain with me. And  
18 in every case I have addressed his concerns as  
19 quickly as possible and in every case apologies  
20 were forthcoming almost immediately.

21 And I consider that to be a mark of a  
22 true gentleman. Although somebody who never  
23 loses their temper or somebody who can handle  
24 his temper is an even better gentleman, and  
25 that's the reason I like Jim Miller so well.

1           But I think Mr. Farley is a fine  
2 gentleman. I've admired him very much.

3           And Georgia Power and Alabama Power  
4 Company have been at odds with each other for --  
5 historically because people in Southern have  
6 always compared us -- our financial results.

7           When I was a young engineer it was  
8 not uncommon to say -- to hear people tell me  
9 that Alabama's tree trimming costs were less than  
10 my tree trimming costs. And that's what I blame  
11 it on, the revering just doesn't build  
12 fellowship and brotherhood for those things to  
13 occur.

14           I think it was bad management  
15 practice by past managers that resulted in most  
16 of the -- most of the problems between Alabama  
17 and Georgia.

18           Q       And those past managers would be who?

19           A       Whoever was in the office at the  
20 time. I say this has been going on for decades.

21           Q       I understand. But in the office of  
22 Alabama Power it would have been Mr. Farley?

23           A       No. These are statements that were  
24 -- that were made by Southern in comparing our  
25 financial results, then our own people would

1 circumstances.

2 But if you knew the president of a  
3 company personally, you would remember if he was  
4 mad at you, whether you remembered the  
5 circumstances or not.

6 And that is my testimony and that is  
7 what it is. I can testify to nothing else,  
8 nothing further.

9 MR. LAMBERSKI: Michael,  
10 obviously the witness is becoming  
11 upset by your harassing him on this  
12 question. So if you would please move  
13 on, I'd appreciate it.

14 MR. KOHN: I disagree with your  
15 assessment of asking the question in  
16 regards to his memory. That's not  
17 harassment.

18 MR. LAMBERSKI: The fact of the  
19 matter is he's upset, okay. So please  
20 move on to another subject.

21 Q (By Mr. Kohn) Did you know Jack  
22 Pate?

23 A Yes.

24 Q And was he the president of INPO or  
25 is the president of INPO?

1           A       Yes, he was the second president of  
2       INPO I believe, followed Admiral Wikinson.

3           Q       Do you know if Mr. Pate has a good  
4       working relationship with Mr. Farley?

5           A       I have no knowledge of Mr. Pate's  
6       relationship with Mr. Farley.

7           Q       I don't mean to press on a sore  
8       point, but for clarification you previously  
9       testified that with -- that you had heard  
10      something that -- and I'm going to try to  
11      summarize it as best I recollect it, and if I'm  
12      incorrect you can correct me or counsel can  
13      correct me -- but that you had heard that  
14      Mr. Farley was unhappy with you for some reason;  
15      do you recall that?

16          A       Yes.

17          Q       Now, did that episode of you going  
18      and talking things out with Mr. Farley relate to  
19      any one of the episodes where he got angry with  
20      you?

21          A       No, he was not angry on that  
22      occasion. As you recall I testified that I went  
23      to see Mr. Farley and he explained that his  
24      attitude toward me was due to my association  
25      with Georgia Power Company and not with Grady

1 Baker personally.

2 Q As best you can recall the three,  
3 when was the last time Mr. Farley blew up at you  
4 that you can recall, the date?

5 A I honestly, you know --

6 MR. LAMBERSKI: You've asked him  
7 that question already, Michael, and he  
8 answered it.

9 THE WITNESS: Yeah, this is --  
10 you know, this is the fourth or fifth  
11 time.

12 And as counsel said, you got me  
13 upset while ago. And I don't know how  
14 often or how many times or what ways  
15 that I can tell you that would, you  
16 know, make you feel comfortable that  
17 I'm telling you the truth.

18 But I do resent being accused by  
19 repetitive asking of the same question  
20 of lying to you on all the other  
21 answers and that's exactly what you're  
22 doing.

23 MR. KOHN: I'm sorry that you're  
24 taking it that way. I'm only trying  
25 to --

# **EXHIBIT 2**

## A F F I D A V I T

of

Marvin B. Hobby

Under the pains and penalties of perjury, I, Marvin B. Hobby, state that the following is true and correct to the best of my knowledge.

1. On June 1, 1985, I returned to Georgia Power Company and became Assistant to the President and Chief Operating Officer.
2. My responsibilities were to assist the President as he gave executive direction to all aspects of the Company.
3. At this time, Georgia Power Company was involved in the construction of a two-unit nuclear power plant near Augusta, Ga., the Alvin W. Vogtle, Jr. Nuclear Power Plant.
4. In late 1985 and early 1986, I was asked by the President to contact my former boss, Admiral E. P. Wilkinson, the retired President and Chief Executive Officer of the Institute of Nuclear Power Operations, and ask him to serve as an executive management consultant. He was asked to conduct several visits to the site, meet with the employees and management, review schedules, and assess overall whether the plant was being build in a quality fashion and whether or not the plant was being built on schedule. He was asked to provide his conclusions to the President.
5. I did contact the Admiral and he agreed to conduct a management assessment of the Vogtle Project. This review was conducted over a period of time from the Fall of 1985 until 1986.
6. At each visit to the site by the Admiral, I was present and accompanied him on a tour of the site and discussions with the personnel. Most of the time, the President of the Company also was present.
7. In early 1986, the Admiral made his findings and recommendations to the President of the Company. Among his observations was that the senior manager of the project responsible for the successful construction of Plant Vogtle did not want to continue on the project and openly discussed his desire to return to the Corporate office in Atlanta.
8. The Admiral realized that the successful, timely completion of Plant Vogtle was of paramount importance to Georgia Power. He thus offered, if Georgia Power wished him to do so, that he



would accept the responsibility to come to Georgia and complete the construction of Plant Vogtle. He furthermore requested that I be made available to him to serve as his number two person for the duration of the construction at the Plant.

9. The Admiral made his recommendations to the President of the Company. To my knowledge, no one was present when Admiral Wilkinson discussed his findings and recommendations except Admiral Wilkinson and the President.
10. When Admiral Wilkinson completed his briefing, he came by my office and handed me a copy of his outline of what he had just discussed with the President and left the building as he had to catch a plane. He also left a copy of his remarks with the President.
11. After Admiral Wilkinson left the building, the President, Mr. J. H. Miller, Jr., called me into his office and asked me if I knew what Admiral had found during his assessment and what his recommendations were. I told him that Admiral Wilkinson had discussed his concerns with me over the last few months and that I knew generally what they were. I also told him I knew that the recommendation to replace the senior management would be made and that the Admiral would offer to take over the completion. The President told me that he was very pleased that the Admiral would consider taking over such a large and complex project.
12. Mr. Miller stated he was going to take the recommendation to Mr. Scherer, the Chairman and Chief Executive Officer, with a strong recommendation that it be approved.
13. Later, Mr. Miller informed me that Mr. Scherer, the Chairman and CEO, had approved his recommendation that Admiral Wilkinson take over the Vogtle Project. He told me that Mr. Scherer was going to go out to Southern and inform Mr. Addison.
14. A few days later, Mr. Miller informed me that Mr. Scherer had discussed the change with Mr. Addison and that Mr. Addison had overruled Mr. Scherer's decision to approve Admiral Wilkinson taking over the project. Mr. Miller asked me to inform the Admiral and I did so.

*Marvin B. Hobby*  
Marvin B. Hobby

*October 3, 1994*  
(Date)

# **EXHIBIT 3**

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

Before Administrative Judges:

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

-----x  
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  
:-----x

The deposition of ROBERT SCHERER,  
Deponent, taken on behalf of the Intervenor, the  
reading and signing of the deposition not being  
waived; taken before W. Stephen Walker, Deposition  
Officer and Certified Court Reporter, commencing  
at 10:12 o'clock a.m., June 8, 1994, at Suite  
5200, 600 Peachtree Street, N.E., Atlanta, Fulton  
County, Georgia.

-oOo-

American Court Reporting Company

41 Marietta Street NW, Suite 600  
Atlanta, Georgia 30303

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1 I think I may have been retired at the time that that  
2 occurred or close to it.

3 Q. Now, do you recall a Southern Company board  
4 meeting where a vote was taken to go forward with the  
5 operating company concept?

6 A. I honestly can't recall. I think this was  
7 occurring about the time that I was retiring, and my  
8 focus was mainly on seeing Vogtle No. 2 become a  
9 reality.

10 Q. So, you were focusing on the construction of  
11 Vogtle?

12 A. I was focusing on the completion of the  
13 construction and the operation and the ultimate  
14 granting of the license for full operation.

15 Q. For both units?

16 A. Well, all units, yes. But, of course, in my  
17 last year or so we had finished Unit 1 and we were  
18 bringing No. 2 on.

19 Q. Do you ever recall casting a vote to  
20 establish a nuclear operating company?

21 A. I don't remember. I wouldn't have been  
22 opposed, but I just don't remember.

23 Q. Were you ever asked where the location of the  
24 Southern Nuclear Operating Company should be, whether  
25 Alabama or Georgia?

1 A. I don't ever remember being asked that.

2 Q. Were you involved in any of the personnel  
3 decisions to staff a nuclear operating company?

4 A. No. I believe -- let me go back and restate  
5 that. There were some people that were transferred  
6 from Georgia Power Company, and I don't remember when  
7 that occurred.

8 I did not find fault with the individuals --  
9 some individuals who were selected, but I didn't have  
10 anything to do with selecting those individuals or  
11 anyone below those principals. Again, I'm very hazy  
12 as to when that occurred.

13 Q. Do you recall Mr. Addison asking Mr. Farley  
14 if he would be interested in heading up the nuclear  
15 operating company?

16 A. It was not in my presence.

17 Q. Did you become aware that Mr. Addison had  
18 asked Mr. Farley that?

19 A. I think I was aware that he had asked him.  
20 But, again, I think this was after I had retired, but  
21 I can't be sure.

22 Q. Well, what is your best recollection of the  
23 conversation you had where you had learned that Mr.  
24 Addison had asked Mr. Farley to head up an operating  
25 company?

1       A.    I don't remember the details of it. I just  
2   -- I think I probably thought it was a good idea.

3       Q.    I assume that you did not hear it from Mr.  
4   Addison and Mr. Farley.

5       A.    I didn't hear it from Mr. Farley, and I don't  
6   know whether I heard it from Mr. Addison or not. I  
7   may have heard it internally. I just don't remember.  
8   And, I thought it was a good idea. And, again, I  
9   don't know whether it was after I retired or before I  
10  retired.

11       Q.    So, if I understand it, you heard, either  
12  before or after you retired, that Mr. Farley would  
13  head up the Southern Nuclear Operating Company,  
14  correct?

15       A.    I heard that that was a consideration. I  
16  think at the point in time that I heard that Mr.  
17  Farley was considering taking over as managing partner  
18  of the Balsh (phonetic) law firm, that Mr. Balsh was  
19  contemplating retirement and that Mr. Farley was being  
20  seriously considered to take that position.

21       And, it was during that period of time,  
22  whenever that was, that the decision -- Mr. Farley's  
23  decision, I guess, was to go to the nuclear operating  
24  company instead of to the law firm. But, again, I  
25  don't remember what time that was, the time frame.

1 used to select Mr. Farley to head up Nuclear  
2 Operations?

3 A. I don't know what the process was. Mr.  
4 Farley obviously has a lot of talent and he has had a  
5 lot of experience, and I'm sure that that all entered  
6 into it.

7 Q. Do you know why Birmingham was selected  
8 rather than Atlanta?

9 A. I have no idea.

10 Q. Were you aware of pending Security and  
11 Exchange Commission approval to form the operating  
12 company?

13 A. I understand that there obviously was a  
14 requirement. I don't know when that was, you know,  
15 requested, when it occurred. I don't recall that.  
16 But, I knew it was necessary.

17 Q. Did you take place in any discussions about  
18 waiting until after you received SEC approval before  
19 moving Georgia's nuclear operations?

20 A. I don't know whether that was discussed with  
21 me or not; I really don't.

22 Q. Now, with respect to Mr. McCoy and Mr.  
23 Beckham you were asked whether it was okay for them to  
24 relocate to Birmingham?

25 A. Well, it wasn't a matter of whether it was



1 okay. It was more a suggestion that they were going,  
2 and I guess it was an opportunity to object if I  
3 wanted to, but they didn't ask me, "Can we move them  
4 to Birmingham."

5 Q. Basically you were given an informational --

6 A. Yes, right.

7 Q. -- briefing that they were going over to  
8 Birmingham?

9 A. Right. And, I guess if I had said, "Oh no,"  
10 they might have changed their minds.

11 Q. Do you remember who gave you that briefing?

12 A. I think Pat McDonald did. It wasn't much of  
13 a briefing. It was just a side comment.

14 Q. Can you tell me were you a member of the  
15 Georgia Power Management Council?

16 A. We had a council. I don't know that we gave  
17 it that grandiose title. We had a group of senior  
18 officers, and I think this goes back to about 1982 or  
19 something of that nature, somewhere in that area,  
20 where we took the senior officers and we would meet on  
21 a weekly basis just about to discuss what was in front  
22 of us, what problems we had across the whole spectrum  
23 of the operation of the company.

24 Q. Now, during those sessions periodically would  
25 you look at the performance of management within

1 for that position?

2 A. No, no.

3 Q. Do you know if Mr. Long ever became a vice-  
4 president of Southern Company Services?

5 A. I don't know Mr. Long.

6 Q. Do you know if there was a technical services  
7 branch for the Sonopco project?

8 A. No, I don't know.

9 Q. Do you know if Mr. McCrary ever became  
10 involved in the Sonopco project?

11 A. I don't know.

12 Q. Now, can you tell me any individual within  
13 Georgia Power Company's Nuclear Operations management  
14 who was promoted after Mr. McDonald became executive  
15 vice-president of Nuclear?

16 A. I don't remember.

17 Q. You can't recall anyone?

18 A. I'm sure there may have been -- I mean, I'm  
19 not sure. There may have been. I just don't  
20 remember.

21 Q. Now, were there more people -- before the  
22 Sonopco project was formed were there generally more  
23 people in Georgia Power's Nuclear Operations than  
24 Alabama's; do you know?

25 A. I don't know.

# **EXHIBIT 4**

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

Before Administrative Judges:

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

-----x  
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 Plant, : Nuclear)  
Units 1 and 2) : ASLBP No. 93-671-01-OLA-3  
: :  
-----x

The deposition of LOUIS BRIAN LONG,  
Deponent, taken on behalf of the Intervenor, the  
reading and signing of the deposition not being  
waived; taken before W. Stephen Walker, Deposition  
Officer and Certified Court Reporter, commencing  
at 2:21 o'clock p.m., June 8, 1994, at Suite  
5200, 600 Peachtree Street, N.E., Atlanta, Fulton  
County, Georgia.

-oOo-

American Court Reporting Company

41 Marietta Street NW, Suite 600  
Atlanta, Georgia 30303

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1 me Joe Farley wanted to talk to me about something,  
2 and it was the first time I had ever had the  
3 opportunity to meet Mr. Farley.

4 He came over and told me that I was going to  
5 be an officer of Southern Company Services kind of  
6 based on something -- some words like kind of that it  
7 didn't even need to go through a selection process,  
8 that I just kind of naturally fit into the  
9 organization that they -- that we had developed.  
10 There was no selection process, but Mr. Farley was the  
11 one who informed me of it.

12 Q. Now, was that before the Georgia Power people  
13 had moved over to Birmingham?

14 A. Yeah. Let's see. I had been on the task  
15 force to put together Southern Nuclear, and we were  
16 still -- I guess this was like -- it was in the mid  
17 '87 time frame -- mid '88, excuse me, mid '88 time  
18 frame.

19 Q. That's when you recollect your conversation  
20 with Mr. Farley?

21 A. Uh-huh (affirmative).

22 Q. I wrote down that that was October of '88  
23 that Mr. McDonald told you that. I thought that was  
24 what you originally said. Is it the middle of '88, or  
25 do you have --

1       A.     It was October of '88 that I was made a vice-  
2 president.

3       Q.     Okay. I understand. So, in the middle of  
4 '88 that's when you became aware that was going to  
5 happen, --

6       A.     Right.

7       Q.     -- and then it formally took place in October  
8 of '88?

9       A.     Right.

10      Q.     Now, was there a staff under you?

11      A.     Uh-huh (affirmative). Yeah, I had a staff of  
12 people at Southern Company Services who primarily have  
13 some unique technical expertise in the nuclear area  
14 that work for all of the plants on the system. So, I  
15 already had those, like Nuclear Fuel, and there were  
16 some licensing kind of activities that were under me.

17      Q.     All right. Now, were those offices  
18 rearranged or realigned to better fit into what was  
19 going to become the Sonopco project?

20      A.     Yeah, a little bit, but primarily Sonopco  
21 moved in underneath me. My organization was on the  
22 sixth floor of Building 40, and the rest of the people  
23 kind of moved in underneath me. So, we were already  
24 in the building that everybody moved into.

25      Q.     How long had you been in that building?

1 responsibility occurred in the Fall or --

2 A. Okay. The task force responsibility  
3 primarily started in October of '87 and then went  
4 through --

5 Q. Excuse me. When, October?

6 A. October of '87, yeah. That's when we got the  
7 second task force, kind of the implementation task,  
8 put together under Pat McDonald.

9 They worked for six to eight months to try  
10 and come up with a number of different -- to put  
11 together a number of different tasks related to making  
12 this Southern Nuclear a reality. And, I had  
13 responsibilities for the technical organization, and I  
14 had responsibility for developing a general licensing  
15 strategy.

16 And, then that was -- once those activities  
17 were done, then that information was kind of archived,  
18 if you will. And, then as things began to happen and  
19 people began to assume some real responsibility for it  
20 then they took that as input in actually putting flesh  
21 on the organization.

22 So, you know, George and Pat became officers  
23 of Georgia Power and Alabama Power Company and began  
24 having those responsibilities, and I found out I was  
25 going to be the real guy in the technical services

1 area. We really, you know, paid a lot more attention  
2 to the details of the substructure of the  
3 organization.

4 Q. Had there been an organizational chart  
5 created that was put into the -- you mentioned the  
6 archives --

7 A. As part of the task force?

8 Q. Yes, the portion that you were working on.

9 A. Yeah, but it was not very detailed. I mean,  
10 it was like there ought to be, for instance, -- well,  
11 a new Nuclear Fuel was going to be virtually intact;  
12 new In-Service Inspection was going to be intact;  
13 Quality Services was going to be the same.

14 And, then this group, specialty areas, I just  
15 kind of generally said there ought to be chemists and  
16 licensing, and it really wasn't detailed out. It was  
17 kind of these are some general areas that need to be  
18 included.

19 Q. Were you involved with the salary plan  
20 administration as to what level these jobs would be  
21 at?

22 A. Yeah. I looked at all of those levels and  
23 worked with George on establishing what those levels  
24 ought to be. George was kind of coordinating the  
25 levels on the projects, and he was serving as kind of



1 the sanity check to make sure that the levels on the  
2 project were consistent with the technical levels.  
3 That's so we didn't get, you know, inequities in pay  
4 amongst the groups.

5 Q. And, did you receive feedback as to when the  
6 levels were approved by whatever organizations had to  
7 approve them in their budgeting departments or  
8 whatever those departments were, Human Resources  
9 Departments? Were you kept informed as to when a  
10 position had been formalized and --

11 A. Uh-huh (affirmative).

12 Q. Did you prepare ---

13 A. Job descriptions?

14 Q. Yes. Thank you.

15 A. Yeah, and most of them already existed in one  
16 form or fashion either at the operating company or at  
17 Southern Company Services. In the case of Southern  
18 Company Services I didn't have to do anything, because  
19 they already existed.

20 But, when these people transferred to the  
21 Southern Company Services we would take the existing  
22 job descriptions, make sure it applied to the new  
23 organization and just use those.

24 Q. Okay. When did the process of starting to  
25 write the job descriptions begin?

1       A.     Again, most of them had already been done,  
2     and the levels had already been established, and there  
3     had been -- I mean, these jobs had already been cross-  
4     correlated. So, it was really just putting the  
5     paperwork together within Southern Company Services,  
6     and I'm not sure exactly when that occurred.

7       Q.     Well, were you on the Phase One task force?

8       A.     No.

9       Q.     Okay. So, Phase Two began in October of '87?

10      A.     Uh-huh (affirmative).

11      Q.     Okay. And, from the Phase Two implementation  
12     is that when you began putting together all these nuts  
13     and bolts?

14      A.     Uh-huh (affirmative).

15      Q.     So, the job descriptions and levels were not  
16     being done as of October of '87?

17      A.     No, no, no. In October of '87, really, the  
18     concepts were kind of getting laid out. There were  
19     some major decisions that had to be made, whether we  
20     were going to kind of a project organization or  
21     whether we're going to have a staff-run company with  
22     the plants kind of taking orders from the staff or  
23     whether we were going to have a line accountability  
24     system structure. And, that's where we developed the  
25     recommendations that ultimately we implemented in

1 Southern Nuclear.

2 We had a lot of major decisions to reach,  
3 major recommendations to make, and we also put as much  
4 detail as we could, some more than others.

5 Q. What happened with respect to the staff-run  
6 or line accountability?

7 A. Well, what we ended up with was a very strong  
8 project accountability such that the vice-president at  
9 each one of the plants was -- everybody understands  
10 that he is the man that's accountable for what goes on  
11 at that plant.

12 It's not a -- my support organization can't  
13 go down and tell the chemistry guy at Plant Vogtle  
14 he's got to do something. Those guys are responsible  
15 for that plant, and we do not have a staff-run  
16 organization, and I think that's the way it should be.

17 Q. And, is Southern Nuclear still operating --

18 A. Uh-huh (affirmative).

19 Q. -- in that fashion?

20 A. Uh-huh (affirmative).

21 Q. Now, who do you recall being involved in  
22 those discussions with respect to the staff-run or  
23 line accountability?

24 A. It was Pat, Tom McHenry, myself, and the  
25 other -- John Mier, Bob Gilbert. The other guys on

1 the task force were all involved in the discussions,  
2 because we were being asked to come up with  
3 recommendations on what the organization ought to look  
4 like.

5 Q. Was Grady Baker involved in the Phase Two  
6 task force?

7 A. He was one of their -- there were three  
8 people that were serving as a steering committee for  
9 the Phase Two task force; Grady Baker; Bill Dahlberg,  
10 as president of SCS; and Bill Whitt from Alabama.

11 So, you had -- all of the companies that were  
12 involved in this transition had members of the  
13 steering committee. I use the term "steering  
14 committee". They may have another term applied to  
15 that.

16 Q. Okay. The Phase Two task force as of October  
17 '87 was underneath Mr. McDonald?

18 A. Uh-huh (affirmative).

19 Q. Can you explain that? I mean, where did  
20 Dahlberg, Baker and Whitt fit in?

21 A. They're up here in the steering committee.  
22 Pat had the team down here and was reporting to them  
23 about their progress and findings and recommendations  
24 that were coming forth from the steering committee --  
25 I mean from the Phase Two --

1 Q. All right. So, there was a --

2 A. -- implementation.

3 Q. -- staff underneath Mr. McDonald --

4 A. Uh-huh (affirmative).

5 Q. -- which included --

6 A. Myself.

7 Q. -- yourself and Mr. McHenry and some other  
8 people?

9 A. Right.

10 Q. Did you observe what role Mr. Grady Baker  
11 played?

12 A. Not really. I think -- Pat typically dealt  
13 with the steering committee himself, and we provided  
14 him input to whatever he needed; but Pat, frankly,  
15 dealt with those guys directly, and he saved us from  
16 having to deal with that.

17 Q. And, when did the Phase Two -- was it called  
18 task force or something?

19 A. I don't remember the name.

20 Q. Whatever it was called, --

21 A. Implementation committee. I don't remember  
22 what it was called.

23 Q. Was there a point in time where that  
24 implementation committee terminated?

25 A. Yeah. We --

1 clear for the Reporter.

2 THE DEPONENT: Okay, sure.

3 BY MR. KOHN:

4 Q. And Mr. Gilbert?

5 A. He was Alabama Power Company.

6 Q. Glen Gucwa, if I'm pronouncing his name  
7 right. Len --

8 MR. WITHROW: Len Gucwa.

9 BY MR. KOHN:

10 Q. Gucwa. Was he in this group or not?

11 A. No.

12 Q. I believe Mr. Farley testified that in 1987  
13 he had a conversation with Mr. Addison asking him to  
14 become involved in this Southern Nuclear Operating  
15 project. When did you start observing Mr. Farley's  
16 involvement?

17 A. The first time I saw Mr. Farley was when he  
18 asked me -- told me about being an officer of Southern  
19 Company Services as part of the Sonopco project. That  
20 was the first time -- I did not see him in any of our  
21 activities that we had on the task force.

22 Q. The other people, Mr. Dahlberg or Grady  
23 Baker; did you see them?

24 A. Yeah, you know, they would come by when they  
25 would have meetings and just kind of stop and say

1       referring to? He has --

2               MR. KOHN: The project --

3               MR. LAMBERSKI: -- talked about a couple  
4       of meetings.

5 BY MR. KOHN:

6       Q. The NRC project managers. What was the  
7       status of the Phase Two? Where were you at?

8       A. Well, essentially that was over, and what we  
9       were really going into at this point was  
10      implementation of the whole Southern Nuclear formation  
11      and license transfer process. And, this was trying to  
12      brief the project managers on the licensing strategy  
13      and the processes that we would be going through in  
14      order to make this happen.

15      Q. Okay. Were you at that point when you had  
16      your initial meeting with Mr. Scinto?

17      A. No, that was just exploratory to develop a  
18      strategy.

19      Q. I'm going to show you an exhibit marked as --  
20      or a document contained as Exhibit 1 to Georgia  
21      Power's proposed stipulation (presenting). Can you  
22      tell me if you have seen this document before?

23      A. Yeah. Yeah, Len was there.

24      Q. If I might call your attention, this is a  
25      March 9, 1988 --



1 questions to a single guy so they could factor those  
2 into all the reviews. And, that was just a suggestion  
3 to the NRC.

4 Q. Okay. Did the NRC follow up on that  
5 suggestion?

6 A. Not really, because we kind of changed our  
7 strategy, kind of dumped this strategy. This was at  
8 the point where we were hoping to make the transfer  
9 all at one time and were not able to do that.

10 Q. And, do you know who came up with that  
11 strategy?

12 A. What strategy?

13 Q. You would transfer everything at one time.

14 A. Yeah, I did.

15 Q. Okay. And, as I understand it, the NRC was  
16 not buying into that proposition.

17 A. Oh, they were.

18 Q. Okay.

19 A. The thing that changed was Oglethorpe's  
20 unwillingness to proceed forward initially.

21 Q. And, was there something else later on?

22 A. What?

23 Q. You said that Oglethorpe's unwillingness  
24 interfered with the strategy. Was there something  
25 else later on which interfered with the strategy?



1       A.    No.  Later on they said it was fine.  I'm  
2 just saying the initial reaction that they had was one  
3 of, "Gee, we're not sure about this," and the  
4 discussions kept going on and on and on.

5       And, finally, we just said we just need to --  
6 you know, Oglethorpe kind of had us over a barrel; and  
7 we just, you know, sat until they finally agreed to go  
8 ahead or else we began to move forward.

9       Q.    Now, did you consider going forward with  
10 creating an operating company and just transferring  
11 Farley's license at that point?

12       A.    That's what we evolved to.

13       Q.    And, when did that evolution begin?

14       A.    Well, there were discussions -- and I wasn't  
15 part of this, but the discussions with the co-owners  
16 were done by Pat.  And, you know, those discussions  
17 were initiated sometime in the beginning of '88 as it  
18 you know, became -- as we were looking into the  
19 details of the implementation.

20       As part of making that happen you have to  
21 change the existing agreements between Oglethorpe and  
22 Georgia and the other co-owners, develop an agreement  
23 between them and Southern Nuclear, all which would  
24 need to be part of this activity.  And, they got into  
25 discussions about the details of that, and they just

1 kept dragging on and on.

2 And so, these were ongoing basically from the  
3 first of the year. And, at some point in time, which  
4 was probably more in the, you know, May -- well, it  
5 was midyear sometime -- it was clear that we just  
6 weren't getting to resolution and we just needed to  
7 either give up the idea or go do something.

8 Q. And, that was in the middle of '88?

9 A. Uh-huh (affirmative).

10 Q. And, that's when the concept of the Sonopco  
11 project came about?

12 A. Yes. And, again, I was one of the ones who  
13 kind of crafted that. This is exactly what was done  
14 at GPU where prior to forming a separate organization  
15 they used the double-heading approach between Jersey  
16 Central and the other operating utility to come up  
17 with an interim organization that was a transition, if  
18 you will, to a complete organizational transfer.

19 Q. Okay. Now, by the middle of '88 was it a  
20 foregone conclusion that Oglethorpe was not going to  
21 be buying into this for a while?

22 A. We just didn't see an end point. And, again  
23 this is secondhand. I was just sensing a lot of  
24 frustration from those that were engaged in those  
25 deliberations. It was just, you know, well, we've got

1 this issue today, and you would think you had kind of  
2 wrapped that up, but now some new ones, and it just  
3 kept going on and on.

4 Q. Now, was there a presentation to the NRC  
5 about this change to this Sonopco project concept?

6 A. There may have been. I just was not there.

7 Q. Okay. You're not aware of one personally?

8 A. No.

9 Q. I'm going to show you a document contained as  
10 Exhibit 2 to Georgia Power's request for stipulations  
11 (presenting), and this appears to be a follow-up -- or  
12 there's another meeting with the NRC shortly after the  
13 March 2nd meeting.

14 A. Uh-huh (affirmative).

15 Q. The document we're looking at is a March 25,  
16 '88 letter from NRC to Alabama and Georgia Power.

17 A. Yeah.

18 Q. Again, do you recall being in attendance at  
19 this March --

20 A. Uh-huh (affirmative).

21 Q. -- 18 meeting?

22 A. Right.

23 Q. All right. What was the purpose of the March  
24 18 meeting?

25 A. I think that's the one where we wanted to

1 that I do that don't -- we have a number of different  
2 work orders at Southern Company Services, and some of  
3 them are allocated and some of them are specific to  
4 specific work types.

5 For instance, I've got Nuclear Fuel, and if I  
6 do Nuclear Fuel work on Alabama or Georgia it would be  
7 allocated directly into those accounts so that there  
8 was a clean accounting for those kind of activities.

9 Q. And, you would get a specific work order for  
10 those activities?

11 A. Uh-huh (affirmative).

12 Q. Okay. And so, if I understand it, there was  
13 a continuous standing work order for miscellaneous  
14 work --

15 A. Uh-huh (affirmative).

16 Q. -- for Alabama and Georgia, correct?

17 A. Uh-huh (affirmative).

18 MR. LAMBERSKI: Yes?

19 THE DEPONENT: Yes.

20 BY MR. KOHN:

21 Q. And, then these more specific work orders  
22 would come in from time to time that would be of  
23 specific duration?

24 A. Yes.

25 Q. Do you know who signed your monthly time

1 sheets?

2 A. For when, what period?

3 Q. Let's say from the time you started working  
4 on the Phase Two task force.

5 A. Up until I became an officer they were signed  
6 by Doug Dutton of SCS. After I became an officer they  
7 were signed by Paul Rice, changed my reporting  
8 responsibilities.

9 Q. And, who was Mr. Rice?

10 A. He was an executive vice-president of  
11 Southern Company Services.

12 Q. Now, the monthly work orders; were they being  
13 issued within Southern Company Services, or was the  
14 paperwork being generated from Georgia Power?

15 A. All the work orders were authorized by the  
16 operating companies, and then we charged to them.

17 Q. Was the process that one of the operating  
18 companies would call up and say, "We're going to be  
19 loading fuel --"

20 A. Typically at the beginning of the year we  
21 would send something over to the operating companies  
22 telling them the work orders that we had that were  
23 general, and then there were specific ones that we  
24 would require. And, sometimes specific work orders  
25 would be issued from time to time because it's on a

1 special project that they want.

2 Q. In discussion with someone, and I don't  
3 remember now, but I think they indicated that the work  
4 orders -- it may have been Mr. Burr indicated the work  
5 orders would come even from the lower-level managers  
6 within the project if they needed a specific task  
7 done.

8 A. Yes.

9 Q. Okay. And, was there a process on who would  
10 sign the work orders for Georgia Power, or was it just  
11 basically anyone who needed the work done was sending  
12 them over?

13 A. Typically what each operating company does is  
14 they have a budget that they get approved, and then  
15 they have responsibility for that budget. And, for  
16 work to be done they have authorization to spend money  
17 within that authorization.

18 So, if you're over at Alabama Power Company  
19 and you've got a budget approved for so much money,  
20 then it's up to you to get it done. You can issue  
21 work orders within that, you know, budgetary limit.

22 Q. Have you ever seen the actual service  
23 agreement between Georgia Power and Southern Company  
24 Services prior to the formation of Southern Nuclear?

25 A. I don't recall having seen it, no.

1 Q. Now, after the Georgia and Alabama nuclear  
2 organizations were co-located into the 40 Inverness  
3 Building did you have occasion to attend weekly staff  
4 meetings?

5 A. We had a weekly staff meeting down at the  
6 second floor.

7 Q. In whose office? In a conference room?

8 A. Conference room.

9 Q. And, who was usually or often in attendance  
10 at those meetings?

11 A. Pat McDonald, George Hairston, the project  
12 vice-presidents, Charles McCrary. I can't remember  
13 when Mr. Farley came to those meetings. He came to  
14 those meetings -- I'm just not sure when he began  
15 doing that, whether it was -- I guess it was after he  
16 was appointed Southern Company EVP. Frankly, I just  
17 don't remember.

18 And, then sometimes our public relations  
19 fellow would be there, also, and sometimes our  
20 treasurer, Bob Gilbert. Oh, and John Mier, corporate  
21 secretary. I think that's it.

22 Q. Okay. Now, we're talking during the Sonopco  
23 project phase?

24 A. Yeah. I just can't -- I don't think Mr.  
25 Farley attended those meetings then. So, it was



1 everybody -- of course, George Hairston was there.  
2 Everybody except Mr. Farley. I think that's the way  
3 it was.

4 Q. And, after he was appointed Southern Company  
5 Services executive vice-president --

6 A. Uh-huh (affirmative), then he --

7 Q. -- that's when he started?

8 A. -- would have attended, yeah.

9 Q. Okay. So, whatever date that is would --

10 A. Yeah.

11 Q. -- would key that in?

12 A. And, we would have still -- well, now, wait a  
13 minute. We wouldn't have had Southern Nuclear --  
14 well, when was that? I don't remember. I don't  
15 remember the chronology between Sonopco project --  
16 let's see. That was -- when we became the Sonopco  
17 project was like in October of '88 or -- no -- yeah,  
18 October of '88. Then we became Southern Nuclear in  
19 like December of '90.

20 And, I guess Mr. Farley was in -- sometime in  
21 between those two periods he was made EVP of Southern  
22 Company Services. And so, I guess at the time that he  
23 was made EVP he would have then started coming to  
24 those staff meetings. So, we were still in the  
25 project phase, if you will.



1 same way with everyone else. It's a status kind of  
2 thing.

3 Q. Was there a general seating arrangement that  
4 followed out? I mean, --

5 A. First come, first serve.

6 Q. Okay. Was there any chair in the meeting?

7 A. Yeah. You know, Pat or Mr. Farley would  
8 initiate it, and the first thing you would do is call  
9 on the presiding VP who had projects reporting to him  
10 and ask for plant status.

11 Q. Have you ever seen an organization chart  
12 before the incorporation of the Sonopco project which  
13 set out your management chain?

14 A. We have the -- before the formation of the  
15 project?

16 Q. Before the incorporation of the project.

17 A. For Southern Nuclear --

18 Q. Incorporated. I guess that's December '90 or  
19 something like that.

20 A. Yeah. I'm sure I did. I mean, I reported --  
21 well, maybe I didn't. All I -- the main document that  
22 we had was the announcement that talked about the  
23 reporting relationships; you know, I reported to Pat,  
24 and Charles reported to Pat, and with our  
25 administrative reporting relationships identified in

1 there, also. Frankly, we're not big on organization  
2 charts, if you want to know the truth.

3 Q. Now, the announcement you're talking about,  
4 is that the announcement --

5 A. Yeah, that's that one that --

6 Q. That Mr. Addison signed; is that the  
7 announcement?

8 A. No, there was another one. Maybe that was --  
9 do you have that again?

10 Q. Yes.

11 A. Let me look at that.

12 Q. I'm going to show you the document Exhibit 10  
13 to Georgia Power's request for stipulations  
14 (presenting).

15 A. No, there's actually another announcement.

16 Q. Do you remember when that announcement came  
17 out?

18 A. Well, it was, you know, like October 1st when  
19 the date of the thing actually occurred.

20 Q. Was that from Mr. Addison?

21 A. No, I don't think so. It was whoever was  
22 president of Southern Company Services probably. But  
23 there was a general announcement that spelled out my  
24 responsibilities and who I reported to, -- it's a one-  
25 pager -- Charles McCrary and his reporting

# **EXHIBIT 5**

1 IN THE MATTER OF THE GEORGIA POWER  
2 COMPANY (VOGTLE ELECTRIC GENERATING  
3 PLANT, UNITS 1 & 2)

4  
5  
6  
7  
8 DOCKET NOS. 50-424-OLA-3  
9 50-425-OLA-3  
10

11  
12  
13  
14 DEPOSITION  
15 OF  
16 JOSEPH M. FARLEY  
17 April 14, 1994  
18  
19  
20

21 TAKEN BEFORE: Gail B. Pritchett  
22 Registered Professional  
23 Reporter and Notary Public

Bingham. Again, several of my members of the firm are aware that my deposition is being taken because I made no secret of that, but I haven't discussed the content or substance in any way with them.

6 Q. Have you spoken with Mr.  
7 Dahlberg in the last month?

8 A. Yes, and he had advised me that  
9 his deposition was going to be taken and  
10 I told him mine was as well. I did see  
11 him after his deposition. And all he  
12 said was words to the effect that he was  
13 glad it was over and he didn't  
14 particularly like depositions, that's  
15 about all the conversation we had.

16 Q. And what was the purpose of  
17 meeting with Mr. Dahlberg?

18 A. It was to talk with him about  
19 some governmental affairs matters in  
20 Washington that he and I shared thoughts  
21 about having to do particularly with the  
22 creation of the new trade association,  
23 nuclear electric institute and the

of the Southern Company externally on  
this. So what is more important is,  
then, in the eye of the beholder. I  
played a role, but not necessarily the  
key role.

Q. Did you ever report informally  
to Mr. McDonald?

MR. WITHROW: At what time  
period?

Q. At any time.

MR. WITHROW: Okay.

A. I would not necessarily  
characterize it as report to. But I was  
in the position of being supportive of  
Mr. McDonald during a number of the --  
during considerable time period in which  
the formation of SONOPCO was involved. I  
was a service company employee and I had  
some obligations to the -- both to the  
Alabama project and to the Georgia  
projects for rendering whatever service I  
could do and in that sense I was  
supportive of Mr. McDonald in his two

roles, his role at Alabama and his role at Georgia. Whether you would call that reporting to him, though, I am not quite sure.

Q. Now, do you recall how the -- there came a time there was something known as a SONOPCO project, correct?

A. Yes.

Q. And the SONOPCO project was the predecessor of SONOPCO corporation?

A. In many respects it was. It has somewhat different responsibilities and became a part of the corporation, that the project had been perhaps and were supportive of, but it was certainly an evolution from the SONOPCO project.

Q. And in the course of that evolution, the framework of the SONOPCO project management structure that would become the SONOPCO managing structure, had been mapped out at some point?

A. Well, we had in front of us from the beginning of the formation of



Q. Now, are you familiar with an organization known as nuclear organization contract group by Georgia power previously?

A. I am aware that such a group was designated by Mr. Dahlberg.

Q. And were you aware that one of the reasons Mr. Dahlberg designated that group was to assist in budgetary matters?

A. I have forgotten exactly what the wording of the letter was, but when I saw the letter setting it up, I gathered that it -- that that was one of the subjects that it was to be involved with.

Q. At some point did you become aware that nuclear operation administration group never became involved with the budget process?

A. I am not sure whether it did or whether it didn't, because that was a Georgia Power Company function, and our work of the SONOPCO project and later on Southern Nuclear for Georgia Power, we



generated our recommendations on the budgets and sent them to Georgia Power company for their -- I say we, they were created as a part of Georgia Power Company and Georgia Power Company received them just as it did presumably parts -- other parts of its operation such as fossil generation or transmission or otherwise. So what Southern Nuclear, SONOPCO and the Georgia projects put together went into the mix of Georgia Power Company's budget and what the contracts administration would or wouldn't do, I really don't know.

Q. Do you recall scheduling a meeting or having a meeting scheduled with you to meet with Mr. Dahlberg to discuss nuclear operation contract administration?

A. I don't believe I ever had a meeting scheduled with Mr. Dahlberg to discuss that. I have met with Mr. Dahlberg, but not to discuss the

contracts administration group.

Q. But do you recall meeting with Mr. Dahlberg and discussing the contract administration group?

A. I remember discussing with Mr. Dahlberg in generalities the concept of a Georgia Power Company review group, but I don't recall that it was specifically about a contract administration review group or whatever that name was that was given in the memorandum that I presume you are referring to.

Q. Now, after nuclear operation contract administration group was formed, do you recall having a meeting with Mr. Dahlberg concerning that function?

A. I had a meeting with Mr. Dahlberg that was really an invitation to have lunch with Mr. Dahlberg back sometime in May of '89 or '90, I guess it was -- it must have been '90, I don't really remember. And the concept of a review group came up really in the

context of Mr. Dahlberg talking about assembling some people as a group to review the activities of the SONOPCO project. This was a lunch that I had with Mr. Dahlberg and Mr. Baker that really grew out of the fact that I happened to be in Georgia Power Company on that particular day to address a human resources staff meeting at Georgia Power by invitation. There was some discussion of a review group at that meeting, and I expressed my views to him and to Mr. Baker about such a group. I don't remember that it was in the context of this specific group that we have mentioned.

Q. Do you recall either Mr. Dahlberg or Mr. Baker saying what do you want to do with Mr. Hobby, do you want him?

A. At some point during the luncheon -- and luncheon is perhaps overly dignifying -- sandwich and a glass

1 of iced tea, sort of what we had here,  
2 Mr. -- I think it was Mr. Baker asked me  
3 if there was a place in the SONOPCO group  
4 in Birmingham for Mr. Hobby.

5 Q. And you indicated that you had  
6 to think about it?

7 A. I indicated that I would have  
8 to look and see, because I was not really  
9 that up on what our job opportunities  
10 were, and I did not personally keep track  
11 of where we were on option and so on. I  
12 think I -- as I remember, I expressed to  
13 Mr. Baker, I believe it was Mr. Baker  
14 that had asked, that as I had recalled  
15 Mr. Hobby had been offered an opportunity  
16 early on to be a part of the SONOPCO  
17 project and had declined, that was my  
18 understanding. This was not from my  
19 conversation with Mr. Hobby, but it was  
20 my understanding. And that I would be a  
21 little surprised if Mr. Hobby would want  
22 such a transfer, but that I would look to  
23 see if we had such a job opportunity

of the LER, the licensing event reports, those were handled by the line management for the respective organizations.

Q. Do you recall receiving a briefing from Mr. Shipman on April 19, 1990, that was the date the LER was filed?

A. I don't recall having received a briefing from him, I may have, but I don't remember.

Q. So you may have received a briefing about the filing of the LER?

A. I would not normally have received a briefing about the filing of an LER, that is not something that I normally received a briefing about. I would learn of the filing of an LER, but I would not be necessarily briefed on --

Q. Do you recall a telephone communication with either Mr. Hairston or Mr. Shipman at the end of the day in April of -- April 1990?

A. I don't recall specifically,

1 no.

2 Q. Do you recall Mr. Hairston  
3 briefing you about the filing of the LER  
4 in April 19, 1990?

5 A. No, sir, I do not.

6 Q. Do you recall conducting any  
7 staff meetings with respect to either  
8 Plant Vogtle or Plant Hatch?

9 A. I am not sure that I know what  
10 you mean by conducting any staff  
11 meetings. Do you mean a meeting at the  
12 plant?

13 Q. At the SONOPCO project  
14 location.

15 A. No, I would not have conducted  
16 a staff meeting about a plant or an event  
17 with it. We had a staff meeting each  
18 Monday and occasionally would be  
19 scheduled some other day, but that was  
20 for the purpose of exchanging information  
21 and being sure that everybody was aware  
22 of what was going on in all of the  
23 various departments and organizations.



1 That's where we would learn of anything  
2 of interest at Vogtle, including the  
3 status of the aftermath of the event  
4 which would include perhaps a comment  
5 about the filing of an LER, but I do not  
6 recall conducting any specific meeting  
7 about either Hatch or Vogtle or Farley,  
8 for any matter.

9 Q. Do you know what an N-O-V-E  
10 refers to?

11 MR. LAMBERSKI: A what?

12 MR. KOHN: N-O-V-E.

13 A. I can try to put together what  
14 that acronym would stand for, but I would  
15 have to be refreshed on what that is.

16 Q. Give me your best shot.

17 A. Notice of violation something  
18 or notice of --

19 Q. You are familiar with some  
20 jargon along that line in the nuclear  
21 industry?

22 MR. LAMBERSKI: In all fairness  
23 to Mr. Farley, I don't think there is

1       sometime later.

2           Q.       At some point you became aware  
3       that Mr. Hobby had in writing submitted a  
4       memorandum concerning potential illegal  
5       transfer of Georgia Power's license?

6           A.       I saw such a memorandum  
7       sometime later and I don't remember the  
8       exact time, but I think it was not long  
9       before my deposition was taken in I guess  
10      it was 1990 or whenever my deposition was  
11      taken in that --

12          Q.       In the Hobby proceeding?

13          A.       In the Hobby proceeding.

14          Q.       And were you involved with the  
15      selection of Mr. McCoy as a project vice  
16      president?

17          A.       My involvement consisted of my  
18      having discussed it with Mr. McDonald at  
19      some length when he told me he was  
20      thinking about employing or having Mr.  
21      McDonald -- excuse me, having Mr. McCoy  
22      given an offer. And he asked my thought  
23      about it, and we talked about it.



1 Q. Can you tell me what those  
2 discussions were?

3 A. Well, he knew that I had known  
4 Mr. McCoy to some extent at INPO, I was  
5 chairman of the board of INPO, Institute  
6 of Nuclear Power Operations, and Mr.  
7 McCoy was a part of the staff at INPO.  
8 Mr. McDonald knew that I knew him and Mr.  
9 McDonald and I had already discussed the  
10 fact that we both agreed that there was  
11 someone experienced needed for the  
12 overall manager, vice president for the  
13 Vogtle project. So he asked my thoughts  
14 about it in that connection. And I  
15 expressed a favorable view at that point  
16 in time. We may have talked about it  
17 more than once, I am not sure, but I know  
18 we talked about it.

19 Q. While you were chairman of the  
20 board of INPO, as I understand it Plant  
21 Hatch was shut down?

22 A. Plant Hatch was -- yes, was  
23 shut down for some time frame while some

1 Q. When you say outside board  
2 memebers --

3 A. I mean by that nonmanagement  
4 board members.

5 Q. And how many nonmanagement  
6 board members were there?

7 A. At that point in time, there  
8 were -- let me see, one, two and four is  
9 I believe six, including Mr. Vogtle,  
10 president of Southern at that point in  
11 time.

12 Q. Can you tell me who they were?

13 A. They would have been Mr.  
14 Scherer, who was chairman of Georgia  
15 Power, Mr. Reed, R-e-e-d, who was  
16 president of the service company.

17 MR. WITHROW: He was asking  
18 about outside directors.

19 A. I thought you were asking about  
20 inside directors.

21 Q. So there were six --

22 A. Inside directors, including the  
23 president of Southern. I thought you

1 were asking me who were the inside, the  
2 management directors.

3 Q. No, the outside directors.

4 A. Who were they?

5 Q. Yes.

6 A. Oh, goodness.

7 MR. WITHROW: Or how many were  
8 they. I don't believe you have responded  
9 yet to his question.

10 A. How many, oh, I am sorry. I  
11 think there were seventeen board members  
12 at that time which would mean eleven  
13 outside and six inside, I believe I am  
14 correct in that, but I am not off far.

15 Q. And who do you recall as the  
16 eleven outside board members?

17 A. Goodness, it would have been  
18 Mr. Hubert Stockham, Mr. William  
19 McTyeire, M-c-T-y-e-i-r-e, Mr. Rushton,  
20 William Rushton, Mr. William Parker,  
21 Crawford Rainwater, Pat Patillo,  
22 P-a-t-i-l-l-o, I guess that is right, Mr.  
23 -- guy from Mississippi, whose name I

1 Q. Do you recall reading any  
2 account of the Southern Company election  
3 of Mr. Addison in the press?

4 A. I am sure I did. I don't  
5 specifically recall it, but I know that I  
6 would have read the various accounts. We  
7 have a clippings file that goes by  
8 everybody and have the clippings from  
9 most of the major newspapers within the  
10 service area, including also Wall Street  
11 Journal and New York Times. So I would  
12 have read them. I don't specifically  
13 recall it, though. I am a habitual  
14 newspaper reader and I read all of the  
15 clippings file diligently, somewhat to  
16 the waste of my time.

17 MR. KOHN: Go off the record.

18 (Off-the-record discussion.)

19 Q. Were you aware whether Mr.  
20 Vogtle supported you as a nominee for  
21 president of the Southern Company?

22 A. No, I am not.

23 Q. Whether he ever supported you?

# **EXHIBIT 6**

1 UNITED STATES OF AMERICA  
2 BEFORE THE UNITED STATES DEPARTMENT OF LABOR

3 MARVIN B. HOBBY, )

4 Complainant, )

5 vs. )

CIVIL ACTION FILE  
NO. 90-ERA-30

6 GEORGIA POWER COMPANY, )

7 Respondent. )

8  
9  
10  
11 - - -  
12 DEPOSITION OF

13 H. G. BAKER, JR.  
14 - - -  
15  
16  
17  
18  
19  
20  
21  
22

23 BULL & ASSOCIATES  
24 COURT AND DEPOSITION REPORTERS  
4651 Roswell Road, N.E., Suite F-504  
Atlanta, Georgia 30342  
25 (404) 256-2886

Deposition of H. G. BAKER, JR., taken  
on behalf of the complainant, pursuant to  
the applicable rules of the United States  
Department of Labor and by agreement of  
counsel, all formalities waived, before  
Barbara B. Terry, Certified Court Reporter  
and Notary Public at Large, at the offices  
of Troutman, Sanders, Lockerman & Ashmore,  
The Candler Building, Suite 1400, 127  
Peachtree Street, N.E., Atlanta, Georgia,  
commencing at approximately 10:00 a.m., on  
Wednesday, May 23, 1990.

- - -

1 A. Yes.

2 Q. Whether or not SONOPCO was formed?

3 A. Yes.

4 Q. So Mr. Hobby's job was not tied to the  
5 formation of -- to the incorporation of SONOPCO?

6 A. Yes, it was.

7 Q. How was it tied to the incorporation of  
8 SONOPCO?

9 A. Well, the fact that the SONOPCO people are  
10 located in Birmingham and we were located in Atlanta  
11 and it was -- seemed to be the propitious thing to do  
12 to have a point source of records.

13 Q. But SONOPCO would never -- could never  
14 administer its own contract with Georgia Power Company;  
15 correct?

16 A. SONOPCO is not an entity. If you're  
17 asking me what the future will be like when it is a  
18 corporate entity, I, you know, I can guess with you,  
19 but I don't know.

20 SONOPCO is sort of a project headed up by  
21 an officer of Georgia Power Company. The chief  
22 operating officer of the nuclear units is SONOPCO of  
23 Georgia Power Company, and that's where he gets his  
24 authority to do what he does in connection with the  
25 nuclear plants.



1 Q. Is it a project of the Southern System?

2 A. Well, predominantly it's Georgia Power  
3 Company and Alabama Power Company.

4 Q. It's a joint project?

5 A. Well, see, it's in charge of both nuclear  
6 plants, I would say that's true, yes.

7 Q. It's a joint project of Georgia Power  
8 Company and Alabama Power Company?

9 A. I think that would be true.

10 Q. But it's not a project of Southern  
11 Company?

12 A. Well, it's, it's very difficult to  
13 separate the operating companies from the Southern  
14 companies, it's -- we are all one entity. Certainly we  
15 have -- you know, if you look at it that way it could  
16 be called a project of the Southern Company, I would  
17 say yes, it is a project of the Southern Company.

18 Q. It's a project of the Southern Company  
19 verses a joint project of the Alabama and Georgia Power  
20 companies?

21 A. I don't know how to distinguish, the way  
22 you're saying it.

23 Q. Well --

24 A. Do you understand what the Southern  
25 Company is?

1 Q. All right.

2 A. If your question based on your  
3 understanding of what the Southern Company is, the  
4 Southern Company is a holding company that owns Georgia  
5 Power Company and Alabama Power Company as well as  
6 several others.

7 McDonald is an officer of, I believe,  
8 Southern Company Services as well as Alabama Power  
9 Company and Georgia Power Company, and that's his flow  
10 of authority, to operate the three nuclear plants and  
11 to -- well, just to operate the three nuclear plants.

12 Q. And do you know what office Mr. McDonald  
13 holds at Southern Company Services?

14 A. No, I don't.

15 Q. What leads you to believe he's an officer  
16 of Southern Company Services?

17 A. I've been told that that's the case.

18 Q. And who's told you that?

19 A. I don't remember.

20 Q. And once Mr. McDonald joined Georgia Power  
21 Company, you had no oversight role in nuclear; is that  
22 correct?

23 A. That is true, except the administrative  
24 function.

25 Q. So you oversaw the nuclear administrative

1 McDonald could come to Georgia Power Company as an  
2 executive vice president of nuclear?

3 A. I asked Mr. Farley that on one occasion  
4 before I made up my mind to negotiate Mr. O'Reilly's  
5 departure from Georgia Power Company, I asked  
6 Mr. Farley if I could have Mr. McDonald or Mr. Hairston  
7 to replace him.

8 Q. I assume Mr. Farley agreed?

9 A. Mr. Farley did not agree.

10 Q. If Mr. Farley didn't agree, how did  
11 McDonald get to Georgia Power Company?

12 A. That was somewhat -- something before the  
13 SONOPCO project was formed.

14 Q. So once the SONOPCO project was going to  
15 form, then Mr. Farley agreed that Mr. McDonald could go  
16 to Georgia Power Company?

17 A. In the manner that he has come to Georgia  
18 Power Company, as the joint officer of Alabama Power  
19 Company and Georgia Power Company.

20 Q. Mr. McDonald joined Georgia Power Company  
21 in April of 1988, who asked him to come?

22 A. Well, I don't -- you know, the formation  
23 of SONOPCO or the structure of SONOPCO was put together  
24 by a steering committee, which I chaired, on which  
25 Mr. Dahlberg, who was then president of Southern

1 Services, served, and I've forgotten who served from  
2 the Alabama Power Company. And the arrangement and the  
3 personnel was sort of the result of the deliberations  
4 of that steering committee, the structure, the joint  
5 officer structure and so forth.

6 Q. Did the steering committee ask  
7 Mr. McDonald to come to Georgia Power as executive vice  
8 president?

9 A. No.

10 Q. Who did that?

11 A. The president of Georgia Power Company.

12 Q. Mr. Dahlberg or --

13 A. I don't know, I believe it was  
14 Mr. Scherer, Mr. Scherer was president of Georgia Power  
15 Company at that time. I'm sure it was Scherer because  
16 we originally were thinking that Mr. McDonald would  
17 come as senior vice president and Scherer agreed that  
18 we bring him in as executive vice president.

19 Q. Is one of the reasons Mr. Hobby was  
20 removed from his job at Georgia Power Company because  
21 Mr. Farley and Mr. McDonald wanted him removed?

22 A. No.

23 Q. But you didn't make the decision to remove  
24 Mr. Hobby; correct?

25 A. I concurred in the decision, I didn't make

# **EXHIBIT 7**

THIS IS A COPY

OFFICE OF THE ADMINISTRATOR  
WAGE AND HOUR DIVISION  
EMPLOYEE STANDARDS ADMINISTRATION  
U. S. DEPARTMENT OF LABOR

-----X  
JOHN M. FUCHKO,  
GARY ALLEN YUNKER,  
Petitioners,  
vs.

Case Number

89-ERA-9 and 89-ERA-10

GEORGIA POWER COMPANY,  
Respondent.  
-----X

The deposition of ROBERT W. SCHERER, Deponent,  
taken at the instance of the Petitioners by agreement  
and notice before Christopher McDaniel, Deposition  
Officer, with all formalities, excluding the reading  
and signing of the deposition, being waived, commencing  
at 2:00 o'clock p. m., on December 21, 1988, at  
127 Peachtree Street, NE, 10th Floor Conference  
Room, Atlanta, Georgia.

-o0o-

THIS IS A COPY

Christopher McDaniel, Court Reporter (404) 522-4600  
ATLANTA, GEORGIA

1 is: Could you take a look at that, please.

2 A (Reading).

3 I, I don't even recall seeing this letter.

4 Q Okay, do you remember hearing about the substance  
5 of, of that problem, though?

6 A Let me read through it, then.

7 Q Okay.

8 A (Reading).

9 Mr., Mr. Kist informed me -- and I can't say when  
10 that was; it was some time, obviously, between this letter  
11 and, and today -- that, uh, they had been offered -- they  
12 had not been offered a position in the Birmingham operation  
13 of SONOPCO.

14 Q Okay, did you ask anybody to look into the matter  
15 of why they had not been?

16 A No, I didn't ask anyone to look into the matter,  
17 but I -- and I don't know whether it was at this point in  
18 time or when, but I -- my instructions to Mr. Kist was that  
19 Mr. Fuchko and Mr. Yunker were not to be discriminated  
20 against, and in fact we should bend over backwards to make  
21 sure that they had employment with the company in order to  
22 demonstrate that we were not in any way discriminating  
23 against them for raising concerns.

24 But as to whether they had a job in SONOPCO or  
25 within the existing Georgia Power Company remained to be

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20 against, and in fact we should bend over backwards to make  
21 sure that they had employment with the company in order to  
22 demonstrate that we were not in any way discriminating  
23 against them for raising concerns.

24 But as to whether they had a job in SONOPCO or  
25 within the existing Georgia Power Company remained to be



1 determined.

2 Q Did you determine -- by who?

3 A What jobs were available within the Georgia Power  
4 Company outside of the SONOPCO operation, and ultimately  
5 Mr. Kist advised me that they had offered, been offered a  
6 job with, within the security department of Georgia Power  
7 Company, the security department from which they had come.

8 He further advised me that the company, in keeping  
9 with the tone that I had set, was that, uh, we, we would  
10 -- there would be no reduction in salary, that they would  
11 maintain their present salary.

12 Q So you never looked into the fact of whether the  
13 failure of SONOPCO to hire or even interview Petitioners  
14 was actually discriminatory activity?

15 A I don't think it was dis -- well, let me put it  
16 this way: I didn't write a job description for that, for  
17 any job within the SONOPCO operation for which they might  
18 have been or not qualified.

19 That was left to the executive management of the,  
20 of the SONOPCO operation to determine, what disciplines were  
21 necessary and what talents and experience was required.

22 Q So you relied upon their consideration of who  
23 should be considered for what jobs?

24 A That's right.

25 Q Okay, did you ever talk to Mr. McDonald or anybody

1 who was a part of that executive management as to what their  
2 criteria for SONOPCO jobs were?

3 A No, I did not.

4 Q Okay, and is Mr. McDonald, is he one of the people  
5 that you're talking about who was responsible for evalu --

6 A He would be the chief person responsible for the  
7 overall operation of SONOPCO. I can't say as to whether he  
8 developed the job descriptions or someone within his organ-  
9 ization -- I can't say that.

10 Q Just a second.

11 I'll show you a letter that you sent to Mr.  
12 Fuchko.

13 A Right.

14 Q Exhibit 3.

15 A Well, this one I do remember.

16 Q Okay. Um, let's see. (Reading).

17 Now, you're resolving in this letter some, some  
18 of the personal concerns that Mr. Fuchko expressed.

19 A Yes.

20 Q Do you feel at this time that Mr. Fuchko's request  
21 for, for con -- this consideration that you gave him was  
22 unfounded?

23 A I don't know.

24 Q Why don't you know?

25 A I didn't get into details of it. We accepted --

1 Mr. Kist accepted the fact that this had occurred and that  
2 we would be responsive to his request for compensation.

3 Q Okay, so you found the request reasonable?

4 A I found it reasonable within this, the purview  
5 of what I said; we are not going to, uh, penalize a person  
6 for respond -- for bringing up a concern.

7 And if he felt that he had been improperly treated  
8 as far as that one week's additional vacation, if he had  
9 been not properly compensated for counselling during the  
10 summer of '87, then we would, we would go ahead and com-  
11 pensate him for that.

12 Q Okay, as far as you know had, had -- does Georgia  
13 Power at this time consider this request unfounded?

14 A Well, I, I guess my response to that is that  
15 letter speaks for itself.

16 Q Okay, so nothing has developed since then that  
17 makes you think that y'all should not have given this per-  
18 sonal consideration to Mr. Fuchko?

19 A We gave the personal consideration because we  
20 wanted to do everything, to bend over backwards, to insure  
21 that they had not been improperly treated.

22 Q You state on the second page that you have con-  
23 cluded that (reading):

24 Your reassignment to the Georgia Power security  
25 department is reasonable and appropriate.

1 Please tell me the basis for that conclusion.

2 A The basis for that conclusion was based on the  
3 fact that there was no job available in SONOPCO for these  
4 individuals; that their talents and experience had been in  
5 the security department; and that these jobs which were  
6 available in the security department were appropriate for  
7 them to be transferred to.

8 Q Now, why did you think there was no job available  
9 for them in SONOPCO?

10 A That was the advice that I had.

11 Q And who was that advice from?

12 A Mr. Kist reported that to me, and I presume he  
13 secured that from Mr. McDonald or someone within the SONOPCO  
14 operation.

15 Q Okay.

16 A And here again, I think it's appropriate to recog-  
17 nize that these individuals were being treated better than  
18 many of the people who were not offered jobs within the  
19 Georgia Power Company at all.

20 Q Are you familiar with the personnel background  
21 of any of those people who were not offered jobs?

22 A No, I'm not.

23 Q So there might have been a reason that they were  
24 not offered jobs?

25 A Just as there were reasons that they were not

1 offered jobs as these individuals were not offered jobs in  
2 the SONOPCO, yes.

3 Q What is the relationship between SONOPCO and  
4 Georgia Power?

5 A What is the relationship?

6 Q Yeah.

7 A Right now the relationship is that SONOPCO will  
8 operate the generating plants, the nuclear generating  
9 plants, for the individual operating companies, Alabama and  
10 Georgia, that own nuclear power facilities.

11 Q I don't know a lot about corporations and all,  
12 but what, what do you call what SONOPCO is?

13 A SONOPCO at the present moment doesn't exist. It  
14 is, we -- there is a, a -- whatever it's called -- a peti-  
15 tion before the Securities and Exchange Commission to create  
16 SONOPCO as a subsidiary corporation of the Southern Company.

17 And, uh -- but the formation of it, the actual  
18 configuration of it, exists in reality in Birmingham, be-  
19 cause we have brought together the corporate general office  
20 staff of Alabama and Georgia, and also of Southern Company  
21 Services, into one central location, with the responsibility  
22 of operating the nuclear plants of the various operating  
23 companies.

24 Q Okay.

25 A And we're awaiting approval from the Securities

1 and Exchange Commission.

2 Q Okay.

3 Were you advised by Mr. Kist or by anybody else  
4 that SONOPCO did not want Petitioners because they had an  
5 overconcern with regulatory matters?

6 A No, I was not.

7 Q And you sent a similar letter to Mr. Yunker as  
8 well as the letter you sent to Mr. --

9 A Yes.

10 Q -- Puchko?

11 Do you know the status of the quality concerns  
12 the Petitioners filed?

13 A No, I don't.

14 Q Do you know if they've been resolved?

15 A I have been advised by Mr. Kist that they are --  
16 let me see, now, if I can properly state it -- that they  
17 are being properly reviewed and there are no, uh, quality  
18 or safety concerns as far as operating the plant.

19 But now, as to any particular one issue Mr. Puchko  
20 or Mr. Yunker may have, I don't know about those.

21 Q Mr. Scherer, several weeks before you met with  
22 Petitioners you had made a statement to the press that, to  
23 the effect that at Georgia Power an environment had been  
24 created where employees did not feel free to share concerns  
25 with higher management.

1 And you stated that that was a fundamental manage-  
2 ment problem. Do you remember that address to the press?

3 A Yes, I do.

4 Q Don't you think this is the same environment of  
5 which Petitioners were complaining of, that they had made  
6 their concerns before and didn't see them going somewhere?

7 A No, because I, I really distinguish this in that  
8 we -- what I was saying in that press conference was that  
9 we had created a different quality concerns program in the  
10 general office than we had at Plant Vogtle.

11 And what I was planning to do -- and which we have  
12 subsequently done -- is to bring the quality concerns pro-  
13 gram that we've had at Vogtle into the general office.

14 The quality concerns program that we had in the  
15 general office was that you, me -- I would have to go di-  
16 rectly to my supervisor if I felt that there was some quali-  
17 ty or safety or, or some concern that I had about the opera-  
18 tion of the enterprise. And that seemed not to work well.

19 That's what I was expressing a concern about. But  
20 I was quite pleased with the way generally that our quality  
21 concerns program at Vogtle had functioned in that there were  
22 opportunities and avenues for access to others, you know,  
23 other than in the direct chain of command.

24 My concern -- what I was saying was, the environ-  
25 ment that existed at the general office was the one with



# **EXHIBIT 8**



In The Matter Of:

*GEORGIA POWER COMPANY, et al.*  
*U.S. NUCLEAR REGULATORY COMMISSION*

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*WILLIAM GEORGE HAIRSTON, III*  
*APRIL 13, 1994*

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*BULL & ASSOCIATES, INC.*  
*ATLANTA and FAYETTEVILLE*  
*4651 Roswell Road, NE, Suite F-504*  
*Atlanta, GA 30342*  
*(404) 256-2886*

*Original File MS0528GHASC, 67 Pages*

**Word Index included with this Min-U-Script®**

1 really focused more on the plant operations.

2 Q If I understand that, you say you and  
3 Mr. McDonald focused more on the plant operation?

4 A No. Between Pat McDonald and myself on a  
5 day-to-day basis, I was focused more on the plant  
6 operations; whereas, Pat worked on the formation  
7 activities.

8 Q Now, were you aware that there were  
9 meetings between -- well, first, let me back up.

10 Did you know who would constitute the  
11 SONOPCO board of directors as of November of '88?  
12 Or I should say by November of '88?

13 A As a part of the phase one task force,  
14 that issue was looked at. I wouldn't say in final  
15 form, but that issue was discussed. And I would say  
16 that out of phase one, my impression was that the  
17 board, as it was constituted eventually in late '90,  
18 early '91, was pretty much the way that it had been  
19 looked at back then. I think it had been looked at  
20 several other times, you know, in like phase two,  
21 but I wasn't involved in that.

22 Q And the board in '90 consisted -- after  
23 incorporation, consisted of Mr. Dahlberg,  
24 Mr. Farley, Mr. Franklin --

25 A Mr. Addison and Mr. McDonald. Now, my

1 comments on the board don't so much have to do with  
2 people's names as to, you know, the president of  
3 Alabama Power Company and president of Georgia Power  
4 Company and Southern Company and Southern Nuclear  
5 people. That was sort of discussion.

6 Q And you were aware that the group of  
7 people we've just mentioned that were holding those  
8 positions during phase one had periodic meetings in  
9 Birmingham?

10 A No. I just have a general recollection  
11 that the leadership of the Southern Company, the  
12 upper leadership of the Southern Company, had some  
13 periodic briefings on where we were on the  
14 transition. Now, who was in those meetings or what  
15 specifically was talked about, I don't have any  
16 knowledge of that.

17 Q Now, you became a member of the SONOPCO  
18 board of directors at some point?

19 A Yes, in May or June of '93. Seems like  
20 it was June 1st of '93. I could be off a couple of  
21 weeks.

22 Q Now, at some point, did Mr. McHenry work  
23 for you?

24 A He worked for me briefly from the time  
25 that I went to Georgia Power Company in late May,

1 early June of '88 until later in the fall. He --  
2 it's my recollection in late '88 or early '89 he  
3 left Georgia Power Company and went to work for  
4 somebody else.

5 Q The time Mr. McHenry left, was he  
6 reporting to you?

7 A Now, when you said he worked for me, you  
8 did not say direct report. I don't think that Tom  
9 was my direct report in any of that period. He may  
10 have reported up through another manager.

11 Q Did you know if Mr. McHenry was offered a  
12 job at SONOPCO?

13 A It's my recollection that he was. Let me  
14 clarify that. Let me clarify that. When we  
15 decided -- when the decision was made to locate the  
16 project in Birmingham, it's my recollection that Tom  
17 was made an offer for a job in Georgia Power  
18 Company, which would have been located in  
19 Birmingham.

20 Q As a Georgia Power Company/SONOPCO  
21 project employee?

22 A As a Georgia Power Company employee.  
23 There's no such a thing as a SONOPCO project  
24 employee, legally.

25 Q Were you aware of whether Mr. McHenry

1 a promotion?

2 A I don't have any specific recollection.  
3 My rule -- my policy was that if it was a promotion,  
4 we would, in general, grant an interview, and if it  
5 was a lateral move, we would look at what's best for  
6 the employee and for the company.

7 Q Now, were you aware of whether a decision  
8 was made to prohibit Mr. Barker from interviewing?

9 A No. I don't have any specific  
10 recollection of that. I remember that it just --  
11 that in the end, he did not go to Atlanta. And  
12 that's all I remember.

13 Q Do you remember telling Mr. Hobby that  
14 Mr. McDonald was on a mission for Mr. Addison, and  
15 he should not get involved with respect to  
16 Mr. Barker with respect to these personal matters?

17 A No. I have no recollection whatsoever of  
18 saying that.

19 Q Now, were you aware that Oglethorpe Power  
20 had raised a concern to Georgia Power Company  
21 management about the reporting relationship of  
22 Mr. McDonald and Mr. Farley?

23 A I was not aware of that in '89, and I  
24 don't believe I was -- became aware of that until  
25 the DOL proceedings.

1           Q       Is there any reason that these type of  
2 concerns would not be brought to your attention?

3           A       Yeah.

4           MR. WITHROW: Wait a minute. I'm going  
5 to -- I'm going to object to the form of the  
6 question, because it calls for him to speculate  
7 on other people's thought processes and motives  
8 and so forth.

9           So, I mean, if you can answer the  
10 question, go ahead.

11          A       (Continuing) Well, I can't answer the  
12 question. But what I can say is that my focus, as  
13 I've said all along, was really on day-to-day plant  
14 operations. And many of the issues that involve the  
15 transition period were handled by Pat on a  
16 day-to-day basis. And occasionally, we talked, you  
17 know, about what each of us was doing. But just on  
18 a day-to-day basis, I wasn't involved in that type  
19 of detail.

20          Q       (By Mr. Kohn) So if I understand it,  
21 then, in reality, you were the primary executive in  
22 charge of the day-to-day operations of the plant?  
23 Let me rephrase that.

24                 From a day-to-day perspective, you took  
25 on the role as the highest level officer involved in

## **EXHIBIT 9**

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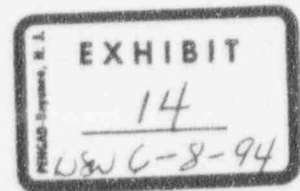
92 PROJECT

015130



## **EXHIBIT 10**

# News



## Consolidation of System Nuclear Operations Moving Forward

Effective Oct. 1, three SCS officers have been named to fill key management positions as part of an interim nuclear support organization known as the SONOPCO Project.

Louis Long — formerly general manager, nuclear safety and fuel for SCS — has been named vice president, technical services-nuclear. Charles McCrary — previously assistant to the president of Alabama Power — has been elected vice president, administrative-nuclear. Bob Gilbert — formerly general manager, corporate planning, of Alabama Power — has been named assistant comptroller and assistant treasurer.

The SONOPCO Project — which will be staffed by employees from Alabama Power, Georgia Power, and SCS — will be in place until approval is received from the Securities and Exchange Commission to create a separate Southern Company subsidiary. That subsidiary — Southern Nuclear Operating Company — will provide management and technical services for system nuclear facilities.

The SONOPCO Project is being guided by Pat McDonald — executive vice president of Alabama Power and Georgia Power. For administrative direction, however, Long will report to Paul Rice, executive vice president of SCS. McCrary will report to Tom Nunnally, also executive vice president of SCS. Gilbert will report to McCrary.

In his new position, Long will be responsible for specialized technical services for the system's nuclear power plants — including nuclear fuel services, inspection and testing, regulatory and environmental matters, and quality services.

Long, 44, joined the Southern electric system in 1970 as a licensing engineer in the nuclear support organization of SCS. He advanced through positions of increasing responsibility in that organization and was named manager, nuclear project licensing, in 1976. In 1984, Long was named general manager, nuclear safety and fuel.

McCrary will be responsible for financial services, human resources, corporate services, and public affairs.

McCrary, 36, joined the Southern electric system in 1973 as assistant engineer in the steam projects planning department of SCS. He transferred to Alabama Power in 1982 and advanced to manager of the environmental affairs department in 1984. He was named assistant to the president in 1986.

Gilbert will help direct the financial and accounting functions of the SONOPCO Project.

Gilbert, 40, joined the Southern electric system in 1972 as a senior internal auditor at Alabama Power. In 1986, after serving as assistant to the executive vice president and chief financial officer, Gilbert was named general manager of corporate planning with responsibilities for strategic planning, operational planning, capital budgeting, and corporate performance and productivity.

Management and staff for the SONOPCO Project will be located in Building 40 of the Inverness office park — adjacent to the nuclear and engineering support groups of SCS.

10/7/88

# **EXHIBIT 11**

Appointment Schedule  
Edward L. Addison  
01/02/89 - 04/10/89

Tuesday 02/14/89

8:00AM	9:00AM	SOUTHERN COMPANY SERVICES AUDIT COMMITTEE MEETING CONF. ROOM 7054 - BLDG 64A
9:00AM	10:00AM	SOUTHERN COMPANY SERVICES BOARD OF DIRECTORS MTG CONF. ROOM 7054 - BLDG 64A
10:15AM	2:30PM	EXECUTIVE ROUNDTABLE - ROOM 7050-A&B
3:00PM		SONOPCO PROJECT BD MEETING
3:30PM		MEETING WITH ARTHUR GIGNILLIAT TO DISCUSS SAVANNAH CONSTRUCTION BUDGET

March 26, 1990

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DAY	MONDAY	TUESDAY	WEDNESDAY
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6

10:00 am - Geoffrey 2nd yr  
 (Cousin on Camera)  
 and Dwyll's Evers  
 26 April 1990

1:00 - SONPCO Field  
 Exec Conf Rm.

7

14 Dept ADIC 8:00 am  
 Focus Groups -  
 B'ham  
~~2nd yr~~  
~~Ethics Review~~  
~~Ch. 34 mtg~~  
 APCO - 8:30 - 11:30  
 2:30 - 3:30

15

21

29

EASTER



## **EXHIBIT 12**

Appointment Schedule  
 Bill Dahlberg  
 01/01/89 - 03/31/89

Monday      03/06/89

9:00AM NOON      Management Council (Board Room)  
 11:45AM      Lunch w/Rice (Glass Room)  
 1:00PM      SONOPCO Board Meeting (SCS/Atlanta, Exec. Conf. Room)  
                  See Bill Crain at SCS (Ext. 4593)

-----  
 Dinner

Tuesday      03/07/89

8:45AM 9:45AM      St. Mountain to Augusta (Daniel Field) (Heli. w/Tal Wright)  
  
 10:00AM      Phil Kent and Augusta Chronicle Editors  
 10:45AM      Mardy Jackson interview  
 11:30AM      If time, visit employees in Division Headquarters  
 12:15PM      Media reception/Vogtle update at Division Headquarters  
 1:30PM      Employee visits  
 2:30PM      Visit to major customer  
 4:30PM      Augusta (Daniel Field) to Stone Mountain

-----  
 HAWKS

Wednesday      03/08/89

8:00AM 9:00AM      Foundation Board Meeting (Piedmont Room)  
 9:00AM 11:00AM      Bud Stacy, Tom Kilgore, Grady Baker RE: 2/28 letter  
 11:00AM      Board Agenda Review (RWS' conf. room)  
 1:00PM 1:05PM      Van Mol, Lamkin  
 1:15PM 1:30PM      Jim Griffith RE: 2:00 Meeting  
 1:30PM      Greg Huddleston RE: PIP Approval  
 2:00PM 2:30PM      Jim Griffith, Art Wacaster - Director of Energy Policies,  
                  Southern States Energy Board  
 3:00PM 3:15PM      Danny Johnson RE: Conway Video (AWD's office)  
 3:30PM 4:30PM      Mac Carlton

Thursday      03/09/89

HOLD  
 Jim Griffith?

Friday      03/10/89

7:30AM      Breakfast: Advisory Council of the Atlanta Organizing  
                  Committee (Georgia Pacific Center, Executive Dining Room,  
                  51st Floor)  
 9:00AM 1:00PM      ELA Project Meeting (SCS/Atlanta, 3rd Fl., Conf. Rm. B)  
 2:00PM      Baker, Williams, Porry, Carlton, Franklin (AWD's Conf. Rm.)

-----  
 5:00PM 7:00PM      Atlanta Botanical Gardens Reception

Monday      03/13/89

9:00AM NOON      Management Council (Board Room)  
 12:30PM      Luncheon w/Van Mol, Altman, John Pruitt and Steve Smith  
                  of Channel 11. (Glass Room)  
 2:00PM      Ed Ney RE: Shenandoah

GPH 003055

PAGE 8

January 9, 1990

## **EXHIBIT 13**



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DISCUSSION/POSSIBLE VOTE ON FULL POWER  
OPERATING LICENSE FOR VOGTLE, UNIT 2

PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Thursday, March 30, 1989

The Commission met in open session, pursuant  
to notice, at 2:00 p.m., Lando W. Zech, Jr., Chairman,  
presiding.

COMMISSIONERS PRESENT:

Lando W. Zech, Jr., Chairman of the Commission  
Thomas M. Roberts, Commissioner  
Kenneth M. Carr, Commissioner  
Kenneth C. Rogers, Commissioner  
James R. Curtiss, Commissioner

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WASHINGTON, D.C. 20005

## STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

ROBERT W. SCHERER, CEO and Chairman of the Board  
Georgia Power Company

A. WILLIAM DAHLBERG, President  
Georgia Power Company

PAUL D. RICE, Executive Vice President  
Georgia Power Company

R. PATRICK McDONALD, Executive Vice President  
Nuclear Operations, Georgia Power Company

GEORGE BOCKHOLD, Plant Manager *General Manager*  
Vogtle Plant, Georgia Power Company

C. KEN McCOY, Vice President for Nuclear Generation  
Vogtle Plant, Georgia Power Company

MR. SNEZICK, Deputy Director, NRR

JOHN HOPKINS, NRR Project Manager

MEL ERNST, Deputy Regional Administrator, Region II

JOHN ROGEY, Senior Resident Inspector

DAVE MATTHEWS, Project Director, NRC

MR. TAYLOR

1 General Manager for Support.

2 The Assistant General Manager for  
3 Operations, he has reporting to him a Manager of  
4 Operations because that Assistant General Manager has  
5 other things reporting to him. So, you go right down  
6 that line through his assistant general manager and  
7 manager of operations.

8 COMMISSIONER CARR: So, the two plant is one  
9 plant as far as management is concerned.

10 MR. McDONALD: That's right. That's exactly  
11 right.

12 COMMISSIONER CARR: I had a management  
13 concern that looked to me like he was a long way from  
14 the CEO.

15 MR. McDONALD: He's a long way from the CEO?

16 COMMISSIONER CARR: Yes. Maybe I don't  
17 understand what Ken's -- what's the hierarchy between  
18 the CEO and the plant manager?

19 MR. McDONALD: Okay. That's what you mean.

20 Okay. The hierarchy between a CEO and a plant  
21 manager, I report to Mr. Dahlberg. Reporting to me is  
22 Ken McCoy who is in charge of the entire Vogtle  
23 Project. He and I have a -- I have two Vice  
24 Presidents reporting to me. The Vice President of  
25 Hatch has a similar position to his. So, he is

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Actually has the  
VP's  
DI IE

Small...  
...  
On paper  
only! In  
actuality  
McDonald appears  
to report to  
Barby who  
reports to  
McDonald!  
Fact is GPC  
know less about plants than  
we do! We provide GPC with

1 responsible for all the corporate support as well as  
2 the plant. George reports directly to him.

3 CHAIRMAN ZECH: Both units he has.

4 MR. McDONALD: Both units.

5 CHAIRMAN ZECH: Yes. All right.

6 MR. McDONALD: Is that what you want to  
7 know?

8 COMMISSIONER CARR: So, you have a guy for  
9 each, Vogtle and Hatch.

10 MR. McDONALD: Yes.

11 COMMISSIONER CARR: But they don't have  
12 anybody for the two plants.

13 MR. McDONALD: They manage those two plants  
14 as one plant, those two units as one plant.

15 COMMISSIONER CARR: And Ken has Vogtle and  
16 Hatch.

17 MR. McDONALD: No. No, Ken has reporting to  
18 him three people. He has George reporting to him, he  
19 has a QA manager reporting to him and he has the  
20 corporate staff support reporting to him.

21 MR. BOCKHOLD: Only for Vogtle.

22 MR. McDONALD: For Vogtle, for Plant Vogtle.

23 MR. RICE: Then there's a Vice President for  
24 Hatch.

25 MR. McDONALD: That has a similar

1 organization.

2 COMMISSIONER CARR: Okay. I understand your  
3 organization. I still have my concern, I guess.

4 MR. McDONALD: May I be responsive to more?

5 COMMISSIONER CARR: Oh, sure. I just say,  
6 if he's got a problem that needs the CEO's attention,  
7 he goes a long way to get there, was my concern.

8 MR. DAHLBERG: I guess I should add  
9 something on that matter also. I guess one of the  
10 things we have done well is while Pat is an Executive  
11 Vice President of Nuclear, it does mean that he is  
12 available to the site. He visits the site. He is  
13 there. He talks to the people and he looks at the  
14 equipment. We've tried to use that philosophy for all  
15 of our operations. It doesn't stop with Pat. I have  
16 the same type of a relationship. I guess we could go  
17 even further than that. We do have a Board of  
18 Directors committee for oversight of nuclear. They  
19 even visit the site. So, it's not removed.

20 I think we have established the kind of a  
21 relationship and the kind of a personal hands on with  
22 management. George has access to anybody he needs  
23 access to.

24 COMMISSIONER CARR: Let me -- are you -- is  
25 Ken at the site?

He should  
be concerned  
the true  
above were  
resented.

Misleading!  
Pat does visit  
the site regularly  
and he is a  
responsible individual  
who

1 MR. MCCOY: No, I'm --

2 COMMISSIONER CARR: You're at the  
3 headquarters.

4 MR. McDONALD: Let me expound on that just a  
5 moment. One of our major management techniques is  
6 managing problems and we keep pretty comprehensive  
7 lists of the top problems, top 10, 20, 30 problems.  
8 Those problems are reviewed periodically by all levels  
9 of management including Board of Directors. We  
10 have a completely technical meeting with the Board of  
11 Directors describing such things as the PERM problem  
12 and any other kind of a technical problem there is, so  
13 that the entire management structure is involved in  
14 personnel matters, technical matters and what have you  
15 on a routine basis. All these facts which might  
16 otherwise get lost are brought up to the top level of  
17 the company.

18 On the Board of Directors committee, which  
19 he takes part, we have some very capable people from  
20 various walks of life, like almost any board. We have  
21 a gentleman who is head of a big construction company  
22 and another -- various types of things. So, I think  
23 that we talk technical detail on a routine basis with  
24 all levels of management very frequently.

25 CHAIRMAN ZECH: Commissioner Rogers?

## **EXHIBIT 14**

June 8, 1989

Dennis:

I promised you in the earlier letter that I would discuss a little of what is going on at Georgia Power. You have read several accounts that I have sent you related to the IRS investigations, FBI investigations, political campaign contributions, etc. There is, to my knowledge, no progress in these areas and I am told that these investigations will be going on for years. There is a lot of speculation as to whether Mr. Addison will be able to weather the storm - after all, he was the CEO at Gulf Power when many of these allegations occurred. The situation in the company - throughout Southern Company - is horrible.

I will get more specific about my situation in a moment. But, I must admit that I am grateful to have worked at Georgia Power when Mr. Miller was President. He was a no nonsense guy, hard working, competent, inquisitive, honorable, and he worked for the Company. He lived, breathed, and existed for Georgia Power. The man could lead. He asked questions. He asked for input. When people disagreed with him, that was fine. It seemed it was only an opportunity for him to ask more questions and he would admit when he learned something. Even though he was President, he was not afraid to learn something or hear a new idea. He was not afraid to say he didn't know. He wasn't afraid to say he didn't understand something. He wasn't afraid to ask for advice. He didn't mind people challenging him - not personally but on an issue.

Mr. Miller had integrity. He gave us guidance and direction and his message to us was clear. He also held you accountable for your performance. As one lower level supervisor in building services said to me in lamenting Mr. Miller's retirement, "We are really going to miss him. You may not always agree with the direction he gives you, but you always know where you are going." She was right.

Mr. Miller also focused his attention on where the company should be headed and what was required to get there. He really took an emotional interest in the 15,000 employees we had and he wanted them to perform. And, if they performed, he took care of them whether he liked them or not. It was not essential that Mr. Miller like you because he judged each employee on performance and what they were doing for Georgia Power.

Mr. Miller could make a decision. Sometimes he would make a snap judgement based upon his technical knowledge, his experience, his managerial ability, or just his hunch. But, when a decision was made, that was the end. Everybody jumped. He also protected the company. There were several examples where the System wanted Georgia Power to change what they were doing although what we were doing was turning out the profits. But, the bureaucrats at Southern, who wanted to increase their power, demanded that all operating companies abide by the same set of rules. Mr. Miller said no that he was in charge of operating Georgia Power and, although some people at Southern got bent out of shape, Mr. Miller's decision ruled the day.



A lot of people remember Mr. Miller as a tough, authoritarian figure. I remember him as a great leader, someone to be admired, a role model, and a loving and caring man who dedicated his life to Georgia Power and its employees.

Yet, Mr. Miller was a strong man. Several senior executives were glad to see him retire because he ruled firmly and would not let some of them put into effect their lunacy. I am convinced that several executives wanted their day in the sun and made suggestions just to make themselves look good. But, their suggestions died because they did not have the courage to bring them to Mr. Miller for approval.

What resulted was a small group of executives who wanted so desperately to be in charge that they looked for every opportunity to enhance their position - - not the company's position - - their personal position. Some of them would have sold their mother and the company outright if they could have positioned themselves better.

There was one exception. George Head. George was a technically competent, hard headed, hard driving manager who did an exception job. He had a weakness in that he did not have as broad a perspective as did Mr. Miller and George found it hard to listen and learn. He felt he knew his business sufficiently well to do his job and listening, learning, taking advice, or changing was difficult for him. George could not adapt. I don't mean he just didn't want to, he couldn't.

After Mr. Miller left (actually before Mr. Miller left, George was assigned to report to Grady Baker. The organization at the time was Mr. Scherer was Chairman of the Board and CEO, and Grady Baker and Elmer Harris were the two Senior Executive Vice Presidents. Grady had planned his career such that when Mr. Miller retired, he would become President. Elmer was brought over from Alabama Power to head External Affairs and the word was that he could become Chairman and CEO of Georgia Power. Grady even told everyone that would listen to him that he had picked Elmer to be CEO at Georgia because he (Grady) did not want the job - - he wanted to be President and COO.

Mr. Addison became President of Southern and said Georgia Power did not need both a President and a Chairman of the Board. He said that when Mr. Scherer retired, we would have a President and a CEO and no Chairman. That crushed Grady. He had worked to become President all these years and now would not get the job. Then a horse race began to see whether Elmer would become President or whether Bill Dahlberg, President of Southern Company Services and an ex-Senior Vice President of Georgia Power who used to work for Grady, would become President of Georgia Power. Friction developed between Grady and Elmer. Grady was obviously pushing Bill. Bill won because, in part I think, Elmer got involved heavily in this campaign contributions fiasco.

Back to George. George and Grady did not get along. Grady is a Jekyll and Hyde. There are days when his thought process is brilliant. There are days when he acts like an idiot. And, you never know which person you are dealing with. I could go into a lot of examples where George and Grady disagreed but there is not need. I would point out that for years Southern had been trying to tell Georgia how to do its business.

Mr. Miller would not let that happen and Mr. Miller and George Head were on the same side. After Mr. Miller left, Grady tried to get on Mr. Addison's good side by agreeing to everything Southern Services wanted to do. George disagreed but Southern is gradually taking over.

Now, however, we are left with another poor situation. Elmer Harris is named President of Alabama, Bill Dahlberg at Georgia, and Allen Franklin at Southern Company Services. Each one of them is running for Addison's job. It appears that it is not so important that each one of them does his present job properly as it is that each stays on good terms with Mr. Addison. Southern is now run by a management council of all the CEOs. It is run by consensus. There are not disagreements. As a matter of fact, each CEO makes it his business to agree with what they think Mr. Addison wants to do. A rumor can start that Mr. Addison wants something done and all the CEOs break their necks to agree to it even if Mr. Addison knows nothing about it. We are in a heavily political arena here and right means little.

Into this situation enter one R. Patrick McDonald. This atmosphere is made for him; he excels in it. He is either 61 or 62, knows he is not going further in the Company, has retirement from the Navy, makes good money, and recognizes a vacuum in the leadership of the Company. He does what he wants to do, regardless of what any one else says, explains it without sticking to the truth, and, in general, is enjoying life. He gets along very well with Mr. Farley partly because he lies to Farley and partly because Mr. Farley hates Georgia Power Company. Pat can get away with anything by badmouthing Georgia Power. Farley is Executive Vice President of Southern for Nuclear and reports to Mr. Addison.

When the decision was made to bring Pat into Georgia Power (he is Executive Vice President of Georgia Power and Alabama Power) and to move our nuclear operations group to Birmingham, I decided after my experiences with him to not go. I went to Grady and told him that I didn't want to go and I recommended that we establish a contract administration group to protect Georgia Power -- not to manage SONOPCO -- but to advise GPC's senior management on how our performance was. Grady agreed to that and said he would talk to Dahlberg. I specifically remember him saying that whoever got the job as General Manager of his group would have a tough time trying to deal with Mr. Farley and Mr. McDonald. (Incidentally, everyone in senior management at Georgia Power that I have talked to: George Head, Grady, Elmer, Dwight Evans, and I have been told Dahlberg hates Pat McDonald. They think he is bordering on crazy, and he doesn't tell the truth).

Grady took his proposal to Dahlberg and at some point Grady and George Head talked to Dahlberg. They decided we did need such a group and it would be reporting to George Head. Dahlberg asked George who would head the group and George told him me. He said I was the only one in the Company left with nuclear experience, except George.

I was given the job on December 27. A copy of Dahlberg's memo announcing the promotion is enclosed. Prior to the memo going out, George asked me how I would structure the group. A copy of my memo to George on that subject is also enclosed.

Early in January, Pat McDonald came over to Georgia Power and told me to do something. I told him I would be glad to but that I needed to inform George Head since I now worked for him. Pat went livid. He asked what I was talking about and I went and got a copy of the memo for him. He got very made and said he opposed the creation of such a group. He said when the time came for such a group, he would set up the group, decide what it would do, and he would pick the head of it. He said he would not have any of this. I reported this to George.

From January until the end of April when George retired, I worked as well as I could to do the job assigned to me by the President. Unfortunately, Pat McDonald would not cooperate and would not let his people in Birmingham cooperate. I will not go into details except to say that Pat has refused to let his people in Birmingham even talk to me.

During this period, I told George we needed help from Dahlberg. I must have requested a meeting with Dahlberg 50 times. George asked for many, many meetings. He had maybe 4 or 5. Each time, Dahlberg would say he supported us, wanted us to do our job, and was behind us. But, he did nothing. Pat still would not cooperate. Finally, George asked me to call McDonald and set up a meeting between McDonald, Head, and me. McDonald would not set up the meeting.

Then George announced he was retiring. Dahlberg asked him to reconsider and remain with GPC but George refused. One of the reasons George refused was that he felt we did not have a leader at Georgia Power and that Bill would not make a decision and would not stand up for Georgia Power.

Throughout all of this, I have continued to remind people that Pat McDonald reported to Bill Dahlberg and, by NRC regulations, had better. I told Grady, George, Dwight Evans (EVP of External Affairs and a good friend of Dahlberg's), Chuck Whitney (Asst to Dahlberg), Fred Williams (EVP of Bulk Power), and the attorneys that I thought we had a problem. I told them that, in my opinion, Pat McDonald worked only for Joe Farley, now EVP of The Southern Company, and if that were true we were in violation of our license and the NRC could shut our plants down. Several people shared my concern but would not agree or disagree. George Head agreed. Fred Williams said all we had to do was show the NRC the organization chart. I said Fred that won't cut it.

I talked to the lawyers. They were concerned and even went so far as to tell Hairston that if he were ever asked who he reported to he was to say McDonald who reports to Dahlberg. For the license on Unit 2 at Vogtle, the people were coached as to how to answer that question.

Finally, George has decided to retire and he went to Dahlberg and said there was one matter he wanted to get settled before he retired and that was our relationship with SONOPCO. Dahlberg responded that he knew there was a problem and he was going to meet with Farley and see if they could straighten it out. When George told me that, I said something like if McDonald report to Dahlberg why in the hell can't Bill just tell him what to do and why does Bill have to go and straighten it out with Joe Farley? George said, "Well, I guess we have just got the answer as to who McDonald really reports to." George also said that Dahlberg said it was a waste of time for Dahlberg to talk to McDonald.

When we learned that Grady and Dahlberg were going to meet with Farley, I told George that they shouldn't go talk to Farley without talking to him and me first about what problems we were having. He agreed and tried to set up a meeting with Dahlberg. Dahlberg wouldn't meet with us.

About this time, I was going up to George Head's office on the 21th floor and the Executive Vice President for External Affairs saw me and we starting talking. His name is Dwight Evans and he is pretty close to Dahlberg. Dwight said that if he were me he would start looking for another job in the company because he had heard that McDonald and Farley were out to get me fired or out of the job I was in.

I reported this to George and he said we had to talk to Dahlberg and Grady before they met with Farley. He tried but failed. He then suggested that I might go to Grady and tell him what we had heard and what our concerns were and try to get a meeting with Grady and Dahlberg. I went to see Grady and asked for a meeting. He said it was not necessary. I said something like Grady, the rumor is going around that McDonald and Farley are after my job. Won't you at least talk to George and me? He jumped up from his chair, threw his arms up high, laughed and continuing to laugh said, "Hobby, what can I say?" And, he then walked out of the room.

I told George. He got mad and said he was leaving the Company, wanted to get away from those people, and he basically apologized that the Company did not have a backbone and would not stand up for what was right. He said we did not have anyone in senior management at GPC "worth a shit" and that McDonald would win because no one at GPC would dare tackle Farley.

About the same time, I got a call from Fred Williams, VP of Bulk Power. He is the guy that really deals with most with the joint owners. He said he had been asked by Dahlberg and Grady to go to Birmingham to see if we could work out the problems between SONOPCO, GPC, and the joint owners. He asked me to write down the major problems I had in dealing with McDonald. He said he would not show it to McDonald but he would give it to Grady and Dahlberg for their meeting with Farley.

I wrote the memo (which is enclosed) and before giving it to Fred I showed it George Head. George agreed with the memo and felt so strongly about what I had said, he said he wanted to sign the memo with me. I have the original memo at home with my and George's signature. I took the memo to Fred Williams. He read it. He told me to destroy the memo because we did not want something like that in our files. He said the joint owners had been fussing about McDonald and who McDonald reported to and he said that my memo showed that McDonald reported to Farley and we could not have this memo in our files because it would prove Oglethorpe's argument.

I told Fred that this was a regulatory concern. I told him that the way he reacted indicated that we did have a problem and that we ought to fix the problem before we got into trouble with the NRC. I told him we ought to concentrate on fixing the problem not worrying about some memo. I further said if he did not have a problem, then the memo meant nothing.

(6)

It only meant something if McDonald did not actually report to Dahlberg but to Farley. I told him I thought we were going to get in trouble with the NRC. He said there was not a problem that if the NRC ever asked about the issue we would just show them an organization chart. Then he said, you must destroy this memo. He also said he was going to keep a copy of the memo but he would not keep it and he would not let Grady and Dahlberg see it. It was because of that that I went to see George and later to see Grady.

I talked to George and we agreed that I would not destroy the memo. I do not have a copy at the office. I do elsewhere.

In my conversation with Fred Williams, I asked him why Dahlberg just didn't tell Pat McDonald what to do and the whole issue would be behind us. He said Bill did not have the clout to do that. He said McDonald was very close to Farley and if Bill gave Pat McDonald an order and Farley did not agree with it, the matter could wind up before Ed Addison. I asked well, doesn't Dahlberg have enough clout with Addison to win the argument. Fred said that wasn't the issue. He said Addison did not have enough clout to tell Farley what to do. He said the Southern Board was divided and that Addison did not have enough votes to do something if Farley disagreed and that Farley did not have enough votes if Addison disagreed. He said the Southern Board is at a stalemate and we have to make do the best we can. And, the one thing Dahlberg could not afford to do was raise an issue between Dahlberg and Farley that would require Addison to make a decision because, if push came to shove, Addison was not guaranteed that the Board would support him over Farley. Therefore, no major disagreements were to be brought to Addison.

Bottom line: Dahlberg wants to replace Addison. Dahlberg is not going to make something an issue that will require Addison to decide between Dahlberg and Farley. No one is in control at Southern. It is a shared responsibility. Farley can do what he likes. Farley lets McDonald do what he likes. And, nobody can stop him.

I shared what Fred told me with Paul Rice and Paul said that was pretty much the truth. He said Addison is working to gain a majority of the Board's support but he does not have it now.

After George retired, Kerry Adams, who knows nothing about nuclear, was named to replace him. Grady told him he was not sure who I would eventually wind up reporting to, but that I was to hire no new people.

I believe that the outcome will be that my job will be greatly reduced including a reduction in pay and I will be asked to report to Fred Williams. Or, I could be asked to resign. I don't know. But, I do know this, I have tried to do a good job and have been prohibited from doing my job by Pat McDonald. I got excellent support from George Head. I have received no support -- except lip service -- from Grady or Dahlberg. Everybody is protecting their own position in the company.

I don't know what will happen. It is my opinion that GPC and Alabama Power Company are in violation of our NRC licenses. McDonald reports to Joe Farley, I don't care what the organization chart says. I have pointed out over and over to management that I was concerned that we were

violating Federal law. But, the answer is time and time again, "We'll show them an organization chart."

Maybe you and     can talk about this on Sunday.



## **EXHIBIT 15**

# TELEPHONE LIST - ON-CALL PROJECT MANAGER

<u>Name/Title</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Mobile Phone</u>	<u>Beeper</u>
<u>DIRECTOR OF CORPORATE RESPONSE *</u>				
1. W. B. Shipman, General Manager Nuclear Support	8-821-7104 1-205-877-7104	1-205-991-8001	1-205-936-6760	** 54104
2. P. D. Rushton, Manager Nuclear Engineering & Licensing	8-821-7103 1-205-877-7103	1-205-985-4879		** 54041
3. J. A. Bailey, Manager Licensing	8-821-7097 1-215-877-7097	1-205-823-1125		** 54043
4. L. A. Ward, Manager Nuclear Maintenance Support	8-821-7802 1-205-877-7802	1-205-995-4757		** 54049
<u>GEORGIA POWER COMPANY CORPORATE MANAGEMENT</u>				
1. Joseph M. Farley Executive Vice President-Nuclear The Southern Company	8-821-5513 1-205-868-5513	1-205-879-1572 1-205-868-5479	1-205-531-0328	
2. R. P. McDonald Executive Vice President- Nuclear Operations Alabama & Georgia Power Companies	<u>Birmingham, AL</u> 8-821-5540 1-205-868-5540  <u>Atlanta, GA</u> 8-526-3848 1-404-526-3848	1-205-879-9589	1-205-936-2706	*** 5540 ** 54090



TELEPHONE LIST- ON-CALL PROJECT MANAGER  
(continued)

JUN 13 '93 09:25AM ALLEN L. MOSBROUGH

<u>Name/Title</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Mobile Phone</u>	<u>Beeper</u>
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GEORGIA POWER COMPANY CORPORATE MANAGEMENT (continued)

3. W. G. Halrston, III Senior Vice President Nuclear Operations	8-821-5581 1-205-868-5581	1-205-991-8188 1-205-991-7731 (unlisted)	1-205-936-2712	*** 5581 (Ala) ** 55581 (Atlanta/Other Major Cities Outside Ala)
4. A. W. Dahlberg, President & CEO Georgia Power Company	8-526-6000 1-404-526-6000	1-404-270-1832	1-404-697-1893	
5. J. T. Beckham, Vice President Hatch Project	8-821-7279 1-205-877-7279	1-205-995-4780	1-205-936-7299	** 19636
6. C. K. McCoy, Vice President Vogtle Project	8-821-7122 1-205-877-7122	1-205-362-7113	1-205-936-6892	** 83286 *** 7122 **** 304

PUBLIC INFORMATION MANAGER \*

1. G. K. Van Mol, Director Corporate Communication	8-526-7470 1-404-526-7470	1-404-963-9848 1-404-467-2687 (Weekends)	1-404-281-2903	
2. N. R. Harris Public Affairs Coordinator (Vogtle)	8-695-3630 1-404-826-3630 (Both at Vogtle)	1-404-796-0151	1-404-828-6059	
3. J. E. Varner Communications Services Manager	8-526-7480 1-404-526-7480	1-404-251-5516		1-404-898-4564

TELEPHONE LIST - ON-CALL PROJECT MANAGER  
(continued)

<u>Name/Title</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Mobile Phone</u>	<u>Beeper</u>
<u>JOINT OWNERS</u>				
Contact one representative from each, starting from the top of each list.				
1. <u>OGLETHORPE POWER CORPORATION</u>				
E. J. Toupin, Superintendent Nuclear Operations	8-695-3401 1-404-724-6221	1-404-863-7215		**** Vogtle/240
D. H. Smith	1-404-621-3091	1-404-381-8951		
Operator	1-404-496-7600			
2. <u>MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA</u>				
T. W. Loria Manager of Generation Planning	1-404-952-5445 Ext. 206	1-404-452-7196		
Hack Secord	1-404-952-5445 Ext. 204	1-404-252-3861		
3. <u>DALTON UTILITIES</u>				
DeForrest Parrot, General Manager	1-404-278-1313	1-404-278-1561		
V. D. Parrot, Jr., Consultant	1-404-278-1313	1-404-278-5395		

## **EXHIBIT 16**

SOUTHERN NUCLEAR OPERATING COMPANY, INC.

BOARD OF DIRECTORS MEETING  
AUGUST 5, 1991

MINUTES

A meeting of the Board of Directors of Southern Nuclear Operating Company was held in Birmingham, Alabama on August 5, 1991.

E. L. Addison, A. W. Dahlberg, E. B. Harris, H. A. Franklin, J. M. Farley, R. P. McDonald and J. O. Meier attended. Mr. Farley served as Chairman and Mr. Meier served as Secretary.

The Chairman stated that it was necessary to approve the Minutes of the May 21, 1991 meeting of the Board. Upon a motion duly made and seconded, the following resolution was adopted by unanimous vote:

RESOLVED, that the Minutes of the meeting of the Board of Directors of Southern Nuclear Operating Company, Inc., which was held in Atlanta, Georgia on May 21, 1991, are hereby approved and adopted as submitted.

The Chairman stated that it was necessary to adopt certain resolutions concerning changes in the management of assets held in connection with the Pension Plan. Upon a motion duly made and seconded, the following resolutions were adopted by unanimous vote:

RESOLVED, that pursuant to Section 10.8 of the Pension Plan for Employees of Southern Company Services, Inc., (hereinafter referred to as the "Pension Plan") and Section 4.1 of The Southern Company System Master Retirement Trust (hereinafter referred to as the "Master Retirement Trust"), the Board of Directors of Southern Nuclear Operating Company (hereinafter referred to as the "Company") hereby approves the appointment of each company listed below to serve as in investment manager of assets held under the Master Retirement Trust with respect to the assets of the Pension Plan:

<u>Investment Manager</u>	<u>Asset Category</u>	<u>Proposed Initial Approximate Allo- cation(in millions)</u>
Baring International Investments, Ltd.	International Equity	\$ 22
BEA Associates, Inc.	International Equity	\$ 22
JP Morgan Investment Management, Inc.	International Equity	\$ 22
Scudder, Stevens & Clark, Inc.	International Equity	\$ 65
Baring International Investments, Ltd.	Global Fixed Income	\$ 65
The Putnam Companies	Global Fixed Income	\$ 65
AMB Institutional Realty	Real Estate	\$ 80
ANB Investment Manage- ment & Trust Co.	S & P 500 Index Fund	\$157
Lincoln Capital Manage- ment Corporation	Domestic Growth Equity	\$124
Husic Capital Manage- ment	Domestic Small Cap- italization Equity	\$118
Pilgrim, Baxter, Greig and Associates	Domestic Small Cap- italization Equity	\$118
J. P. Morgan Invest- ment Management, Inc.	Domestic Core Bond	\$274

RESOLVED FURTHER, that the Board of Directors of the Company hereby authorizes and directs Bankers Trust Company, as Trustee of the Master Retirement Trust, to invest on behalf of the Trust, \$14 million in the Metric Institutional Apartment Fund II, L. P., of which Metric Institutional Realty Advisors is the investment manager; and

RESOLVED FURTHER, that the Board of Directors of the Company hereby authorizes and directs Bankers Trust Company, as Trustee of the Master Retirement Trust, to invest on behalf of the Trust, \$18 million of the Trust assets in the Advent Real Estate Investment Corporation, the Board of Directors of which are Michael Ruane, Arthur Segal and Noel Posternak, which assets will then be invested in a real estate limited partnership of which Advent Real Estate Investment Corporation is a co-general partner; and

RESOLVED FURTHER, that the Board of Directors of the Company hereby authorizes and directs Bankers Trust Company, as Trustee of the Master Retirement Trust, to invest on behalf of the Trust, \$18 million of the Trust assets in the ZML Investors II, Inc., which assets will then be invested in the Zell/Merrill Lynch Opportunity Partners Limited Partnership II of which Equity Financial Management Company is the investment manager.

RESOLVED FURTHER, that the Board of Directors of the Company hereby approves the removal of Discount Corporation of New York Advisers, Lieber and Company, and Strong/Corneliuson Capital Management, Inc., as investment managers under the Master Retirement Trust, to be effective as soon as permissible under the terms of the Investment Manager Agreement with each such investment manager; and

RESOLVED FURTHER, that the Board of Directors of the Company hereby authorizes and directs the appropriate officers of the Company to take all actions necessary or desirable to carry out the intent and purposes of the foregoing resolutions with respect to the appointment and removal of the investment managers named hereinafter, including, but not limited to, entering into investment manager agreements and giving notice of termination.

Mr. Addison stated that it was necessary to approve base salary increases for Mr. J. M. Farley and Mr. R. P. McDonald in recognition of the changes in their responsibilities which were approved by the Board on May 21, 1991. Messrs. Farley and McDonald did not participate in the making, seconding, discussing or voting on this motion. Upon a motion duly made and seconded, the following resolutions were adopted by a unanimous vote of the remaining disinterested directors:

RESOLVED, that in recognition of the changes in the responsibilities of J. M. Farley which were approved by the Board on May 21, 1991, the base salary of the Chairman and Chief Executive Officer as presented to the meeting is hereby approved and made effective as of May 21, 1991; and

RESOLVED FURTHER, that in recognition of the changes in the responsibilities of R. P. McDonald which were approved by the Board on May 21, 1991, the base salary of the President as presented to the meeting is hereby approved and made effective as of May 21, 1991.

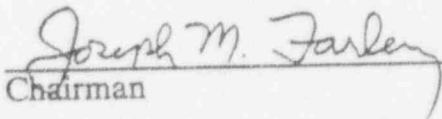
The following items were discussed by the Board:

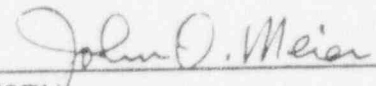
1. Status of Plant Farley license amendments -- Mr. Farley reported that the 30-day public notice had not yet been published in the Federal Register by the NRC. The NRC is considering a policy issue of whether the notice must solicit comments on potential antitrust aspects. Resolution of this issue is expected within a few days. Negotiations with the IBEW over the effects of assigning the labor contract to Southern Nuclear Operating Company are proceeding as planned.
2. Report on steam generator matters -- Mr. McDonald reported that a decision model should be completed in the next two weeks which will enable Alabama Power to decide when steam generators should be replaced, based on a definitive set of operational and financial parameters. It appears that replacement could be deferred until after 1997 based on technical considerations, but financial alternatives must be evaluated. Discussions are being held with nine other utilities to explore pooling purchase efforts. It was noted that Alabama Power has entered into an agreement with Westinghouse to preserve Alabama Power's legal rights regarding the steam generators.
3. Matters in litigation -- The status of actions filed by Messrs. Hobby and Mosbaugh with the Department of Labor and the NRC was reported.
4. Status of budget preparation -- Mr. McDonald reported that the preliminary O&M budgets for Hatch and Vogtle were sent to

Georgia Power. The preliminary O&M budget for the Farley plant should be ready for Alabama Power this week. Mr. Dahlberg expressed an interest in pursuing an outage reserve concept to levelize Georgia Power Company budget swings due to nuclear unit outages.

5. Issues relating to the functioning of the Nuclear Regulatory Commission -- NRC enforcement conferences are scheduled for August 19, August 22, and September 19, 1991. Preparations are being made for an NRC Administrative Law hearing on the Plant Farley environmental qualification issue and proposed fine.
6. Status of ALWR Program -- Mr. Farley reported that the program is moving, but delays are being caused by NRC's decision making process. A proposal to provide equity funding to Westinghouse for first of a kind engineering work on a joint venture basis will be explored to develop this option for future presentation to the Board.
7. Next meeting date -- The consensus of the Board was that the next meeting should be held at one of the plant sites if possible. Mr. Dahlberg requested that a future Board meeting include a presentation of Southern Nuclear's organization and key personnel.

There being no other business to come before the board, the meeting was adjourned.

  
Chairman

  
Secretary



## **EXHIBIT 17**

SNC BOD 8/5/91

all 6 Directors + some present

1. <sup>JMF</sup> antitrust notice [ legal staff says no problem  
staff group says policy, should always  
Sept 1 request date "May not be met" for "policy issue"  
Expect ~~the~~ Commissioners to decide policy issue within a few days  
30 day notice required

JMF trying to make appointment with Stolley

IBEW discussions are going on - going well

2. <sup>RPW</sup> financial & operational model being developed - operable about mid-Aug  
with a number of other utilities  
also, 9 other utilities - joint procurement of replacement SS's

expect to be able to defer until after 1997 if desired

approx \$300M for 2 units replacements

need  $\geq 4$  years lead time on order

\* outage  $\approx 100$  days - maybe down to 80 days

vendors:

Framatom W German utilities (Kraftwerk Union, ABB)

capitalized work

delaying concerns: OHS + radiation dose

<sup>JMF</sup>

group of utilities said W - know of defects when bought & built  
AFC standard agreement to avoid statute running  
(but we don't know that W had knowledge X protecting position)

other vendor's have similar tube problems

3. <sup>JMF</sup> Marvin Hobby

DOL - tried 11/90 before ALJ - no decision yet, not sure why - maybe due to Massbanger.

↑ discovery under way - dragging by Kohan  
we have both moved for summary judgment

concerned why delay is occurring - bad sign?

NRC - Section 2.206 complaint filed last year

NRC has various violations of license allegations  
recent "amendment" to filing - rehash

~~response ready~~ response ready, but need NRC to say if part of old complaint or a new one. (response needed if new)

last Aug, NRC inspection at VNP

report issued 7/91 - very good language - (handout)

report indicates NRC attitude is good

2PM - requesting of witnesses (OI)

NRC proposed rule - requester witness w/o counsel

utilities sued - won ~10 days ago (case going on ~8 years)

↑ total vindication - right to counsel of choice

4. RPM

H+V prelim O+M sent to GPC - under forecast

all plants, controlling contractors effectively (VNP → 34 now)

F - prelim discussions with EBH - will send soon.

prelim A+G to APC + GPC this week - small increases, but close to forecast

92 PROJECT 064783

IR allocation ~\$3M to nuclear for "voice communication" system

AWD - want to pursue outage reserve  
to levelize outage savings - rates are fixed

GDS - wants to normalize 3 outages to  $2\frac{2}{3}$   
↑ test period                      ↑ average

RPM - untized costs later this year  
(don't have activity budgeting yet)

## 5. JMF

NRC enf. conf 8/19 VNP - improper calib of pressure trans inst  
- initial calib of instruments didn't consider water column effect  
- violation of TS  
- found onsite by GPC - went back to W & confirmed error

4/19 Enf. conf

- early '88 event (involved with Marshall)
- hydrazine injection - Kofke had no injection point built in
- used valve - TS says it should be closed, or closed immediately
- enf. against GPC for violation  
+ also personally Asst GM-Ops Skip Kitchens (heinous)
- Marshall actually approved it at the time

8/22 Enf. conf - Farley mispositioned valve

- starting up after shutdown
- Aux FW pump bypass valve - left open several hours

1989 NRC proposed \$450K fine - EQ deficiencies  
we think it is wrong, we opposed + demanded a hearing  
discovery has proceeded  
still going forward

AWD:

would like to see org chart w/pictures + discussion of the people  
at a future BOD meeting

EBH: need for FNP people to know they "work" for APC - community  
~~relationship~~ needs to know APC is in Dothan - APC  
wants formal interaction with plant management personnel

6. JMF

biggest problem - NRC delay - don't have good decision process  
but program is moving

at point where we will need FOAK engineering

- can only fund 1 mid-size (either W or GE)

- evolutionary - engg is being done overseas - can buy

- \$200M for mid size

DOE 5 yrs @ \$20M = \$100M

Industry - Vendor, EPRI, utilities, foreigners, AE's

Sherwood Smith - survey: ~\$40M will come from Industry

we can expect to be asked for \$5-10M over 5 yrs

W proposal on JV - equity or R&D money

\$15M per order - up to 20 orders

McNannahan thinks SEC will accept

don't need decision yet -

'92 maybe only \$200,000 - less than a full year

just want an input on JV - should we pursue?

would put us in position for early nuclear order (with <sup>FPL</sup>~~EPRI~~)

~~consensus~~

consensus - explore what it would mean - develop the option

JMF - will bring it back when defined

Next meeting - will bring personnel info, charts, etc

Would like to go to a plant - Farley?

## **EXHIBIT 18**

Hearing date - June 26 -

Testimony by May 23 -

PM

Haelmann

(1442) → Bob ~~Haelmann~~ →

554-8258

361-4096

(1510) Bob Haelmann →

(1532) Bob Conway (602)-250-1301

wrong  
#

(1535) Bob Conway - (602)-250-3253

no  
Answer -

(1545) Russel Spence - 7884

(1615) G. Head -

(1619) D. Smith - out

(1624) B. Evans - 1461

HCB talked to L. O'Keefe -

Warm & congenial -

No answer yet - Farley to provide

Farley makes call



## **EXHIBIT 19**

1 IN THE MATTER OF THE GEORGIA POWER  
2 COMPANY (VOGTLE ELECTRIC GENERATING  
3 PLANT, UNITS 1 & 2)  
4  
5  
6  
7

8 DOCKET NOS. 50-424-OLA-3  
9 50-425-OLA-3  
10  
11  
12  
13

14 DEPOSITION  
15 OF  
16 ROBERT P. MCDONALD  
17 April 14, 1994  
18  
19  
20

21 TAKEN BEFORE: Gail B. Pritchett  
22 Registered Professional  
23 Reporter and Notary Public

1           A.       I was at Georgia Power and  
2       reported to Bob Scherer, but I understand  
3       you were putting this in the time frame  
4       of '89, '90 or that time frame.

5           Q.       That is fine, yes. Did you  
6       work on a budget that was presented to  
7       Mr. Scherer?

8           A.       I don't remember.

9           Q.       The best of your recollection,  
10      it is all of the budgets you worked which  
11      were presented to Mr. Dahlberg?

12          A.       I don't recall whether there  
13      was a period of time where Mr. Scherer  
14      was -- prior to his retirement, was the  
15      CEO and I reported directly to him, until  
16      he retired and I don't recall the  
17      budgeting process at that time. Or  
18      whether there was time -- how the timing  
19      was if there had been a budget process.

20          Q.       Isn't it true that with respect  
21      to the 1990 budget, there was an  
22      additional step employed?

23          A.       Additional what?



1 Hatch site to discuss salary  
2 administration matters?

3 A. I know that Mr. Farley visited  
4 those sites as a part of a Southern  
5 company effort to focus on all Southern  
6 company employees on things of common  
7 interest among all Southern Company  
8 affiliates.

9 A. May we take a short break?

10 Q. I would rather just finish this  
11 line of questioning, if I may.

12 MR. LAMBERSKI: Do you need to  
13 use the restroom or something?

14 Q. Go ahead, sure.

15 (Brief recess.)

16 Q. We were discussing the meeting  
17 that was held at the plant -- first, were  
18 you aware that Mr. Farley came to the  
19 Plant Vogtle and the Plant Hatch?

20 A. Yes.

21 Q. And were you involved in the  
22 decision to send Mr. Farley?

23 A. Was I involved in the

1 would look like for the SONOPCO  
2 incorporated entity before it was an  
3 incorporated entity?

4 A. He was involved with what the  
5 board of directors would look like?

6 Q. Yes.

7 A. What do you mean look like?

8 Q. He was involved in giving  
9 guidance to the Southern system on who to  
10 put on the board of directors for the  
11 Southern Nuclear Operating Company?

12 A. He was involved with other  
13 people in the determination of the  
14 formation of the board of directors of  
15 Southern Nuclear Operating Company, as  
16 far as I know he was involved.

17 Q. And he was involved in the  
18 decision to realign the operating  
19 companies into a -- to co-locate them in  
20 Birmingham?

21 MR. WITHROW: Wait, wait.

22 Q. Let me rephrase. Mr. Farley  
23 was involved in the decision to co-locate

1 individuals in Birmingham?

2 A. I don't actually know who was  
3 involved. I know that the decision was  
4 made to co-locate to Birmingham. But I  
5 don't know whether Mr. Addison made that  
6 decision or whether there was a group  
7 decision or exactly who made the  
8 decision. All I know, the decision was  
9 made.

10 Q. So you did not make the  
11 decision?

12 A. No, sir.

13 Q. Were you consulted prior to the  
14 decision?

15 A. It was a matter of much talk  
16 among many people. And in my  
17 discussions, I attempted to remain  
18 noncommittal and neutral on it because I  
19 wanted to be effective in either way that  
20 the decision would go -- or any way it  
21 would go, because there were other places  
22 discussed such as other locations other  
23 than Birmingham and Atlanta.

Q. Now, Mr. Farley also had a role concerning providing services to Georgia Power Company regarding compliance with nuclear regulatory requirements?

A. You are asking me if he did have?

Q. Yes.

A. He did not have a role in the operation decisions carrying out the license of the Georgia plants. He did have a role when he became the president of Southern Nuclear Operating Company providing support services insisting Georgia Power to do all of the administrative work and technical work, in assisting them in Georgia Power's responsibility to operate the plant in accordance with NRC requirements.

Q. Who would have been involved -- let me rephrase it. When you are going from the different phases to create stand-alone SONOPCO corporation ultimate license transfer, wasn't Mr. Farley going



Q. What role did you play in the selection of Mr. McCrary to his position within the SONOPCO project?

MR. WITHROW: Objection, that has been asked and answered in prior proceedings, but you can answer it again, Mr. McDonald.

A. Mr. McCrary -- state the question once more, please.

Q. Did you play a role in selecting Mr. McCrary as a vice president?

A. I did not play a role in selecting him. I played a role in recommending him for the job.

Q. Did you play a role in recommending Mr. Long for his --

A. Yes.

Q. -- vice president job?

A. Yes.

Q. Have you ever been an employee of Southern Company Services?

A. No. I had to think about

1 that. No, I have never been employed.

2 MR. KOHN: Let's go off the  
3 record.

4 (Off-the-record discussion.)

5 Q. Is it not true that you  
6 consulted with Mr. Farley concerning  
7 staffing Georgia Power employees in the  
8 SONOPCO project?

9 A. Is it not true that I consulted  
10 Mr. Farley concerning Georgia Power  
11 employees in the SONOPCO project?

12 Q. Concerning the staffing of  
13 Georgia Power employees within the  
14 SONOPCO project?

15 A. You use the word consulted. I  
16 would say that I might have discussed it  
17 with him.

18 Q. But do you recollect consulting  
19 with Mr. Farley on that subject?

20 A. I may have discussed with him  
21 on that subject.

22 Q. Do you recall whether any  
23 documentation was filed with the NRC

## **EXHIBIT 20**

MEMORANDUM

TO: Marvin Hobby  
FROM: Bob Edwards  
RE: Nuclear Operating Agreements  
DATE: October 25, 1989

You have requested my comments on the drafts we are likely to see from OPC. Attached are the key comments. I have not undertaken a line by line editorial, but have striven to provide notice of the key points.

I have also attached copies of the key pages.

Finally, as a separate memo I am enclosing my suggestion on the term of the Managing Board Agreement.

Enclosures

October 25, 1989

Managing Board Agreement Draft Dated 10/18/89

1. Managing Board Agreement should be entered into simultaneously with Nuclear Services Agreement with SONOPCO. Strike last sentence of 1.23 and insert a reference to the Agreement, either citing it by date or as an Exhibit. Otherwise, OPC will obtain greater authority to veto obtaining nuclear operating services than it currently has.
2. GPC should preserve its authority to act in accordance with prudent utility practice, including ability to apply to transfer the License to SONOPCO without co-owner consent. Strike last sentence of 1.21, 1.22. A fallback would be 85% approval unless prudent utility practice or legal requirements required such a transfer. OPC would retain rights to oppose transfer at the NRC. Under current situation OPC's agreement is a practical necessity.
3. Consistent with these comments, the last nine lines on page 14 (Section 4.0) should be deleted and a period placed after "Each Plant." Subpart (a) should be deleted because Managing Board approval is not needed for the Nuclear Services Agreement. Subpart (b) should be deleted because GPC's authority is governed by existing Participation Agreements. Subpart (c) should be deleted because GPC's authority is

governed by existing Participation Agreements. If we want to provide for the Managing Board to take some action with regard to applying to transfer the license to SONOPCO, a separate sentence describing that requirement could be added here.

Nuclear Services Agreement Draft Dated 10/17/89

1. In order to distinguish the Nuclear Services Agreement and to avoid any accusation that SONOPCO is operating the plants without a license, we should insert the following as the second sentence of 2.01(a) at page six:

"Until SONOPCO is licensed to operate Plant Hatch and Plant Vogtle the scope of these Nuclear Operating Services shall be limited to such nuclear support services as GPC in its capacity as the licensee responsible for plant operations requests. Within the scope as established by GPC or an operating license issued by the NRC ...."

2. OPC will probably object to the restrictive definition of "willful misconduct" in Section 7.02(b) (page 29-30). I think it can be stricken. This is likely to be controversial with the SONOPCO group.

## **EXHIBIT 21**

8-6-90

11:00 AM

C

Meeting V. Tie main  
2nd Floor Large Conf. Rm.

Bowley - "Next week we intend to issue Rev. 0 of the outage schedule" ----

A. Coy - "Let me make a comment again and be sure that everybody understands this because --- There's been some discussions in some of the other plants of SONOPCO that were not adhering to this and so we had some discussion at the highest levels including Mr. Farley, McDonald, Harriston and the 3 VP's about our scheduling philosophy for outages.

There was some discussion about what was meant by "Optimum". We say that we schedule everything to an optimum schedule and there was not a common understanding as to what optimum means and that was the thrust of the discussion.

The conclusion of that discussion was that optimum means the basically shortest schedule that you are able to do something in --- everything goes right. Everything falls into place right. That you do not put any contingency or extra time in there and after lots of discussion everybody agreed that that was the right way to do the scheduling.

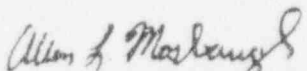


## **EXHIBIT 22**

## Affidavit of Allen L. Mosbaugh

Under the pains and penalties of perjury I state as follows:

1. I am the intervenor before the Atomic Safety and Licensing Board in the matter of Georgia Power Company et. al., Docket Nos. 50-424-OLA-3 and 50-425-OLA-3 concerning the License Transfer Amendment to Southern Nuclear.
2. From about April 1989 to May 1990 I was the Acting Assistant General Manager Plant Support at Georgia Power's, Plant Vogtle, nuclear power station.
3. In this capacity, one of my responsibilities was the "Vogtle Duty Manager", a position I held for one week assignments ( 24 hours a day) in a continuously rotating schedule along with 3 other Vogtle managers. Thus, between April 1989 and May 1990 I was the "Vogtle Duty Manager" every fourth week. I also was one of the Vogtle Emergency Directors.
4. My duty manager responsibilities were described to me by the Plant General Manager, George Bockhold. These responsibilities were also proceduralized. Basically, the Vogtle Duty Manager was responsible for keeping the SONOPCO "On Call Project Manager" in corporate informed, on a 24 hour a day basis, of important operational events at the Vogtle site ( reactor trips, safety features actuations, significant reductions in power output ect.) as well as emergency events occurring at the plant site and communicating Corporate input back to the site.
5. A typed "Vogtle Project / Vogtle Duty Manager Schedule" of assignments (Attachment A) showing the plant as well as the corporate counterpart, "On Call Project Manager" duty assignments was periodically distributed to me so that I knew when my duty period was and who to call in corporate. This Schedule also identified the Project Response Teams and the Director of Corporate Response.
6. Typed Telephone Call lists of "Duty Manager Phone Numbers" ( Attachment B ) and typed "Telephone List- On-Call Project Managers" ( Attachment C ) showing the higher executives in the "on -call" duty chain were also provided to me.
7. The list titled Telephone List- On-Call Project Manager ( Attachment C ) was provided to me as information in the event that I could not reach my appropriate counterparts and would need in an emergency to contact other personnel.
8. I was informed that "Georgia Power Company Corporate Management" listed on Attachment C were routinely contacted as part of the reporting of significant operational and emergency events occurring at Plant Vogtle thru the duty manager chain.
9. It was my understanding that the personnel listed on Attachment C were to be contacted starting at the top of the lists.
10. During the period of about 1988 thru April 1989 I knew Steve Chestnut who was a manager in the SONOPCO Project Corporate offices in the engineering area. In about April 1989 Steve Chestnut came to the site where he attended SRO licence training.
11. In 1989 or early 1990 Joseph Farley came to the Vogtle site and held meetings with groups of site personnel to explain the "Pay for Performance" system that was being instituted at Vogtle. "Pay for Performance" was a new system of employee performance evaluation and compensation.

  
Allen L. Mosbaugh

10-2-94  
Date

## VOGTLE PROJECT/VOGTLE DUTY MANAGER SCHEDULE

Date	On Call Project Manager	Vogtle Duty Manager	Project Response Team
1/8 -1/14	L. A. Ward	J. E. Swartzwelder	B
1/15-1/21	W. B. Shipman	1/15 G. Bockhold, Jr. 1/16-1/21 W. F. Kitchens	C
1/22-1/28	P. D. Rushton	A. L. Mosbaugh	D
1/29-2/4	C. K. McCoy	1/29-1/30 G. Bockhold, Jr. 1/31 W. F. Kitchens 2/1 -2/4 G. Bockhold, Jr.	A
2/5 -2/11	L. A. Ward	J. E. Swartzwelder	B
2/12-2/18	W. B. Shipman	W. F. Kitchens	C
2/19-2/25	P. D. Rushton	A. L. Mosbaugh	D
2/26-3/4	C. K. McCoy	G. Bockhold, Jr.	A
3/5 -3/11	L. A. Ward	J. E. Swartzwelder	B
3/12-3/18	W. B. Shipman	W. F. Kitchens	C
3/19-3/25	P. D. Rushton	A. L. Mosbaugh	D
3/26-4/1	C. K. McCoy	G. Bockhold, Jr.	A
4/2 -4/8	L. A. Ward	J. E. Swartzwelder	B

## Project Response Teams:

Position	Team A	Team B	Team C	Team "D"	Pager #
Dir. Corp Resp.	Bailey	Ward	Shipman	Rushton	*
GOOC Mgr.	Walker	Badgett	Ajluni	Cobb	6034
Eng. Svcs. Mgr.	Williams	Bush	Burr	Miller	6035
Admin/Log Mgr.	Rollins	Cardona	Copeland	Barker	6038
Rad Assess Mgr.	As designated by Manager Environmental Services				6030

\* Pager numbers: Bailey 7097; Ward 6047; Shipman 7104; Rushton 7103

xc: M. J. Ajluni	W. G. Copeland	G. Bockhold, Jr.
J. J. Badgett	C. C. Miller, Jr.	D. M. Hopper
J. A. Bailey	A. S. Rollins	T. J. Kirkham
M. D. Barker	P. D. Rushton	W. F. Kitchens
K. S. Burr	W. B. Shipman	A. L. Mosbaugh
R. J. Bush	H. P. Walker	D. D. Rickertsen
A. E. Cardona	L. A. Ward	A. C. Stalker
E. F. Cobb	J. A. Williams	J. E. Swartzwelder

*Attach A*

DUTY MANAGER PHONE NUMBERSON CALL PROJECT MANAGERS

Name	Office	Home	Mobile	*Beeper
J. P. Kane	1-205-877-7103 8-821-7103	1-205-979-9192 1-404-664-5560		54041*
C. K. McCoy	1-205-877-7122 8-821-7122	1-205-362-7113	1-205-936-6892 1-404-568-7626***	83286* 7122** Vogtle #304
W. B. Shipman	1-205-877-7104 8-821-7104	1-205-991-8001	1-205-936-6760	54104*
L. A. Ward	1-205-877-7802 8-821-7802	1-205-995-4757		54049*

VOGTLE DUTY MANAGERS

G. Bockhold, Jr.	404-826-3118 8-695-3118	404-860-9458	825-0050 404-833-7606 (ATLA)	001
W. F. Kitchens	404-826-3140 8-695-3140	404-592-2867	825-0412	213
A. F. Mosbaugh	404-826-3143 8-695-3143	404-863-2353	825-0502	200
J. E. Swartzwelder	404-826-3618 8-695-3618	404-860-8754	825-0424	044

\* 1-800 Beeper B'ham or Atlanta

\*\* B'ham "Page" Beeper

\*\*\* Georgia Mobile Number (Dial This Number First Then B'ham Mobile Number)

0219e

Attach B

TELEPHONE LIST - ON-CALL PROJECT MANAGER

<u>Name/Title</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Mobile Phone</u>	<u>Beeper</u>
<u>DIRECTOR OF CORPORATE RESPONSE *</u>				
1. W. B. Shipman, General Manager Nuclear Support	8-821-7104 1-205-877-7104	1-205-991-8001	1-205-936-6760	** 54104
2. P. D. Rushton, Manager Nuclear Engineering & Licensing	8-821-7103 1-205-877-7103	1-205-985-4879		** 54041
3. J. A. Bailey, Manager Licensing	8-821-7097 1-205-877-7097	1-205-823-1125		** 54043
4. L. A. Ward, Manager Nuclear Maintenance Support	8-821-7802 1-205-877-7802	1-205-995-4757		** 54049
<u>GEORGIA POWER COMPANY CORPORATE MANAGEMENT</u>				
1. Joseph M. Farley Executive Vice President-Nuclear The Southern Company	8-821-5513 1-205-868-5513	1-205-879-1572 1-205-868-5479	1-205-531-0328	
2. R. P. McDonald Executive Vice President- Nuclear Operations Alabama & Georgia Power Companies	<u>Birmingham, AL</u> 8-821-5540 1-205-868-5540  <u>Atlanta, GA</u> 8-526-3848 1-404-526-3848	1-205-879-9589	1-205-936-2706	*** 5540 ** 54090

Attach C 123

TELEPHONE LIST- ON-CALL PROJECT MANAGER  
(continued)

Name/Title	Work Phone	Home Phone	Mobile Phone	Beeper
------------	------------	------------	--------------	--------

GEORGIA POWER COMPANY CORPORATE MANAGEMENT (continued)

3. W. G. Hairston, III Senior Vice President Nuclear Operations	8-821-5581 1-205-868-5581	1-205-991-8188 1-205-991-7731 (unlisted)	1-205-936-2712	*** 5581 (Ala) ** 55581 (Atlanta/Other Major Cities Outside Ala)
4. A. W. Dahlberg, President & CEO Georgia Power Company	8-526-6000 1-404-526-6000	1-404-270-1832	1-404-697-1893	
5. J. T. Beckham, Vice President Hatch Project	8-821-7279 1-205-877-7279	1-205-995-4780	1-205-936-7299	** 19636
6. C. K. McCoy, Vice President Vogtle Project	8-821-7122 1-205-877-7122	1-205-362-7113	1-205-936-6892	** 83286 *** 7122 **** 304

PUBLIC INFORMATION MANAGER \*

1. G. K. Van Mol, Director Corporate Communication	8-526-7470 1-404-526-7470	1-404-963-9848 1-404-467-2687 (Weekends)	1-404-281-2903	
2. N. R. Harris Public Affairs Coordinator (Vogtle)	8-695-3630 1-404-826-3630 (Both at Vogtle)	1-404-796-0151	1-404-828-6059	
3. J. E. Varner Communications Services Manager	8-526-7480 1-404-526-7480	1-404-251-5516		1-404-898-4564

JUN 13 1989 03:03 PM HILLARY L. RUSSELL

TELEPHONE LIST - ON-CALL PROJECT MANAGER  
(continued)

<u>Name/Title</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Mobile Phone</u>	<u>Beeper</u>
<u>JOINT OWNERS</u>				
Contact one representative from each, starting from the top of each list.				
1. <u>OGLETHORPE POWER CORPORATION</u>				
E. J. Toupin, Superintendent Nuclear Operations	8-695-3401 1-404-724-6221	1-404-863-7215		**** Vogtle/240
D. H. Smith	1-404-621-3091	1-404-381-8951		
Operator	1-404-496-7600			
2. <u>MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA</u>				
T. W. Loria Manager of Generation Planning	1-404-952-5445 Ext. 206	1-404-452-7196		
Mack Secord	1-404-952-5445 Ext. 204	1-404-252-3861		
3. <u>DALTON UTILITIES</u>				
DeForrest Parrot, General Manager	1-404-278-1313	1-404-278-1561		
V. D. Parrot, Jr., Consultant	1-404-278-1313	1-404-278-5395		

## **EXHIBIT 23**



UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION

The Southern Company )  
Alabama Power Company )  
Georgia Power Company )  

---

Admin. Proc. No. 70-7530

RECD S.E.C.

SEP - 6 1988

FEB 88

MOTION TO INTERVENE, COMMENTS,  
AND REQUEST FOR HEARING OF  
OGLETHORPE POWER CORPORATION

On June 22, 1988, The Southern Company ("Southern"), a registered holding company, and two of its wholly-owned subsidiaries, Alabama Power Company ("APC") and Georgia Power Company ("GPC"), filed an application/declaration (the "Application") with the Securities and Exchange Commission (the "Commission") pursuant to Sections 6, 7, 9, 10, 12 and 13 of the Public Utility Holding Company Act of 1935 (the "Act") and Rules 24, 44, 45, 50 and 86-95 of the Commission's rules implementing the provisions of the Act. The Application seeks authority for Southern to form, organize and acquire the capital stock of another wholly-owned subsidiary, Southern Nuclear Operating Company ("SONOPCO"). If formed, SONOPCO would provide nuclear operation and related technical and administrative services to affiliates of Southern that own and operate nuclear power plants. In its Notice of Filing issued August 12, 1988 (Release No. 35-24694), the Commission has

requested all interested persons to file comments and/or requests for a hearing with regard to the Application.

Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("Oglethorpe") serves 39 member distribution companies in Georgia. Oglethorpe is a co-owner of two nuclear power plants, Plants Hatch and Vogtle, with GPC and several other parties. As discussed more fully below, Oglethorpe believes that its rights and interests will be adversely affected by the Commission's approval of the Application, because Oglethorpe is currently engaged in negotiations with GPC and Southern to resolve issues relating to the proposed SONOPCO operation of the co-owned plants. The Commission should therefore defer any action on the Application until appropriate arrangements have been agreed to concerning rights of co-owners in the management and operation of the plants, and until other deficiencies in the Application are corrected. Oglethorpe requests that if the Commission proceeds with its review of the Application, it should conduct hearings to consider all disputed issues of fact and law. Oglethorpe also requests that it be allowed to participate in all hearings and related proceedings in this docket as a full party.

I. OGLETHORPE'S INTEREST AND ITS MOTION  
TO INTERVENE AS A FULL PARTY

Oglethorpe is an electric membership corporation organized under the laws of the State of Georgia, with its

principal place of business located at 2100 East Exchange Place, Tucker, Georgia 30085-1349. Oglethorpe provides at wholesale and on a not-for-profit basis the power requirements of its 39 members, each of which is an electric membership corporation serving retail member-consumers in Georgia. Oglethorpe has assets in excess of \$5 billion, the majority of which has been financed with loans and loan guarantees from the Rural Electrification Administration ("REA"), an agency of the U.S. Department of Agriculture.

Pursuant to agreements among the co-owners, GPC is the co-owners' agent and serves as plant operator for Plants Hatch and Vogtle Unit 1. GPC also serves as agent for the construction of Vogtle Unit 2, scheduled for commercial operation in June 1989. Southern and its affiliates seek to form SONOPCO and transfer operating responsibilities from GPC.

Oglethorpe has discussed the concept of a nuclear operating company with GPC, and Oglethorpe is not opposed to the concept of such a company under proper circumstances and with appropriate arrangements in place to safeguard its and the public's interest. However, the co-owners have not agreed to the formation of SONOPCO as currently envisioned, nor to the terms of a transfer of existing responsibilities to SONOPCO. The Application fails to discuss what rights and remedies, if any, co-owners of plants partially owned by Southern's affiliates will have in the operation of the nuclear plants in which they have an ownership interest.

Oglethorpe will be directly and adversely affected by the formation of SONOPCO because a new operator, with substantially differing interests, will be imposed, and there is no assurance that Oglethorpe's rights, interests and remedies will be protected. Moreover, Oglethorpe's financing for the Vogtle Project is conditioned on Oglethorpe having reasonable control and input over GPC's construction management and on Oglethorpe enforcing fully its rights as a co-owner. . Thus, without adequate assurances that its rights, interests and remedies will be protected, Oglethorpe's financing (and, ultimately, the financing of the project as a whole) may be put in jeopardy.

Oglethorpe's concerns in this regard are not merely speculative. The Georgia Public Service Commission ("Georgia PSC") has found GPC to have been imprudent in its management of the construction of Vogtle Unit 1, and the Georgia PSC's decision with regard to imprudence was affirmed on appeal. Georgia Power Co. v. Georgia Pub. Serv. Comm'n., Civ. No. D-50843, Superior Court, Fulton County (July 21, 1988).

[ Oglethorpe has repeatedly raised GPC's ongoing failures to provide Oglethorpe with adequate and accurate information concerning the cost of constructing Plant Vogtle Units 1 and 2 and operating Vogtle Unit 1 as required by the Vogtle "Purchase and Ownership" and "Operating" agreements between Oglethorpe, GPC, and the other co-owners. The Georgia PSC proceedings indicate that there may well have been construc-

tion management problems at Plant Vogtle. Any change in management of the plant that places further barriers between the co-owners and the operating agent naturally increases Oglethorpe's concerns regarding the ability to avoid in the future management difficulties such as those that the Georgia PSC has deemed to have occurred in the past.]

Oglethorpe and GPC have discussed these issues, but have not reached any agreement that satisfies Oglethorpe's concerns with GPC's management of the Hatch and Vogtle Units. While Oglethorpe believes that the assignment of operating responsibilities to a new specialized entity may offer significant improvements, these improvements will occur only if the operators' responsibilities and obligations to co-owners outside The Southern Company are clearly specified by agreement among the parties. In the absence of such an agreement, Oglethorpe believes that the formation of SONOPCO will exacerbate the management failures. Any consideration of the application and its relation to the public interest requires full and detailed review of the interests of co-owners and their customers or members.

It is also particularly important that the formation of a new service company within the Southern system not be permitted until there has been a full review and any necessary corrective steps taken to address questions raised by recent press reports about the accuracy of financial information prepared by The Southern Company and its auditors.

Because Oglethorpe is a co-owner and will be directly affected by the transfer of operating responsibilities from GPC to SONOPCO, Oglethorpe's participation as a party in any proceedings in this docket is in the public interest and Oglethorpe should be granted full intervention as a party pursuant to Rule 201.9(e) of the Commission's rules. See 17 C.F.R. § 201.9(e).

Oglethorpe requests that the following persons should be included on the official service list in any proceedings established by this Commission and that all communications concerning this filing be addressed to the following:

F. F. Stacy, President and Chief Executive Officer  
Charles T. Autry, General Counsel  
Oglethorpe Power Corporation  
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Tucker, Georgia 30085-1349

Charles A. Patrizia, Esq.  
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1050 Connecticut Avenue, N.W.  
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## II. COMMENTS ON SOUTHERN'S PROPOSAL TO FORM SONOPCO

- A. It is Premature for the Commission to Determine Whether the Proposal to Form SONOPCO Is In the Public Interest Because the Application Fails to Address Certain Key Issues or to Include Important Information.

As Southern has noted in its Application, its issuance and sale by SONOPCO of shares of its capital stock is

subject to the provisions of Sections 6(a) and 7 of the Act. See 15 U.S.C. §§ 79f, 79g. Section 7 states that the Commission shall not permit a declaration regarding an issuer's sale of stock to become effective unless the Commission determines, inter alia, that the declaration or application comports with rules and regulations that are prescribed as necessary or appropriate in the public interest or for the protection of investors or consumers. Southern's application also states that the acquisition by Southern of the shares of the capital stock of SONOPCO is subject to Sections 9(a) and 10 of the Act (See 15 U.S.C. §§ 79i, 79j) and that the organization of SONOPCO and the conduct of its business are subject to Section 13 of the Act. 15 U.S.C. § 79m.

In reviewing the proposed formation of SONOPCO and the related sale and acquisition of securities issues, the Commission may prescribe such terms and conditions as it may find necessary or appropriate in the public interest or for the protection of investors or consumers. See, e.g., 15 U.S.C. § 79g(c), 79j(e). As shown below, Southern's Application contains insufficient information upon which the Commission can rely in determining whether the transactions proposed in the Application are in the public interest, whether conditions must be imposed for the protection of investors or consumers, or whether the Application satisfies

other relevant statutory provisions and Commission regulations.

1. Degree of involvement and ability of co-owners to control plant operations.

The creation of SONOPCO and the plan to make SONOPCO the licensed operator of Plants Hatch and Vogtle raises serious questions about the rights of co-owners to have some input in the operation of the plants or to remedy failures of SONOPCO to meet its obligations. Southern's Application ignores the obligation under the relevant Ownership Agreement to seek approval from the other co-owners of Plants Hatch and Vogtle before operating responsibilities of the plants can be transferred to another entity such as SONOPCO and the direct relationship that co-owners currently have with the operator of the facilities that allows for their input into such operation. SONOPCO's assumption of its role of plant operator would hinder Oglethorpe's ability to receive necessary and appropriate information or otherwise exercise its rights to have input in the operation of the facilities. While the Application makes brief references to expectations that other co-owners will be "kept informed as to the status of plant operations through periodic briefings," it fails to discuss what rights, if any, co-owners will have to specific information, the standards to which the operating entity will be held and the remedies available to correct breaches and failures.



(Application, p. 5.) Moreover, the Application fails to reflect recent discussions between GPC and Oglethorpe concerning the need to maintain a direct agency relationship between the operator and the co-owners.

Oglethorpe's concerns about the proposed changes in the current agency relationship are two-fold. First, it has obvious concerns as a co-owner about proper controls over construction and operation of the co-owned facilities. Second, Oglethorpe's financing for Plant Vogtle, comprising over \$2.4 billion in loans guaranteed by REA and \$700 million in tax exempt pollution control bonds, is contingent upon, inter alia, Oglethorpe having in place a plan that will give it reasonable control over GPC's construction management and GPC having in place a plan that will assure that Oglethorpe has the ability to make an effective contribution to construction management. Moreover, Oglethorpe must exercise all of its rights under the Ownership and Operating Agreements to cause the project to be constructed in accordance with those conditions as well as others, and Oglethorpe may not waive any of its rights under the Ownership and Operating Agreements without REA's prior written consent. As the above-described provisions make clear, REA placed great importance on Oglethorpe's rights as a co-owner when approving the loan guarantees, presumably because it considered Oglethorpe's ability to monitor and advise GPC with regard to its role as

the co-owner's agent a necessary element to the security and feasibility of over \$2.4 billion in federal loan guarantees for Plant Vogtle.

In light of GPC's past performance, it is essential that any change be fully accepted and agreed to among the owners (and have obtained REA's prior consent). Southern's Application in the absence of such an agreement is not in the public interest. Review of this Application should, at least, be deferred until GPC has finalized the necessary arrangements with the other co-owners and Southern has taken other steps to remedy the problems.

2. Standard of care and indemnification

SONOPCO will be held to an extraordinarily low standard of performance under the Application. In performing its services for GPC or APC, SONOPCO is required only to "exercise due care to assure that the services are performed in a professional manner." (Application, Ex. Nos. B-5 and B-6, p. 6). In the event SONOPCO fails to exercise due care, it need only re-perform the work at cost leaving the co-owners to pay twice. Moreover, all fines and penalties incurred by SONOPCO will be assigned directly to the respective plant and the Southern affiliates would indemnify SONOPCO for all such costs incurred. Consequently, SONOPCO and its employees will not be held to the high standard appropriate for a nuclear

facility, and Oglethorpe's current right to insist upon prudent practices is diluted. Such a reduction in rights and standards is contrary to Oglethorpe's and the public's interest.

3. Incurrence and Allocation of Costs

In the Application, Southern states that SONOPCO will provide nuclear services to APC and GPC "at cost." The Cost Allocation Manual attached to the Application is extremely brief and provides minimal information as to how these costs will be allocated to the other operating subsidiaries of Southern and to the plants' co-owners and whether the co-owners will have rights to challenge a specific allocation or allocation methodology. The failure of Southern to provide adequate information as to how the costs of SONOPCO's services will be computed and how such costs will be allocated makes it impossible for the Commission to determine under Section 13 of the Act whether SONOPCO's services will be provided "at cost" and "fairly and equitably allocated" among the different Southern operating subsidiaries. 15 U.S.C. § 79m(b); 17 C.F.R. §§ 250.90-91. Oglethorpe's contracts with GPC require that any services rendered by GPC affiliates be "at cost," and Oglethorpe has a direct interest in the allocation and allocation methodology. As a result of the inadequacy in the filing, the public interest will not be served until the

necessary information has been provided and agreement reached with the co-owners.

In addition, co-owners such as Oglethorpe are currently able to negotiate with GPC over GPC's allocation methodology, but the Application does not discuss whether they will be able to do so directly with SONOPCO. (Application, p. 5 and Ex. B-6.) This issue also must be agreed among the co-owners prior to any Commission review of the Application.

4. Profit component and sharing of benefit

The Application also provides that SONOPCO will earn a rate of return on common equity that will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia PSC. (Application, p. 9.) Under the Vogtle Ownership and Operating Agreements, GPC acts as agent without compensation and its own ownership interests provide incentive for proper performance of its obligations.

Although GPC could contract with affiliates to provide certain services under these Agreements, the parties never contemplated there would be a complete delegation of authority to an affiliate of the kind contemplated in the Application. In light of these factors, Oglethorpe had agreed to limit certain of its remedies under particular circum-

stances. While the Commission's regulations permit reasonable compensation for necessary capital, the attempts by Southern to charge a profit for SONOPCO's services thus unreasonably and unilaterally alter the existing contractual arrangements.

In addition, the Application states that the formation of SONOPCO will result in benefits to system operations, but does not state whether these benefits will be shared by the co-owners and, if so, how they will be shared.

The Application as it currently stands therefore violates the public interest. The Commission should defer review of the application until Southern and its affiliates have obtained formal agreements with plant co-owners on the change in operating company.

B. The Application Also Raises Serious Questions as to the Anti-Competitive Potential of Concentrating Control Over Nuclear Plant Operations in SONOPCO

Section 10(b) of the Act states that the Commission shall approve acquisitions unless the Commission finds that "such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interests of investors or consumers ...." 15 U.S.C. § 79j(b)(1). (Emphasis added.) As noted above, Southern's

acquisition of the shares of SONOPCO is subject to Section 10 of the Act.

As Southern has noted in its Application, it specifically intends to concentrate certain roles and responsibilities in SONOPCO. The anti-competitive effects of the transfer and concentration of plant operation responsibilities are not clear, since the details of SONOPCO's role and its relations to the co-owners are undefined. The SEC must examine the possible anti-competitive potential stemming from such a transfer of responsibilities, precisely because there are no agreements in place defining co-owners' rights. Failure to protect co-owners rights to control the operation of the plant will have anti-competitive effects by concentrating operational control and expertise in the Southern System.

The Commission may not approve an acquisition by a registered holding company under the Act without taking into account its anti-competitive potential, because antitrust violations affect the public interest as well as the interest of investors and consumers. Municipal Elec. Assoc. v. SEC, 413 F.2d 1052, 1057 (D.C. Cir. 1969). The transfer of such control over the nuclear power plants from GPC, which has a direct relation with other co-owners as a result of an anti-trust settlement, and the concentration of such control in SONOPCO presents structural problems that the Commission is in

the best position to address, as opposed to subsequent operational problems and associated costs that the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission and state commissions may later review. The diminution of rights of co-owners and the proposed concentration of such power in SONOPCO may place the other co-owners at a competitive disadvantage because they may incur additional costs which will lead to higher rates to their customers as a result of actions of SONOPCO over which such co-owners have no control. Consequently, the Commission should closely examine the possible anti-competitive effects of the structural issues raised by the Application, as it is so required. See City of Lafayette v. SEC, 481 F.2d 1101, 1105 (D.C. Cir. 1973).

The concentration of control in Southern Company is a direct anti-competitive effect which must also be examined in light of prior rulings related to the very plants involved. At the time GPC applied to the then Atomic Energy Commission for a license to construct and/or operate Plant Hatch Unit 2 and Plant Vogtle, the Atomic Energy Act required a determination whether issuance of the requested license "would create or maintain a situation inconsistent with the antitrust laws." 42 U.S.C. § 2135(c)(5).

The United States Attorney General, upon review of the license applications, determined that GPC had exercised

its monopoly power to prevent establishment of alternative bulk power supply systems in Georgia. As a result, a Settlement Agreement was negotiated under which GPC agreed to sell a portion of several nuclear and coal-fired units to certain parties, including Oglethorpe's predecessor in interest, the Georgia Electric Membership Corporation.<sup>1/</sup> Given the past behavior of Southern's affiliates, the Commission should defer its review of the Application until the questions of co-owner rights in plant operations are worked out to the satisfaction of the other co-owners. In any event, the Commission's review must include careful and full consideration on a complete record of the anti-competitive potential of Southern's proposal to concentrate operating authority in SONOPCO.

### III. REQUEST FOR HEARING

In the event the Commission proceeds with its review of the Application as presently filed on June 22, 1988, Oglethorpe requests that a hearing be held to analyze all disputed issues of fact and law raised by the Application and discussed previously in Section II. Because Southern's

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<sup>1/</sup> We are informed that similar conditions were imposed on APC's license for Plant Farley but have as yet not been exercised by the parties in interest there.



Application contains deficiencies and lacks specific information in many crucial areas, it is premature for the Commission to determine whether the proposed formation of SONOPCO will comport with all relevant provisions of the Act and will be consistent with the public interest. The review of the possible anti-competitive impacts of the concentration of operating authority in SONOPCO is an issue that in itself requires a hearing. See Municipal Elec. Assoc. v. SEC, 413 F.2d 1052 (D.C. Cir. 1969).

Therefore, Oglethorpe requests that if the Commission proceeds with its review of the Application as filed, that it hold hearings and permit Oglethorpe to participate as a full party in all such proceedings.

#### CONCLUSION

For the reasons previously discussed, Oglethorpe requests that the Commission defer consideration of Southern's Application until such time as Southern submits the additional information, agrees to the necessary arrangements with the co-owners and corrects the inherent deficiencies in the Application. In the event the Commission decides to proceed with its review of the Application as presently filed, Oglethorpe respectfully requests that the Commission conduct hearings for consideration of all disputed issues of fact and law. Oglethorpe also requests that it be made a party and be

able to participate fully in all proceedings and hearings held  
in this docket.

Respectfully submitted,

September 6, 1988

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon the persons listed below on this 6th day of September 1988, by first-class prepaid U.S. mail:

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## **EXHIBIT 24**

UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION

THE SOUTHERN COMPANY )

ALABAMA POWER COMPANY )

GEORGIA POWER COMPANY )

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ADMIN. PROC. NO. 70-7530

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REPLY TO THE SOUTHERN  
COMPANY'S RESPONSE TO OGLETHORPE POWER  
COMPANY'S MOTION TO INTERVENE, COMMENTS  
AND REQUEST FOR HEARING

In this proceeding, The Southern Company ("Southern"), a registered holding company, and two of its wholly-owned subsidiaries, Alabama Power Company ("APC") and Georgia Power Company ("GPC") seek authority for Southern to form, organize and acquire the capital stock of another wholly-owned subsidiary, Southern Nuclear Operating Company, Inc. ("SONOPCO"), pursuant to the Public Utility Holding Company Act ("Act") and the Commission's rules. If formed, SONOPCO would provide nuclear operation and related technical and administrative services to Southern affiliates that own and operate nuclear plants.

Oglethorpe Power Corporation ("Oglethorpe Power") filed a "Motion to Intervene, Comments and Request for Hearing" on September 6, 1988 ("Oglethorpe Comments"). Oglethorpe Power demonstrated in its comments that 1) the public interest would be adversely affected by the Commission's approval of the Application; 2) the formation

of SONOPCO could lead to anti-competitive effects; and  
3) the Application lacked specific information in important areas, thereby making it impossible for the Commission to determine whether the transactions proposed are in the public interest. Oglethorpe demonstrated as well that its own interests as a co-owner would be adversely affected. Oglethorpe sought to have action deferred until sufficient information was filed and its concerns addressed, and in the alternative, that the Commission order a hearing on the issues.

On March 13, 1989, Southern filed a response to Oglethorpe Power's Comments ("Southern's Response"). Southern's Response fails to address whether the formation of SONOPCO is consistent with the public interest standards and other provisions of the Act. Southern also mischaracterizes the extent of Oglethorpe Power's concerns with the Application and the lack of necessary supporting material, thereby underscoring the need for the Commission to hold hearings to review all disputed issues of fact and law raised by the Application.

#### DISCUSSION

Since Oglethorpe Power filed its comments, Southern, GPC, and Oglethorpe Power have discussed Oglethorpe Power's concerns in an attempt to resolve them.

Southern and GPC have now asserted that without regard to those discussions, the SEC should approve Southern's proposal. Southern's request is without basis. Contrary to Southern's assertion that the issues raised by Oglethorpe Power only concern "resolution of . . . private matters between the parties" (Southern's Response at 7), Southern's continuing failure to present adequate support for its application goes directly to the public interest and other standards of the Act and the Commission's rules. Oglethorpe Power does not seek from this Commission "revisions of existing contractual agreements between the co-owners," Southern's Response at 7, but rather the proper and statutorily required consideration of a sufficient record and the implementation of safeguards required by the 1935 Act.

1. Degree of Involvement and Ability of Co-Owners to Control Plant Operations.

The creation of SONOPCO as Southern now contemplates would seriously undermine the rights of co-owners relating to plant operations and effectively prevent efforts by the co-owners to correct SONOPCO's failures in implementing its obligations and to protect their investment. As a result, the public's interest in efficient and prudent operation of the facilities will be undercut. These events will occur under Phase II as contemplated by

Southern, and are already occurring under Phase I. SONOPCO's eventual assumption of the role of plant operator would further hinder Oglethorpe Power's ability to act to assure prudent and efficient operation. Oglethorpe Comments at 8-9.

Actions taken by GPC and Southern during Phase I have already had the effect of interfering with Oglethorpe Power's ability to discharge its obligations and rights under the Vogtle and Hatch Participation Agreements and to carry out its responsibilities to its members. GPC personnel with whom Oglethorpe Power dealt directly in relation to its interests are now subject to separate authority and are located in Birmingham, Alabama. Oglethorpe Power's ability to obtain contractually required information is thus hindered, and its ability to fulfill its obligations as co-owner reduced, to the detriment of its and the public's interest.<sup>1/</sup> Implementation of Phase II will only exacerbate such problems unless appropriate conditions and safeguards are established. It is certainly not in the public interest to permit establishment of a structure that would impede proper oversight of nuclear plant operations.

<sup>1/</sup> The ability to obtain information about the progress of construction and ongoing operation of the units is especially important after nuclear plants are commercially operable because of the need to be informed of decisions to add expensive capital additions. For example, the total cost of Plant Hatch has increased over one and one-half times since its commercial operation date because of capital additions to the plant.



2. Standard of Care and Indemnification.

Oglethorpe Power also demonstrated in its comments that SONOPCO will be held to a very low standard of performance in its contracts with GPC and APC. As noted in the application and attached proposed contracts, SONOPCO will only be required to "exercise due care to assure that the services are performed in a professional manner." Oglethorpe Comments at 10-11.<sup>2/</sup> Southern has responded that contracting for services with SONOPCO will not relieve GPC of its "legal responsibility" to the co-owners for plant operation as defined in the Participation Agreements.

Southern's Response fails to recognize that the standard of care to which SONOPCO will be held is much less than the standard required between co-owners under the Participation Agreements. The issue is not the continuation of GPC's "legal" obligation, but whether it is in the public interest for the operator of a nuclear plant to be held to such a low standard and whether it is in the public interest to permit such a contract to be created. Rather than the product of arms length bargaining, the SONOPCO contract represents precisely the type of sweetheart contracting for substandard services barred by the 1935 Act.

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<sup>2/</sup> As Oglethorpe Power also noted in its comments, if SONOPCO fails to exercise due care, it need only re-perform the work at cost which effectively means the co-owners will pay twice. Oglethorpe Comments at 10.

Moreover, the standard in the Participation Agreements will be rendered meaningless if SONOPCO is held to such a low standard of care in the performance of its services. The Commission's power to supervise arrangements is not a substitute for proper and rigorous controls, and the appropriate attention by a co-owner to the faithful performance of an operator's role.<sup>3/</sup>

Finally, it is not responsible nor in the public interest to use the holding company structure to permit formation of a nuclear operating company that will have complete control over plant operations, but virtually no responsibility or liability for its actions. Simply put, an operating company that has control over plant operations should be held fully accountable for the results of its actions.

3. Concurrence and Allocation of Costs.

Oglethorpe Power also noted that while Southern stated that SONOPCO will provide nuclear services to APC and

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<sup>3/</sup> As Oglethorpe Power noted in its Comments, its concerns over the effect on its ability to have reasonable control and input in plant construction and management and the resulting effect on the public interest are not speculative in nature. Oglethorpe Comments at 4. As noted therein, the Georgia Public Service Commission found GPC to have been imprudent in the management and construction of Vogtle Unit I. That finding was upheld on judicial review. Oversight by co-owners is needed to prevent future acts of imprudence.

GPC "at cost", the Cost Allocation Manual provided minimum information as to how these costs will be allocated among the operating companies of Southern and the co-owners and whether the co-owners will even have the right to challenge the specific allocations or allocation methodologies. Oglethorpe Comments at 11-12. Southern responded that the co-owners' responsibility to compensate GPC for costs associated with the co-owned plants are set forth in the existing Participation Agreement which will continue in effect unchanged through Phase II of the SONOPCO proposal. Southern Reply at 9.

While Southern notes that costs will be assigned directly to specific nuclear plants and will be allocated in accordance with the Cost Allocation Manual, it provides no more additional information to bolster in any way the insufficient information provided thus far. Moreover, it opines that allocation of costs will be "subject to ongoing review and oversight by the Commission to ensure that all regulatory requirements are satisfied." Id. at 9. Contrary to Southern's assertion, such a mechanism does not assure that such cost will be "fairly and equitably allocated between APC and GPC" given that Southern has filed insufficient information for the Commission to perform its review of the Application and exercise subsequent oversight. Id. Southern fails to bolster the sketchy information provided thus far and such failure makes it impossible for

the Commission to determine under Section 13 of the Act that SONOPCO's services will be provided "at cost" and "fairly and equitable allocated" among the different Southern operating subsidiaries. See 15 U.S.C. § 79m(b); 17 C.F.R. § 250.90-91 (1988).<sup>4/</sup>

Oglethorpe Power also pointed out in its comments that allowing SONOPCO to earn a greater return on common equity unreasonably and unilaterally alters existing contractual arrangements between the parties. Oglethorpe Comments at 12-13. Under the Vogtle Ownership and Operating Agreements, GPC acts as agent without compensation, and Oglethorpe Power had agreed in return to limit certain of its remedies under particular circumstances. Southern contends that a reasonable return is necessary to protect the interest of Southern's public investors and that benefits which are expected to result from the implementation of SONOPCO will reduce operating costs. Southern further argues that each owner will bear its

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<sup>4/</sup> Southern's sketchy cost allocation information is also insufficient to enable co-owners to determine proper allocation of costs between the nuclear plants and specific units owned by an individual Operating Company such as GPC. The ability to allocate costs between plants is important because some plants such as Plant Vogtle in which co-owners have an interest are subject to buy back provisions (i.e., GPC buys back part of the ownership share of the co-owners) while others such as Plant Hatch are not. It is therefore necessary to insure that co-owners and their customers are not unfairly burdened because of improper allocations of costs as a result of a difference in their retained ownership interests at the time.

respective share of all operating costs and will be entitled to its respective share of output from each plant.

Southern's Response is insufficient. A future hope, however fond, is not a legally sufficient basis for the Commission to permit an anticipatory breach of contracts. The co-owners already have the right to their respective share of the output from the plants and Southern's unilateral attempt to alter the existing contractual arrangement is without foundation. Moreover, Southern has failed to provide any studies or other evidence proving that SONOPCO will produce benefits such as reduced operating costs.

4. Possible Anti-competitive Effects  
Resulting from the Formation of SONOPCO

Oglethorpe Power also noted that the Commission must examine the potential anti-competitive effects of the formation of SONOPCO pursuant to § 10(b) of the Act. 15 U.S.C. § 79j(b)(1). See Municipal Elec. Assoc. v. SEC. 413 F.2d 1052, 1057 (D.C. Cir. 1969). Specifically, Oglethorpe Power noted the SEC should examine the anti-competitive potential stemming from a transfer of responsibilities and a concentration of operational control and expertise in the Southern system. Oglethorpe Comments at 13-16. Such a review is especially important because there are no agreements in place to protect a co-owner's rights and

failure to protect co-owners could be detrimental to the public interest. Southern responds that Oglethorpe Power's existing contractual right would be sufficiently protected against anti-competitive affects associated with such concentration of expertise.

The issue under the antitrust law is not whether Oglethorpe will be protected against a further cost escalation, but whether the proposal, by its form and substance increases the concentration of utility property or assets. By its action Southern seeks to attenuate Oglethorpe's ability to further develop its own nuclear expertise though oversight of its interest in Hatch and Vogtle. Southern seeks to concentrate solely in its hands the experience and role of managing a nuclear plant, rather than permitting its co-owners to develop such experience. GPC and Southern have already limited the information flow to Oglethorpe Power. This concentration is barred by the 1935 Act.

Similarly, Southern's statement that Oglethorpe Power would have remedies under the federal antitrust laws in the event that SONOPCO uses its position as plant operator to raise the effective cost of power to Oglethorpe misses the mark. Southern's Response at 10-12. The issue is not the availability of a remedy once SONOPCO has caused an antitrust injury, but, whether formation of SONOPCO could lead to a concentration in Southern of control and expertise

in the operation and management of nuclear units in the southeast, thereby creating a barrier of entry that prevents other entities such as Oglethorpe Power from developing such expertise. Such a barrier is not permitted by the Act, and thus SONOPCO's formation should be prevented.

5. Adopting a Corporate Structure that Ensures Safe Plant Operations

Southern also claims that the rights sought by Oglethorpe Power will compromise the ability of the plant operator to ensure safe operation of the plants and would otherwise invade the appropriate management prerogative of the plant operator. Southern's assertion is a canard, and Southern neglects to support it in any way. Oglethorpe Power is necessarily concerned that no change result in a detriment to plant safety or operations. In fact, Oglethorpe Power is concerned that the amount of control already abrogated by GPC to the joint "matrix" organization will be to the detriment of the co-owner licensee's ability to monitor plant operations and correct operator failures.

Oglethorpe's motivation in participating in the present proceeding has not been "to secure additional private rights for itself." Southern's Response at 6. Oglethorpe's concerns over the restructuring of the nuclear operation and administrative services and concentration in one entity relate to how to insure that co-owners receive

sufficient information and are able to make known directly to the operator their concerns and interests in order to facilitate safe and prudent management of the plant. This involvement is fully consistent with Oglethorpe Power's obligation as a co-licensee and its rights under existing contractual arrangements. Oglethorpe Power does seek to assure its rights are not diminished to the detriment of the public interest.

Southern's suggestion that there is no need to extend co-owners' rights beyond those presently approved by the Commission ignores the fact that the creation of SONOPCO will alter the existing relationship between the plant operator and the co-owners. Thus, the only way to ensure that the new arrangement will continue to satisfy the public interest standard under PUHCA is to ensure that the rights to information and oversight of the co-owners are protected.

6. Formation of SONOPCO Violates Existing Agreements Between the Parties

GPC contends that, pursuant to sections 2(b) and 1(d) of the Vogtle and Hatch Operating Agreements, respectively, Plant Operating Agreement ("Hatch Operating Agreement"), it "has the authority under the Participation Agreements to engage SONOPCO for the activities envisioned during Phase Two" based upon the provision in the Vogtle Operating Agreement that it may "contract with any of its



affiliates for . . . the performance of services." Southern's Response at 5. This provision, however, was only intended to permit limited services (i.e., clerical, engineering and accounting), not the effective assignment to a newly-created entity of the responsibility for and control over all nuclear operations and related technical and administrative services. More importantly, however, GPC's delegation of all of its essential duties and responsibilities as plant operator violates both the Vogtle and Hatch Operating Agreements in that it effectively assigns one of its most important ownership rights (i.e., the right to manage and operate the plant) without the required consent of the other participants. See Vogtle Operating Agreement, §§ 5(f), 6(b); Hatch Operating Agreement, §§ 5(b), 5(j).

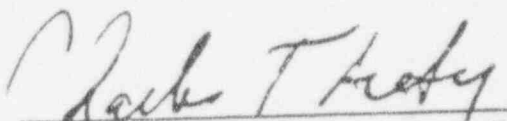
#### CONCLUSION

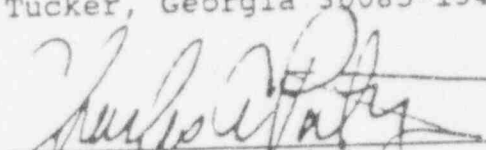
In the reasons set forth above, neither Southern's Application nor its Response provide the information necessary for the Commission to determine whether the proposed formation of SONOPCO and all related transitions are in the public interest or comport with the requirements in the Act. The Commission should defer review of all phases of the Application until Southern has agreed upon appropriate arrangements concerning rights of co-owners in the manage-

ment and operation of the plants and the other deficiencies in the Application are corrected. If the Commission does proceed with its review of the Application, Oglethorpe Power requests that the Commission conduct hearings to consider all disputed issues of law and permit Oglethorpe to participate as a full party.

March 31, 1989

Respectfully submitted,

  
Charles T. Autry *4COP*  
General Counsel  
OGLETHORPE POWER CORPORATION  
(Electric Membership  
Generation & Transmission  
Corporation)  
2100 E. Exchange Place  
Tucker, Georgia 30085-1349

  
Charles A. Patrizia  
N. Beth Emery  
William D. DeGrandis  
John J. Rice  
PAUL, HASTINGS, JANOFSKY & WALKER  
Twelfth Floor  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 223-9000

Counsel for Oglethorpe  
Power Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing "Reply to The Southern Company's Response to Oglethorpe Power Company's Motion to Intervene, Comments and Request for Hearing" to be served upon the persons listed below on this 31st day of March 1989, by first-class prepaid U.S. mail:

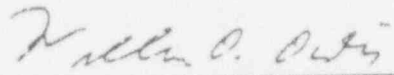
W. L. Westbrook  
Financial Vice President  
The Southern Company  
64 Perimeter Center East  
Atlanta, Georgia 30346

Walter M. Beale, Jr., Esq.  
Balch & Bingham  
700 Financial Center  
505 North 20th Street  
Birmingham, Alabama 35203

J. R. Harris  
Vice President  
Southern Company Services, Inc.  
One Wall Street, 42nd Floor  
New York, New York 10005

John McLanahan, Esq.  
Troutman, Sanders, Lockerman &  
Ashmore  
1400 Candler Building  
Atlanta, Georgia 30043

PAUL, HASTINGS, JANOFKSY  
& WALKER  
1050 Connecticut Avenue, N.W.  
Twelfth Floor  
Washington, D.C. 20036  
(202) 223-9000

  
\_\_\_\_\_  
William D. DeGrandis  
Attorney for  
Oglethorpe Power Corporation

## **EXHIBIT 25**

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-K

(X) ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 1993

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the Transition Period from      to

---

<u>Commission File Number</u>	<u>Registrant, State of Incorporation, Address and Telephone Number</u>	<u>I.R.S. Employer Identification No.</u>
1-3526	The Southern Company (A Delaware Corporation) 64 Perimeter Center East Atlanta, Georgia 30346 (404) 393-0650	58-0690070
1-3164	Alabama Power Company (An Alabama Corporation) 600 North 18th Street Birmingham, Alabama 35291 (205) 250-1000	63-0004250
1-6468	Georgia Power Company (A Georgia Corporation) 333 Piedmont Avenue, N E Atlanta, Georgia 30308 (404) 526-6526	58-0257110
0-2429	Gulf Power Company (A Maine Corporation) 500 Bayfront Parkway Pensacola, Florida 32501 (904) 444-6111	59-0276810
0-6849	Mississippi Power Company (A Mississippi Corporation) 2992 West Beach Gulfport, Mississippi 39501 (601) 864-1211	61-0505820
1-5072	Savannah Electric and Power Company (A Georgia Corporation) 600 Bay Street, East Savannah, Georgia 31401 (912) 232-7171	58-0418070

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contract with four industrial customers. Under the terms of these contracts, SAVANNAH purchases excess generation of such companies. During 1993, SAVANNAH purchased 2.4 million kilowatt-hours from such companies at a cost of \$51,000.

The competition for retail energy sales among competing suppliers of energy is influenced by various factors, including price, availability, technological advancements and reliability. These factors are, in turn, affected by, among other influences, political and environmental considerations, taxation and supply.

The operating affiliates have experienced, and expect to continue to experience, competition in their respective retail service territories in varying degrees as the result of self-generation (as described above) and fuel switching by customers and other factors. (See also Item 1 - BUSINESS - "Territory Served" herein for information concerning suppliers of electricity operating within or near the areas served at retail by the operating affiliates.) In addition, while the Energy Act does not provide for "retail wheeling" (i.e., the transmission and distribution by an electric utility to retail customers within its service territory of energy produced by another entity), applicable legislative and regulatory bodies may consider imposing such a requirement in the future, the effect of which may be adverse.

## Regulation

### State Commissions

The operating affiliates and SEGCO are subject to the jurisdiction of their respective state regulatory commissions, which have broad powers of supervision and regulation over public utilities operating in the respective states, including their rates, service regulations, sales of securities (except for the Mississippi PSC) and, in the cases of the Georgia PSC and Mississippi PSC, in part, retail service territories. (See Item 1 - BUSINESS - "Rate Matters" and "Territory Served" herein.)

### Holding Company Act

SOUTHERN is registered as a holding company under the Holding Company Act, and it and its subsidiary companies are subject to the regulatory provisions of said

Act, including provisions relating to the issuance of securities, sales and acquisitions of securities and utility assets, services performed by SCS and Southern Nuclear, and the activities of certain of SOUTHERN's special purpose subsidiaries.

### Federal Power Act

The Federal Power Act subjects the operating affiliates and SEGCO to regulation by the FERC as companies engaged in the transmission or sale at wholesale of electric energy in interstate commerce, including regulation of accounting policies and practices.

ALABAMA and GEORGIA are also subject to the provisions of the Federal Power Act or the earlier Federal Water Power Act applicable to licensees with respect to their hydroelectric developments. Among the hydroelectric projects subject to licensing by the FERC are 14 existing ALABAMA generating stations having an aggregate installed capacity of 1,582,725 kilowatts and 17 existing GEORGIA generating stations having an aggregate installed capacity of 859,440 kilowatts.

In December 1991, ALABAMA and GEORGIA filed with the FERC their applications for new licenses on six of their existing hydroelectric projects. The six projects, ALABAMA's Yates and Thurlow and GEORGIA's Lloyd Shoals, Langdale, Riverview and North Georgia, with 272,340 kilowatts of capacity, had licenses that expired December 31, 1993. Although the possibility of competition existed for these licenses, no competing applications were filed prior to the filing deadline of December 31, 1991.

The Lloyd Shoals, Langdale and Riverview projects were granted new 30-year licenses that expire 2023. Each of the remaining projects are operating on annual licenses under the same terms and conditions as their original licenses. Additionally, the FERC has issued an order granting a combined, 40-year license for the Yates and Thurlow projects. ALABAMA has applied to the FERC for rehearing of certain provisions of this license. As a part of the application for the combined, 40-year license for the Yates and Thurlow projects, ALABAMA agreed to expand the capacity of these units by a total of approximately 10.3 megawatts.

## GEORGIA

### *(a)(2) Identification of directors of GEORGLA.*

**H. Allen Franklin**

President and Chief Executive Officer.

Age 49

Served as Director since 1-1-94.

**Warren Y. Jobe**

Executive Vice President, Treasurer and Chief Financial Officer.

Age 53

Served as Director since 8-1-82

**Edward L. Addison (1)**

Age 63

Served as Director since 11-1-83

**Bennett A. Brown (1)**

Age 64

Served as Director since 5-15-80

**William P. Copenhaver (1)**

Age 69

Served as Director since 6-18-86

**A. W. Dahlberg (1)**

Age 53

Served as Director since 6-1-88

**William A. Fickling, Jr. (1)**

Age 61

Served as Director since 4-18-73

**L. G. Hardman, III (1)**

Age 54

Served as Director since 6-25-79

**James R. Lientz, Jr. (1)**

Age 50

Served as Director since 7-1-93

**William A. Parker, Jr. (1)**

Age 66

Served as Director since 5-19-65

**G. Joseph Prendergast (1)**

Age 48

Served as Director since 1-20-93

**Herman J. Russell (1)**

Age 63

Served as Director since 5-18-88

**Gloria M. Shatto (1)**

Age 62

Served as Director since 2-20-80

**Robert Strickland (1)**

Age 66

Served as Director since 11-21-79

**William Jerry Vereen (1)**

Age 53

Served as Director since 5-18-88

**Thomas R. Williams (1)**

Age 65

Served as Director since 3-17-82

*(1) No position other than Director.*

Each of the above is currently a director of GEO serving a term running from the last annual meeting GEORGIA's stockholder (May 19, 1993) for one year until the next annual meeting or until a successor is elected and qualified, except Messrs. Franklin and L.

There are no arrangements or understandings between any of the individuals listed above and any other person pursuant to which he/she was or is to be selected as director or nominee, other than any arrangements or understandings with directors or officers of GEOR acting solely in their capacities as such.

### *(b)(2) Identification of executive officers of GEORGIA.*

**H. Allen Franklin**

President, Chief Executive Officer and Director

Age 49

Served as Executive Officer since 1-1-94

**Warren Y. Jobe**

Executive Vice President, Treasurer, Chief Financial Officer and Director

Age 53

Served as Executive Officer since 5-19-82

**Dwight H. Evans**

Executive Vice President - External Affairs  
Age 45  
Served as Executive Officer since 4-19-89

**Gene R. Hodges**

Executive Vice President - Customer Operations  
Age 55  
Served as Executive Officer since 11-19-86

**Kerry E. Adams**

Senior Vice President - Fossil and Hydro Power  
Age 49  
Served as Executive Officer since 5-1-89

**Wayne T. Dahlke**

Senior Vice President - Power Delivery  
Age 53  
Served as Executive Officer since 4-19-89

**James K. Davis**

Senior Vice President - Corporate Relations  
Age 53  
Served as Executive Officer since 10-1-93

**Robert H. Haubein**

Senior Vice President - Administrative Services  
Age 54  
Served as Executive Officer since 2-19-92

**Gale E. Klappa**

Senior Vice President - Marketing  
Age 43  
Served as Executive Officer since 2-19-92

**Fred D. Williams**

Senior Vice President - Bulk Power Markets  
Age 49  
Served as Executive Officer since 11-18-92

Each of the above is currently an executive officer of GEORGIA, serving a term running from the last annual meeting of the directors (May 19, 1993) for one year until the next annual meeting or until his successor is elected and qualified, except Messrs. Franklin and Davis.

There are no arrangements or understandings between any of the individuals listed above and any other person pursuant to which he was or is to be selected as an officer, other than any arrangements or understandings with officers of GEORGIA acting solely in their capacities as such.

(c)(2) *Identification of certain significant employees.*  
None.

(d)(2) *Family relationships.*  
None.

(e)(2) *Business experience.*

**H. Allen Franklin** - President and Chief Executive Officer since January 1994. He previously served as President and Chief Executive Officer of SCS from 1988 through 1993. Director of SOUTHERN and SouthTrust Bank.

**Warren Y. Jobe** - Executive Vice President and Chief Financial Officer since 1982 and Treasurer since 1992. Responsible for financial and accounting operations and planning, internal auditing, procurement, corporate secretary and treasury operations.

**Edward L. Addison** - President of SOUTHERN from 1983 until his election as Chairman of Board in 1994. Director of SOUTHERN, ALABAMA, Wachovia Bank of Georgia, N.A., Wachovia Corporation of Georgia, Phelps Dodge Corporation, Protective Life Corporation and CSX Corporation.

**Bennett A. Brown** - Retired from serving as Chairman of the Board of NationsBank on December 31, 1992. Previously Chairman of the Board and Chief Executive Officer of C&S/Sovran Corporation. Director of Confederation Life Insurance Company.

**William P. Copenhaver** - Director, Arcadian Fertilizer, L.P. (agricultural and industrial chemicals). Director of SOUTHERN and Georgia Bank & Trust Company.

**A. W. Dahlberg** - President of SOUTHERN effective in 1994. He previously served as President and Chief Executive Officer of GEORGIA from 1988 through 1993. Director of SOUTHERN, Trust Company Bank, Trust Company of Georgia, Protective Life Corporation and Equifax, Inc.

**William A. Fickling, Jr.** - Chairman of the Board, Mulberry Street Investment Company, Macon, Georgia, and Co-chairman of Beech Street Corporation (insurance).



**L. G. Hardman, III** - Chairman of the Board of First National Bank of Commerce, Georgia and Chairman of the Board and Chief Executive Officer of First Commerce Bancorp. Chairman of the Board, President and Treasurer of Harmony Grove Mills, Inc. (real estate investments). Director of SOUTHERN.

**James R. Lientz, Jr.** - President of NationsBank of Georgia since 1993. He previously served as President and Chief Executive Officer of former Citizens & Southern Bank of South Carolina (now NationsBank) from 1990 to 1993, and from 1987 to 1990, he was head of Corporate Bank Group of NationsBank of Georgia, N.A.

**William A. Parker, Jr.** - Chairman of the Board, Cherokee Investment Company, Inc. (private investments), Atlanta, Georgia. Director of SOUTHERN, Genuine Parts Company, Life Insurance Company of Georgia, First Union Real Estate Investment Trust, Atlantic Realty Company, ING North America Insurance Company, Post Properties, Inc. and Haverty Furniture Companies, Inc.

**G. Joseph Prendergast** - President and Chief Executive Officer, Wachovia Corporation of Georgia and Wachovia Bank of Georgia, N.A. since 1993. From 1988 to 1993, he served as Executive Vice President of Wachovia Corporation and President of Wachovia Corporate Services, Inc.

**Herman J. Russell** - Chairman of the Board and Chief Executive Officer, H. J. Russell & Company (construction), Atlanta, Georgia. Chairman of the Board, Citizens Trust Bank, and Citizens Bancshares Corporation Atlanta, Georgia. Director of Wachovia Corporation.

**Gloria M. Shatto** - President, Berry College, Mount Berry, Georgia. Director of SOUTHERN, Becton Dickinson & Company, Kmart Corporation and Texas Instruments, Inc.

**Robert Strickland** - Retired Chairman of the Board and Chief Executive Officer of SunTrust Banks, Inc. Director of Georgia US Corporation, Equifax, Inc., Life Insurance Company of Georgia, Oxford Industries, Inc. and The Investment Centre.

**William Jerry Vereen** - President and Chief Executive Officer of Riverside Manufacturing Company (manufacture and sale of uniforms), Moultrie, Georgia.

Director of Gerber Garment Technology, Inc. and Text Clothing Technology Corp.

**Thomas R. Williams** - President of The Wales Group, Inc. (investments) Atlanta, Georgia. Director of ConAgra, Inc., BellSouth Corporation, National Life Insurance Company of Vermont, AppleSouth, Inc., and American Software, Inc.

**Dwight H. Evans** - Executive Vice President - External Affairs since 1989. Senior Vice President - Public Affairs from 1988 to 1989.

**Gene R. Hodges** - Executive Vice President - Customer Operations since 1992. Senior Vice President - Region/Land Operations from 1990 to 1992. Senior Vice President - Division Operations from 1986 to 1990.

**Kerry E. Adams** - Senior Vice President - Fossil and Hydro Power since 1989.

**Wayne T. Dahlke** - Senior Vice President - Power Delivery since February 1992. Senior Vice President - Marketing from 1989 to 1992.

**James K. Davis** - Senior Vice President - Corporate Relations since October 1993. Vice President of Corporate Relations from 1988 to 1993.

**Robert H. Haubein** - Senior Vice President - Administrative Services since 1992. Vice President - Northern Region from 1990 to 1992. Division Vice President of ALABAMA from 1985 to 1990.

**Gale E. Klappa** - Senior Vice President - Marketing since 1992. Vice President - Public Relations of SCS from 1981 to 1992.

**Fred D. Williams** - Senior Vice President - Bulk Markets since 1992. Vice President - Bulk Power Markets from 1984 to 1992.

*(f)(2) Involvement in certain legal proceedings.*  
*None.*

## **EXHIBIT 26**

Georgia Power Company  
333 Piedmont Avenue  
Atlanta, Georgia 30308  
Telephone 404 526-6000

Mailing Address:  
Post Office Box 4545  
Atlanta, Georgia 30302

A. W. Dahlberg  
President  
Chief Executive Officer

The Southern Electric System

December 27, 1988

EXECUTIVE OFFICERS  
DIVISION VICE PRESIDENTS  
GENERAL OFFICE DEPARTMENT HEADS  
DIVISION MANAGERS

As you know, Georgia Power Company's nuclear operations group has been relocated to Birmingham, Alabama. We are in the process of working out the agreements with our joint owners to establish Southern Nuclear Operating Company which, when finalized, will contract with us to operate our nuclear plants.

It is important for us to realize that while our nuclear operations may be managed in Birmingham and ultimately will be managed by a separate Southern subsidiary, Georgia Power will be held accountable by our regulatory groups, our stockholders, and the public for the operation and performance of our nuclear units. It is essential that Georgia Power Company be involved in the operations of our units, monitor their performance and integrate nuclear operations goals, accountabilities, and financial planning into Georgia Power Corporate Plan.

Effective immediately, a Nuclear Operations Contract Administration Group is formed to interface with our nuclear operations group in Birmingham. This group will report to Mr. G. F. Head, Senior Vice President, who will be responsible for all nuclear operations interactions.

Mr. M. B. Hobby, Assistant to the Senior Executive Vice President, currently on loan to Nuclear Operations, is named General Manager Nuclear Operations Contract Administration and will report to Mr. Head.

Your support as we move to restructure our nuclear operations group is appreciated.

Sincerely,



A. W. Dahlberg

/dt

c: Mr. E. L. Addison  
Mr. J. M. Farley  
Mr. H. A. Franklin

TAB-A

## **EXHIBIT 27**

Tape #260, side A, Tr. Pg. 8-11

*Beginning p. 8 Line 24 OF NRC TRANSCRIPT*

Mosbaugh: Speaking of the duty manager, there was a funny comment made in that meeting down there this morning by McCoy about the shift supervisor calls the duty manager, the duty manager calls the corporate duty manager, and the corporate duty manager calls the president of the company.

Aufdenkampe: ~~The VP calls the president.~~

*? INAUDIBLE*

Mosbaugh: He calls the VP? And the VP calls the president of the company.

*JEH*  
*VOICE INAUDIBLE*

Aufdenkampe: Yeah, I thought that was interesting.

*Cupholder*

Chestnut: The president of the company for Georgia Power or Alabama Power.

*your talking about (INAUDIBLE)*

Aufdenkampe: [Inaudible]

*SHC*  
Voice:

Sure

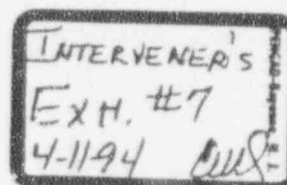
Mosbaugh: I just--thought that-- I have been involved in the duty manager and I never-- and I think I was aware of what the communications path was and I just don't think that's what's happen-- what's happens. I just -- that was just real interesting to me.

Chestnut: That seems kind of surprising to me, too.

*SHC*  
*JGA*  
Mosbaugh:

*(INAUDIBLE) ENGINEERING - ty (INAUDIBLE)*  
Who are they calling? I mean, if I call-- If I call, you know --if I call--

[ Phone call interruption]



Aufdenkampe: [Inaudible]

Mosbaugh: I mean, if I call Shipman—

Voice: [Inaudible]

Mosbaugh: You know, if I call Shipman or something, Then Shipman usually will say—

*Page 9 Lines 25 through Page 10 Line 18 from NRC Transcript omitted.*

[Interrupting phone call ends]

Mosbaugh: *OK* Anyway, You know, I call, I call Shipman and then Shipman will sometimes talk to McCoy or to Hairston

Chestnut: Um hum.

Mosbaugh: But that was the extent of —

Chestnut: There are alot of calls to Farley. I know they called Farley alot.

Mosbaugh: They who called Farley?

Chestnut: The VP.

Mosbaugh: Oh. They're calling Farley?

Chestnut: Yeah. A good bit. I know they call Farley alot. But it wasn't until recently I started hearing this thing about them calling— about calling— I can't imagine them calling Dahlberg because Dahlberg probably knows how many plants he has, but he doesn't know which ones are running ~~and he's not interested~~. Jim Miller paid attention to which plants were running and— but I think Dahlberg is more concerned about the market.

Mosbaugh: Yeah.

Chestnut: How much power we sold.

*Ends Page 11 Line 11 of NRC Transcript*

## **EXHIBIT 28**

OFFICE OF THE ADMINISTRATOR  
WAGE AND HOUR DIVISION  
EMPLOYEE STANDARDS ADMINISTRATION  
U. S. DEPARTMENT OF LABOR

JOHN M. FUCHKO, GARY ALLEN YUNKER, )  
PLAINTIFFS, )  
VS. ) 89-ERA-9  
GEORGIA POWER COMPANY, ) 89-ERA-10  
DEFENDANT. )

STIPULATIONS

IT IS STIPULATED AND AGREED, by and between  
the parties through their respective counsel, that  
the deposition of ROBERT PATRICK McDONALD may be  
taken before Charles S. Barrington, Commissioner  
and Certified Shorthand Reporter, at the law offices  
of Balch & Bingham, Financial Center Office,  
Suite 700, 505 North 20th Street, Birmingham,  
Alabama, on the 23rd day of December, 1988, commencing  
at 9:00 a.m., Central Standard Time.

IT IS FURTHER STIPULATED AND AGREED that the

DEPOSITION OF ROBERT PATRICK McDONALD



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Q What are their areas of special qualifications?

A Their areas of special qualification involves the nuclear security functions as characterized by the installations and operations and procedures of a nuclear plant on site.

Q Do you know how candidates for jobs in those three projects were evaluated for the jobs?

MR. MILLER: Excuse me, but I guess I ought to object to that, because how candidates for those jobs in those three projects could literally mean hundreds of candidates, hundreds of jobs.

Q I mean, in general, do you know what the process was, the evaluation process?

MR. MILLER: A general generic question?

Q Yes.

A The generic question was starting at the top of the organization in each one of these.  
the persons that head the organizations were  
selected first. In that case they were Tom Beckham,  
and Ken McCoy. And then they together in management  
teams, and in their individual organizations  
selected the next tier of management based upon  
knowledge, training, experience and demonstrated

1 Department of Southern Company Services.

2 Q Do you have any authority over those  
3 departments? What is your relationship with those?

4 MR. MILLER: Which question do you want him  
5 to answer?

6 MS. FOWLER: What was my first question?

7 (First question read.)

8 A I am in a position of authority over the  
9 Hatch, Vogtle and Farley Projects.

10 Q What is your position of authority regarding  
11 the other two projects?

12 A The other two projects are each headed up  
13 by officers of the Southern Company Services.  
14 Southern Company Services is providing services to  
15 Georgia Power Company and Alabama Power Company  
16 individually for those projects. So those two  
17 departments are providing us services for the  
18 support groups.

19 Q Who selected the administrative and technical  
20 services vice-presidents?

21 MR. MILLER: Who, as in a person, or who  
22 as in a company?

23 Q What person selected those people, the people

1 in those positions?

2 MR. MILLER: If there is such a person and  
3 you know them you may answer.  
4

5 A I don't know. ||

6 Q So you did not select them? ||

7 A No.

8 Q Who are the vice-presidents for those  
9 services?

10 A Charles McCrary and Lewis Long.

11 Q And Charles McCrary is the Vice-President for  
12 what?

13 A McCrary? Administrative Services.

14 Q Okay. How about Lewis Long, is Technical  
15 Services?

16 A Yes. Now let me qualify my statement, in  
17 saying that I don't know. The selection of those  
18 people is under the authority and responsibility  
19 of the Southern Company Services. I imagine in  
20 the normal course of events that selection is  
21 officially made by the President of Southern Company  
22 Services. There may have been other arrangements  
23 that I am not aware of, but I think that that was  
true.

1 Q Who is the President of Southern Company  
2 Services?

3 A Alan Franklin.

4 Q And so the Administrative Department and  
5 the Technical Services Department provide services  
6 to your projects, the Farley, Hatch, and Vogtle  
7 Projects?

8 A Correct.

9 Q Okay. You are the Executive Vice-President  
10 of Georgia Power Company for Nuclear Operations.

11 A Yes.

12 Q What does that title entail in the way of  
13 duties?

14 A It essentially involves responsibilities for  
15 all the plant operations. And the support that  
16 it requires, which may be performed by other entities  
17 on an agreement or a contract basis; it involves  
18 the corporate support for the plant. I will stop  
19 there.

20 Q Are there any other things?

21 A Well, to exercise direct line responsibilities  
22 for the operation and the associated activities  
23 of the plants.

1 MR. MILLER: You want to take a break?

2 THE DEPONENT: Well I am not --

3 MS. FOWLER: Well, I have a lot to find out,  
4 and I am going to take it how I can get it.

5 MR. MILLER: You are the master of the questions.  
6 We can't give an answer until you ask the questions.

7 Q Okay. Explain to me, would you, sir, the  
8 concept for staffing SONOPCO.

9 A The concept for staffing SONOPCO? The  
10 concept was and is that these -- one, when I  
11 say SONOPCO, and let me understand when you say  
12 SONOPCO you don't mean the final company, you mean  
13 these five organizations which we are talking about?

14 Q Yes, sir.

15 A The concept for staffing those was that  
16 each organization was to be staffed by the people  
17 in charge of them from resources available within  
18 the Southern system, and in as much as possible  
19 within the originating company. Now that --  
20 okay, that is the concept.

21 Q And which would be the originating company  
22 in case of the Administrative Department?

23 A Southern Company Services.

1 Q And how about in the area of Technical  
2 Services Department?

3 A Southern Company Services.

4 Q Now when you say Southern Company Services --

5 A Yes.

6 Q -- does that include Georgia Power and  
7 Alabama Power?

8 A No.

9 Q Okay.

10 A Now the question you asked, does Southern  
11 Company Services include Georgia and Alabama;  
12 Southern Company Services is a separate company  
13 and entity within itself. Now what is the question  
14 about Southern Company Services that you asked?

15 Q Okay. You said that an effort was made to  
16 staff each of these departments, as I understand,  
17 from the results available in the Southern system.  
18 Right?

19 A Yes. Southern system. I misstated it;  
20 I misstated it to some degree. The concept was  
21 to staff one of these five organizations to the  
22 maximum extent possible from within the Southern  
23 system; and for Alabama and Georgia, those three

1 for each of them to the maximum extent possible  
2 from the originating company. That is, Alabama  
3 from Alabama, and Georgia from Georgia. For  
4 Southern Company Services, that organization,  
5 technical organization, was, most of the people  
6 in it were already established as service organi-  
7 zations with Southern Company Services. That is,  
8 the nuclear fuels, some testing, and quality  
9 assurance, they were already existing organizations  
10 in almost the same form previously in Southern  
11 Company Services, but not collected together in  
12 one department.

13 Q So they fall under the Technical Services  
14 Department?

15 A Yes.

16 Q Okay.

17 A They were taken and put into a department,  
18 which had not existed before. And you might say  
19 as postulated would become a part of SONOPCO.  
20 Some of them never moved, they stayed in the same  
21 offices. And some of them maintained the same  
22 managerial relationships, like the nuclear fuel,  
23 and so they were merely a, basically relocating

1 from one building in some cases to another  
2 building, and in some cases staying there.

3 The Administrative Services Department was  
4 a new organization, that essentially had no  
5 basis. That was to be formed from a candidate  
6 in the Southern system, not merely from Southern  
7 Company Services. Okay.

8 Q So the Southern system includes Georgia  
9 Power Company and Alabama Power Company.

10 A Yes.

11 Q Okay.

12 (Whereupon, at this time the  
13 proceedings were in recess  
14 from 10:00 a.m. until 10:03 a.m.  
15 at which time proceedings  
16 were resumed as follows:)

17 MR. MILLER: All right. Let's press here.

18 EXAMINATION BY MS. FOWLER: (Resumed)

19 Q Do you know my clients, John Fuchko and  
20 Gary Yunker?

21 A Yes.

22 Q When did you first meet them?

23 A The first time that I met them face to  
face in an individual situation other than as



1 a group was when they came to see me in the  
2 May-June time frame.

3 Q Do you know why the petitioners weren't  
4 offered a job at any of these five projects that  
5 hopefully will eventually become SONOPCO?

6 MR. MILLER: Petitioners, who is that?

7 Q My clients, Mr. Fuchko, and Mr. Yunker.

8 A Yes.

9 MR. MILLER: Wait.

10 A Now I want to back up. I know why they  
11 weren't offered a job in any of these three nuclear  
12 projects.

13 Q Why weren't they offered a job at any of  
14 the nuclear projects?

15 A Because each job was being filled by individuals  
16 particularly qualified for that job based upon  
17 education, training, experience and demonstrated  
18 performance in that area of expertise.

19 The three projects, the two Georgia projects  
20 that were being restructured and realigned, in  
21 the restructured and realignment configuration,  
22 there were no jobs that included their special  
23 areas of qualification.

1 Q What are their areas of special qualifications?

2 A Their areas of special qualification involves  
3 the nuclear security functions as characterized  
4 by the installations and operations and procedures  
5 of a nuclear plant on site.

6 Q Do you know how candidates for jobs in those  
7 three projects were evaluated for the jobs?

8 MR. MILLER: Excuse me, but I guess I ought  
9 to object to that, because how candidates for  
10 those jobs in those three projects could literally  
11 mean hundreds of candidates, hundreds of jobs.

12 Q I mean, in general, do you know what the  
13 process was, the evaluation process?

14 MR. MILLER: A general generic question?

15 Q Yes.

16 A The generic question was starting at the  
17 top of the organization in each one of those,  
18 the persons that head the organizations were  
19 selected first. In that case they were Tom Beckham,  
20 and Ken McCoy. And then they together in management  
21 teams, and in their individual organizations  
22 selected the next tier of management based upon  
23 knowledge, training, experience and demonstrated

1 performance in the area required for the new  
2 realigned job. And that continued down to each  
3 layer; they reviewed, and then the selection was  
4 proposed by let's say a middle level manager;  
5 reviewed by a higher level manager; and approved  
6 by the Vice-President in charge of that project.

7 Q Do you know if Morris Howard has been on --  
8 is he a part of the Vogtle Project?  
9

10 A No.

11 Q Is he a part of any project?

12 A No.

13 Q Do you know what his position is?

14 A He is no longer with the company.

15 Q Was he asked to join the project?

16 A No.

17 Q Was he offered a job?

18 A No.

19 Q Why wasn't he offered a job?

20 A He resigned.

21 Q When did he resign?

22 A Last summer.

23 Q Was he asked to resign?

A No.

1  
2 that may not be inclusive, but that is the only  
3 ones that I recall.

4 Q Is the manager of Corporate Security within  
5 the top tier of managers?

6 A Yes.

7 Q Okay. Are there any other jobs in that top  
8 tier that haven't been filled yet?

9 A Not that I can remember. Wait. Let's go  
10 back. What is your question?

11 Q Okay. You have named only five --

12 A Okay, but you are implying that the Corporate  
13 Security is not the only one -- it is the only  
14 one that has not been filled.

15 Q No, I am asking you if it is.

16 A Let me think again. I believe so. I know  
17 it has not been filled, but I am not sure that  
18 there isn't another one. But I can't recall.

19 Q Okay. So did --

20 A And let me further state this: That I am  
21 aware, I have been told that a man did accept that  
22 position. But before he formally accepted it  
23 through transfer he backed out.

Q Do you know who that man was?

1 A Yes.

2 Q Do you know if he was asked to evaluate  
3 on potential nominees?

4 A No.

5 Q You don't know whether he was?

6 A No.

7 Q Do you know why my clients weren't offered  
8 positions in the nuclear, in the Corporate  
9 Security Department? Not in the nuclear, in the  
10 Corporate Security Department. I am talking  
11 about --

12 MR. MILLER: You see, now I am really  
13 confused, because I thought that your guys did  
14 work for Corporate Security.

15 MS. FOWLER: No. From what I understand --

16 MR. MILLER: Isn't that right --

17 MS. FOWLER:--there is no Corporate Security  
18 Department. They work in Georgia Power Corporate  
19 Security Department.

20 MR. MILLER: Oh, okay. All right.

21 A So you are talking about the Southern Company  
22 Services Administrative Department, why they  
23 weren't offered jobs?

1 Q Right.

2 A I know this: That the normal process which  
3 I have described to you for the selection of  
4 people --

5 Q Uh-huh.

6 A -- started always at the top. You  
7 pick the man in charge, and he is the one  
8 responsible for selecting the people who works  
9 for him.

10 Q Uh-huh.

11 A Because you don't assign people to work  
12 for somebody. That is not the practice anywhere  
13 within our business. The person who works for  
14 somebody selects the people he works for.

15 Q So, is what you are saying that because  
16 there is no Corporate Security manager that is  
17 why?

18 A I am saying that that is a logical reason  
19 why no one has been selected for any jobs within  
20 that department.

21 Q Okay. Do you know why Mr. Fuchko has  
22 not been considered for the position of Corporate  
23 Security manager?

1 Q What jobs did you all talk about?

2 A We had no jobs that they could go into  
3 within those, Hatch and Vogtle Projects. So  
4 we talked about the possibility of going into  
5 Corporate Security jobs from where they had  
6 been.

7 Q Corporate Security in Georgia Power Company?

8 A Yes.

9 Q Did you discuss whether they were qualified  
10 for any jobs in the Administrative Services  
11 Department?

12 A No.

13 Q Why didn't you?

14 A At the time that we were trying to realign  
15 people in the organization, the Administrative  
16 Services organization had not been staffed. It  
17 had no manager of security. When in essence there  
18 was no way to select people for those jobs.

19 Q But aren't there other jobs in Administrative  
20 support besides in the Corporate Security  
21 Department?

22 A Certainly.

23 Q Okay. The Corporate Security Department, I

1 were trying to ask were specifically about  
2 Georgia Power Company.

3 Q Okay.

4 A Now, if you could state that again maybe  
5 I can get it related.

6 Q Okay. In your efforts to reorganize were  
7 you trying to place Georgia Power folks in the  
8 nuclear operating department, or division?

9 A I was trying to place the Georgia Power  
10 Company employees within the nuclear department  
11 organization, into a realigned organization; which  
12 consists of the Hatch Project and the Vogtle Project.

13 Q Okay. If you were not able to put them in  
14 one of those two areas was there any attempt to  
15 put them in the Administrative Services Department,  
16 if they had the qualifications?

17 MR. MILLER: The Administrative Services  
18 Department of Southern Company Services?

19 Q Yes.

20 MR. MILLER: All right.

21 A In this case it never came up, because at  
22 that time the top jobs had not been selected by  
23 Southern Company Services. And as far as I know



1 Southern Company Services had not requested from  
2 the nuclear organization, no nuclear organization,  
3 any nominees for those top tier jobs. If they had  
4 of requested nominees for those top tier jobs,  
5 controllers, and resources and security, they would  
6 have gone to those similar organizations in other  
7 companies. Nuclear organizations did not contain  
8 that type of experienced expertise that they would  
9 be looking for.

10 Q Okay. You said that you discussed with  
11 Mr. Hairston whether or not to allow my clients  
12 to change jobs into the Administrative Services  
13 Department.

14 A Negative. I didn't say that. I said I  
15 discussed with Mr. Hairston and Mr. McHenry and  
16 possibly others, the change of jobs by your  
17 clients.

18 Q Okay. What did you discuss with Mr. Hairston,  
19 what was your conversation regarding?

20 A I discussed -- I discussed with him the fact  
21 that he had not found, and no one had found comparable  
22 type jobs in the Hatch or Vogtle Project for your  
23 clients. I discussed that fact.

ATTACHMENT  
2b

## **EXHIBIT 29**

1 UNITED STATES OF AMERICA  
2 BEFORE THE U.S. DEPARTMENT OF LABOR

3 MARVIN B. HOBBY, )  
4 Complainant, ) CIVIL ACTION  
5 vs. ) FILE NO.  
6 GEORGIA POWER COMPANY, ) 90-ERA-30  
7 Respondent. )

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14 DEPOSITION OF  
15 GERALD JOHNSON  
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17  
18  
19  
20  
21  
22

23 BULL & ASSOCIATES  
24 COURT AND DEPOSITION REPORTERS  
25 4651 Roswell Road, N.E., Suite F-504  
Atlanta, Georgia 30342  
(404) 256-2886

Deposition of GERALD JOHNSON,  
taken on behalf of the Complainant,  
before Susan E. Reynolds, Registered  
Professional Reporter, Certified  
Court Reporter and Notary Public, at  
the Candler Building, 127 Peachtree  
Street, N.E., Suite 1400, Atlanta,  
Georgia, commencing at approximately  
2:45 p.m., Tuesday, October 2, 1990.

1       could review the document first and indicate  
2       whether you have ever seen a copy of that  
3       document before?

4                       (Brief pause.)

5               A       Yes, I have.

6               Q       (By Mr. Kohn) Does the content  
7       of that document accurately reflect your  
8       understanding of Georgia Power Company's  
9       position regarding a fallback performance  
10      indicator?

11              A       Yes, it does.

12              Q       Can you tell me the sum and  
13      substance of your meeting in Birmingham  
14      relative to performance indicators?

15              A       Yes. There were two break-out  
16      sessions that we had. One was dealing with  
17      accounting issues and one was dealing with  
18      performance standards and the individuals  
19      that were dealing with performance standards  
20      were more engineering type folks there. Mr.  
21      Farley was there, Mr. McDonald was there,  
22      Bob Gilbert; just about all the top management  
23      at SONOPCO as well as Ed Hicks and Michael  
24      Barker and Mr. Domby proceeded to outline our  
25      goal with what GDS had proposed in there.

1           A           I am not certain of what the  
2 company's position was before this incident.  
3 At the time a lot of meetings were going on in  
4 discussing the strategy and I would be of the  
5 opinion that the company's position was to take  
6 a look at whether the jurisdictions were doing  
7 what performance standard and to see if there  
8 was something out of that that we could do that  
9 could be given to the commission or used with  
10 the company.

11           Q           At some point did the work in  
12 that area cease?

13           A           It's my understanding the two  
14 gentlemen, Mr. Hicks and Mr. Barker, were told  
15 not to do anymore work so far as performance  
16 standards were concerned and both of them told  
17 me that.

18           Q           Both Mr. Hicks and Mr. Barker told  
19 you that?

20           A           That's correct.

21           Q           Did they tell you that that  
22 instruction came from Mr. McDonald?

23           A           From upper management.

24           Q           At SONOPCO?

25           A           At SONOPCO, yes.

1 well as give copies of the testimony to SONOPCO  
2 or highlight what we considered the high points  
3 of the testimony.

4 Q What was Georgia Power Company  
5 seeking from SONOPCO? What was the purpose of  
6 giving them this information?

7 A To develop rebuttal testimony.

8 Q Did that rebuttal testimony include  
9 an alternative performance indicator?

10 A Would you repeat that again?

11 Q Sure. The rebuttal case, the  
12 testimony that was going to be presented by  
13 Georgia Power Company, was that also going to  
14 include an alternate performance indicator?

15 A That's correct. What it was going  
16 to include was reasons for not having a  
17 performance indicator at all and that's what it  
18 did include.

19 Q But the purpose of this particular  
20 meeting was also to develop a fallback  
21 position, an alternative performance indicator?

22 A Was to present what GDS had given  
23 in their testimony in alternatives to that.  
24 That was my understanding of the meeting.

25 Q What was decided at the meeting?



1           A       The meeting at SONOPCO?

2           Q       Yes.

3           A       The information was presented and my  
4 understanding is that SONOPCO was going to be  
5 working on rebuttal testimony and my  
6 understanding was that reasons why we should  
7 not have a performance indicator, not the fact  
8 that we would have an alternative performance  
9 indicator but why we shouldn't have an  
10 indicator.

11          Q       Who made that decision?

12          A       Upper management in that room.  
13 As I said, Mr. Farley and Mr. McDonald were  
14 all in there. So it was kind of joint. It was  
15 my understanding that it was a joint decision.

16          Q       Can you tell me your understanding  
17 of how the 1990 nuclear budget was approved?

18          A       How it was approved? I'm not sure  
19 how it was approved. I know the normal process  
20 of when I was in resource management that Mr.  
21 Dahlberg set a target for each budget, each  
22 organization of budget, and that budget would  
23 be presented to Management Council and  
24 Management Council would either approve it or  
25 tell the individual organization to go back and

1 work on it some more. I'm not sure how the  
2 1990 budget was approved or if it has been  
3 approved. At this point I don't think it has  
4 been approved.

5 Q The 1990 budget?

6 A 1990 budget. Oh, I am sorry. I  
7 thought you meant 1991. The 1990 budget?

8 Q Yes.

9 A The 1990 budget to my understanding  
10 is that Mr. Dahlberg and Mr. McDonald never did  
11 come into agreement on what that budget was or  
12 would be.

13 Q There is a 1990 budget?

14 A Yeah. There is a 1990 budget.

15 Q If Mr. McDonald or Mr. Dahlberg  
16 never came to an understanding, what's your  
17 understanding of the process of how it got  
18 approved?

19 A I am not certain as to how it got  
20 approved. I don't know whether Mr. Dahlberg  
21 approved it or if it was just submitted and put  
22 in. I am not certain of that. My  
23 understanding is that Mr. Dahlberg didn't  
24 approve or wasn't approving the Management  
25 Council is my understanding of the 1990 budget.

1           Q       Did you say was not approved at the  
2 Management Council?

3           A       It's my understanding -- I was not  
4 present at the Management Council but that's my  
5 understanding.

6           Q       Were you ever told that it was  
7 approved by the SONOPCO Board of Directors?

8           A       I am not certain.

9           Q       Did you have any discussions  
10 with Georgia Power budgeting people as to  
11 who approved the 1990 budget?

12          A       Yes.

13          Q       Can you tell me what was discussed  
14 in those meetings as to who approved the 1990  
15 budget?

16          A       Well, it was -- and this is  
17 basically rumor because I don't know for a  
18 fact -- but it was a rumor that the budget  
19 was approved. I guess the Board out of the  
20 Southern Company, that included all of the  
21 operating company's presidents.

22          Q       Other than this 1990 nuclear budget,  
23 was it your understanding that all other  
24 nuclear budgets were approved by the Management  
25 Council?

1           A       That's correct.

2           Q       Other than the nuclear 1990 budget,  
3 were all other budgets at Georgia Power Company  
4 approved by the Management Council to your  
5 knowledge?

6           A       That's my understanding. I can't  
7 say for certain.

8           Q       Thank you very much, Mr. Johnson.

9           MR. KOHN: I have no further  
10 questions.

11           THE REPORTER: Did you both  
12 need a copy of the transcripts?

13           MR. KOHN: Yes.

14           MR. WITHROW: Yes.

## **EXHIBIT 30**

In The Matter Of:

*GEORGIA POWER COMPANY, et al.*  
*U.S. NUCLEAR REGULATORY COMMISSION*

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*DAN HOWARD SMITH*  
*APRIL 12, 1994*

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*BULL & ASSOCIATES, INC.*  
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*(404) 256-2886*

*Original File MS0520DS.ASC, 72 Pages*

**Word Index included with this Min-U-Script®**

1 investigations into false statements concerning  
2 submission of LER 90-06?

3 A I get documents from the NRC concerning  
4 it. I'm on the -- still on the distribution list to  
5 receive any documents concerning Vogtle or Hatch  
6 from the Nuclear Regulatory Commission.

7 Q Are you aware of whether anyone within  
8 Oglethorpe Power receives periodic briefings as to  
9 what is occurring with respect to investigations  
10 into false statements by operational officials?

11 A No. I can't answer that. I'm sort of  
12 out of the nuclear chain now. I'm -- Dave Self and  
13 Ernie Toupin handle all the nuclear. Whether they  
14 handle all the regulations or not, I don't know.

15 Q I call your attention back to the 1990  
16 time frame. Do you recall that budget information  
17 for Georgia Power before the nuclear operating  
18 budget for Plant Vogtle came directly from the  
19 SONOPCO project to Mr. Peacock, who then personally  
20 delivered it to you?

21 A Mr. Peacock delivered it to my office, if  
22 I remember correctly, a whole box full. Now,  
23 whether it came directly from Southern Nuclear to  
24 Mr. Peacock, I can't testify to that at all. I can  
25 tell you Mr. Peacock brought it to my office.

1           Q       On page 843 of the hearing testimony, in  
2 Mr. Hobby's proceeding, in an answer, you indicate  
3 that, "If I recall correctly, the 1990 information  
4 came directly from SONOPCO to a Mr. Peacock from  
5 Georgia Power, who personally delivered a box full  
6 of information to my office."

7                   I realize that this has been some -- many  
8 years. Can you illuminate on that testimony any  
9 further today as to --

10          A       Well, what I would have been referring to  
11 there, it probably was delivered from SONOPCO to  
12 Peacock. The issue there, and I didn't allude to  
13 it, was Mr. Hobby aware of that occurring? Did  
14 Mr. Hobby get a copy? I don't know. I don't think  
15 he did, but, you know, that's the issue, when you  
16 say directly to me, was Mr. Hobby knowledgeable that  
17 that was occurring, because he was the one that I  
18 would have expected to get that information from.

19          Q       Do you recall when you received your  
20 information about Georgia Power's 1990 nuclear  
21 operating budget?

22          A       Around September of -- August, September  
23 of 1990. We had negotiated a delivery schedule for  
24 a number of those documents. We'd spent well over a  
25 year with Bill Smith negotiating that delivery



1 schedule. So that was the first proof of the  
2 pudding that worked.

3 MR. WITHROW: Michael, excuse me. I  
4 think you talked about the 1990 budget.

5 MR. KOHN: Correct.

6 MR. WITHROW: And he's referring to  
7 receipt of information in '90, and I just think  
8 that the record's going to be a little confused  
9 on this point. Were you talking about the 1989  
10 budget?

11 MR. KOHN: No.

12 Q (By Mr. Kohn) I'm talking about the 1990  
13 budget. Do you recall when that was received?

14 A No, no. The '90 -- I was referring to  
15 the 1989 report. I can't tell you about the 1990.  
16 I'm not even sure I was in the department in 1990.  
17 I'd have to go back and look.

18 Q You were in the department when Mr. Hobby  
19 was named as general manager of nuclear operations  
20 contract administration?

21 A Yep. Was that '90?

22 Q That was December '88. And --

23 A Okay. Then we probably are talking about  
24 the '90 data, budget data.

25 Q Then you recalled that being transmitted

1 in August or September of 1990?

2 A To the best of my knowledge, yeah, what  
3 the schedule -- delivery schedule would have called  
4 for. The exact dates -- there's a number of dates  
5 in that schedule, and I can't tell you exactly which  
6 one.

7 Q Do you know if that scheduling  
8 documentation is in existence?

9 A Yeah. It's part of -- it's an enclosure  
10 to the amended and restated nuclear managing board  
11 agreement. It hasn't been changed, as far as my  
12 knowledge, the delivery schedule.

13 MR. LAMBERSKI: Let me make a  
14 clarification for you here, Michael. I think  
15 the amended and restated nuclear managing board  
16 agreement is an agreement that's in existence  
17 now, not in 1990.

18 A (Continuing) But it still has that  
19 enclosure with it. To my knowledge, it does. I  
20 don't know that it was ever changed.

21 MR. LAMBERSKI: That's the only  
22 clarification I wanted to make.

23 A (Continuing) That's why I said that,  
24 because we never changed that document after we  
25 negotiated those dates and that delivery schedule.

1 anything being inaccurate. Doesn't mean it wasn't.

2 MR. KOHN: Go off the record for a  
3 minute.

4 (Discussion was held off the record.)

5 Q (By Mr. Kohn) On page 850 of the Hobby  
6 transcript, it indicates that -- a question arose  
7 whether Georgia Power was really in charge of  
8 nuclear plants and whether they were exercising  
9 their licensing responsibility. And that question  
10 arose in part, because I've highlighted a portion of  
11 your testimony, that in some statements that were  
12 made by Mr. Farley at various times to the employees  
13 at the nuclear plants, statements that were made in  
14 various SONOPCO publications regarding Mr. Farley's  
15 duties?

16 A That's true.

17 Q Can you, as best you can today, tell me  
18 what statements and facts and publications that you  
19 heard that you can remember?

20 A I can remember that Mr. Farley did  
21 address the employees, Georgia Power employees, at  
22 Plant Hatch. I believe it was Plant Hatch. And he  
23 made a number of statements concerning, if my memory  
24 serves me correctly, about what they proposed as  
25 future actions for the -- future personnel actions

1 regarding those employees. His comments were  
2 published in -- it was either a newsletter that was  
3 put out by SONOPCO or a newsletter that was put out  
4 by the plant management of Plant Hatch. That's what  
5 that comment refers to.

6 Q Did you maintain a copy of that  
7 publication?

8 A No, I did not. I do not have a copy. I  
9 didn't maintain a copy.

10 Q At this time, are you capable of  
11 remembering any other factual information concerning  
12 Mr. Farley's involvement with SONOPCO?

13 A No, not really. Well, I know that he was  
14 involved with SONOPCO for a number of years, until  
15 he basically retired. And he got promoted out of  
16 there and then subsequently retired from Southern  
17 Company.

18 Q Now, do you recall the process used --  
19 let me back up and get a little background  
20 information. Let me get a little background  
21 information.

22 At some point, you received the go-ahead  
23 from your management to negotiate with Mr. Hobby the  
24 management board agreement?

25 A Yes, I did.

## **EXHIBIT 31**

BEFORE THE  
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,

Complainant,

vs.

GEORGIA POWER COMPANY,

Respondent.

VOLUME I

Case No. 90-ERA-30

Courtroom 901,  
DeKalb County Courthouse,  
556 N. McDonough Street,  
Decatur, Georgia

Tuesday, October 23, 1990

The above-entitled matter came on for hearing,  
pursuant to Notice, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,  
DAVID K. COLAPINTO, Attorney,  
Kohn, Kohn & Colapinto,  
517 Florida Avenue, N.W.,  
Washington, D.C. 20001;  
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,  
WILLIAM N. WITHROW, Attorney,  
Troutman, Sanders, Lockerman & Ashmore,  
1400 Candler Building,  
Atlanta, Georgia 30303-1810;  
Appearing on behalf of the Respondent.

1 they recognized that there was a problem there.

2 MR. KOHN: Your Honor, is it possible I could take  
3 a short recess for one minute or two?

4 JUDGE WILLIAMS: All right. Off the record.

5 (A brief recess.)

6 JUDGE WILLIAMS: Okay.

7 BY MR. KOHN:

8 Q. After you and Mr. Head signed the memo, what did  
9 you do?

10 A. I took the memo down to Mr. Fred Williams, and I  
11 hand delivered it to him.

12 Q. And what happened then?

13 A. Excuse me. I'd like to back up and say one other  
14 thing that I forgot. Maybe I did say it, I'm not sure.

15 Mr. Williams said one of the purposes for asking  
16 for the memo was that he had been asked by Mr. Dahlberg to  
17 go to Birmingham and discuss with the SONOPCO people some of  
18 the problems.

19 In addition, Mr. Williams was going to brief Mr.  
20 Dahlberg in preparation for Mr. Dahlberg's May 5th meeting.  
21 I'm not sure I made that clear.

22 Q. Okay. And after -- all right. Now you're in a  
23 meeting with -- you've brought the memo to Mr. Williams.  
24 What occurred during that meeting?

25 A. Mr. Williams took the memo, he read the memo, he

1 turned to me and he told me to destroy the memo. Excuse me.  
2 He said for me to destroy all copies of the memo.

3 He said that Oglethorpe Power had been raising  
4 this concern about what Mr. McDonald reported to, and he said  
5 there is a possibility that Oglethorpe Power may try to sue  
6 the company over this.

7 He said "We cannot have that memo in our files, I  
8 want you to destroy all copies of it."

9 Q. Did Mr. Williams raise during the meeting his trip  
10 to Birmingham?

11 A. Mr. Williams after he told me to destroy it, I  
12 told Mr. Williams I was raising a regulatory concern. I  
13 knew he didn't have a lot of nuclear experience. I said to  
14 him that I was raising a regulatory concern and he should  
15 not tell me to destroy all copies.

16 We talked about that for another couple of  
17 minutes, and then Mr. Williams handed me back the original,  
18 but he kept a copy, and he told me that he was going to  
19 Birmingham the next day and he was going to discuss some of  
20 the problems with the people at SONOPCO, but he assured me  
21 that he was not going to give them a copy of the memo that  
22 he kept, and he said he would not retain that copy in his  
23 files.

24 He again told me to go and get rid of the memo,  
25 get rid of all copies of the memo.



we couldn't come to some resolution, and he said he did not think that I had a -- he said "I'm not a lawyer, but I don't think you've got an obligation to go to the NRC."

Q. You indicated that you had prepared the April 27th memo to Mr. Williams in preparation for the May 5th meeting.

A. Yes, sir.

Q. Did you get any feedback of what occurred at this May 5th meeting?

A. The only feedback that I received immediately was that the investigator in the corporate concerns program, Mr. Bill Evans, called me and told me that they had discussed the job that I had open and I had been trying to fill in the May 5th meeting, and that Mr. Farley was going to make the call as to whether I could hire a performance engineer and that we did not have an answer at that time, that Mr. Farley would make the call.

Q. I call your attention again to Exhibit 12, the May 8th entry at 1624.

A. Yes, sir.

Q. Can you explain what that entry relates to?

A. It was a call from Mr. Evans, and as I recall I had previously either called Mr. Glenn or Mr. Evans and asked them had we heard back on whether or not I could hire a performance engineer.

1           They had talked with Mr. Baker, and the note says  
2       "H.G.B. talked to Lee Glenn, warm and congenial" meaning  
3       they had a nice talk, "no answer yet, Farley to provide,  
4       Farley makes call."

5           Q.    What does that refer to in your notes, Farley  
6       makes call?

7           A.    As to whether or not I could hire a nuclear  
8       performance engineer in my organization.

9           Q.    And did you ever learn whether you could hire that  
10      performance engineer?

11          A.    Yes, sir.

12          Q.    And?

13          A.    In late May, I believe the date was May 23rd -- as  
14      I mentioned, Mr. Head retired effective May 1st, and Mr.  
15      Carey Adams was named senior vice president of fossil and  
16      hydro power.

17                Mr. Adams and his assistant, Mr. Shannon, came  
18      down to my office on May 23rd to meet with me and talk with  
19      me, and Mr. Adams said on the way down here Grady came out  
20      of his office on the 24th floor and said "You are to hire no  
21      more people in your organization."

22          Q.    Did Mr. Adams call you before coming down to visit  
23      you?

24          A.    His assistant did.

25          Q.    Would you happen to know the May 23rd entry in

1 Exhibit 12 at 8:31 a.m. reflects that phone call?

2 A. Yes, sir, it does.

3 Q. And is this the first time you were meeting with  
4 your new boss?

5 A. I knew Mr. Adams, I had known him for a number of  
6 years, but this was the first time to my recollection that  
7 he had met with me after I started reporting to him.

8 Q. And what was the sum and substance of his  
9 discussion as to why you were not going to be allowed to  
10 hire Mr. Barker?

11 A. He had no knowledge of it. The extent of his  
12 knowledge was he said he was headed out of his office to  
13 come to my office, and Mr. Baker stopped him in the hall  
14 and said "Where are you going?", he said "To Marvin's  
15 office," and he said "Well, tell him he can't hire any more  
16 people."

17 Q. And how long did you report to Mr. Adams?

18 A. To my knowledge I reported to Mr. Adams until  
19 January the 1st, 1990.

20 Q. Did you report to Mr. Williams at any time in  
21 1989?

22 A. Not to my knowledge.

23 Q. Did anyone ever tell you you were reporting to Mr.  
24 Williams in 1989?

25 A. Yes.

1 Power Company, you indicated that Mr. McDonald reports to  
2 you. Does Mr. McDonald take all of his management direction  
3 from you with respect to the operation of Georgia Power  
4 Company's nuclear plants?

5 A. That's correct.

6 Q. Now, Mr. Dahlberg, I would like to ask you to  
7 describe the SONOPCO project.

8 A. The SONOPCO project was originally envisioned as a  
9 separate corporation. However, now it operates without a  
10 corporate identity and operates in effect as a division of  
11 the company, or a division of the Southern Company.

12 It is divided now so that it has specific  
13 responsibilities for Georgia Power Company as we've indicated  
14 for the operation of the Georgia units, and also has a  
15 separate responsibility for Alabama's units.

16 It is not yet a corporate entity and does as I say  
17 operate as in effect a division of The Southern Company.

18 Q. And with respect to the operation of Georgia Power  
19 Company's nuclear plants, Plant Hatch and Plant Vogtle, does  
20 SONOPCO function as a division if you will or department of  
21 Georgia Power Company?

22 A. Yes. It's very similar to our fossil and hydro  
23 plants which are the other type plants we have. We have a  
24 senior officer responsible for the operation of those plants,  
25 and the nuclear organization works basically the same way.

1 Q. Mr. Dahlberg, what was the purpose of establishing  
2 the nuclear operations contract administration group?

3 A. I had talked to Mr. Head about heading up a group  
4 to review what was happening in the nuclear organization. At  
5 that point in time I thought that there would be a contract  
6 in effect between the SONOPCO project and -- or between  
7 SONOPCO and Georgia Power Company, and there would be some  
8 need to administer that contract, to check the performance  
9 under that contract with SONOPCO.

10 Q. Mr. Dahlberg, the contract which you referenced,  
11 that's a contract that would have been executed between  
12 Georgia Power and SONOPCO once SONOPCO was incorporated; is  
13 that right?

14 A. That's correct.

15 Q. In your mind, Mr. Dahlberg, was there any function  
16 for the nuclear operations contract administration group to  
17 perform if SONOPCO had not been approved, had not been  
18 incorporated, and there had been no contract executed between  
19 SONOPCO and Georgia Power Company?

20 A. Well, certainly if there was no contract there  
21 would have been no administration of that contract. In fact,  
22 we don't have a contract today.

23 There could have been some other duties, and that  
24 is just to monitor the performance of nuclear operations and  
25 look at how well the plants are running, costs, and those

1 type things, and in effect the SONOPCO project does that  
2 themselves, and it would have been a duplication of that  
3 function that they now perform.

4 Q. At the time you issued this memorandum at Tab 2 of  
5 Exhibit R-18, when did you expect to receive SEC approval and  
6 to incorporate SONOPCO?

7 A. Well, again I thought it would be a matter of  
8 months.

9 Q. Going now, Mr. Dahlberg, to a point in time in  
10 1989, who was responsible for recommending that the position  
11 of general manager of nuclear operations contract  
12 administration be eliminated?

13 A. I would think it would have been Mr. Evans or  
14 perhaps Mr. Williams.

15 Q. Okay. Do you know the reasons for the decision and  
16 recommendation that the position of general manager be  
17 eliminated?

18 A. Yes. There was not a function to be performed.  
19 There was no contract, and I had determined that the other  
20 things that I saw could be performed by that group, that is a  
21 monitoring of performance wasn't necessary and that SONOPCO  
22 did that themselves.

23 The same thing happens in the fossil and hydro. I  
24 don't have, for example, a separate organization that looks  
25 at the performance of that group, they do it themselves, and

1 A. No, I didn't know he was involved.

2 Q. Did you discuss that with Mr. Evans, Mr. Boren or  
3 Mr. Williams?

4 A. No, sir.

5 Q. To your knowledge, Mr. Dahlberg, was that  
6 contention of Mr. Hobby's a factor in any way in the decision  
7 to eliminate the position of general manager/nuclear  
8 operations contract administration?

9 A. No, sir.

10 Q. Mr. Dahlberg, did Mr. Pat McDonald or Mr. Joe  
11 Farley ever state to you that they wanted Mr. Hobby  
12 terminated?

13 A. No, sir.

14 Q. Did they ever tell you that they wished to see Mr.  
15 Hobby leave the employment of Georgia Power Company?

16 A. No, sir.

17 Q. Were you ever advised that Mr. Hobby or Mr. Head,  
18 George Head, felt that the nuclear operations contract  
19 administration group was not getting sufficient cooperation  
20 from SONOPCO?

21 A. No. The only thing I was aware of is that there  
22 wasn't much information to be worked on, and I think that's  
23 one of the things that led to the elimination of the job,  
24 there just wasn't a function there. That's the only thing I  
25 recall.



1 Q. Did you ever discuss with Mr. George Head his  
2 desire or request to meet with Mr. Pat McDonald to discuss  
3 any problems that nuclear operations contract administration  
4 was having in getting cooperation from SONOPCO?

5 A. I'm sorry, I didn't understand the first part. Was  
6 I aware of --

7 Q. Let me just restate my question.

8 Did you ever discuss with George Head George Head's  
9 request or desire that he meet with Mr. Pat McDonald to  
10 discuss any problem that nuclear operations contract  
11 administration was having in getting cooperation from the  
12 SONOPCO project?

13 A. Not that I recall.

14 Q. Okay. Mr. Dahlberg, did you attend a meeting on  
15 May 5, 1989 with Mr. Grady Baker and Mr. Joe Farley?

16 A. I remember meeting with them some time about then.  
17 I assume that's the date.

18 Q. Okay. What was the purpose of that meeting as you  
19 remember?

20 A. It was a status report on where we were with  
21 negotiations with Oglethorpe I think was the principal  
22 subject.

23 Q. And that is what was discussed principally at the  
24 meeting?

25 A. The best I recall, yes.



1           A.    I'm not sure it would be required. You know, our  
2 original anticipation was that there would be a contract, and  
3 it would be between that corporation and Georgia Power  
4 Company.

5                   There is no corporation, there has been no  
6 contract, but beyond that the real task that I saw being  
7 performed by that group was beyond the administration of the  
8 contract, it was to look at performance, to look at budgets,  
9 to look at those type things, and as a matter of fact it just  
10 wasn't necessary.

11                   When there's a budget review, Mr. McDonald does  
12 that directly, so there's not a need for somebody in the  
13 middle.

14           Q.    Okay.

15           A.    When I look at performance, I get performance  
16 measures from SONOPCO. I don't need somebody else to do the  
17 same thing, so --

18           Q.    Do you all determine --

19                   MR. JOINER: Your Honor, let him finish the answer.

20                   JUDGE WILLIAMS: Wait until he finishes.

21                   THE WITNESS: So in effect there was something in  
22 the middle that just wasn't necessary.

23                   It's no different than the other power plants, the  
24 fossil plants. I have a person who is an officer of Georgia  
25 Power Company who heads up those plants. His organization

1 progressing with regard to the co-owners of Plants Hatch and  
2 Vogtle, and one of those co-owners' objection at the SEC is  
3 why we have not yet gotten approval for the formation of the  
4 subsidiary, and that ongoing negotiation and what to do about  
5 that was a major part of it, and it was my understanding that  
6 and just a general "How is it going?" were the purposes of  
7 the get-together.

8 Q. At that May 5 meeting, Mr. Farley, was there any  
9 discussion of the nuclear operations contract administration  
10 group or of the need for having such a group?

11 A. There was some discussion. It was not a major part  
12 of the dialogue, but there was some discussion of it.

13 Q. And if you will, Mr. Farley, tell the court what  
14 that discussion was.

15 A. The major aspect of it had to do with the proposal  
16 for adding -- and I've forgotten whether one, two, three --  
17 but adding some job authorizations for that group who would  
18 be nuclear engineers or people of that level, and I was asked  
19 what I thought about that, and I expressed my opinion of what  
20 I thought about the desirability or the lack of desirability  
21 of doing that.

22 Q. What was your opinion, Mr. Farley?

23 A. It was my opinion then, and still is that if the  
24 Southern system is to achieve the economies and the  
25 management approach that was desired in the formation of a

1 nuclear organization.

2 Q. And that's because Mr. Dahlberg was just about to  
3 increase Mr. Hobby's staff I think you testified by three  
4 individuals or something, and you had learned about this?

5 A. It was not my understanding that Mr. Dahlberg was  
6 about to increase the staff. It was my understanding that  
7 that was under consideration.

8 I didn't know what Mr. Dahlberg was going to do or  
9 not do, and he didn't indicate to me what he would do or not  
10 do.

11 Q. Okay. So basically the sum and substance of the  
12 discussion was Bill Dahlberg saying to you, Mr. Parley, "Hey,  
13 I'm about to consider expending a lot of resources to get  
14 this contract administration group up and operating," and you  
15 respond saying "Hey, wait, we could do that just as well over  
16 at our side, so why don't we just transfer the function over  
17 to SONOPCO?"

18 A. No, sir, that was not the way the conversation went  
19 at all.

20 Mr. Dahlberg had before him as I understood it a  
21 request from Mr. Hobby for some additional personnel, and Mr.  
22 Dahlberg just asked me what did I think about increasing some  
23 personnel for a group that would interface with Southern  
24 Nuclear, and sort of translate what Southern Nuclear would be  
25 doing to other parts of Georgia Power Company, and my

1 response was that I thought that would lead to -- either be  
2 or would lead to duplication, and if there was a problem we  
3 ought to address the problem rather than just adding more  
4 personnel.

5 Q. And what was the problem?

6 A. I was not aware that there was a problem, and to my  
7 knowledge there wasn't a problem, except I thought there  
8 would be a problem if we set up a duplicating staff to  
9 oversee what another group was doing.

10 Q. So it was basically a duplication of efforts, and  
11 the meeting was to decide either whether SONOPCO was going to  
12 do that or Georgia Power Company, being they were duplicating  
13 each other?

14 A. That was not what the meeting was about. This  
15 subject came up during the course of the discussion, but as I  
16 said earlier I don't think that was the reason for the  
17 meeting.

18 I can't tell you why Mr. Dahlberg asked me to come  
19 by his office for a sandwich. That's some thing he'd have to  
20 tell you, but that was not my understanding of the purpose of  
21 the meeting.

22 Q. Now, you're involved with negotiating contracts on  
23 behalf of SONOPCO; is that correct?

24 A. I am involved among others with some contract  
25 negotiations, including the undertaking to try to work out an

1 that there was a similar contract administration group at  
2 Southern Nuclear that they were reviewing. It was my  
3 understanding that they would review what Southern Nuclear  
4 was doing generally.

5 Q. And what would they be reviewing that you were --?

6 A. I'm not sure.

7 UUDGE WILLIAMS: You've gone over this, Mr. Kohn.  
8 He's testified to it previously.

9 BY MR. KOHN:

10 Q. Is there a rivalry between, a sibling rivalry so to  
11 speak between Alabama and Georgia Power Corporation?

12 A. There is some competitiveness between the four, or  
13 now the five operating companies, certainly there is that.  
14 There's a bit of rivalry that perhaps on some occasions gets  
15 a little more than it should, but I think basically it's  
16 within what would be expected in a large organization between  
17 departments.

18 Q. And do you know who selected the -- do you know who  
19 Mr. Long is?

20 A. There are several Mr. Longs. Which one are you  
21 referring to?

22 Q. The vice president over --

23 A. Lou Long, yes. Mr. Long was more or less a  
24 consensus choice for his job, because in essence he was  
25 already doing the job as a part of Southern Company Services,

1 Q. Was that a somewhat frequent complaint of Mr.  
2 Hobby's?

3 A. Yeah, and it was not unusual because any time  
4 you're starting up a new group you've certainly got to work  
5 out guidelines, and that was the purpose of us trying to work  
6 those out so we would have all these problems worked out  
7 ahead of time.

8 It wasn't that unusual, and in fact we were trying  
9 to make -- I was trying to -- I had gone to Mr. Dahlberg and  
10 talked to him a couple of times about this, and then we had  
11 asked him to -- and I had told him that we were going over  
12 and, Mr. Hobby and myself were going over and sit down with  
13 Mr. McDonald and see where our problems were and try to work  
14 these problems out.

15 Q. You told that to Mr. Dahlberg?

16 A. Yes.

17 Q. And when did that conversation occur?

18 A. That occurred during one of these periods of time  
19 when we had talked about problems we had had. It was prior  
20 to this memo being written.

21 Q. Okay. Did you have an occasion to go to talk to  
22 Mr. McDonald about these problems?

23 A. No. When I had talked to Mr. Dahlberg, he asked  
24 that we wait before we go over and talk to Mr. McDonald,  
25 because he was going over and have a meeting with Mr. Farley



1 Q. And in every conversation you had with Mr. Dahlberg  
2 prior to leaving, he was supportive of your efforts at  
3 nuclear operations contract administration?

4 A. Yes.

5 Q. And he wanted that group to be a success; correct?

6 A. Certainly.

7 Q. And as far as you knew, you left on April 28th with  
8 Dahlberg wanting the group to be a success, you having signed  
9 a memo stating that "Look, these are the problems, and if  
10 you want my group to be a success you've got to clean out  
11 this foliage and let Marvin do his job," correct? That's  
12 basically where you left it?

13 A. No, I did not give that memo to Dahlberg. We gave  
14 that memo to Fred, since Fred was doing -- Fred Williams was  
15 doing the negotiating with them we thought he would be the  
16 proper place for Marvin to work with Fred and work these  
17 problems out.

18 Q. Right. But you had already arranged that with Mr.  
19 Dahlberg --

20 A. No, I didn't arrange anything with Mr. Dahlberg. I  
21 had talked to Mr. Dahlberg that we were going over and sit  
22 down and talk to Mr. McDonald about some of our  
23 communications problems.

24 Q. And then this April 27th memo was written with your  
25 understanding, your personal understanding that Fred Williams

1 SONOPCO, and they were concerned, and we had a contract with  
2 them and we were trying to allay their fears that -- when it  
3 originally started we were trying to allay their fears that  
4 we were still going to look after their interest and our  
5 interest even though we were contracting a third party to  
6 operate our plant.

7 Q. Okay. And the nuclear operations contract  
8 administration's role was to interface with Oglethorpe and  
9 provide them data and performance information they wanted;  
10 correct? That was Marvin's role? Marvin was doing that  
11 before he took the job?

12 A. That's right, because we were operating the plant  
13 for them. He was doing that before he took the job, and we  
14 assumed that's the way we would operate afterwards when the  
15 contract was established.

16 Q. Now, the information that the SONOPCO people, the  
17 cooperation problem --

18 Well, for instance, you mentioned Mike Barker not  
19 being able to talk to Oglethorpe, that had nothing to do with  
20 a contract because that was on Marvin's other side of his  
21 responsibilities, his responsibility with the joint owners  
22 and Georgia Power Company -- correct? -- and so -- do you see  
23 what I'm trying to get at?

24 A. No, I really don't see what you're trying to get  
25 at.



1           Because of the lack of information with Georgia  
2 Power about the day to today operations of those plants, a  
3 question arose in my mind is: Perhaps Georgia Power is, in  
4 fact, not in charge of the plants because at least, based  
5 on my communications with Mr. Hobby and his people, they  
6 certainly didn't seem to be very knowledgeable about what  
7 was going on.

8           So the question arose: Is Georgia Power really  
9 in charge of the nuclear plants? Are they exercising  
10 their license responsibility?

11           That and some statements that were made by Mr.  
12 Farley at various times to the employees at the nuclear  
13 plants, statements that were made in various Sonopco  
14 publications regarding Mr. Farley's duties.

15           A question came out in my mind who really is in  
16 charge. It has to do with this triple headed  
17 organization. If you look at that organization, the upper  
18 managing -- Mr. McDonald, Mr. Harrison, Mr. Beckham, Mr.  
19 McCoy, I believe, and John Meier are all triple headed.  
20 They are --

21           Q     What do you mean by triple headed?

22           A     They are employed as Georgia Power, Sonopco and  
23 Alabama Power which means that they work for all three  
24 companies simultaneously. That is a very difficult  
25 situation to be put in. It is very hard to make that

1 work, in fact.

2           The issue and question here is Mr. Dahlberg, who  
3 is CEO of Georgia Power, really have direct control over  
4 Mr. McDonald who wears three hats who has control over Mr.  
5 Harrison who wears three hats who has control over Mr.  
6 Beckham and Mr. Farley, et cetera.

7           Or at any given time, who really is in charge of  
8 the nuclear plants? Is there a direct chain of command to  
9 Mr. Dahlberg. That was the question that came up in my  
10 mind because I have a responsibility for looking after my  
11 company's interest and I wanted to ensure that the  
12 arrangement that we were operating with was, in fact,  
13 legal and that the NRC agreed that it was legal. So I  
14 raised the issue.

15           Q     Who did you raise it with at Georgia Power?

16           A     Mr. Marvin Hobby.

17           Q     How many times did you bring it to Mr. Hobby's  
18 attention?

19           A     Several times. I don't know exactly how many  
20 times.

21           Q     What was Mr. Hobby's response?

22           A     He was noncommittal.

23           Q     What do you mean by noncommittal?

24           A     He basically heard me and made no comments about  
25 whether he agreed or disagreed. Essentially, he told me

1 that he would refer it to his management or gave me no  
2 answer at all.

3 Q This concern regarding reporting structure, does  
4 it in any way relate to the licenses held by Georgia Power  
5 Company to operate its nuclear facilities?

6 A I have already said that that is the issue here.  
7 The licensee, the operating agent, has the responsibility  
8 of managing the plant and having a direct line and chain  
9 of authority from the CEO to the plant manager, at least.  
10 That is the issue and that is the responsibility of the  
11 license holder -- a legal requirement, as I understand it.

12 Q What percent ownership does Oglethorpe have in  
13 the Georgia Power?

14 A We have about a \$4 billion investment, 3 percent  
15 in each of the four nuclear units.

16 Q Why did you raise the -- What led you to raise  
17 the concern to Mr. Hobby?

18 JUDGE WILLIAMS: I believe that has already been  
19 answered.

20 THE WITNESS: I believe I have answered that  
21 one.

22 BY MR. KOHN:

23 Q Are you aware of whether anyone at the Nuclear  
24 Regulatory Commission ever mentioned in your presence a  
25 similar concern over the reporting structure?

1 A Yes, I am.

2 Q Can you tell me what occurred?

3 A One evening after work, several of my associates  
4 and I were at the Bradbury Hotel in Tucker, Georgia. By  
5 chance, John Rogge who is the chief resident inspector at  
6 the Vogel nuclear plant happened to be staying there  
7 attending some type of NRC project. We were having a  
8 drink together essentially. John Rogge made the comment  
9 to no one in particular but to our group that the NRC was  
10 having trouble figuring out who was in charge at Plant  
11 Vogel, I assumed.

12 Q How did the people in your group respond?

13 A We changed the subject. We didn't respond to  
14 that comment.

15 Q Did you ever make a formal request to Mr. Hobby  
16 for an answer as to reporting chain at Georgia Power  
17 Company?

18 A Yes, I did.

19 Q When did you do that?

20 A I don't know the exact date. It was --

21 Q Where did you do it?

22 A I did it via the joint sub-committee for power  
23 generation which is an appropriate thing to do through  
24 that sub-committee.

25 Q Would you turn to Exhibit 19 in front of your?

1 Can you tell me what that document purports to be?

2 A Well, it purports to be a memo from Marvin Hobby  
3 to Fred Williams, basically informing Fred that I had  
4 formally requested certain information about the  
5 organization and reporting chain up through the --  
6 essentially the board of directors for Sonopco, and  
7 specifically for how Mr. Farley fit into the operation.

8 Q I notice in that document, I believe, that it  
9 looks to be a quotation of yours. Does that seem to  
10 accurately reflect what you have stated at the sub-  
11 committee meeting?

12 A That is accurate. Yes.

13 Q Do you recall -- Did Mr. Hobby give you an  
14 immediate answer when you made your request at the sub-  
15 committee?

16 A No, he did not.

17 Q Did you ever get an answer?

18 A Yes, I did, approximately one month later which  
19 was the next meeting of the joint sub-committee. I did  
20 not receive that answer. My representative, Mr. Dave  
21 Self, was given that answer. He was there representing me  
22 at that meeting.

23 Q Would you please turn to Exhibit 21? The  
24 Exhibit is -- there isn't much testimony about it. It is  
25 a confidential memo from Mr. Hobby to Mr. Williams. Can

1 from Sonopco project working on an alternative performance  
2 indicator. And, therefore, we would not be allowed to go  
3 back over to Georgia and work with Georgia Power on that.

4

5 From that point on, Georgia Power personnel in  
6 Atlanta came to Birmingham to work with us.

7 Q So the work went on, right?

8 A The work did go on. As far as our working on  
9 the performance indicator.

10 Q But the question was whether the work was to  
11 occur in Birmingham or was to occur in Atlanta?

12 A But the difference was in Birmingham, our orders  
13 were strictly to work on saying that we would not agree to  
14 a performance indicator. Not that we could work on an  
15 alternative to a performance indicator. So our scope of  
16 direction changed.

17 Q You say your -- You say "our order"?

18 A My orders.

19 Q You mean your orders?

20 A When I say "our," at the beginning, in July,  
21 both on the fifth and on the 18th, when we went to Georgia  
22 Power and had meetings, I say our because there was an  
23 engineer from the Hatch project, Ed Hicks, and myself,  
24 from the Vogel project. And we, Ed and I, were sent over  
25 to these meetings and gained certain direction. And were,

1 quote, the technical experts from Sonopco project, to  
2 Georgia Power to work on this. We, Ed and I, were also  
3 the ones that were giving the orders in Birmingham to turn  
4 and not work on an alternative performance standard  
5 anymore. That we could not go back to Georgia Power and  
6 work.

7 Q And when did you receive that direction?

8 A That was after a meeting that we had around -- I  
9 want to say like August 5th, where counsel for Georgia  
10 Power, Mr. Lamberski, and, I believe, Mr. Domby; came over  
11 and spoke to Mr. McDonald. And then we had a big meeting  
12 where several people were in attendance, myself, two vice  
13 presidents for the project, for each project.

14 Mr. McCrary, the vice president of Adman, Mr. McDonald,  
15 etcetera. Our orders were changed then to no longer work  
16 on an alternative to performance standards, but that we  
17 would work to fight against performance standards. And  
18 that was our new direction.

19 Q Okay. Now let me see if I can clarify this by  
20 asking a few questions. You started working on  
21 performance standards in July of 1989, right?

22 A Correct.

23 Q And you and Mr. Hicks worked on that together,  
24 right?

25 A Correct.



1           Q     Now, did you ever review any documents or other  
2 material which demonstrated to you that Georgia Power  
3 Company's president, Mr. Dahlberg's position, was to go  
4 forward with preparing testimony on an alternate  
5 performance standard and that Mr. McDonald -- and that  
6 after you knew what Mr. Dahlberg's position on it was, you  
7 were still instructed by Mr. McDonald not to go forward  
8 with working in that area?

9           A     Could you ask that again, please.

10          Q     Yes. Did there come a point where you knew that  
11 what Mr. Dahlberg's position was with relation to  
12 preparing testimony on an alternate performance standard  
13 and that after you had knowledge of what Mr. Dahlberg's  
14 position of it was, that you were still instructed by  
15 Mr. McDonald not to work on that testimony?

16          A     That is correct.

17          Q     Last question I have is on the microfiche  
18 incident. The microfiche was not boxed up, is that  
19 correct?

20          A     That is correct.

21          Q     The microfiche was not sent back to INPO,  
22 correct?

23          A     Correct. Because it had other Georgia Power  
24 documents on it.

25          Q     And was there a belabor process in which the



## **EXHIBIT 32**



DATE: September 15, 1989  
FROM: M. T. Brown, Jr.  
RE: GPC Rate Case Testimony  
TO: Mr. J. M. Farley  
Mr. R. P. McDonald  
Mr. W. G. Hairston  
Mr. J. T. Beckham  
Mr. L. B. Long  
Mr. C. K. McCoy  
Mr. C. D. McCrary  
Mr. R. M. Gilbert

Attached for your information is the first draft of the major elements of the proposed performance standards. Please note that Item 4 will be changed to include the comparison plants submitted by the project VP's.

The attorneys have requested that we submit our comments by 4:30 today.

If you have any questions, please let me know.

*Merv*

lt

Attachment

cc: Mr. T. S. Marvin ✓  
Mr. S. E. DeWitt  
Ms. M. J. Childs



DATE: September 15, 1989  
FROM: M. T. Brown, Jr.  
RE: GPC Rate Case Testimony  
TO: Mr. J. M. Farley  
Mr. R. P. McDonald  
Mr. W. G. Hairston  
Mr. J. T. Beckham  
Mr. L. B. Long  
Mr. C. K. McCoy  
Mr. C. D. McCrary  
Mr. R. M. Gilbert  
Mr. W. B. Shipman  
Mr. D. M. Crowe  
Mr. M. J. Amick  
Mr. M. D. Barker  
Mr. E. D. Hicks  
Mr. M. K. Tate

Attached for your information is a copy of Thursday's transcript of comments by Commissioners Lovett and Andrews regarding performance standards.

If you have any questions, please let me know.

*Merv*

1t

Attachment

DATE: September 19, 1989  
FROM: M. T. Brown, Jr.  
RE: GPC Rate Case  
Proposed Performance Standards  
TO: Mr. J. M. Farley  
Mr. R. P. McDonald  
Mr. W. G. Hairston  
Mr. J. T. Beckham  
Mr. L. B. Long  
Mr. C. K. McCoy  
Mr. C. D. McCrary  
Mr. R. M. Gilbert  
Mr. W. B. Shipman  
Mr. D. M. Crowe  
Mr. E. F. Cobb  
Mr. M. D. Barker  
Mr. E. D. Hicks  
Mr. P. H. Wells

Attached is Georgia Power Company's recommendations for changes to the major elements of GDS's proposed performance standards. These will be submitted to the Georgia Public Service Commission for consideration during deliberation of the rate case.

If you have any questions or comments, please let me know.

*Mew*

It

Attachment

cc: Mr. T. S. Marvin  
Mr. S. E. DeWitt  
Ms. M. J. Childs