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October 12, 1995 NRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

GEORGIA POWER COMPANY'S RESPONSE TO INTERVENOR'S
MOTION TO ADMIT EXHIBIT II-247 (TRANSCRIPT OF TAPE 99B)

I. Introduction

Georgia Power Company ("Georgia Power") hereby responds to Intervenor's Motion to Admit Exhibit II-247 (Transcript of Tape 99B), dated October 5, 1995 ("Intervenor's Motion"). Intervenor has offered a different explanation on each of three separate occasions as to why the Board should admit Intervenor Exhibit II-247 (the "Exhibit"). None of these explanations satisfies the high standard established by the Board that Intervenor demonstrate the Exhibit is necessary for an adequate record. Accordingly, the Board should deny Intervenor's Motion.

II. Background

Intervenor first presented the Exhibit to the parties and to the Board on September 15, 1995 during his cross-examination of Mr. Bockhold. Tr. 14180. Neither the NRC Staff nor Georgia Power had ever seen the Exhibit prior to that time. Intervenor's counsel explained

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"[t]he process of making tape transcripts is lengthy, and we didn't begin this until after Mr. Hairston testified and they produced his tape 99." Tr. 14181. When asked by the Board what relevance the Exhibit had to Mr. Bockhold, who was not a participant in the conversation reflected by the tape transcript excerpt, Intervenor's counsel opined, "[y]our Honor, the relevance to this witness is that he was involved in that meeting [i.e., a meeting earlier in the day and recorded on the other side of the same tape] and his response to the meeting." Tr. 14182. Later, when asked by the Board why the Exhibit was needed for an adequate record, Intervenor's counsel changed his argument for the admission of the Exhibit to "plac[ing] Mr. Hairston's communications and the actual response to the site that they were afraid to raise concerns at that meeting with Mr. Hairston as identified in this document, and that -- and this would be the additional portion of tape 99 presented to Mr. Hairston that Intervenor needs for a complete and adequate record." Id. The Board ruled that the Exhibit would not be admitted and that Intervenor should file a written motion demonstrating why the Exhibit is necessary for an adequate record. Tr. 14182-83.

Intervenor's Motion, prepared on October 5, 1995, argues that the Exhibit is needed to rebut inferences in Mr. Hairston's rebuttal testimony, and associated Exhibit B, related to Georgia Power's response to its meeting with the NRC on April 30, 1990. Intervenor's Motion at 2-3. Intervenor also argues that submission of this Exhibit is consistent with prior Board rulings and party agreements regarding the use of tape transcripts as evidence. Id. at 3-4. Finally, Intervenor argues that this Exhibit "constitutes a portion of Intervenor's rebuttal case" which it has a right to submit. Id. at 4.

At the post-hearing conference on October 6, 1995, Intervenor argued yet another

basis for the admission of the Exhibit. Intervenor's counsel argued that the NRC/Georgia Power joint exhibit, identified as Intervenor's Exhibit II-4A, includes portions of Intervenor's Exhibit II-247 and that Exhibit II-247 is being offered merely to place into appropriate context Intervenor's Exhibit II-4A. Tr. 15504.

III. Argument

Given the shifting nature of Intervenor's basis for the admission of the Exhibit, Georgia Power is not certain which of the arguments Intervenor is now proffering to satisfy the Board's ruling that Intervenor demonstrate why the Exhibit is necessary for an adequate record. Accordingly, Georgia Power will address each of Intervenor's arguments and show that none of them individually nor all of them collectively satisfies the high standard set by the Board's prior ruling.

Intervenor's attempt to use the Exhibit to cross-examine Mr. Bockhold, who was not a participant to the conversation reflected in the tape transcript, was obviously inappropriate. While Intervenor's counsel argued at the hearing that such a use of the Exhibit was appropriate because Mr. Bockhold was a participant to a prior meeting recorded on the same tape,^{1/} Intervenor's Motion has since abandoned this questionable rationale entirely.

Intervenor's Motion, as discussed above, fails to explain why the Exhibit is necessary for an adequate record. Intervenor's primary argument is that this Exhibit is being offered as evidence to rebut Mr. Hairston's rebuttal testimony. Conspicuously absent from Intervenor's Motion is any explanation for waiting until after Mr. Hairston had left the stand before

^{1/} The fact that the two conversations occur on the same tape (albeit on different sides) is pure happenstance. The two conversations involved different people at different times. The "same tape" argument has no meaningful application here.

seeking to introduce the Exhibit rather than using the Exhibit to cross-examine Mr. Hairston. Mr. Hairston's prefiled rebuttal testimony was distributed to the parties on August 23, 1995, and Mr. Hairston did not testify until September 8, 1995. Intervenor thus knew of Mr. Hairston's testimony and its references to Hairston Exhibit B (a segment from Tape 99, side A) for over two weeks prior to Mr. Hairston's appearance and for over three weeks prior to attempting to move Exhibit II-247 into evidence.

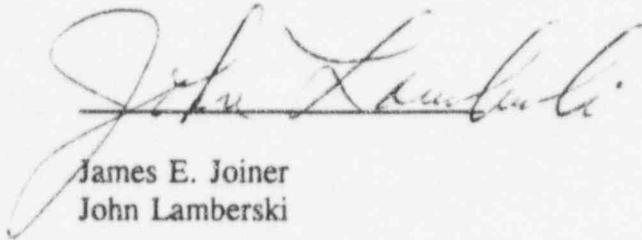
Finally, both Intervenor's Motion and Intervenor's statements to the Board at the post-hearing conference on October 6, 1995 fail to mention that the parties engaged, with the Board's urging, in extensive efforts to identify and reach agreement on tape transcripts prior to the commencement of the Phase II hearing. Intervenor first identified its Exhibit II-4 in a letter dated March 17, 1995. Georgia Power and NRC Staff reviewed this transcript, along with numerous others, and developed positions on Exhibit II-4. The parties then entered into negotiations in an effort to stipulate to tape transcripts proffered by the respective parties. See Tr. 4357 (May 15, 1995). For Intervenor Exhibit II-4, these negotiations were completed during the week of May 15-19, resulting in an agreement that Intervenor would continue with his Exhibit II-4 and the NRC Staff and Georgia Power would submit a composite exhibit labelled Intervenor Exhibit II-4A. The express purpose of these negotiations was to ensure each party either agreed with the proffered tape transcript or developed an alternate transcript reflecting what that party believed was necessary for accuracy and context. Intervenor's Motion, at 3 fn. 1, attempts to create the illusion that the NRC Staff sprung Intervenor Exhibit II-4A on Intervenor at the last minute and Intervenor Exhibit II-247 is merely an effort to provide context to that exhibit. However, given the

negotiations in May, when Intervenor was provided a copy of the alternate exhibit and given an opportunity to comment on it, Intervenor's argument that he is now offering Exhibit II-247 as context for Intervenor Exhibit II-4A appears to be better described as a pretext. Intervenor is simply scrambling for some plausible argument for introducing a tape transcript because he failed to do it at the appropriate time.

IV. Conclusion

For the foregoing reasons, Intervenor's Motion to admit Intervenor Exhibit II-247 into evidence should be denied.

Respectfully submitted,



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Dated: October 12, 1995

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NUCLEAR REGULATORY COMMISSION

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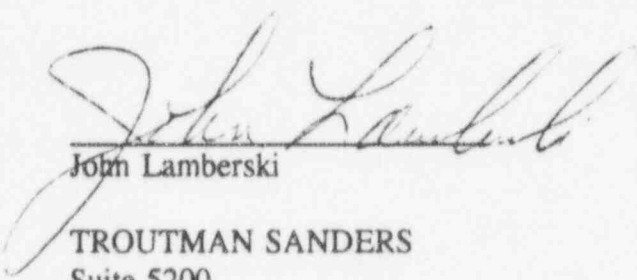
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)	ASLBP No. 93-671-01-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of Georgia Power Company's Response to Intervenor's Motion to Admit Exhibit II-247 (transcript of Tape 99B), dated October 12, 1995, were served by express mail upon the persons listed on the attached service list this 12th day of October, 1995.


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

In the Matter of
GEORGIA POWER COMPANY,
et al.

(Vogtle Electric Generating Plant,
Units 1 and 2)

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Docket Nos. 50-424-OLA-3
50-425-OLA-3

Re: License Amendment
(Transfer to Southern Nuclear)

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

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