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# SHAW, PITTMAN, POTTS & TROWBRIDGE

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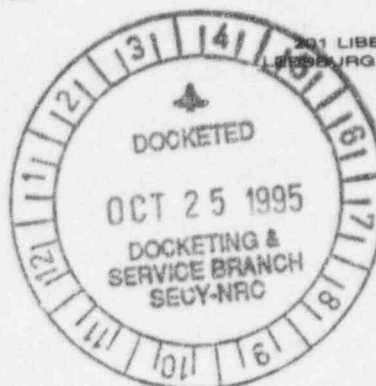
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October 25, 1995



Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

**Re: Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2): Docket Nos. 50-424-OLA-3, 50-425-OLA-3**

Dear Sirs:

Subsequent to the filing of Georgia Power Company's Petition for Review of Order to Produce Attorney Notes of Privileged Communications ("Petition for Review"), it has come to the attention of counsel for Georgia Power that there exists legal authority which Intervenor has failed to disclose to the Commission or to Georgia Power that is directly adverse to the principal case cited by Intervenor in his Opposition to the Petition for Review ("Opposition"), Samaritan Foundation v. Goodfarb, 862 P.2d 870 (Ariz. 1993). In his Opposition, Intervenor argued that, "[b]ased on the reasoning set forth in Samaritan, the inescapable conclusion is that the Dixon interview notes are not subject to the attorney-client privilege." Opposition at 7. Moreover, Intervenor averred, "the Samaritan decision conforms with the Upjohn precedent," and "[t]he Samaritan decision is applicable to the case at bar." Opposition at 5, 10. What Intervenor has failed to disclose, however, is that in April 1994, five months after the Supreme Court of Arizona decided Samaritan, the Arizona state legislature specifically overruled that decision by passing House Bill 2161, amending § 12-2234 of the Arizona Revised Statutes relating to attorney-client privileged communications.<sup>1</sup> The intent of the Arizona legislature in passing H.B. 2161 was to "enact[]

<sup>1</sup> As amended, § 12-2234 provides that

any communication is privileged between an attorney for a corporation, governmental entity, partnership, business, association or other similar entity or an employer and any employee, agent or member of the entity or employer regarding acts or omissions of or information obtained from the employee, agent or member if the communication is either:

1. For the purpose of providing legal advice to the entity or employer or to the employee, agent or member.
2. For the purpose of obtaining information in order to provide legal advice to the entity or employer or to the employee, agent or member.

§ 12-2234(B).

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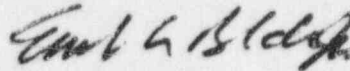
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October 25, 1995

Page 2

the U.S. Supreme Court's standard as enunciated in Upjohn Co. v. United States into Arizona law" and "replace the case law authority of Samaritan Foundation v. [Goodfarb] and conform the elements of Arizona's corporate attorney-client privilege to those of the Federal courts and the majority of other states' courts." Arizona State Senate, Minutes of Committee on Judiciary, Statement of Greg Cygan, Assistant Research Analyst, March 22, 1994 at 2. See also Arizona State Senate and House of Representatives, Report of Conference Committee, Minority Report ("The purpose of the bill is to override the Arizona Supreme Court's decision in Samaritan Foundation v. Goodfarb"). The Governor of Arizona signed H.B. 2161 into law on April 26, 1994.

Respectfully submitted,



Ernest L. Blake, Jr.

cc: (See attached service list)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commissioners

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

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Service upon the persons listed above was by deposit in the U.S. Mail, first class, postage prepaid, unless indicated by an asterisk in which case service was by facsimile.

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