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May 24, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

95 MAY 25 P2:01

Before the Atomic Safety and Licensing Board

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

MOTION BY GEORGIA POWER COMPANY,
CHARLES L. COURSEY, MICHAEL L. HOBBS, AND R.P. McDONALD
TO QUASH THE SUBPOENAS OF
CHARLES L. COURSEY, MICHAEL L. HOBBS, AND R.P. McDONALD

I. Introduction

Pursuant to 10 C.F.R. § 2.720(f), Georgia Power Company ("Georgia Power"), Charles L. Coursey, Michael L. Hobbs, and R.P. McDonald move to quash the subpoenas issued on behalf of Intervenor on April 5, 1995, for the appearances and testimony of Messrs. Coursey, Hobbs, and McDonald.^{1/} These subpoenas should be quashed because they are unreasonable. They seek the presence of witnesses in order to elicit testimony on matters of which the subpoenaed individuals have no personal knowledge. They also seek testimony on areas previously ruled to be irrelevant by the Board. In addition, none of the subpoenas have been properly served because no witness fees were included.

^{1/} Messrs. Coursey, Hobbs, and McDonald have requested counsel for Georgia Power to submit this Motion on their behalf. Georgia Power also submits this Motion on its own behalf, as an employer and as a party that would be adversely affected by the unnecessary and immaterial testimony sought by Intervenor.

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Specifically, the subpoena to Mr. Coursey should be quashed because, as far as Georgia Power can determine, Intervenor wishes to elicit vague hearsay testimony concerning water in the diesel air system. Mr. Coursey has no personal knowledge on this topic -- indeed, even his recollection of hearsay statements is vague. His testimony on this subject would therefore have no probative value. The subpoena to Mr. Hobbs should similarly be quashed because he has no personal knowledge of the pertinent facts of this case. The subpoena to Mr. McDonald should be quashed because he has little firsthand knowledge of the underlying facts of this case. Any testimony that is sought from Mr. McDonald would merely be cumulative of testimony that has been and will be given by other Georgia Power witnesses. Accordingly, his subpoena should also be quashed.

II. The Subpoenas are Unreasonable

The Commission's Rules of Practice, at 10 C.F.R. § 2.720(f) authorizes the Licensing Board to quash any subpoena that is unreasonable, or requires evidence not relevant to any matter in issue. In addition, the Board also has the power "to limit the number of witnesses whose testimony may be cumulative," and "to strike argumentative, repetitious, cumulative, or irrelevant evidence." 10 C.F.R. § 2.757(a), (b). See also 10 C.F.R. § 2.718; Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452 (1981). The Board Chairman has expressed "frustration" that this proceeding has not "run effectively and efficiently." He specifically asked "[i]f the parties can figure [it] out, I would be willing to go with the plan." Hearing Tr., May 19, 1995, at 4542. This is such an opportunity to bring

discipline to the proceeding. The Board should quash each of the three subpoenas for the reasons specified below.

Subpoena to Charles L. Coursey

Mr. Coursey was apparently subpoenaed by Intervenor to testify on alleged moisture in the Vogtle diesel air system.^{2/} We surmise that Intervenor seeks to introduce Mr. Coursey's testimony that he heard "there was some moisture drained out of one of the lines." Deposition of Charles L. Coursey, July 20, 1994, at 9. As can be seen from the transcript of his July 20, 1994 deposition, Mr. Coursey's testimony on alleged findings of moisture in air lines is hardly probative of the issues in this case.^{3/}

Mr. Coursey could not identify when the alleged moisture drainage occurred, or even how he heard about it. He also testified that he had no personal knowledge concerning a jar of fluid collected from a trip line. *Id.* at 10. Mr. Coursey's testimony concerning alleged moisture drainage is not based on personal knowledge. See Fed. R. Evid. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter"). This testimony has no probative value, and is unreliable because it is based on unidentified hearsay, which the Board has already ruled

^{2/}Intervenor's Motion for Issuance of Subpoenas Regarding GPC Witnesses, Apr. 3, 1995 at 8 (Coursey items a-f).

^{3/}Pages 9-10 of the Coursey Deposition are attached hereto (Attachment 1). This deposition transcript has not been reviewed by the witness for its accuracy; indeed, Intervenor failed to produce the transcript in time for its use during this hearing. Georgia Power submits this portion of the transcript only to illustrate the lack of probative value that would be provided by Mr. Coursey's testimony.

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inadmissible.^{4/} See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-367, 5 NRC 92, 121 (1977) (hearsay evidence must be reliable); see also Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-86-12, 23 NRC 414, 419 (1986).

Intervenor also states that he wishes to question Mr. Coursey, as well as Mr. Hobbs, on alleged false statements in the Georgia Power July 31, 1994 response to the NRC's Notice of Violation. Intervenor's Motion for Subpoenas at 8, 13. This assertion is vague to the point of being meaningless. Based on Intervenor's deposition of Mr. Coursey, Georgia Power is unaware of any topic other than air quality that Mr. Coursey can provide testimony on. There is no evidence that either Mr. Coursey or Mr. Hobbs had any role in preparation of the July 31, 1994 response to the NOV. There is no reason for their testimony on this issue, which would lack personal knowledge and merely cause delay in the proceeding.

In addition, Intervenor seeks to question Mr. Coursey on "[f]ailing to recognize conditions adverse to quality and take appropriate corrective actions for the root cause of the diesel failures during the site area emergency." Intervenor's Motion for Subpoenas at 8 (emphasis added). Intervenor's request to admit root cause testimony was rejected by the Board. Memorandum and Order (Motion to Strike Mosbaugh Testimony), May 11, 1995 at 21-22. Accordingly, Intervenor should not now be permitted to seek additional testimony on root cause issues.

^{4/}Memorandum and Order (Motion to Strike Mosbaugh Testimony), May 11, 1995, at 14 ("If the identity of the speaker is not revealed, it is not subject to appropriate cross-examination").

Subpoena to Michael L. Hobbs

Like Mr. Coursey, Mr. Hobbs lacks personal knowledge of the pertinent facts at issue in this proceeding. For example, he testified in his deposition that he was not involved in looking at diesel generators after the site area emergency; he could not recall whether there was an increase in frequency of dew point readings after the SAE; he could not recall any communications with Mr. Bockhold after the SAE concerning higher than expected dewpoint readings; and could not recall any problems with dewpoint test equipment. Deposition of Michael Hobbs, Aug. 4, 1994, at 4-5, 18, 27.^{5/} Even this last point (knowledge of problems with test equipment) has no probative value, because Mr. Hobbs was on temporary assignment during the 1990 outage at Plant Vogtle and was not involved in any dewpoint measurement at that time.^{6/} Mr. Hobbs' testimony is not probative of any issue in this proceeding.

Subpoena to R.P. McDonald

The subpoena to Mr. McDonald, a retired Georgia Power executive, should be quashed because he has little personal knowledge of the facts at issue in this proceeding, and any testimony provided by Mr. McDonald would be cumulative and repetitive of testimony provided by other Georgia Power witnesses. For example, Intervenor seeks Mr. McDonald's

^{5/}Pages 4-5, 18, and 27 of the Hobbs Deposition are attached hereto (Attachment 2). Like the Coursey deposition transcript, this deposition transcript has not been reviewed by the witness for its accuracy because Intervenor failed to produce the transcript in time for its use during this hearing. Georgia Power submits the portions of this transcript only to illustrate the lack of probative value that would be provided by Mr. Hobbs' testimony.

^{6/}See Georgia Power Company's Third Supplemental Response to Allen L. Mosbaugh's Third Set of Interrogatories and Request for Documents, Aug. 8, 1994 at 2 n.3 ("Mr. Hobbs, who was the Vogtle I&C Superintendent, assumed a temporary role within another Maintenance Department group from February 1990 through the end of 1990. Mr. Mark Briney, who is no longer a GPC employee, acted as the I&C Superintendent during this period").

testimony on the April 9, 1990 presentation to the NRC and on the April 9, 1990 letter to the NRC. Intervenor's Motion for Subpoenas at 18 items a-b, e. Mr. McDonald was not involved in either activity. His involvement in the April 19, 1990 LER was minimal, and did not include any involvement in the diesel start issue.

Mr. McDonald also has little personal knowledge of the real events at issue in this proceeding. While he signed the 2.206 response letter, he did so on the basis of representations by Georgia Power officials that the information therein was correct, not on the basis of personal knowledge. The root cause testimony sought from Mr. McDonald (Intervenor's Motion for Subpoenas at 19 items n and p) were previously ruled by the Board to be inadmissible in this proceeding. Memorandum and Order (Motion to Strike Mosbaugh Testimony), May 11, 1995 at 21-22. The testimony sought from Mr. McDonald concerning information provided in a Section 211 Department of Labor proceeding (Intervenor's Motion for Subpoena at 19 item i) is irrelevant to this proceeding. See Memorandum and Order (Motion to Strike) at 10 (striking testimony related to Section 211 Department of Labor proceeding).

With respect to the other subjects on which Intervenor seeks testimony, other Georgia Power witnesses with personal knowledge of the facts have already testified or will testify on these matters. Such topics include LER 90-006, and responses to OSI. Mr. McDonald's testimony on these matters will be repetitious and cumulative. It is difficult to imagine the need for four hours of testimony from Mr. McDonald^{2/} given his lack of knowledge of the facts at issue in this proceeding. The subpoena to Mr. McDonald should be quashed.

^{2/}Intervenor's Preliminary Phase II Witness Schedule, May 19, 1995, at 1.

III. The Subpoenas Have Not Been Properly Served

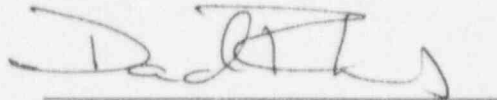
The subpoenas should also be quashed because they have not been properly served. Under 10 C.F.R. § 2.720(c), service of a subpoena must be made by tendering the fees for one days attendance and mileage. None of Intervenor's subpoenas have been properly served because Intervenor failed to tender the requisite fees,^{8/} in direct contravention of 10 C.F.R. § 2.720(c). This provision is taken verbatim from Fed. R. Civ. P. 45(b)(1), which has also been construed as requiring the simultaneous tendering of the fees. Subpoenas tendered without such fees are invalid. CF&I Steel Corp. v. Mitsui & Co., Inc., 713 F.2d 494, 496 (9th Cir. 1983); Long v. United States, 1990 U.S. Dist. LEXIS 4180 (D. Colo. April 5, 1990); 5A Moore's Federal Practice Digest, ¶ 45.06[1] (2d ed. 1994); 9 C. Wright & A. Miller, Federal Practice and Procedure § 2461 (1971).

^{8/}Georgia Power's counsel have discussed this topic with Mr. Mosbaugh's counsel a number of times. As of Monday, May 22, counsel for Mr. Mosbaugh confirmed that he would provide witness fees. Counsel for Georgia Power agreed not to require mileage fees until mileages have actually been established. No checks have been received.

IV. Conclusion

For all of the reasons stated above, the subpoenas for Charles L. Coursey, Michael L. Hobbs, and R.P. McDonald should be quashed.

Respectfully submitted,



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Dated: May 24, 1995

UNITED STATES OF AMERICA
ATOMIC SAFETY & LICENSING BOARD

In the Matter of:

GEORGIA POWER COMPANY

DOCKET NOS.:

50-424-OLA-3

50-425-OLA-3

Wednesday, July 20, 1994

Deposition of:

CHARLES LOUIS COURSEY

called for examination and testified as follows:

[TRANSCRIPTION FROM STENOGRAPHIC NOTES PROVIDED
BY THE CLIENT.]

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WASHINGTON, D.C. 20006

1 A. No, sir.

2 Q. Or after the March 12th incident?

3 A. No, sir.

4 Q. Did you ever hear, or know, that fluid had
5 been drained out of one of the trip lines of the diesel?

6 A. Yes, there was some moisture drained out of
7 one of the lines.

8 Q. Do you recall when that occurred?

9 A. No, sir.

10 Q. Do you recall how you heard about it?

11 A. No, sir. I just don't know that date or who
12 told me or what occurred, but I remember we found
13 moisture problems in some of the air lines.

14 Q. Are you referring to the trip lines?

15 A. Yes.

16 Q. Did you also hear of any moisture problems
17 with the air start system?

18 A. Yes.

19 Q. And that's not in relation to March 12th;
20 that's in the last nine (phonetic) years? Do you recall
21 whether this was in the March 12th report or not?

22 Do you remember an air start moisture problem

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1 with respect to the air start celnoid having a flaw?

2 A. No, sir. I don't remember that.

3 Q. Did you, on occasion, ever happen to observe a
4 jar of water, or fluid, from a trip line having been
5 collected?

6 A. No, sir.

7 (Off the record discussion.)

8 (A short break was taken.)

9 MR. KOHN: No further questions from me.

10 (The deposition ended at 4:10 p.m.)

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WASHINGTON, D. C. 20005

UNITED STATES OF AMERICA

NUCLEAR REGULATORY

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

DEPOSITION

IN THE MATTER OF:

GEORGIA POWER COMPANY

Vogtle Electric Generating

Plant, Unit 1 and Unit 2

Docket No.

50-424-OLA-3;

50-425-OLA-3

Friday

August 4, 1994

DEPOSITION OF:

MICHAEL HOBBS

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Q. Does that {PROER} (process?) have a plant
2 dock number? Do you know what I am referring to?

3 A. You have the WOFA (standards) standards
4 checklist number. And I don't recall that number.

5 Q. And who would you fill out the checklist?

6 A. The technician performing the task.

7 Q. And those technicians would then be
8 reporting to you?

9 A. Uh-huh (phonetic).

10 Q. Did all the I and CH (phonetic)
11 technicians report to you?

12 A. Yes.

13 Q. There was any increase in the frequency
14 of dew point readings after the site air emergency?

15 A. I don't recall.

16 Q. Were you involved with looking at diesel
17 generators after the site air emergency?

18 A. No, not to my recollection.

19 Q. Did the I and CH (phonetic) technicians
20 perform additional dew point readings after the
21 site air emergency?

22 A. I don't recall. In addition to what?

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WASHINGTON, D.C. 20005

1 Q. To the normal PM program.

2 A. I don't recall.

3 Q. Now, if a high dew point was obtained,
4 was there a process you would use to determine
5 whether the reading was accurate?

6 GEORGIA POWER: Is this now before or
7 after or any time?

8 MR. KOHN: Well, let's start with before
9 the site air emergency.

10 THE WITNESS: Restate your question.

11 BY MR. KOHN:

12 Q. Okay. Is the dew point requirement that
13 the air receivers have 50 degrees or lower degrees
14 Fahrenheit dew point? Are you aware of that?

15 A. Uh-huh (phonetic).

16 Q. Okay. If a dew point reading was above
17 50 degrees out of specification, what steps would
18 do to determined that the test dew point was valid?

19 A. (No response.)

20 Q. If there are additional steps that you
21 take. I don't mean to imply that you are --

22 A. There are no additional steps to take to

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WASHINGTON, D.C. 20005

1 Q. So if I understand it then, you would
2 learn about a higher than expected dew point
3 reading from your technicians directly?

4 A. Uh-huh (phonetic).

5 Q. And then Mr. Stokes would also learn from
6 the same technician?

7 A. That's the way the program was intended.

8 Q. Okay. And you have no recollection of
9 any communications with Mr. Bokhold (phonetic)
10 after the site air emergency concerning higher than
11 expected dew point readings?

12 A. I don't have any recollection of that,
13 no.

14 Q. Do you have a recollection of any
15 conversations with anyone in -- after the site air
16 emergency, within a month or two after the site air
17 emergency of any conversations with anyone about
18 higher than expected dew point readings other than
19 your technician?

20 A. Yes.

21 Q. Who was that?

22 A. Ken Stokes. I believe it was Ken.

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WASHINGTON, D.C. 20005

1 BY MR. KOHN:

2 Q. Mr. Hobbs, can you tell me if a piece of
3 one of the dew point pieces of test equipment were
4 considered or determined to be defective, what
5 {PROERS} (process?) would be taken?

6 A. For a defective piece EMTE (phonetic),
7 typically we would remove it from the program; put
8 a hold tag on it.

9 And it would remain on hold until
10 corrective action had been taken and I had a
11 subsequent successful calibration record on that
12 piece of equipment.

13 Q. And since you have no recollection of
14 that occurring with any piece of dew point test
15 equipment?

16 A. From the 1990 time frame period?

17 Q. Yes.

18 A. No, sir. I don't recall.

19 MR. KOHN: No further questions.

20 BY GEORGIA POWER:

21 Q. Mr. Hobbs, just a few questions to follow
22 up Mr. Cone. I believe that Mr. Kohn testified

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et al.)	Re: License Amendment
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(Vogtle Electric Generating Plant,)	
Units 1 and 2))	ASLBP No. 93-671-01-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion by Georgia Power Company, Charles L. Coursey, Michael L. Hobbs, and R.P. McDonald to Quash the Subpoenas of Charles L. Coursey, Michael L. Hobbs, and R.P. McDonald," dated May 24, 1995, 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 24th day of May, 1995.



David R. Lewis
Counsel for Georgia Power Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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Units 1 and 2))	ASLBP No. 93-671-01-OLA-3

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