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USNRC
October 31, 1994UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 NOV -2 P4:09

Before the Atomic Safety and Licensing BoardOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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 Nuclear)
(Vogtle Electric Generating Plant,)	
Units 1 and 2)	)	ASLBP No. 93-671-01-OLA-3

GEORGIA POWER COMPANY'S
MOTION FOR ISSUANCE OF SUBPOENA

Pursuant to 10 C.F.R. § 2.720, Georgia Power Company (GPC) moves the Licensing Board to issue a subpoena for the deposition of Ben Hayes. A subpoena is appended for signature.

The Board has previously ruled that this deposition is essential and may be conducted. Memorandum and Order (Sept. 19, 1994) at 4-5. Counsel for GPC has contacted Mr. Hayes, who has requested a subpoena. Counsel for GPC has asked Mr. Hayes to identify a date that would not be inconvenient, but Mr. Hayes has not responded. See letter from D. Lewis to B. Hayes (Oct. 25, 1994), attached hereto. GPC remains willing to accommodate Mr. Hayes' schedule, as reflected in the appended subpoena.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



 David R. Lewis
 Counsel for Georgia Power Company

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SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N STREET, N.W.
WASHINGTON, D.C. 20037-1128
(202) 663-8000
FACSIMILE
(202) 663-8007

DAVID R. LEWIS
(202) 663-8474

October 25, 1994

By Federal Express

Mr. Ben Hayes
15 Foxfire Drive
Ashville, NC 28883

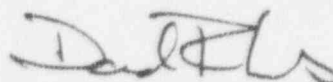
In the Matter of
Georgia Power Company
(Vogtle Electric Generating Plant, Units 1 and 2)
Docket Nos. 50-424-OLA-3 and 50-425-OLA-3

Dear Mr. Hayes:

I spoke with you by telephone on October 6 to arrange a deposition in the Georgia Power Company license transfer case, and I understood that you would call me back with a date that would be convenient to you. Despite leaving another message on your answering machine, I have not heard back from you. I would still very much like to chose a date that does not inconvenience you or your family, but because of our hearing schedule, I cannot continue to wait. Therefore, unless I hear from you by Friday, October 28, I will proceed to schedule the deposition for Tuesday, November 15 (in Atlanta, as you requested) and include that date in a subpoena from the Licensing Board.

Again, I would very much like to minimize any inconvenience and would be willing to agree to another reasonable date if possible. If there is a better date, please let me know. If you cannot reach me, please call Ernie Blake at 202-663-8084.

Sincerely,



David R. Lewis

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October 31, 1994

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NUCLEAR REGULATORY COMMISSION

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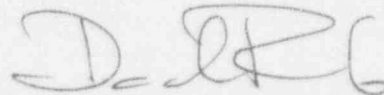
Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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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 Nuclear)
(Vogtle Electric Generating Plant,)	
Units 1 and 2)	)	ASLBP No. 93-671-01-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of "Georgia Power Company's Motion for Issuance of Subpoena," dated October 31, 1994, were served upon the persons listed on the attached service list by deposit in the U.S. Mail, first class, postage prepaid, or where indicated by an asterisk by hand delivery, this 31st day of October, 1994.



David R. Lewis
Counsel for Georgia Power Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

SERVICE LIST

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

Director,
Environmental Protection Division
Department of Natural Resources
205 Butler Street, S.E., Suite 1252
Atlanta, Georgia 30334

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
933 Green Point Drive
Oyster Point
Sunset Beach, N.C. 28468

Stewart D. Ebnetter
Regional Administrator, Region II
U.S. Nuclear Regulatory Commission
101 Marietta Street, N.W., Suite 2900
Atlanta, Georgia 30303

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

Office of the Secretary
Att'n: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

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

Mitzi A. Young, Esq.
Charles Barth, Esq.
John T. Hull, Esq.
Office of the General Counsel
One White Flint North
Stop 15B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Carolyn F. Evans, Esq.
U.S. Nuclear Regulatory Commission
101 Marietta Street, N.W., Suite 2900
Atlanta, Georgia 30323-0199

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges

Feter B. Bloch, Chair

Dr. James H. Carpenter

Thomas D. Murphy

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 Nuclear)
(Vogtle Electric Generating Plant,)	
Units 1 and 2)	)	ASLBP No. 93-671-01-OLA-3

SUBPOENA

In accordance with section 161(c) of the Atomic Energy Act, 42 U.S.C § 2201(c), and 10 C.F.R. § 2.720, Ben Hayes is hereby ordered to attend and give testimony at deposition upon oral examination by counsel for Georgia Power Company in the above captioned proceeding. The deposition will be held on November 15, 1994, beginning at 9:00 a.m., at the offices of Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, N.E., Atlanta, Georgia 30308-2216, or at such other mutually convenient time and location as may be agreed to prior to this date. The deposition will be conducted before a Notary Public and transcribed. Ben Hayes is further ordered to produce at the deposition all notes, memoranda, files, and other documents in his possession, custody or control relating to Mr. Allen Mosbaugh, allegations made by Mr. Mosbaugh and addressed in OI Report on Case No. 2-90-020R, or investigations of, inquiry into, or evaluation of such allegations.

On motion made promptly, and in any event received on or before November 10, 1994, and on notice delivered to Georgia Power Company on or before that date, this Atomic Safety and Licensing Board (or if the Licensing Board is unavailable, the Commission) may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter or issue, or (2) condition denial of the motion on just and reasonable terms. A copy of an order relating to the scope of this proceeding is attached.

IT IS SO ORDERED.

Peter B. Bloch, Chair

Dated at Rockville, Maryland
this ____ day of _____, 1994

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LBP-94-15

OFFICE OF SECRETARY
DOCKETING & SERVICE May 23, 1994
BRANCH

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

SERVED MAY 24 1994

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)

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

MEMORANDUM AND ORDER
(Scope of Proceeding)

Today we received by facsimile transmission a letter from Georgia Power containing what we interpret to be a motion to limit the scope of scheduled depositions in accordance with prior rulings of this Board. We have decided to deny Georgia Power's motion without waiting for a response. Our ruling is relevant to depositions scheduled during the next two days and must, therefore, be made promptly.

The Georgia Power motion is based on a ruling of the Board that predated the issuance to Georgia Power of a Notice of Violation and Proposed Imposition of Civil

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Penalties on May 9, 1994 (NOV).¹ The motion argues, primarily, that three aspects of the NOV were not mentioned in this proceeding and may not be raised as issues. The issues sought to be excluded from this case are: (1) the accuracy and completeness of a Georgia Power statement in June 29, 1990 letter to the NRC concerning GPC's April 9 letter and April 19 LER, (2) the accuracy and completeness of a Georgia Power statement in an August 30, 1990 letter to NRC concerning Georgia Power's April 9 letter to NRC, and (3) the issue of air quality (high dew point readings) that might affect the starting of the Vogtle diesel generators.

The NOV was based on an extensive investigation conducted by the Office of Investigations of the Nuclear Regulatory Commission.² The matters contained in the NOV also were considered by the Vogtle Coordinating Group, which was comprised of NRC Staff members selected for their expertise in evaluating these charges.³

We note that our earlier order,⁴ which placed some limitations on the scope of this case, delineated the scope of Phase I of this proceeding. At the time, we were aware that it might later be appropriate to expand the scope into

¹Docket No. 50-424, License No. NPF-68, EA 93-304.

²The investigation was completed December 20, 1993, and was released to the public simultaneously with issuance of the NOV. (Case No. 2-90-020R).

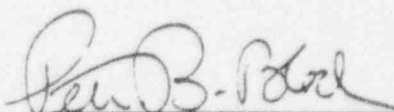
³February 9, 1994, released simultaneously with the NOV.

⁴LBP-93-21, 38 NRC 143 (September 24, 1993).

a Phase II proceeding. Without even considering whether the prior limitations did or did not pertain to the matters raised by Georgia Power, we have determined that it is necessary to include all the matters in the NOV in the scope of this proceeding. We are hearing an allegation that SONOPCO lacks the character and competence to run a nuclear power plant. We do not know, at this time, whether the allegations in the NOV are valid. However, we have examined extensive documentation that suggests that they have been carefully considered. Hence, the allegations of the NOV are relevant and important to the pending contention. To exclude any of those allegations would be to have an inadequate record, compiled with blinders that would keep us from examining a portion of the relevant facts. This we shall not do.

All the allegations in the NOV are relevant to this case. IT IS SO ORDERED.⁵

FOR THE ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch
Chair

Bethesda, Maryland

⁵Motions for reconsideration may be filed within ten days. However, this ruling shall apply during the pending depositions.