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USNRC
May 29, 1995UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

95 JUN -1 P4:52

Before Administrative Judges: OFFICE OF SECRETARY
Peter B. Bloch, Chair DOCKETING & SERVICE
Dr. James H. Carpenter BRANCH
Thomas D. Murphy

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-3Re: License Amendment
(transfer to Southern Nuclear)

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

INTERVENOR'S RESPONSE TO MOTION TO QUASH SUBPOENAS
OF CHARLES COURSEY, MICHAEL HOBBS AND R.P. McDONALD

I. Introduction

Intervenor, through counsel, hereby opposes Georgia Power Company's ("GPC") motion to quash subpoenas of Charles Coursey, Michael Hobbs and R.P. McDonald.¹ For the outset, Intervenor notes that, pursuant to 10 C.F.R. § 2,720(f)(1), a subpoena should be quashed only if it is unreasonable or not relevant to any matter in issue. As demonstrated below, each and every witness identified below has factual information relevant to this proceeding. Although GPC asserts in its heading on page 2 that "The Subpoenas are Unreasonable," the factual arguments presented only address the relevance of the testimony sought. §2.720(a) specifically provides that: "The officer to whom application is

¹ GPC's counsel indicates that the motion is also being filed on behalf of Messrs. Coursey, Hobby and McDonald. GPC's counsel has not submitted a notice of appearance for these witnesses.

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made may require a showing of general relevancy of the testimony or evidence sought...but he shall not attempt to determine the admissibility of evidence." A review of GPC's motion demonstrates that GPC's arguments only address the admissibility of the testimony the witnesses will present at the hearing. GPC's arguments are therefore improper on their face; the Board should not attempt to determine the admissibility of the testimony before it is presented at the hearing.

II. Arguments

1. Charles Coursey possesses sufficient knowledge and factual information to require his appearance

Mr. Coursey is currently employed by Georgia Power. He holds the position of Maintenance Superintendent at plant Vogtle. Mr. Coursey held this position during and after the Site Area Emergency ("SAE") and was otherwise responsible for overseeing diesel maintenance as well as the implementation of portions of the plant Vogtle Measuring and Test Equipment ("M&TE") program. Additionally Mr. Coursey was a member of the SAE Critique Team.

A. Adequacy of root cause determination

While serving as a Critique Team member, Mr. Coursey made statements concerning his knowledge of historical problems associated with the calibration of diesel generator CALCON sensors. Intervenor seeks to elicit testimony concerning the adequacy of the root cause determination of the Site Area Emergency contained in the critique report, including statements and observations of Mr. Coursey that were excluded from the Critique Team report.

B. Personal knowledge of air quality problems

Mr. Coursey's scope of responsibilities and position with in the Vogtle organization necessarily make his observations concerning air quality relevant and reliable. Mr. Coursey testified at his deposition that he recalls finding water in the diesel air trip lines and knew of moisture problems with the diesel air start system. Given his managerial position and responsibility within the Vogtle organization, Mr. Coursey's statements concerning fluid being drained from diesel trip lines constitutes an admission of a party opponent and is admissible for the truth of the matter asserted. Indeed, F.R.E. 801 requires that the testimony be deemed reliable.

C. MT&E program

Mr. Coursey has first hand knowledge of the operation and functioning of the M&TE program. Intervenor contends that, the statement contained in the 4-9-90 Confirmation of Action Response letter ("COAR") that "initial reports of higher than expected dewpoints were later attributed to faulty instrumentation" is false because no dew point test equipment maintained by the plant Vogtle MT&E program was ever determined to be faulty or defective.

Mr. Coursey's position within the Vogtle organization and his first hand knowledge facts and events demonstrate a sufficient basis to require his appearance at the hearing.

2. Michael Hobbs possesses sufficient knowledge and factual information to require his appearance

Mr. Hobbs held the position of Superintendent of Instrumentation and controls ("I&C"). His testimony is relevant to the following matters:²

A. Dew Point readings

Mr. Hobbs was the responsible manager over the technicians who took dew point readings prior to the SAE and was responsible for implementation of procedures governing air quality testing of the diesel generators. During his deposition he testified that he had knowledge about the borrowing of an air quality test instrument from the V.C. Summer plant; about dew point test equipment suspected of being defective and/or found to be defective; and about who would be notified about defective dew point test equipment. He also testified that he was aware that moisture was found in the air receivers in 1990 during received blow-downs. He specifically testified that he was knowledgeable of the fact that following the SAE water was found in diesel air

² GPC's objection to Mr. Hobbs is particularly egregious given that GPC relied upon Mr. Hobbs to supply responses to Intervenor's Seventh request for Interrogatories. See Response to No. 3.a. (requiring GPC to "Identify each and every piece of faulty equipment believed to be responsible for the higher than expected readings"); 9 ("Identify all procedures and requirements contained in the MT&E Program or any other program that must be followed when a piece of test equipment, specifically and ALNOR, EG&G . . . is . . . suspected of being out of calibration [or is] out of calibration; suspected of being faulty [or] determined to be faulty."); and 10 ("State what, if any, action required under any procedure addressed in interrogatory 9 above, was taken with respect to any piece of test equipment suspected of being faulty in the April 9, 1990 COA.").

That GPC relied upon Mr. Hobbs to provide sworn responses provides a sufficient basis to require his attendance at the proceeding.

receivers; and that he received reports from I&C technicians about obtaining high dew point readings. Mr. Hobbs also testified about what the M&TE program required if a piece of test equipment was determined to be defective (i.e., a hold tag is to be placed on the test equipment and the equipment is to be rechecked and verified with M&TE approved test equipment).

B. 1994 NRC Inspection

Mr. Hobbs has first hand knowledge of the NRC's 1994 inspection of the diesel generators. Intervenor is entitled to question Mr. Hobbs about factors pertaining to the 1994 NRC inspection as they relate to the adequacy or GPC's prior root cause determination.

3. R.P. McDonald possesses sufficient knowledge and factual information to require his appearance

Mr. McDonald is the former Executive Vice President of GPC. His testimony is relevant to the following issues:

A. Matters pertaining to McDonald's credibility

Mr. McDonald appeared during the first phase of this proceeding. Questions related to the credibility of Mr. McDonald are necessary to a full and complete determination of facts related to Phase I and Phase II. During the Phase I proceedings, Intervenor's counsel specifically sought to question Mr. McDonald about false statements he made with respect to the issuance of LER 90-006 and statements contained in responses to Intervenor's 2.206 petition related to LER 90-006. At this juncture, the Board ruled that questioning pertaining to the credibility of Mr.

Mcdonald regarding the issuance of the LER should be stayed until Phase II hearings commenced. In this respect, the hearing transcript indicates the following:

CHAIRMAN BLOCH:

Since the line of questioning [pertaining to the issuance of LER 90-006] has no direct relevance to misrepresentation to the NRC or a legal transfer, we will not permit it now. We think it likely that we will defer final decision on this part of the case until after we've heard testimony on the other part of the case, so that credibility -- cross-credibility issues can be considered by us. But we would not hear that at this time.

Hearing Tr. at p. 1258.

Mr. McDonald presented sworn testimony in September of 1990, asserting that he played absolutely no role reviewing, or drafting on LER 90-006 at any time on or before April 19, 1990. Licensee's witnesses (Stringfellow and Aufdenkapme) both testified that Mr. McDonald played a role with the drafting of LER 90-006. In order to determine the credibility of licensee's witnesses, Intervenor must be allowed to examine Mr. McDonald about his the truth and veracity of his prior sworn testimony. Intervenor contends that Mr. McDonald, Mr. McCoy and Mr. Hairston met to determine whether a material false statement concerning the diesel starts had previously been made to the NRC. Intervenor should be permitted the opportunity to question Mr. McDonald about his involvement and assertion whether he has previously made false statements under oath with respect thereto.

B. 2.206 Petition Response

Mr. McDonald signed 2.206 GPC's response to Intervenor's 2.206 Petition under oath. His response asserted in Footnote 3 that Mr. Hairston was not a participant during the 4-19-90 late afternoon conference call. It is appropriate and essential that Intervenor be allowed to question Mr. McDonald concerning his knowledge of the facts set forth in the 2.206 response and the adequacy of the factual basis pertaining to footnote 3.

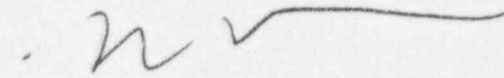
4. Licensee agreed to accept witness fee checks; service will be proper assuming Intervenor tenders the witness fees before a witness appears at the proceeding.

Georgia Power's asserts that the subpoenas were not properly served is not ripe for adjudication. Intervenor's counsel previously advised licensee's counsel that they would tender fees before the witness would testify. Intervenor's counsel will pay such fees by check no less than 24 hours before any witness is to appear.

Conclusion

For the foregoing reasons, the motion to quash should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the above document was served on the persons listed in the attached service list by first class mail on May 30, 1995 ("*" indicates service by facsimile on May 29, 1995).



Michael D. Kohn

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50-425-OLA-)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Re: License Amendment
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ASLBP No. 93-671-01-OLA-3

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