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October 5, 1995
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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BRANCH

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

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

INTERVENOR'S MOTION TO COMPLETE DISCOVERY
AGAINST NRC STAFF'S EXPERT WITNESSES (MANAGEMENT PANEL)

COMES NOW Allen Mosbaugh, Intervenor in the above captioned matter and moves this honorable Board to allow him to conduct additional discovery against NRC Staff.

I. INTRODUCTION

On March 22, 1995, Intervenor filed Intervenor's Motion to Complete Discovery Against Staff. therein Intervenor requested discovery of NRC Staff's management panel due as NRC Staff had just alerted Intervenor to the existence of this panel and, as such, Intervenor needed to conduct discovery to adequately question NRC Staff's expert witnesses at the hearing. Staff agreed to produce the panel for deposition in a March 29, letter from Mitzi Young to Michael Kohn. This Board ruled in its Memorandum and Order (Motion to Reopen Discovery), dated March 30, 1995 that Intervenor's request was apparently mooted by NRC

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Staff's letter agreeing to produce the panel. Intervenor filed Intervenor's Request for Clarification of the Board's March 30, 1995 Memorandum and Order (Motion to Reopen Discovery) ("Intervenor's Request") on April 2, 1995. In this request Intervenor explained that there was one issue not mooted by Staff's March 29 letter. That issue concerns the document request contained in the notice of deposition issued to the management panel witnesses. Staff refused to "comply with this request because the documents not previously released to Intervenor are protected from disclosure on the basis of the 1) predecisional information privilege; 2) work product privilege; and 3) attorney-client communications privilege." Intervenor's Request p. 2. Intervenor's Request provided legal analysis and case law demonstrating that Intervenor was entitled to the discovery because the management panel because the privilege would not extend to expert witnesses called to testify by NRC. On April 3, 1995 Staff filed NRC Staff opposition to Intervenor's Motion to Complete Discovery Against The Staff. At page 2, paragraph 3, NRC Staff argued that Intervenor's request for discovery should be denied because Messrs. Zimmerman and Reyes were not testifying as experts and Intervenor's believe to the contrary was "erroneous." On April 4, 1995, this Board denied Intervenor's Request stating that:

Intervenor presents no supporting argument for its classification of the "management panel" as experts, and this proposition is denied in Staff's Opposition, at page 2.

Memorandum and Order (Request for Clarification), April 4, 1995, p. 2 (emphasis added).

On September 27 and 28, 1995 the Management Panel testified before this Board. During the course of testifying it became obvious that the NRC Management Panel was providing expert testimony. On September 18, 1995 Intervenor's counsel argued that Intervenor had unfairly been denied discovery against NRC Staff based on Staff's assertion that the NRC Management Panel would not be testifying as experts. Chairman Bloch responded, stating: "since we have ruled that this testimony will go forward, the only question is some kind of relief that you might be due." Tr. 15289 (9-28). Intervenor agreed to file a written motion on this matter by October 6, 1995.

II. ARGUMENT

Intervenor relied on the statements of NRC Staff that the management panel were not experts and would not be presenting expert testimony. Although the panel was made available for deposition, Staff refused to produce the documents identified in the noticed depositions. Intervenor was not interested in conducting the depositions without access to the requested documents. Intervenor was denied the opportunity to effectively conduct discovery of this expert panel and thereby his ability to cross examine the management panel was limited and prejudiced. In ruling against Intervenor's discovery request the Board relied on NRC Staff's assurance that the panel was not an expert panel. See M&O of April 4, 1995. The appropriate relief which Intervenor should be granted is to conduct additional discovery on the expert management panel.

II. DISCOVERY SOUGHT

Below Intervenor sets forth the discovery he seeks against NRC Staff and its expert management panel:

1. Identify and produce all correspondence related to the Notice Of Violation ("NOV"), OI Report 2-90-020R and the settlement negotiations, which was not previously produced, that concerns:

- a. Georgia Power and/or its counsel;
- b. Individuals and/or their counsel who received a Demand for Information ("selected individuals").

2. Identify and produce all documents directly and indirectly related to analyzing evidence or which concerns any settlement and settlement negotiations between the selected individuals, their individual counsel and the NRC regarding the NOV and/or OI Report 2-90-020R.

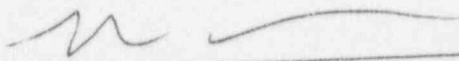
3. Identify any discussions or meetings between Georgia Power or its counsel, and/or the Selected individuals or their counsel, that relate to the NOV, OI Report 2-90-020R and/or the settlement negotiations that were recorded.

Following the receipt of this information, Intervenor requests five days in which to analyze it and determine whether any additional testimony is required from the NRC panel.

III. CONCLUSION

For the forgoing reasons Intervenor requests that he be allowed to conduct the above additional discovery from the NRC Staff.

Respectfully submitted,

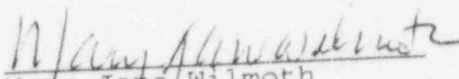

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CERTIFICATE OF SERVICE

I hereby certify that the above-captioned motion was served this 6th day of October 1995 via hand delivery to the persons listed on the accompanying service list.


Mary Jane Wilmoth

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ATOMIC SAFETY AND LICENSING BOARD

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)	
(Vogtle Electric Generating)	Re: License Amendment
Plant, Unit 1 and Unit 2))	(transfer to Southern Nuclear)
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