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

'95 SEP -5 P4:13

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'S MOTION TO STRIKE EXPERT TESTIMONY
OF HILL AND WARD; AND TO CONDUCT ADDITIONAL DISCOVERY

Allen L. Mosbaugh, Intervenor in the above captioned matter, pursuant to 10 C.F.R. §2.718, §2.740, and §2.743, moves this Honorable Licensing Board to require Licensee to expeditiously respond to the Intervenor's request to 1) strike expert testimony from the Hill-Ward panel; 2) to conduct additional discovery to obtain information needed to evaluate, address and rebut factual statements or inferences raised by the Owyong-Johnston expert panel.

I. MOTION TO STRIKE EXPERT TESTIMONY

A. facts

An examination of the record must begin with Georgia Power's responding to request No. 19 to Allen Mosbaugh's First Set of Interrogatories to Georgia Power Company, filed on May 4, 1993, which states:

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Identify each person you expect to call as an expert witness at the trial of this matter, and for each person state the subject matter, the facts and the opinions or conclusions to which he or she is expected to testify and give a summary of the grounds for each opinion or conclusion.

On June 2, 1993 Georgia Power responded to this request by stating (footnote added):

(Domby) At this time, GPC does not expect to call any witnesses purely as experts at the hearing in this proceeding. Many of GPC's potential witnesses identified in Response No. 18¹ are qualified to and may provide expert opinion testimony relating to nuclear power plant operations and regulation.

To date, Georgia Power has not amended this response even after this Board ordered Georgia Power to review and amend its interrogatory responses. In this respect, on March 30, 1995, the Board issued Memorandum and Order (Motion to reopen Discovery), requiring the parties to supplement discovery responses pertaining to diesel generators. Intervenor submitted his prefiled testimony on April 4, 1995. After studying Intervenor's prefiled testimony for one week, on April 11 and 12, 1995, Georgia Power's counsel submitted two letters asserting that a review of the interrogatory responses had been performed and it was determined that no additional information was discoverable. Indeed, the first time Georgia Power conclusively stated that it intended to call an expert was on August 11, 1995, and at that time only identified one expert, Mr. Hill. See Tr. 11022 (August 11, 1995) (the citations are to pages identified in computer disks

¹ GPC's response to Response No. 18 fails to mention Mr. Howard Hill as well as Messrs. Owyong and Johnston. The response does identify Mr. Ward, but with respect thereto, Georgia Power refused to state what knowledge and information he possessed.

of the transcripts and may not reflect an exact page citation to final official transcript).² Intervenor is most troubled by the failure to disclose the true scope of expert testimony Georgia Power was planning to call -- an obligation Georgia Power

² Prior to August 11, 1995, Georgia Power mentioned of an expert prior to that occurred on May 15, 1995, when Georgia Power mentioned Mr. Hill's name for the first time, but stated that Georgia Power had not decided to call Mr. Hill as an expert as of that date.

The relevant portions of the May 15, 1995 hearing record reads as follows:

CHAIRMAN BLOCH: ...We have had an off the record discussion that seems to me to have been quite productive about what the agenda for today should be.

And that agenda consists of first some matters that Georgia Power wants to raise concerning our order for on the motion to strike. The second matter is order of witnesses, and Georgia Power wants to disclose some additional rebuttal witnesses...

* * *

MR. BLAKE: . . . we've identified two experts. A Stephen Fienberg -- he's a professor of statistics at Carnegie Mellon. I don't think there's any need frankly at this juncture -- I don't think you'll hear anything more about him. . . And Howard Hill, who was a consultant on air quality. And we simply just have to study more what the Board's ruling is and determine whether or not, since root cause is out, whether we're still going to be talking enough about those topics, just in terms of judging credibility and whatnot as the Board has indicated, to determine whether or not Mr. Hill will be necessary. But those are the additional names.

ADMINISTRATIVE JUDGE CARPENTER: What is Mr. Hill's occupation?

MR. BLAKE: Mr. Hill is a consultant. He worked for Bechtel for a number of years. Most of his work has been done with ILT, integrated leak rate testing. He is -- but he's familiar with air quality dew points. What happens with water, what happens with it in the systems. That's his background and that's his --

ADMINISTRATIVE JUDGE CARPENTER: Thank you.

Tr. pp. 4330-4336 (May 15, 1995).

was required to fulfil since May of 1993, in response to a specific interrogatory request concerning experts. Indeed, Intervenor did not know that Messrs. Owyong and Johnston were hired as "experts"³ and did not know that they were testifying as expert witness until the day they appeared before the Board on August 23, 1995. Intervenor did not learn of Mr. Ward's appearance as an "expert" until sometime after August 23, 1995.

B. Argument

Intervenor timely filed interrogatory questions in May of 1993 requiring Georgia Power to identify its expert witnesses and to state the subject matter, facts, opinions or conclusions, and the grounds for each opinion or conclusion of any expert testimony. To date Georgia Power has not supplemented its discovery responses.

Supplementation of interrogatory requests pertaining to expert witnesses is governed by 10 C.F.R. §2.740(e)(1), which, in relevant part, provides:

A party is under a duty seasonably to supplement his response with respect to any question directly addressed to... (ii) the identify of each person expected to be called as an expert witness at the hearing, the subject matter on which hi is expected to testify, and the substance of his testimony.

³ Interrogatory No. 20 to Intervenor's first set of Interrogatories required Georgia Power to identify persons retained, employed or consulted in anticipation of litigation who is not expected to be called as an expert. Georgia Power should have alerted at the time Messrs. Owyong and Johnston were initially contacted, whether or not a final decision to utilize them as experts was made.

Intervenor filed his first set of interrogatory questions on Georgia Power in May of 1993. Therein, Request No. 19 directed Georgia Power to identify its expert witnesses and disclose the substance and basis of their testimony. This Georgia Power has never done. Moreover, beyond failing to respond to interrogatory requests, Georgia Power was required to provide an expert report and other materials for experts it intended to call.

Georgia Power had a mandatory duty to disclosure in the form of a written report the following information pertaining to expert witnesses: 1) a complete statement of all opinions to be expressed; 2) a complete statement of the factual basis and reasons for any expressed opinion; 3) the data and other information considered by the witness in forming the opinions; 4) exhibits to be used by the expert; 5) qualifications of the witness; 6) a list of all published works; 7) the compensation to be paid for the study and testimony; and 8) a list of all other cases where the witness has testified as an expert. Fed. R. Civ. P. 26(a)(2)(B). Georgia Power failed to file expert reports with respect to every expert it called.⁴ Indeed, to date, Georgia Power has not as much as voluntarily provided the documents its experts relied upon and reviewed when they were consulted as

⁴ Georgia Power's assertion that prefiled testimony constitutes an "expert report" is disturbing. First, it reflects careful review and input from attorneys who prepared it. Second, the prefiled testimony does not address all the requirements set forth in the federal rules. Third, the prefiled testimony excluded the basis for conclusions and, fourth, it does not include the calculations performed or other materials relied upon by the experts.

experts and thereafter that they relied upon when preparing or reviewing their prefiled testimony.⁵

The failure of a party to designate a person as an expert witness justifies the refusal to allow the expert to testify. Prentiss & Carlisle v. Koehring-Waterous, 972 F.2d 6, 8 (1st Cir. 1992). The court in Prentiss held that while the employee of the defendant was listed as a witness, opposing counsel did not have notice he was to give expert opinion evidence because he was not designated as an expert witness. Id. The witness, in performing and describing certain tests and their results, relied on knowledge in a technical area beyond an ordinary person's understanding and was therefore testifying as an expert. Prentiss, 972 F. 2d at 9; See also Rosemount, Inc. v. Beckman Instruments, Inc., 727 F.2d 1540, 1549 (Fed. Cir. 1984) (refusal to allow witness not listed as expert to testify concerning tests of a product involved in patent litigation).

In Chakales v. Hertz Corp., 152 F.R.D. 240 (N.D.Ga. 1993), the court refused to allow testimony of the plaintiff's medical services providers because they were not designated as experts. The plaintiff argued that since the providers were listed as fact

⁵ The Advisory Committee Notes specifically state:

Given this obligation of disclosure, litigants should no longer be able to argue that materials furnished to their experts to be used in forming their opinions -- whether or not ultimately relied upon by the expert -- are privileged or otherwise protected from disclosure when such persons are testifying or being deposed.

See 134 F.R.D. at 634.

witnesses the defendant's had notice of forthcoming expert testimony by these witnesses. Chakales, 152 F.R.D. at 242. Citing to Prentiss the court stated "Contrary to plaintiffs' position...all experts must be identified as such in adequate time for the opposing party to act upon the information." Id. (emphasis supplied).

Georgia Power's failure to timely and adequately designate the identity and scope of its "expert" witnesses demands exclusion of Georgia Power's last-minute inclusion of expert testimony. The exclusion is required not only due to the total failure to timely respond to interrogatory responses, but because Intervenor has been prejudiced by the seemingly intentional 12th hour submittal of "expert" testimony. Intervenor should have had an opportunity to depose these experts before he was required to submit prefiled testimony on April 4, 1995.⁶ Licensee has now had five months to review, digest and consider Intervenor's testimony before deciding how to craft or formulate its expert testimony. Georgia Power also has an unfair advantage of now being in a position to formulate plausible explanations and theories based on the facts that came to light during the hearing. Clearly, the credibility of the expert witnesses could have suffered serious harm to their credibility if Intervenor had been allowed to lock in the basis for conclusions based on facts believed to be true but which now turn out to be false. The

⁶ Rule 26(b)(4)(A) of the Federal Rules of Civil Procedure states that "a party may depose any person who has been identified as an expert whose opinions may be presented at trial."

testimony of Messrs. Hill and Ward should have been filed as part of Licensee's case in chief. This is born out of the subject matter and scope of the testimony and because Intervenor has not called expert witnesses. Allowing Licensee leeway to present expert witness testimony to support its theory of the case in light of Georgia Power's failure to respond to past discovery on this very topic would be unfair, particularly after Georgia Power was allowed to present one expert panel consisting of Messrs. Owyong and Johnston. Indeed, that expert panel previously addressed issues now being re-raised by Messrs. Ward and Hill (e.g., arguments concerning the ISA standards and moisture in the diesel air system). It is prejudicial to allow Licensee to provide additional expert testimony on the same subject matter as the first expert panel because the scope of Intervenor's cross examination on these subjects was previously revealed.⁷

⁷ Should the Board deny this motion, Intervenor requests that Georgia Power immediately provide Intervenor with all documents created by, reviewed by or relied upon by Messrs. Hill and Ward when providing consulting services to Georgia Power, when preparing expert testimony, including all prior drafts of written testimony, documents or reports on any subject matter related to plant Vogtle; and all prior testimony or writings concerning any other matter that relate to the subject matter discussed in prefiled testimony. Intervenor also requests that he be provided adequate time to study the documents, undertake an investigation and to thereafter depose Messrs. Hill and Ward.

II. INTERVENOR IS ENTITLED TO CONDUCT DISCOVERY RELATED TO THE SCOPE OF TESTIMONY PRESENTED BY GEORGIA POWER'S EXPERT WITNESSES

A. Good Cause

Intervenor was forced to conduct his cross examination of the Owyong-Johnston panel without the benefit of responses to discovery previously filed against Georgia Power. Had Georgia Power timely responded to prior discovery requests, Intervenor would also have been afforded an opportunity to file follow-up discovery concerning the scope of the expert testimony.⁸ At this point, in order to adequately assess and respond to "expert" testimony presented by Messrs. Owyong and Johnston, Intervenor must conduct the discovery he would have filed had Georgia Power timely advised Intervenor of its intent to call Messrs. Owyong and Johnston as experts.

Good cause exists to conduct discovery due to Georgia Power's total failure to comply with previous timely filed discovery requests pertaining to expert witnesses back in 1993. Intervenor purposefully filed interrogatories concerning expert witnesses in its first round of discovery to guarantee that he would receive timely notice of Georgia Power's involvement with experts to guard against surprise and to allow Intervenor the

⁸ Significantly, at Intervenor's request, Licensee provided Intervenor with the phone numbers for Messrs. Owyong and Johnston with the understanding that Intervenor would contact these and other individuals to obtain informal discovery. Yet, when contacted was initiated, Mr. Johnston stated that he was not free to cooperate. See Tr. 12400 (August 23, 1995).

opportunity to file additional discovery concerning expert testimony, where necessary.

B. Basis for additional discovery

Intervenor believes that good cause exists due to Georgia Power's failure to comply with prior discovery obligations and for failing to identify Messrs. Owyong and Johnston as experts prior to appearing at the hearing. Below Intervenor sets forth specific discovery requests followed by an additional statement of good cause.⁹

Request No. 1

Produce all drawings of the diesel control logic in effect as of 3-20-90; all drawings of the layout of the diesel control and/or engine control panel of the diesel, including but not limited to schematic 09-500-76021 (sheets 1-9), and Engine Control Panel Schematic FW-700-7602 (sheets 1-13).

Reason for request

Intervenor needs these documents to adequately address statements made by Messrs. Owyong and Johnston about the functioning of the diesel pneumatic system. Moreover, Owyong and Johnston indicated that they reviewed drawings of the diesel control logic prior to testifying and Mr. Hill refers to the drawing in his prefiled testimony. Intervenor has a right to all of the documents the experts considered prior to testifying.

⁹ Because of the over-lapping nature of the Owyong-Johnston panel testimony with the proposed Hill-Ward panel testimony, the documents requested are also necessary should the Board deny Intervenor's Motion to deny Georgia Power the right to present the Hill-Ward panel.

Request No. 2

Produce the MWO that was in progress when the 1991 Bubble testing misadventure occurred which resulted in the introduction of water into the diesel control system.

Reason for request

This request is necessary to adequately address testimony by Messrs. Johnston and Owyong concerning the 1991 introduction of water during bubble testing and to ascertain the extent to which this event was contemporaneously documented. See Prefiled testimony at p. 5. This document was identified at the hearing and Georgia Power has previously committed to producing it.

Request No. 3

Produce all MWOs corresponding to the MWOs identified in Intervenor's Demonstrative Aid No. 4.

Reason for request

This documentation is necessary to rebut testimony of Messrs. Owyong and Johnston about the presence of water in the diesel air system. This documentation is also necessary to ensure that there is a complete and adequate record with respect to relevant out of specification dew point measurements.

Request No. 4

Produce the following:

- a. Design Change Packages ("DCP"):
 - 1. 91-V1N0113
 - 2. 91-V2N0114
- b. Minor Deviation to Design ("MDD"):

1. 90-V2M-193
2. 90-V1M-194
3. 89-V1M-194.

Reason for request

This discovery is necessary to respond to testimony presented by GPC's "expert" witness panel of Messrs. Owyong and Johnston, who presented testimony concerning orifice change outs made to the diesel pneumatic system. The documents sought will demonstrate which orifices were changed out and when the changes occurred. This documentation is necessary to challenge assertions raised by Messrs. Owyong and Johnston concerning whether .006 inch orifices for pressure make-up were in existence in 1990 for all trip leakage lines including the High Temperature Jacket Water trip lines.¹⁰

¹⁰ During cross examination of the Owyong-Johnston panel, the Board asserted that Intervenor may not know the design of the pneumatic system and questioned whether portions of Mr. Mosbaugh's testimony should be stricken because "there's no basis for Mr. Mosbaugh's testimony on this subject." Tr. 12565. This was based on testimony from Georgia Power's expert panel, who testified that "each of the trip lines" had redundant makeup air. Tr. 12564. Contrary to this testimony, Intervenor believes that High Jacket Water Temperature sensors did not have redundant makeup at the time of the Site Area Emergency and that Georgia Power's expert panel incorrectly stated the configuration of the trip lines when testifying. Where Group I sensors had redundant makeup, Group II sensors, including the High Jacket Water Temperature Sensors did not. High Jacket Water Temperature Sensors were subject to a modification commencing in 1991 to include redundant makeup. See, e.g., Intervenor Ex. 115 at p. 11 (Design Change Packages 91-V1N0113 and 91-V2N0114 "installed 0.006 inch orifices in the jacket water temperature sensor air supply lines similar to other non-emergency trip sensors"). Georgia Power's "expert" panel was apparently misinformed about this later design change. See Tr. 12567.

Request No. 5

Produce deficiency card ("DC") 2-90-225, and the following maintenance work orders ("MWOs"): 2-90-04795; 2-90-05610; 1-90-04621 and 1-90-04622.

Reason for request

These documents identify that pneumatic lines were improperly configured (i.e., "rolled tubing"). The documents are necessary to rebut Owyong's and Johnston's testimony about the adequacy of the root cause investigation conducted by Georgia Power and the adequacy of their reason for concluding the cause of the Site Area Emergency trips.

Request No. 6

With respect to the results identified in MWOs 19303293, 29303950 and 19303290 and with respect to the June 30, 1994 Reply to Notice of Violation concerning these results, state the following:

- a. Who made the determination that the dew point test equipment was suspect;
- b. What steps were taken to determine that the test equipment was providing erroneous readings;
- c. State when the dew point instrumentation was next recalibrated or calibration checked, and produce all documentation pertaining thereto.
- d. State whether "as found" readings for the dew point test instrumentation, as identified in section c above, were obtained, and if so, what these readings were.
- e. State whether the accuracy of the test equipment was ever resolved, and if so, produce all documentation associated with identifying the root cause and the resolution.
- f. State whether personnel error or method of use or attachments or configuration of the test equipment was ever believed to be a cause of the erroneous

readings. If the answer is yes, provide a complete explanation of the resolution and/or determination reached.

- g. State all corrective actions taken.
- h. Produce MWOs 19303293, 29303950, 19303290 and MWO 1-94-00546, and any and all other MWOs and/or DCs associated with the resolution and/or identification of out of specification dew point measurements.
- i. State whether the suspected dew point instrumentation was used elsewhere in the plant at any time after it was suspected of providing inaccurate data.
- j. State whether more than one piece of test equipment was used to verify the accuracy of the dew point readings.
- k. Produce all travelers associated with any suspected dew point instrument.
- l. Produce all documentation and/or correspondence to and from any vendor associated with the suspected dew point instrument.
- m. Produce all correspondence and/or documentation to and from the NRC concerning the response to the June 9, 1994 NOV.

Reason for the request

Messrs. Owyong and Johnston testified that it would be unusual for them to not have heard about a water or moisture problem following the Site Area Emergency. Intervenor requests this documentation to demonstrate that Georgia Power has, on more than one occasion, concluded that there was no moisture in the diesel air system because out of specification dew point readings were attributable to "faulty instrumentation." The fact that Georgia Power, on more than one occasion, has raised this assertion tends to support Intervenor's claim that Messrs.

Owyoung and Johnston were not necessarily told about moisture, and that, if the multiple assertions about faulty instrumentation is not true, then this documentation would tend to impeach their testimony about the absence of moisture within the Vogtle diesel air system. Moreover, the documentation is necessary to assure that a complete and adequate record concerning the April 7, 1990 assertion that dew point instrumentation was faulty. Scrutiny of this second claim of "faulty instrumentation" is likely to shed light on the reasonableness and adequacy of Georgia Power's initial claim of a faulty instrument, including how Georgia Power followed up on the assertion on a separate occasion.

Request No. 7

Produce all MWOs, PMS, DCs, WRTs and other plant documentation concerning problems or failures with Calcon sensors and other pneumatic components of plant Vogtle diesel generators, including all records which resulted in NRC findings stated in section 2.2.2 (Instrument Failure Experience) contained in Intervenor's Exhibit 115 at Enclosure 1, pp 2-3 that the last failure occurred in April of 1993. This documentation includes but is not limited to the following MWOs:

- a. 1-90-00068
- b. 1-90-00016
- c. 1-90-02711
- d. 1-91-03008
- e. 1-91-03009
- f. 1-91-04772
- g. 1-91-04829
- h. 1-90-01511
- i. 2-90-04795
- j. 1-90-01219
- k. 1-90-01409
- l. 2-93-03314
- m. 1-92-03584
- n. 1-92-03585
- o. 2-90-03403
- p. 2-92-00295

q. 1-92-03577
r. 2-92-01061
s. 2-91-02840
t. 1-91-01227
u. 1-91-04783
v. 2-92-02850

Reason for the request

This documentation is necessary to rebut Messrs. Owyong's and Johnston's testimony about the root cause of the Site Area Emergency trips (i.e., the trips are attributable to Calcon sensor calibration problems). These MWOs will demonstrate that the calcon sensors continued to experience a high rate of failure after corrective actions were completed. It stands to reason that, if the failures were actually due to calibration problems with the calcon sensors, then the failures should have subsided after corrective action concerning calibration procedures were completed. The fact that failures continued rebuts the conclusions of Messrs. Owyong and Johnston. Moreover, Judge Carpenter was apparently told during a site inspection that there had been no failures since 1992, see Tr. 6128-6127 (May 26, 1995), and Mr. Stokes confirmed that there were no Calcon sensor failures after 1992. See Tr. 7418 (June 6, 1995). Intervenor believes the assertion that there were no calcon failures since 1992 to be false and seeks the MWOs to correct a factual misstatement made by Georgia Power during the course of this proceeding.¹¹

¹¹ The NRC inspection report introduced as Intervenor's Exhibit 115 at enclosure 1, p. 4, indicates that the last malfunction occurred in April of 1993.

Request No. 8

Produce the MWOs identified in Intervenor's Exhibit 115, at Inspection report 50-424/94-12 and 50-425/94-12 at p. 6, ¶2.4 (28 MWOs).

Reason for request

These MWOs concern leakage in pneumatic lines following the Site Area Emergency. This documentation is necessary to rebut Messrs. Owyong's and Johnston's testimony about the adequacy of workmanship associated with the assembly of pneumatic air lines.

Request No. 9

State whether any of the MWOs identified in Intervenor's Exhibit 115, at Inspection report 50-424/94-12 and 50-425/94-12 at p. 8, continuation of ¶2.5.1 (31 MWOs) indicate that out of specification dew points were obtained between 1988 and 1994; if the answer is yes, produce a copy of any MWO not previously produced.

Reason for the request

This testimony is needed to demonstrate that out of specification dew point readings continued after restart following the Site Area Emergency. This documentation is necessary to rebut the soundness of the argument that faulty instrumentation was the cause of the high out of specification dew point readings and to further demonstrate that the root cause evaluation was inadequate inasmuch as had adequate corrective actions occurred, then problems associated with high dew point readings should have gone away.

Request No. 10.

Produce the entire I&C log for the period 3-9-90 to the end of 1991.

Reason for the request.

This documentation is needed to track all entries associated with dew point measurements and/or defective instrumentation that are contained in the I&C log. At the hearing it was revealed that the I&C log book (Intervenor Exhibit II-217) documented that instrument air readings were taken with the alleged defective Alnor. Similar readings or entries associated with the calibration or recalibration of the Alnor may be contained in the log. Intervenor needs this documentation to adequately challenge the assertions of Georgia Power's expert witnesses concerning whether water formed in the diesel pneumatic air system.

Request No. 11.

Produce the MWO that was in progress when Mr. Johnston detected water in the pneumatic control system in 1995.

Reason for the request.

This request is needed to enable Intervenor to demonstrate that when water is located within the pneumatic air system that it is not documented. This factual assertion contradicts the assertion that Johnston and Owyong would necessarily be advised by Georgia Power that water was located in the pneumatic air system during 1990.

Request No. 12.

Produce all documents in your control or possession concerning Calcon sensors and the failure of Calcon sensors.

Reason for the request

This documentation is needed to evaluate and rebut testimony related to Calcon sensors presented by Messrs. Owyong and Johnston.

Request No. 13.

Produce all documents maintained by Cooper concerning the maintenance history of Cooper diesels.

Reason for request

This documentation is needed to evaluate and rebut testimony related to maintenance of diesel generators presented by Messrs. Owyong and Johnston.

Request No. 14.

State how much pressure is required (at the pilot port of the air start valve) in order to actuate the air start valve. In addition:

- a. Produce the specification sheet and associated drawings for the air start valves and air start distributor;
- b. Drawings of the air supply feeding the air start distributor and the air start valves.

Reason for the request

The Owyong-Johnston testimony addressed the cause of the weak air rolls. This documentation is necessary to rebut that testimony and to provide the technical basis to show that water could cause the weak air roll.

Request No. 15

Produce all engineering reports and other documentation concerning or related to the Part 21 notification issued by Cooper with respect to oil in the air start distributor lines resulting in weak air rolls.

Reason for the request

The Owyong-Johnston testimony addressed the cause of the weak air rolls. This documentation is necessary to rebut that testimony and to provide the technical basis to show that, as did oil, other fluids, including water, could cause the weak air roll.

Request No. 16

Provide Intervenor with all documents created by, reviewed by or relied upon by Messrs. Hill and Ward when providing consulting services, when preparing expert testimony, including all prior drafts of written reports, documents, or testimony on any subject matter related to plant Vogtle. Also produce a copy of all prior testimony or writings authored by Messrs. Hill and Ward that relate to the subject matters discussed in the prefiled testimony.

Reason for the request

See Footnote 7, *supra*.

Pursuant to Rule 26 of the Fed. R. Civ. Pro, "counsel should now expect that any written or tangible data provided to testifying experts will have to be disclosed." See, 6 Wright & Miller, Federal Practice and Procedure: Civil §2031.1 Moreover, the Advisory Committee Notes to Rule 26 explicitly state that a party is required to produce all of the documents and data reviewed by its experts even "if these materials are otherwise

privileged materials were not ultimately relied upon by the expert." Id.

III. LEAVE TO CONDUCT DEPOSITION

Pursuant to Fed. R. Civ. Pro Rule 26(b)(4)(A), a "party may depose any person who has been identified as an expert whose opinion may be presented at trial." Intervenor has consistently indicated a desire to depose expert witnesses,¹² and he should not be disadvantaged by having to examine expert witnesses without having conducted a deposition of the experts. Following receipt of responses to the above discovery requests, Intervenor request leave to conduct any appropriate depositions of Georgia Power's expert witnesses.

IV. DISCOVERY NEEDED TO ENSURE A COMPLETE AND ACCURATE RECORD

Intervenor requests that the following discovery be allowed to ensure that a complete and accurate record is established with

¹² When Georgia Power confirmed that Mr. Hill would present expert testimony, Intervenor immediately requested that documents reviewed by the experts be produced and that he thereafter be granted the right to depose expert witnesses. This was memorialized in an on the record, statement made by Judge Bloch:

When it comes to Mr. Hill's testimony, that there will be a reasonable time period within which Intervenor will be permitted to study the documents provided prior to conducting a deposition of the expert witness and then he'll be scheduled as efficiently as possible.

Tr. 11022-23 (August 11, 1995).

Georgia Power has yet to produced documents reviewed or considered by Mr. Hill.

respect to issues related to whether Alnor VP-2466 was defective. Intervenor requests this discovery based on factual information that came to light during the hearing. Intervenor also believes that responses to the below-stated discovery requests are necessary in order for the Board to assure the creation of a complete and accurate record.

A. Discovery requests

1. Between 1989-1991, in response to the completion or near completion of a calibration interval or during any other calibration check, state whether the M&TE program at plant Vogtle required "as found" readings to be recorded on dew point instrumentation, including the ALNOR and EGG Dewall (VP-2446 and VP-1114). If the answer is yes:
 - a. State whether "as found" readings were taken at any time after 4-7-90 for VP 2466, and provide the date such readings were taken and whether the readings indicated that the instrument was within specification;
 - b. Identify all GPC employees and agents who knew about the existence of "as found" readings taken on VP 2466. For each person identified, state the date and information known.
2. Produce a copy of the complete fax transmission of which a portion was marked as Intervenor's Exhibit II-215.
 - a. Identify from whom the transmission was sent and to whom it was received as well as all other persons, including attorneys, who reviewed the document in or about the time it was transmitted or thereafter made available to Mr. Briney.
3. State all the locations where VP-2466 was kept or stored between 4-7-90 and present and produce any paperwork associated with its transportation or storage during this time period.
4. Produce all documents pertaining to Alnor VP-2466 created between 1989 and present, including:
 - a. Travel sheets;

- b. Certification documentation and documents related to calibration checks;
 - c. Communications to any vendor and/or the manufacturer.
- 5. Produce the Administrative Control procedures governing the M&TE program that were in effect in 1990.
- 6. State whether Alnor VP-2466 had its radiation source replaced. If the answer is yes, state:
 - a. Who made the decision and identify all persons involved in the decision, including vendors and agents of Georgia Power;
 - b. Why the decision was made;
 - c. When and where the decision was made.
 - d. Whether Alnor VP-2466 was ever used again at plant Vogtle after April 7, 1990, and provide the date of any such usage and the location of the plant where the Alnor was utilized.

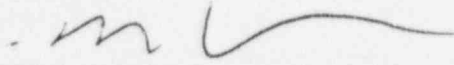
V. EXPEDITED CONSIDERATION

In order to allow Intervenor the ability to affectively cross-examine witnesses during the remaining portion of the proceeding and, to the fullest extent possible, avoid recalling witnesses, Intervenor hereby requests that the Board require the parties to file expedited responses to this motion and that the discovery herein requested by expedited as well. Intervenor requests that responses be filed within three working days from receipt.

Conclusion

For the foregoing reasons, Intervenor request that the Hill-Ward testimony be stricken and that Georgia Power file expedited responses to the above-requested discovery.

Respectfully submitted,



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Certificate of Service

The above-signed certifies that the following persons received the attached motion by hand-delivery this 5th day of September 5, 1995:

Administrative Judges
Peter B. Bloch, Chair
James H. Carpenter
Thomas D. Murphy
Atomic Safety and Licensing Bd.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary
Office of Commission
Appellate Adjudication
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