

Georgia Power Company  
333 Piedmont Avenue  
Atlanta, Georgia 30308  
Telephone 404 526-3195

Mailing Address:  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 868-5581

January 19, 1996

W. G. Hairston, III  
Executive Vice President  
Nuclear Operations

LCV 0725-A

Docket No. 50-424 and 50-425

Mr. Stewart D. Ebnetter  
Regional Administrator  
U. S. Nuclear Regulatory Commission, Region II  
101 Marietta Street, N. W., Suite 2900  
Atlanta, Georgia 30323-0199

Re: Department of Labor Case No. 91-ERA-01 and 91-ERA-11  
Mosbaugh v. Georgia Power Company (EA 95-277)

Dear Mr. Ebnetter:

This letter is in further response to your letters of December 12, 1995 and January 12, 1996 and supplements our December 21, 1995 letter concerning the U. S. Department of Labor Secretary's Decision and Remand Order of November 20, 1995. This letter addresses in detail your concern about the potential "chilling effect" associated with the termination of Mr. Allen Mosbaugh and the issuance of the Secretary of Labor's findings. Our views of the apparent violation and a root cause evaluation are also presented. Based on the discussion below, Georgia Power Company denies this apparent violation.

#### The Secretary's Decision

Georgia Power believes that the Secretary of Labor's decision holding that Mr. Mosbaugh's surreptitious tape recording was lawful and constituted evidence gathering in support of a nuclear safety complaint is legally and factually incorrect. Therefore, Georgia Power will appeal the Secretary's final decision (after the required remand(s) for further determinations), if it is unfavorable to Georgia Power. Moreover, Georgia Power has moved to reopen the Department of Labor record on the basis of new and material information which was not available prior to the close of the hearing record in 1992. The new information includes portions of tape recordings withheld from disclosure by the NRC in the normal course of its investigative efforts and documentation provided to the NRC by Mr. Mosbaugh. As more fully explained in its Motion to Reopen the Record (Attachment 1), Georgia Power contends that Mr. Mosbaugh willfully caused violations of NRC regulations and the Atomic Energy

9601240372

Enclosure 3

97PP

Stewart D. Ebnetter

January 19, 1996

Page 2

Act, that he falsely testified at the Department of Labor hearings, and that his taping was indiscriminate, unreasonable and, in some instances, unlawful.

It is ironic that the Secretary of Labor has deemed Mr. Mosbaugh's extensive taping over approximately eight months, including his conversations with NRC investigators and inspectors, as "protected activity that constituted evidence gathering in support of a nuclear safety complaint." (Decision and Remand Order at 13.) As further explained in this letter, the validity of this decision is, in fact, the crux of our legal dispute with the Secretary of Labor's order. Our evidence clearly demonstrates that during this 1990 time frame Georgia Power was emphasizing its policy of open, honest communication with the NRC and encouraging its employees to cooperate fully with NRC's investigations, while recognizing their personal rights in the investigative process. In fact, Vogtle Project personnel were informed that they may request that the NRC tape record investigative interviews. (April 5, 1990 "OI Interview Guidelines," pg. 2, (Attachment 2)). Mr. Mosbaugh, on the other hand, decided to make his own tape (Tape 251) of his OI interview on August 15, 1990, without informing the NRC. Similarly, he tape recorded NRC Resident Inspectors (Tape 107; Tape 172) and NRC Regional Inspectors (Tape 87). Furthermore, Mr. Mosbaugh did not limit his taping to documenting evidence of safety violations. Rather, when his tape recorder was "on", it captured those conversations within its range; even those in which Mr. Mosbaugh was not an active participant. This is not the kind of tape recording that can be reasonably characterized as evidence gathering in support of a nuclear safety complaint. It also clearly is not the kind of taping which the NRC would have contemplated or asked Mr. Mosbaugh to do, as suggested by the Secretary (Decision and Remand Order at 14, footnote 4). To the contrary, it is the type of taping which breeds distrust and chills open communications.

The narrow issue of secret tape recording of conversations in the nuclear work place and when such tape recording is "protected activity" was addressed by former Chairman Selin in his July 14, 1993 letters to the members of the U.S. Senate Subcommittee on Clean Air and Nuclear Regulation. Chairman Selin observed that "lawful taping of conversations to which the employee is a party to obtain safety information, carried out in a limited and reasonable manner, for the purpose of promptly bringing such material to the attention of the licensee or the NRC, should not be a valid basis for terminating an employee." As the NRC knows from its own review of the tape recordings, Mr. Mosbaugh simply taped daily events over the course of many months as they unfolded. The tape recording was not limited in either duration or scope, nor was it selective. Mr. Mosbaugh did not promptly disclose the existence of the tapes to the NRC; only when ordered to compel the release of the tapes to Georgia Power did he inform the NRC of their relevance to ongoing regulatory reviews.

In our view, the Secretary had an inadequate and incomplete factual basis for evaluating Mr. Mosbaugh's tape recording, even against the standards set out in Chairman Selin's guidance. With the benefit of the whole story, including the facts set forth in our Motion to Reopen, the Secretary should find that Mr. Mosbaugh's taping did not meet the criteria set forth by Chairman Selin; it was not carried out in a limited and reasonable manner, nor did he promptly advise the NRC of his taping or the information on his tapes. Furthermore, the tape recordings do not support Mr. Mosbaugh's Department of Labor claims and demonstrate his own significant contribution to the violation of NRC regulations, which was the subject of one of his major allegations, i.e. the April 19, 1990 Licensee Event Report. These facts, Georgia Power submits, are reasons why Mr. Mosbaugh did not promptly disclose the existence of his tape recordings to either the licensee or the NRC, and why his actions were not "protected." A copy of former Chairman Selin's letter is enclosed (Attachment 3). Georgia Power notes that Chairman's Selin letter does not rise to the standard of a rule, regulation, or order as contemplated by Section 161b of the Atomic Energy Act. Further, Georgia Power questions whether the criteria set forth in Chairman Selin's letter would be judicially upheld as adequately protecting the rights of employers in similar situations.

#### Root Cause Evaluation

If there is a violation, then its apparent root cause is the difference between the legal positions of Georgia Power (with which the Department of Labor Administrative Law Judge agreed in 1992) and of the Secretary of Labor in 1995 regarding "protected activity" under the Energy Reorganization Act. A contributor to this difference of positions is the lack of a complete and accurate record before the Secretary of Labor resulting, to a significant degree, from the lack of relevant evidence available to Georgia Power prior to the close of the Department of Labor record.

#### Potential "Chilling Effect" on Safety Concerns

From the outset, Georgia Power has been careful to separate Mr. Mosbaugh's taping actions from various courses of action available to Vogtle employees who may want to raise safety-related concerns. Georgia Power contends that Mr. Mosbaugh's taping, under the circumstances, was inappropriate. However, Georgia Power also recognizes that the voicing of concerns is not only appropriate, but should be encouraged. Georgia Power has encouraged its employees to maintain open and frank communications within its organization and with the NRC and to promptly report safety or operational issues. As further explained in our letter of January 10, 1991, Georgia Power recognized that its employees might associate Mr. Mosbaugh's administrative leave and termination of employment with his identification of safety concerns. Early Georgia Power initiatives were designed to preclude possible misunderstandings and to make clear that Mr. Mosbaugh's discipline was associated with surreptitious taping of conversations and was not the result of his raising concerns. A copy of

Stewart D. Ebner  
January 19, 1996  
Page 4

Georgia Power's January 10, 1991 letter is attached hereto as Attachment 4 for your convenience.

Georgia Power has repeatedly stressed that no adverse action was taken against Mr. Mosbaugh as a result of submission of his concerns to his employer or to the NRC. Significantly, the Secretary of Labor did not find any retaliation for raising of concerns and specifically concluded Mr. Mosbaugh's average interim performance rating in August 1990 and removal of his company car when assigned to SRO school were not retaliatory for raising concerns. (Decision and Remand Order at 15-16.) In our prior January 1991 letter to you we pointed out that at the time Mr. Mosbaugh was placed on administrative leave, he had been previously selected and assigned to SRO training and the Manager-in-Training program. The training had been listed as his first choice on his list of career options developed on April 30, 1990. These facts were emphasized to our employees in a January 2, 1991, letter from Mr. Bill Shipman. (Attachment E to Georgia Power's January 10, 1991 letter).

Georgia Power disclosed the existence of Mr. Mosbaugh's massive tape recordings to its employees on September 19, 1990, shortly after learning of the taping (see Attachment A to Georgia Power's January 10, 1991 letter). This was consistent with Georgia Power's attempts to foster better internal communications during this time frame. In a similar manner, Georgia Power's Plant General Manager issued a memorandum to employees in August 1990 (prior to knowledge of Mr. Mosbaugh's taping activity) which informed them that all allegations of wrongdoing reviewed by a special NRC inspection team had been found to be unsubstantiated. The General Manager also emphasized Georgia Power's policy of cooperation and openness with the NRC:

The NRC appropriately investigates allegations of wrongdoing which bear on matters of safety or public health in a thorough and deliberate manner. While a formal interview [of an employee] may be disconcerting or stressful, these reviews are sometimes necessary. Georgia Power encourages cooperation in these investigations and views it as essential that the NRC obtain the relevant and material facts.

(Attachment 5, August 21, 1990 letter from G. Bockhold, Jr. to plant employees). Such factual disclosures to employees, we believe, foster a more trusting work environment. Indeed, the Southern System's nuclear plants have common principles for nuclear operations, including the principle that "we maintain open and candid relationships with each other, regulatory agencies and others with which we interact" (Attachment 6).

Stewart D. Ebnetter  
January 19, 1996  
Page 5

On a more general level, Georgia Power has taken several measures over the years which assure that safety and compliance-related issues are raised and addressed by our employees. Foremost, Georgia Power has a well-publicized and practiced management philosophy of openly and frankly identifying and communicating potential problems in order to maximize awareness and to facilitate resolutions at the earliest possible stage. The internal procedures for soliciting, addressing, and resolving concerns over nuclear safety and compliance, as well as other work place concerns, are found at both the plant and corporate office. We described these procedures in a September 30, 1993 letter from the Vice President-Vogtle, Mr. C. Ken McCoy, to the NRC (Attachment 7).

Plant Vogtle maintains a "Deficiency Card" system through which Vogtle employees or managers can document and notify their supervision of a potential quality or safety concern, which requires that the concern be formally addressed and, if necessary, resolved by appropriate management. Literally hundreds of Deficiency Cards are developed and resolved each year. The identification of these potential issues also is reinforced by Vogtle's "Major Problems List" which specifically identifies the most significant problems which the Plant faces and the steps designed to resolve the problems. In other words, management sets an example by self-identifying matters of concern.

Vogtle also maintains a Quality Concerns program; a very similar program is available to nuclear employees in the corporate office in Birmingham. These programs are designed to allow any employee to raise any concern, including anonymous concerns. The program at Vogtle provides for employees to take safety concerns to the Birmingham program if they are uncomfortable using Vogtle's program. In Atlanta, Georgia Power maintains a "Corporate Concerns" program, which allows any employee to file a concern at a level reporting directly to the Company's executive officers. This is yet another avenue available to employees in 1990 and today to express opinions, including non-nuclear matters, to upper management and demonstrates a management philosophy of openness and receptivity. At Vogtle, filled-out concern forms including anonymous ones, can be placed in any of several "drop boxes" located in the Plant. With respect to those quality-related concerns that are not submitted anonymously, there is an acknowledgment section on the form which seeks feedback on the satisfaction of the submitter as to the resolution of the concern. A high percentage of those individuals returning this acknowledgment reflect such satisfaction.

We are confident that Vogtle's Quality Concerns program is effective and viewed as a legitimate vehicle for raising concerns by our employees. The NRC staff shares our view. In May 1995 the NRC reviewed Vogtle's Quality Concern program (Inspection Report No. 50-424/425 95-14, dated June 22, 1995). The NRC Inspectors concluded that Vogtle's Quality Concerns program was effective in handling and resolving employee safety concerns. The Inspectors found the Vogtle Concerns program files to be notably well organized and

Stewart D. Ebnetter  
January 19, 1996  
Page 6

information related to the concerns was very thoroughly documented. Concerns were clearly identified and addressed. Closeout letters to the concerned individuals were well written and timely. The Inspectors also interviewed approximately 20 employees from various levels at Vogtle. The NRC Inspectors observed:

The . . . employees interviewed all stated that they would report safety concerns. All said they would report such concerns first to their supervisor/management, and would have confidence that the supervisor/manager would adequately resolve the concerns. Most said that all such concerns in the past have been adequately resolved by the supervisor/management. All said that they had not been intimidated or harassed by management for raising safety concerns. Most said that management was very receptive to safety concerns.

(Inspection Report 95-14, Report Details, page 6 (emphasis supplied)).

In addition, Vogtle employees are trained as part of their orientation on their right to raise concerns with the NRC. The NRC-prescribed forms are posted around the plant as are notices signed by the General Manager of Vogtle providing information concerning the reporting of quality concerns.

Georgia Power has responded to matters associated with Mr. Mosbaugh's concerns and allegations in a manner designed to avoid any "chilling effect." For example, in May 1994 the NRC issued a Notice of Violation associated with one of Mr. Mosbaugh's principal allegations. I issued a memorandum to nuclear employees which reinforced Georgia Power's policy of openly communicating their concerns to supervisors or through the Quality Concerns program. Employees were reminded that the Nuclear Regulatory Commission is an alternate avenue, and numerous bulletin boards throughout the work areas provide information about that avenue. The memorandum assures employees that they may raise concerns "without any fear of penalty or retaliation." The Senior Vice President, Mr. Jack Woodard, made a presentation to nuclear employees at Vogtle (and Plants Hatch and Farley) to underscore my message. Similarly, in October 1995 the Secretary of Labor issued a Decision in the Hobby v. Georgia Power matter. Shortly thereafter, in order to assure the Decision was not misconstrued, the President and Chief Executive Officer of Georgia Power, Mr. H. Allen Franklin, issued a memorandum re-emphasizing our policies on raising safety and regulatory compliance concerns. Mr. Franklin's letter included the following statement:

No retaliation for raising a compliance concern will be tolerated. Any employee, including a supervisor, manager or officer, who retaliates or penalizes an individual for submission or voicing of a concern will be subject to appropriate disciplinary action.

Stewart D. Ebnetter  
January 19, 1996  
Page 7

Copies of my May 11, 1994 memorandum and Mr. Franklin's October 3, 1995 memorandum are included in Attachment 8.

We have continued to keep our employees informed of developments in the Department of Labor proceeding. Enclosed is a general News Update made available to Birmingham and Plant Vogtle employees shortly after the Secretary of Labor's November 20, 1995 decision (Attachment 9).

### Conclusion

In summary, Georgia Power disagrees that Mr. Mosbaugh's taping was protected activity based, in part, on evidence not in the Department of Labor record and currently known to the NRC, and based in part on the NRC Chairman's letter of July 14, 1993. No finding was made by the Secretary that Georgia Power illegally discriminated against Mr. Mosbaugh because he raised safety concerns; instead, this matter is primarily a legal dispute about the meaning of the law and its application to controverted facts. Consequently, Georgia Power respectfully disagrees that it violated ERA Section 211 or NRC regulations. Even if ultimately proven wrong, history reveals that Georgia Power acted reasonably and in good faith in 1990 without the benefit of any clear NRC precedence. In 1992, the Administrative Law Judge agreed, thereby confirming the reasonableness of Georgia Power's position.

As discussed above, the Secretary had an inadequate record to determine the nature of Mr. Mosbaugh's taping activities or, as addressed in the Motion to Reopen, to determine whether Mr. Mosbaugh willfully violated NRC regulations. Georgia Power has repeatedly stressed that it never discriminated against Mr. Mosbaugh for raising or pursuing safety or compliance concerns, and continues to emphasize the need to raise such concerns through its established policies and procedures.

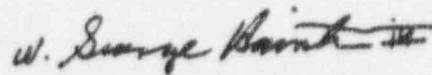
As discussed above, Georgia Power believes the Secretary of Labor's November 20, 1995 decision is in error and will appeal the final order of the Secretary if it is unfavorable to Georgia Power. Georgia Power also has moved to reopen the record to admit evidence which was not available to it at the close of the 1992 Department of Labor hearing. Georgia Power prohibits retaliation for the submission or voicing of concerns, and has attempted to keep its employees informed of developments in these matters. We believe that these efforts have avoided, or minimized to the extent practical, any employee perception that Mr. Mosbaugh was retaliated against for voicing concerns.

This letter was reviewed by me and others familiar with these historical events. While I do not have personal knowledge of all the matters addressed, the foregoing information and opinions are true and correct to the best of my knowledge and belief. We are available to provide any

Stewart D. Ebnetter  
January 19, 1996  
Page 8

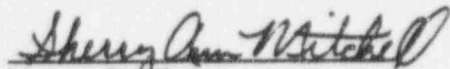
clarification, expansion, or verification which you should desire. As the Executive Vice President - Nuclear of Georgia Power, I am authorized to execute this letter on behalf of Georgia Power.

Yours very truly,



W. George Hairston, III

Sworn to and subscribed before  
me this 19<sup>th</sup> day of January, 1996.



Notary Public  
My Commission Expires:

12/15/96

xc: Georgia Power Company  
Mr. J. Beasley, Jr.  
Mr. M. Sheibani  
NORMS

U.S. Nuclear Regulatory Commission  
Mr. J. Lieberman, Director, Office of Enforcement  
Mr. L. L. Wheeler, Licensing Project Manager  
Mr. C. R. Ogle, Senior Resident Inspector, Vogtle  
Document Control Desk

Date: April 5, 1990

Re: Vogtle Electric Generating Plant  
OI Interview Guidelines  
Log: GMY-00065  
Security Code: NC

From: C. K. McCoy

To: Vogtle Project Personnel

When investigations are being conducted by the Nuclear Regulatory Commission's Office of Investigations (OI), OI investigators may contact you at home or at work to set up an interview. There will be no restrictions placed by Georgia Power Company on your communications with NRC personnel. The purpose of the following guidelines is to advise Georgia Power Company employees of their rights and obligations in dealing with NRC investigations.

#### NRC Interview Request

You do have the right to decline to be interviewed. Georgia Power discourages this action and encourages individuals to cooperate fully with the NRC.

If contacted off the job site or during off duty hours, individuals may postpone any interview until the next work day. The company will pay you for your time when the interview is onsite.

#### Management Notification

If contacted by NRC investigators at work, notify your supervisor to arrange an interview. If contacted off the jobsite, Georgia Power Company suggests that you notify your supervisor to arrange an interview, however supervisory notification is strictly on a voluntary basis.

#### Representation

Georgia Power Company strongly recommends that you have representation at any interview with NRC investigators.

You may demand to have a lawyer, coworker, or friend of your choice at any onsite or offsite interview.

You may request management to arrange for a company lawyer to confer with you before an interview and to represent you during the interview. This will be at no cost to you.

### Recording the Interview

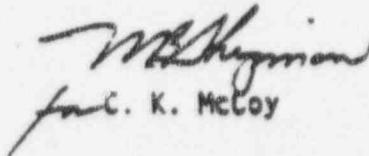
You may request to have the NRC tape-record the interview. Georgia Power Company recommends that you request a copy of the transcript from the NRC.

### Sworn Statements

You may be asked by the NRC for a signed, sworn statement. If you provide such a statement, it should be reviewed very carefully and you should make any changes you wish so that the statement is correct and fully reflects your position. If you sign, you are entitled to a copy for your records.

You may have a lawyer review or prepare your statement with you for accuracy and legal effect.

Remember, our policy is to be open, honest and to cooperate fully with the Nuclear Regulatory Commission.

  
W. K. McCoy

CKM:WBS:mjc

cc: NORMS



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

ATTACHMENT 3

July 14, 1993

The Honorable Joseph I. Lieberman, Chairman  
Subcommittee on Clean Air and Nuclear Regulation,  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter of June 11, 1993, in which you requested the Nuclear Regulatory Commission's views on whether one-party taping of conversations by employees of NRC licensees could constitute, in some circumstances, protected activity under section 211 of the Energy Reorganization Act of 1974. You also suggested that it would be appropriate for the NRC to communicate its views on this issue to the Department of Labor.

In general, the NRC believes that attempts by employees of NRC licensees, contractors, or subcontractors ("employee") to gather evidence relating to nuclear safety concerns at NRC-regulated facilities or to gather evidence of discrimination related to the reporting of safety issues for purposes covered by section 211 of the Energy Reorganization Act, 42 U.S.C. Sec. 5851, are activities subject to protection under that section. In the context of the Committee's letter, the NRC believes that legal surreptitious taping by an employee of personal conversations, to which the employee is a party, with the intent of providing the information obtained to the licensee or the NRC, is an activity subject to protection under section 211.

Although the activity may be within the scope of activities protected under section 211, employment may still be terminated (or other employment action taken), if the employer can demonstrate by clear and convincing evidence that it would have taken the same unfavorable action in the absence of such behavior; i.e., for legitimate, non-discriminatory reasons, including whether the activity was carried out in an unreasonable manner or in violation of law. Thus, while the Commission recognizes that attempts by an employee to gather evidence of safety violations or related discrimination in some respects could have a disruptive effect on the workplace, the mere potential for interruption of routine conduct of operations that may be caused by reasonable whistleblower activities should not be a basis for disciplinary action against an employee. For this reason, determination of whether an employer may terminate or take other employment action against an employee who has engaged in an activity subject to protection under section 211 will

depend on the specific facts and circumstances of the particular case. Lawful taping of conversations to which the employee is a party to obtain safety information, carried out in a limited and reasonable manner, for the purpose of promptly bringing such material to the attention of the licensee or the NRC, should not be a valid basis for terminating an employee.

Once an employee has acted to gather evidence, the employee should inform either the licensee or the NRC, of the employee's actions. Prompt notification is in the public's interest because it enables the NRC and/or the licensee to act promptly to protect public health and safety, to recognize and correct any possible safety violation, or to address any possible discrimination. Surreptitious taping properly carried out under the direction of the NRC should afford the employee protection under section 211 of the ERA for such action.

By copy of this letter, we are communicating our views on these issues to the Department of Labor and are also serving it upon the parties participating in the Department of Labor proceeding, *Mosbaugh v. Georgia Power Company*.

Sincerely,



Ivan Selin

cc: The Honorable Robert B. Reich  
Parties to the Mosbaugh proceeding  
(Alan Mosbaugh)  
(Georgia Power Company)

Georgia Power Company  
333 Piedmont Avenue  
Atlanta, Georgia 30308  
Telephone 404 526-3195

ATTACHMENT 4

12  
Mailing Address  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 868 5551

W. G. Hairston, III  
Senior Vice President  
Nuclear Operations

January 10, 1991

ELV-02428  
0792

Docket Nos. 50-424  
50-425

U. S. Nuclear Regulatory Commission  
Document Control Desk  
Washington, D. C. 20555

Gentlemen:

**VOGTLE ELECTRIC GENERATING PLANT  
ALLEGED EMPLOYEE DISCRIMINATION**

This letter is in response to your letter, dated December 11, 1990, concerning the U. S. Department of Labor's Wage and Hour Division, November 16, 1990 letter regarding a complaint filed by a former employee of Georgia Power Company's (GPC) Vogtle Electric Generating Plant (VEGP). The Wage and Hour Division found that "the weight of the evidence to date" indicated that the former employee was "engaged in protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise his complaint." The basis for the Wage and Hour Division's conclusion was that the former employee filed a petition with the Nuclear Regulatory Commission on September 11, 1990, and provided tape recordings of conversations to the NRC on September 13, 1990, and that on September 15, 1990 the employee was placed on administrative leave and subsequently terminated from VEGP employment on October 11, 1990.

Georgia Power Company has requested a full, de novo, evidentiary hearing on this complaint. Counsel for GPC has kept NRC General Counsel representatives informed of all stages of the investigation and proceedings in this matter. In addition, the NRC has been kept informed by GPC concerning two prior complaints filed with the Department of Labor (DOL) under the Energy Reorganization Act by this former employee. These prior complaints were filed June 7, 1990, and August 23, 1990. In both instances, the Wage and Hour Division found that allegations of impermissible adverse employment action were without merit. The employee has appealed those findings.

Your letter requests an explanation of the basis for the employment action regarding the former employee and copies of any investigative reports regarding the circumstances of the action.

U. S. Nuclear Regulatory Commission  
ELV-02428  
Page 2

Georgia Power Company, although maintaining various documents pertaining to the employment action, has no specific "investigative report" associated with the employment action. The available documents include, for example, copies of the request for proceeding, documentation associated with allegations contained in the request, and the partial deposition of the employee taken on September 11, 1990. Other relevant and material documentation is anticipated to be entered into the record of the evidentiary hearing. In the meantime, should you desire to review any of this information, please feel free to contact me.

With respect to the employment action taken, the former employee's surreptitious taping of co-workers and employees of your agency, its negative effect upon open communications, and the implications of the tape recording relative to the trustworthiness of the employee constitute the basis for the former employee's discharge. The NRC is now well aware of the nature and extent of the tape recording. However, up until September 12, 1990, the NRC apparently was unaware of the taping even though the former employee had access to and was interviewed by the NRC concerning his allegations on several prior occasions. Georgia Power Company notified the NRC of the tapes existence early on September 12, 1990, after learning of their existence on September 11, 1990. The former employee and his counsel notified the NRC of the tapes existence late on September 12, 1990, only after the DOL administrative judge ordered the tapes to be provided to GPC.

The former employee's conduct in indiscriminately tape recording conversations over a period of approximately eight (8) months placed him in a position where he could no longer effectively manage employees, rendering him incapable of effectively performing his assigned duties in the work place. This is because employees at a nuclear power plant must be able to share facts, ideas, problems, and opinions of both a business and interpersonal as well as personal nature. Effective working relationships depend upon mutual trust and candor with an expectation of privacy on those matters of an interpersonal or personal nature and certain business matters. The actions of the former employee violated these cardinal principles. In this regard, it is important to note that the former employee had ample opportunities on numerous occasions to provide the tapes to the NRC. Moreover, the former employee tape recorded representatives of your agency who were investigating allegations submitted by himself and taped subordinate employees who reported to, and were subject to his instructions. Our discovery of these activities on September 11, 1990, was the sole reason for his termination of employment. In fact, at the time the former employee was placed on administrative leave on September 15, 1990, he had been selected and assigned to Senior Reactor Operator training and the "Manager-in-Training" program as of July, 1990. The training had been listed as his first choice on his list of career options developed on April 30, 1990.

Regarding the other alleged "protected activity" of requesting the NRC to initiate a proceeding based upon allegations, as early as June, 1990, the employee had provided the NRC with his concerns. More specifically, the General Manager (VEGP) asked the NRC Resident Inspector to meet with him and the former employee so that the former employee could articulate all potential concerns.

That meeting was held on June 19, 1990 and the employee was requested to air all his concerns in the presence of the Resident Inspector. The employee provided no specific issues at that time but stated that he had some technical and managerial concerns which he had not fully formulated in his own mind. Georgia Power Company tasked the corporate concerns manager to meet with the former employee to obtain and investigate all concerns. During that effort, on July 3, 1990, it became clear that the former employee was withholding concerns. Therefore, the General Manager, on July 6, 1990, directed the former employee in writing to provide his concerns to the NRC. By the time the request for proceeding was filed with the NRC on September 11, 1990, the NRC, as the former employee knew, had already conducted an extensive review of his allegations.

Your letter also requested the licensee to describe actions, if any, taken or planned to assure that the employment action regarding the former employee does not have a "chilling effect" on the raising of perceived safety concerns by other licensee or contractor employees. Several actions have been taken, and others are anticipated. All are designed to inform our employees of the reason for the employment action taken and to inform them of their right and responsibility to raise any safety concerns which they may have. This information dissemination was intended to foster open, honest communication and minimize or preclude any "chilling effect." At the time the employment action was taken, GPC recognized that employees might attribute the administrative leave and termination of employment as being associated with the former employee's identification of safety concerns. Employees who were involved with these historic concerns readily understood the legitimate basis for the employment action. In contrast, many workers without first-hand knowledge of these details might misconstrue the employment action. Accordingly, informal oral presentations were made to both VEGP site employees and VEGP corporate employees which explained the basis for the administrative leave. The primary points made in these presentations are contained in Attachment A, which was used by the General Manager and Vice President - Vogtle in their statements. Questions from employees were solicited and answered. These early initiatives were designed to preclude misinformation, were concurrent with the employment action taken, and were effective. More specifically, employees are believed to understand the distinction between discipline associated with the former employee's surreptitious taping of conversations and improper employment action.

Information GPC had placed in the public domain also established the basis for GPC employment action and differentiated between furtive tape recording by the former employee and the raising of legitimate safety concerns. Prior to the former employee's discharge on October 11, 1990, GPC, by letter dated September 28, 1990, provided the NRC with preliminary comments on the former employee's September 11, 1990 request to initiate an administrative action against GPC. Georgia Power Company specifically addressed its view of the surreptitious taping as "a blatant disregard for the legitimate norms and expectations of co-workers and employees of your agency". Moreover, this September 28, 1990, letter included a July 6, 1990, memorandum from the General Manager (VEGP) to the former employee tasking him with providing safety-related concerns to the NRC which he was withholding from GPC management.

Subsequent to the former employee's termination from employment, GPC refrained from responding fully to press inquiries. GPC's position in the matter was provided to the press, but detailed interviews were not granted. This approach was designed to minimize any residual chilling effect and the potential appearance of retribution.

Later, however, (during November, 1990) the former employee pursued media coverage of his safety concerns. In light of the inquiries from the media, the former employee apparently was attempting to portray his concerns as substantial and his motives as altruistic. Detailed interviews, therefore, were provided by the Vice President - Vogtle to the major newspapers. In these interviews, the Vice President continued to differentiate between the basis for the former employee's discharge and impermissible discipline based upon the raising of safety concerns. Also, the Vice President distinguished between the raising of bona fide concerns and the concerns raised by the former employee by disclosing for the first time the fact that in early June, 1990, the former employee's counsel had proposed a large financial settlement in exchange for his forbearance in pursuing a DOL claim and in submitting concerns to the NRC. News articles in the Augusta and Atlanta newspapers, and other associated media coverage, raised the issue of motive. Editorials in the Augusta newspapers which followed these articles focused on the distinction between bona fide concerns and concerns submitted for financial gain (Attachment B). Georgia Power Company believes, based upon information provided by the media and the Company, that our employees distinguish between the raising of bona fide safety concerns and the motives and actions of the former employee.

In addition to the manner in which GPC publicized the basis for its employment action, GPC also broadly addressed the merits of the allegations. First, the September 28, 1990 letter deals with the allegations themselves. Second, the allegation "hyped" to the media by the former employee and his counsel was addressed directly in intra-company newsletters. Specifically, the allegation of material false statements provided to the NRC regarding the reliability of the emergency diesel generators at VEGP was addressed in a posting for employees on October 31, 1990, (Attachment C) and in mid-November 1990 employee news articles (Attachment D). These articles, among other things, provided details to employees who would not have ready access to the information. The articles acknowledged an error in the original data submitted to the NRC but, specifically avoided a discussion of the degree to which the former employee might have precluded the error, how he was tasked personally to resolve the error, and the fact that he proposed a revised Licensee Event Report which would not have materially differed from the original submittal. In other words, the articles purposefully avoided attacks on the former employee and, by doing so, permitted other employees to view the technical merits of the allegation in a non-adversarial context, which was, less likely to chill open communication.

The duration of the NRC's on-going review (including several requests for follow-on employee interviews) and other activities associated with the review might dissuade some employees from raising safety or operational issues. Attachment E, enclosed, was provided to VEGP employees on January 2, 1991 to reinforce open communication and timely identification and resolution of safety and operational issues. The various options for reporting concerns are expressly set forth in the statement. The statement also anticipates Georgia Power Company's vigorous defense of the former employee's 50.7 allegations in the DOL proceeding.

In conclusion, GPC has addressed this matter in a manner designed to mitigate and preclude a "chilling effect" on the raising of bona fide concerns by employees. Removal of the former employee from the plant site by placing him on administrative leave and subsequently terminating his employment actually served to foster open communications among plant employees. Georgia Power Company firmly believes that it has been successful in differentiating the former employee's inappropriate taping actions from appropriate courses of action available to all those employees who may have concerns. Concomitant with that effort, GPC has encouraged employees to maintain open and frank communications and to promptly report safety or operational issues.

Sincerely,



W. G. Hairston, III

WGH, III/JAB/gm

xc: Georgia Power Company

Mr. C. K. McCoy  
Mr. W. B. Shipman  
Mr. P. D. Rushton  
Mr. R. M. Odom  
NORMS

U. S. Nuclear Regulatory Commission

Mr. S. D. Ebnetter, Regional Administrator  
Mr. D. S. Hood, Licensing Project Manager, NRR  
Mr. B. R. Bonser, Senior Resident Inspector, Vogtle

ATTACHMENT A

9-19-90

Last Saturday, George Bockhold met with Allen L. Mosbaugh and told him that the Company had learned of his actions in taping conversations with a large number of people over an extended period of time. Under these circumstances, Ken McCoy decided it was in the best interest of Allen Mosbaugh and all concerned that he not be on the plant site for the next 30 days. He is now on administrative leave with pay for that time, and all of his employment benefits will remain unchanged during these 30 days.

As we have said many times before, and as I want to reemphasize, each one of you has a duty to maintain the safety of this plant. In order to accomplish this paramount goal of safety, it is absolutely essential that all employees feel free to communicate, and do communicate with one another openly, trustfully and without hesitation.

Any issue related to the safety of the plant needs to be addressed and resolved. We have set up multiple systems for the resolution of concerns. They can be addressed with management, and any of you are free to take issue to higher management if immediate management is not responsive. They can be addressed in the Quality Concern Program or the Corporate Concern Program. You can use the Deficiency Card system. Certainly, any one is free to and is encouraged to go to the NRC on any issue you feel is appropriate. All of these methods and other methods available here can be used anonymously if you feel that is

ATTACHMENT A (CONTINUED)

appropriate. This dedication to safety and open communication remains a fundamental commitment on the part of this Company. I want you to take steps to re-affirm this same message with your subordinates.

# SONOPCO Project News

## From The Augusta Chronicle

Editorial Page 4-A

Friday, December 7, 1990

### Wait on NRC report

Well-meaning employees upset about a company's operations have the option to speak out if they have exhausted redress through the internal company chain-of-command.

But does nuclear engineer Allen Mosbaugh of Grovetown fall into such a whistle-blower category?

He was a Plant Vogtle worker who made no bones about wanting to move away after a stint here — and he was dissatisfied with his employer's attitude toward a pay settlement. So for several months he began secretly tape recording the comments of hundreds of co-workers.

Not surprisingly, he uncovered some dirt.

Mosbaugh then went to the Nuclear Regulatory Commission with his safety gripes and, to be fair, he uncovered disturbing things. However, his employer — the Georgia Power Co. — readily admitted some key problems were due to human or mechanical error.

Initially, Mosbaugh was put on administrative leave but, in our opinion, this fellow should have been axed outright.

He later was fired, but not because of whistle-blowing to the NRC. The power company says it was due to the manner in which he taped

comments from unsuspecting people.

Workers in safety-related jobs could have become more reluctant to talk with one another after the taping was revealed — and communication problems are the last thing needed in a nuclear facility!

Surprisingly, U.S. Labor Department probes claim Mosbaugh was fired illegally; his sleuth work was justifiable. This is being appealed.

Yet the engineer's motives and timing raise questions.

Georgia Power underscores that Mosbaugh didn't go to the NRC until after his lawyers had failed to negotiate a sizable cash settlement with the company. (His anti-nuclear attorneys used to work for the left-wing Government Accountability Project. They naturally have an ax to grind.)

We also couldn't find where Mosbaugh took grievances through company channels for redress. If he was sincere, and not motivated by money, why didn't he simply take his problem-list to Vogtle's various safety and problem-concerns programs?

Mosbaugh's allegations make good newspaper copy. But let's wait for the final NRC report to see if all his claims stand up to scrutiny.

ATTACHMENT B (CONTINUED)

FROM THE AUGUSTA HERALD  
Monday, December 10, 1990

## *Whistle's sour notes*

Employees should be encouraged to blow the whistle when their company ignores or evades proper rules and procedures, but weight also has to be given to whistle-blowers' motives which can have a direct impact on their credibility.

There's no doubt that nuclear engineer Allen Mosbaugh of Grovetown has exposed some safety lapses at Plant Vogtle that it readily admits to and is moving to correct. Other charges it denies and their veracity will be determined by a Nuclear Regulatory Commission investigation.

What troubles us is the way the whistle-blower went about his work. Upset because Vogtle would not give him what he considered a generous severance settlement when he wanted to leave, Mosbaugh took to secretly taping co-workers' conversations and then bought the allegedly incriminating evidence directly to the NRC without ever going through the company's redress channels.

Whatever the truth of Mosbaugh's charges, he surely doesn't fit the image of the altruistic whistle-blower. He obviously had his own fish to fry — namely to embarrass the company he felt had wronged him.

Is that he has succeeded, but we think the company was still right to fire him, not for blowing the whistle, but for taping private conversations. Amazingly, the U.S. Labor Department disagrees and says he was illegally fired.

ATTACHMENT C :

EMPLOYEE NOTICE

10-31-90

Statements by Allen Mosbaugh recently reported in the news media are inaccurate. The statements relate to Georgia Power's reports to the NRC regarding diesel generator testing following the March 20 Site Area Emergency. Mosbaugh, a former Georgia Power employee who worked at Plant Vogtle, was fired earlier this month for his conduct in secretly taping conversations with other employees and with NRC personnel.

Georgia Power has acknowledged that there was a numerical error in data conveyed to the NRC about the testing of diesel generators at Plant Vogtle. However, as soon as Georgia Power determined a potential error in this data, it verbally notified the NRC of the potential error and subsequently corrected the data with the NRC in writing.

The NRC reviewed and was completely briefed on the diesel generator testing after the March 20 site area emergency and before the restart of the unit.

At no time has Georgia Power intentionally made false statements or attempted to mislead the NRC about the diesel generator, and Georgia Power promptly identified and rectified the reporting error, keeping the NRC verbally apprised during the process.

Mr. Mosbaugh filed his request for NRC proceedings under a regulation that permits anyone to file such a request, regardless of merit.

ATTACHMENT C (CONTINUED)

Before he filed his request, Mr. Mosbaugh also brought claims against Georgia Power at the U. S. Department of Labor, seeking monetary compensation. His claims have alleged that adverse employment action was improperly taken against him. Following two independent investigations, the Department of Labor determined that his claims were without merit. He has appealed those determinations.

Georgia Power has and will continue to keep the NRC fully and promptly informed. We will continue to encourage all employees to maintain openness in our communications and to promptly report and resolve any concerns about safety or operational issues.

## World War II plane

continued from page 1

In his spare time, Dan likes to go flying. Following a rough start in aviation, crashing his ultralight, he bought a small airplane and started taking lessons. In August, Dan earned a private pilot's license.

Currently, Dan owns a World War II Army plane which was built in 1944. This fall, he went to "fly-ins" (informal airplane conventions) in Dublin and Carrollton, sleeping under the wing of his plane in a small tent.

In October, Dan put his antique plane on "static display" at the Robins Air Force Base air show. "I bought a leather flying helmet and goggles a long time ago. I've always wanted an open cockpit biplane...it's the only way to fly," stated Dan. He has recently located just such a plane in Missouri and is planning to trade his Army plane for it. □

## Georgia Power clarifies recent publicity about Vogtle diesel generators

**R**ecent news media reports have stated that Georgia Power attempted to mislead the Nuclear Regulatory Commission (NRC) earlier this year when providing data about the reliability of emergency diesel generators at Plant Vogtle. "That is not true," stated Ken McCoy, vice president of the Vogtle Project.

"The original data submitted was in error, but we had no intent to mislead the NRC. As soon as Georgia Power determined that there was a concern about that data, the Company verbally notified them of the concern and subsequently provided a written correction."

This issue concerned the number of times two backup diesel generators successfully operated during testing. "The NRC had people there while we were running the tests, and they reviewed the results. In their review, the NRC had all of the same information we had," McCoy said.

Problems in getting a generator started contributed to the March 20, site-area emergency at the plant. But contrary to recent news media reports, the NRC reviewed and was briefed on the diesel generating testing after the March 20, incident and before the restart of Unit 1.

Georgia Power had originally submitted information that said one of the generators successfully started 18 times, while the second generator successfully started 19 times without failures or problems occurring.

Actually, it was determined later that the employees who gathered and prepared the data for the NRC did not use all available information in determining successful generator starts.

Instead, they used data from the operators' logs only. Operators consider a test "successful" if the diesel generator starts up. Based on that, the operators logged these start attempts as successful for both generators. But, a subsequent review of an engineer's log showed that some of the start-up tests did in fact have problems or failures after operating for a period of time.

"That's the basis of the confusion," McCoy said. "Our first report was based on an incomplete review of the logs."

The erroneous statement is one issue raised in a petition filed with the NRC by Allen Mosbaugh, a former Georgia Power employee. The NRC is treating Mosbaugh's filing as a petition pursuant to federal regulations that permit anyone to file a request to the NRC regardless of merit. The petition is based on false and inaccurate statements, and the issues raised in the petition have already been reviewed and dismissed by Georgia

### HATCH GAZETTE

Published Bi-Weekly by the

Editor: Hatch Nuclear

Information Center

For and About

Plant Hatch Employees

Lewis Sumner .... General Manager

Plant Hatch

June Hagen ..... Editor

Sybil Lee ..... Assistant Editor

#### CORRESPONDENTS

Linda Josses ..... Health Physics

Loretta Bell ..... Quality Control

Beverly Burch ..... Administration

Jonah Layne ..... Maintenance

Mary Anne Durbin ..... Training

Sharon Stone ..... Materials

Colleen Hart ..... Maintenance

Jeanette Owens ..... Engineering

Margaret Hughes ..... Security

Reggie Swanson ..... Recreation Area

Dale Denslow ..... Nuclear Safety

Camp

Susan Gay ..... Operations

Elmer Dukes ..... S&amp;E

Joan Branch ..... Building and Grounds

Shane Thomas ..... Outpost &amp; Planning

Hatch Gazette is published by the Hatch Nuclear Information Center

GEORGIA POWER

NOVEMBER 16, 1988

# THIS WEEK

B2  
V-File

## GPC clarifies recent publicity on Vogtle diesel generators

**G**eorgia Power did not intend to mislead the Nuclear Regulatory Commission about the reliability of Plant Vogtle's emergency diesel generators, according to Ken McCoy, vice president of the Vogtle project.

"The original data submitted was in error, but we didn't intend to mislead the NRC. As soon as we determined there was a concern, the Company orally notified the NRC

and subsequently provided a written correction."

The issue concerned the number of times two backup diesel generators operated successfully during testing. "The NRC had people there while we were running the tests, and they reviewed the results. In their review, the NRC had all of the same information we had," McCoy says.

Problems in getting a generator started contributed to the March 20

site-area emergency at the plant. However, contrary to recent news media reports, the NRC reviewed and was briefed on the diesel generating testing after the March 20 incident and before the restart of Unit 1.

Georgia Power had originally submitted information that said one of the generators successfully started 18 times, while the second generator successfully started 19 times without failures or problems occurring. It was learned later that employees preparing the data for the NRC did not use all the available information in determining successful generator starts.

Instead, they used data from the operators' logs only. Operators consider a test "successful" if the diesel generator starts up. Based on that, the operators logged these start attempts as successful for both

generators. A subsequent review of an engineers' log showed that some of the start-up tests did in fact have problems or failures after operating for a period of time.

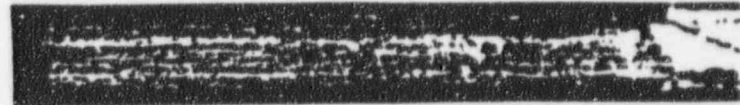
"That's the basis of the confusion," McCoy says. "Our first report was based on an incomplete review of the logs."

The erroneous statement is one issue raised in a petition filed with the NRC by Allen Mosbaugh, a former Georgia Power employee. The NRC is treating Mosbaugh's filing as a petition pursuant to federal regulations that permit anyone to file a request to the NRC regardless of merit. McCoy says the petition is based on false and inaccurate statements, and the issues raised in the petition have already been reviewed and discussed by Georgia Power with the NRC. ▴

## Vogtle completes refueling outage

**T**he Unit 2 refueling outage at Plant Vogtle, which began at midnight on Sept. 14, is now complete. The unit was reconnected to the grid Nov. 14. During the outage, employees completed plant design modifications, maintenance activities and various tests and inspections. Engineers from Southern Company Services and various contractors assisted in the outage.

"Several major jobs were undertaken after the start of the outage, which added to its original scope," says Ken McCoy, vice president of the Vogtle project. "This work should pay dividends in future performance. The outage was a success because of the dedication and teamwork of all plant employees and others who supported them." ▴



Interoffice Correspondence

Georgia Power 

DATE: January 2, 1991  
RE: Open Communication  
FROM: W. B. Shipman  
TO: Vogtle Employees

Recent news reports have focused on litigation between Allen L. Mosbaugh, a former employee at this plant, and Georgia Power Company. In a Department of Labor (DOL) proceeding, Mr. Mosbaugh contends that he was placed on administrative leave and subsequently terminated from employment as a result of his engaging in "protected activity," including submission of safety concerns to the Nuclear Regulatory Commission. In that litigation, Georgia Power denies these assertions; Mr. Mosbaugh was terminated from employment after it was learned that he had surreptitiously tape recorded conversations with other plant workers and with NRC personnel over a substantial period of time. Georgia Power Company, therefore, intends to vigorously defend the DOL action brought by Mr. Mosbaugh.

I want to emphasize to all Vogtle employees that Georgia Power's concern about Mr. Mosbaugh's surreptitious conduct is because of its negative effect on open communications at this plant, and not because of his raising of safety issues. Open and frank communications are essential in our industry. When Georgia Power learned that Mr. Mosbaugh had concerns that he had not disclosed, he was directed to submit his concerns to the NRC in July, 1990. No adverse action was taken as a result of the submission of these or other concerns. Indeed, Mr. Mosbaugh had been selected and assigned to Senior Reactor Operator training and was enrolled in the "Manager in Training" program at the time that his secret tape recording became known.

Georgia Power is fully cooperating with the NRC's review of Mr. Mosbaugh's concerns and allegations. Interviews of plant personnel and review of documents have been conducted and additional interviews may be requested by the NRC. Employees are reminded that Georgia Power encourages individuals to cooperate with the NRC in its investigations, even though individuals have a legal right to decline to be interviewed. Employees also are reminded that they have the right to have a lawyer, co-worker or friend of his/her choice at any on-site or off-site interview with governmental investigators. If requested, management will arrange for an attorney to confer with you before an interview and to represent you during the interview. This will be at no cost to you. At no time are you restricted from your communications with NRC personnel.

ATTACHMENT E (CONTINUED)

Page Two

I encourage and request all of you to maintain openness in your communications and to promptly report and help resolve any concerns about safety or operational issues. In addition to your "chain of command" reporting of concerns, the Quality Concerns Program (telephone number 1-800-225-2055) will accept anonymous allegations (numerous drop boxes exist throughout the plant, or the concerns can be submitted by telephone or personally by contacting Bill Lyon--Quality Concerns Coordinator). The Nuclear Regulatory Commission Resident Inspectors were recently highlighted in the Vogtle Voice and also may be contacted (extension 4116). The NRC also maintains an off-site telephone number, 301/951-0550 (call collect).

Please remember, the identification of issues which may adversely affect safety or health is a fundamental responsibility of each employee. In any complex human endeavor, such as running these plants, technical deficiencies or weaknesses may be identified. Only by your identification of such problems can they be resolved and help assure our foremost goal -- safe operation of the Vogtle Electric Generating Plant.



WBS/tdm

December, 1990

Vogtle Voice

## Meet your inspectors

by Herb Beecher

Who is the Nuclear Regulatory Commission (NRC)? Why are NRC residents on site? In this article, we will answer these questions and introduce you to our resident inspectors.

The resident inspector program originated after the Three Mile Island (TMI) accident. The NRC regulates the civilian use of nuclear materials in the United States to protect the public health and safety and the environment. This mission is accomplished through:

- the licensing of nuclear facilities and the possession, use and disposal of nuclear materials,
- the development and implementation of requirements governing licensed activities, and
- the inspection and enforcement activities to assure compliance with these requirements.

A site resident's responsibilities include:

- Establishing NRC presence on-site on a daily basis,
- Being thoroughly familiar



Brian Bonser



Doug Starkey

with site and facility characteristics, licensee procedures, and licensee and contractor personnel.

- Being aware of day-to-day site activities.
- Responding to site events to serve as the initial NRC observer.
- Communicating on a daily basis with Regional management and the Nuclear Reactor Regulation's (NRR) licensee project manager.
- Performing inspection programs and writing monthly reports.
- Acting as a point-of-contact for local media, government officials and the public, as needed.
- Evaluating the licensee performance.

Vogtle has three resident inspectors on site. They are Brian Bonser, Robert "Doug" Starkey and Pete Balmain.

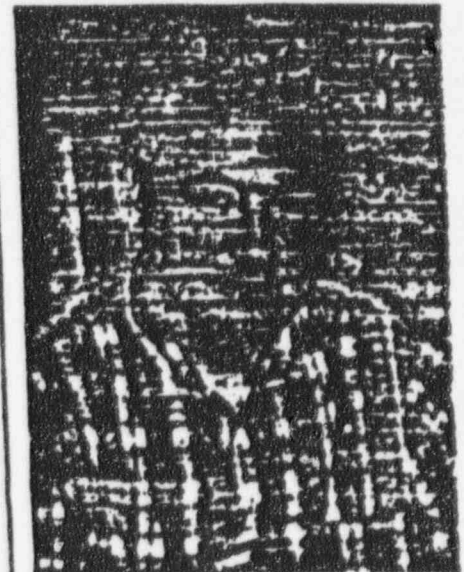
Brian is a graduate of Georgia Tech and holds a bachelor's degree in chemical engineering

and a master's degree in industrial management. He has 18 years of experience in the nuclear industry, the last 5 1/2 with the NRC. Brian is married and has two children.

Doug holds a bachelor's degree in business from Mississippi College and a certificate in nuclear studies from Memphis State University. His experience includes 6 1/2 years in the nuclear field, the last four being with the NRC. Doug is married and has two children.

Pete holds a bachelor's and master's degree in nuclear engineering from Georgia Tech. He has spent the past five years with the NRC. Pete is married and enjoys jogging in his spare time.

The NRC inspectors are here to ensure Vogtle is operated in a safe manner and that public health and safety are not jeopardized. If you have a concern, please contact either your supervisor or call the NRC at (404) 554-9901 or site ext. 4118.



Pete Balmain

## Interoffice Correspondence

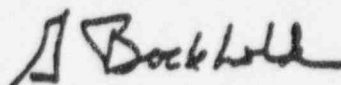
DATE: August 21, 1990  
RE: Operational Assessment Inspection  
FROM: G. Bockhold, Jr.  
TO: Plant Employees

As many of you know, the NRC recently concluded an Operational Assessment Inspection. The inspection, among other things, included investigation of a number of allegations of "wrongdoing," such as intentional violations of NRC requirements. Some VEGP employees were interviewed formally in "on the record" interviews.

The NRC appropriately investigates allegations of wrongdoing which bear on matters of safety or public health in a thorough and deliberate manner. While a formal interview may be disconcerting or stressful, these reviews are sometimes necessary. Georgia Power encourages cooperation in these investigations and views it as essential that the NRC obtain the relevant and material facts.

We have been informed that all allegations of wrongdoing by VEGP employees were found to be unsubstantiated. At the same time, the Operational Assessment team identified several technical items where potential violations of NRC requirements may have occurred. For example, the NRC observed at least one instance in which a Deficiency Card was not issued for equipment repair, contrary to our practices. We must remember to use our Deficiency Card system; only by identifying potential deficiencies can we achieve our high standards of excellence in all of the areas which support this plant. All of us need to be reminded to pay strict attention to detail -- to dot all the i's and cross all the t's -- in each of our daily tasks.

I want to thank all of you who worked diligently to support the Operational Assessment team. Your cooperation during this difficult time is greatly appreciated. I, personally, am very proud of the professionalism shown by each of you and encourage you to maintain those high standards as we move forward to fulfill our goal of efficient and, foremost, safe operation of the Vogtle Electric Generating Plant.



AD/TVG/GB/tcm

## SOUTHERN COMPANY

### Principles for Nuclear Operations

*We are America's best nuclear operations.* Our successful employees exhibit the behaviors and values of *The Southern Style*. Our approach to nuclear operations is guided by the principles outlined below.

- **SAFETY**

As a matter of personal and moral responsibility, we take conservative measures to safeguard the health and safety of our employees and the public. This responsibility is never compromised in the interests of production or cost.

- **CONTINUOUS IMPROVEMENT**

We are dedicated to the optimum operation, maintenance, engineering, and support of each of our nuclear plants, hour-by-hour, day-by-day, to ensure safe, reliable and economical performance. We strive to achieve simple and standard work practices. We maintain open and candid relationships with each other, regulatory agencies and others with whom we interact. We build upon our past achievements and experiences, as well as those of others, to achieve continuous improvement.

- **PROBLEM FOCUS**

We recognize that the methodologies used in the design, construction, and operation of any large, complex production facility, such as a nuclear plant, are a less-than-perfect application of knowledge and skills. We also recognize that we are not infallible in the application of knowledge and skills. These imperfections may evolve into problems that we must be prepared to overcome in order to accomplish our mission. Therefore, we are "problem-oriented." We maintain our day-to-day -- as well as long-term -- focus on detecting existing and potential problems before they become significant. We take action to resolve these problems safely and cost-effectively, taking into consideration the relative importance and priority of every aspect of our work.

- **RESPONSIBILITY AND ACCOUNTABILITY**

We recognize that our success depends on each individual's performance. We set high goals for ourselves. We accomplish our goals through teamwork, with each individual having assigned work and the authority, responsibility and accountability for performance of that work. We act with speed and professionalism, and we dedicate our individual initiatives and unique capabilities to the achievement of our personal, team and company objectives. Each of us will be independently responsible for our professionalism.

- **SPIRIT**

We will be mutually and collectively supportive to maintain a strong, positive team spirit in striving to achieve our goal as "America's Best Nuclear Operations."

# The Southern Style

## **Ethical Behavior**

We tell the truth.  
We keep our promises.  
We deal fairly with everyone.

## **Customer First**

Our business is customer satisfaction. We will think like customers...

## **Shareholder Value**

... and act like owners. We work to increase the value of our investment.

## **Great Place to Work**

We are a first-name company. We enjoy our work and celebrate our successes. We seek opportunities to learn.  
We do not compromise safety and health.

## **Teamwork**

We communicate openly and value honesty. We listen.  
We respect all opinions and expect differing viewpoints as we work together toward common goals. We emphasize cooperation - not turf.

## **Superior Performance**

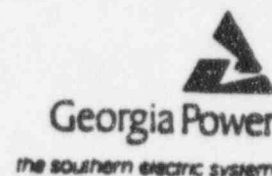
We continue to set high goals for ourselves. We take personal responsibility for success. We act with speed, decisiveness, and individual initiative to solve problems. We use change as a competitive advantage.

## **Citizenship**

We are committed to the environment and to the communities we serve.

C. K. McCoy  
Vice President, Nuclear  
Vogtle Project

September 30, 1993



Docket Nos. 50-321 50-424  
50-366 50-425

HL-3474  
LCV-0165

The Chief  
Rules Review and Directives Branch  
Mail Stop: P-223  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Comments on  
Whistleblower Protection  
(58 Federal Register 41108 of August 2, 1993)

Dear Sir:

On August 2, 1993 the Nuclear Regulatory Commission (NRC) requested comments from the public on whether the NRC has taken sufficient steps within its authority to create an atmosphere where whistleblowers feel free to engage in protected activity without fear of retaliation (58 FR 41108). The Nuclear Utility Management and Resources Council (NUMARC) has submitted comments in response to the NRC's request. Georgia Power Company endorses NUMARC's comments and herein provides supplemental comments based on Georgia Power's experience as a licensee.

1. INTRODUCTION

Georgia Power Company supports the NRC's efforts to ensure that employees within the industry who have safety concerns feel free to raise those concerns with their management, without fear of retaliation. These employees are a critical element in identifying and resolving potential unsafe conditions. Georgia Power recognizes that it has a vital stake in assuring that its employees feel free to identify issues which, if left unresolved, will have an adverse impact on the safe and reliable operation of its nuclear plants. For that reason, Georgia Power has made it an obligation, not just a right, of each employee to raise legitimate safety concerns.

In Georgia Power's opinion there is not sufficient justification for NRC to impose further requirements on licensees. It is apparent the overwhelming majority of industry employees feel free to raise safety concerns without fear of reprimand. Through the numerous concerns programs and opportunities for voicing concerns maintained by licensees, the empirical and anecdotal evidence is conclusive that the process is working and that the individuals who identify potential nuclear safety issues are viewed and treated as important contributors to the achievement of compliance and operational excellence. In an industry populated primarily by highly skilled, well-educated and assertive professionals, the fact that annually only about one tenth of one percent (0.1%) of industry employees

file Section 211 claims is a remarkable testament to the industry's success in promoting the open and frank exchange of ideas and information. Indeed, NRC's Chairman Selin observed in his testimony on July 15, 1993 before the Senate Subcommittee on Clean Air and Nuclear Regulation of the Committee on the Environment and Public Works (hereinafter "Senate Subcommittee") that "[m]ost of the employees that submit allegations to the NRC or raise issues to licensees do so without retaliation... [i]n almost every case [the NRC resident inspectors I spoke with at two-thirds of our plants told me] that the [licensees] employees seem to feel reasonably free coming to the [NRC resident ] inspector." Tr. at 123, 148.

Among the section 211 cases filed, there is an even smaller percentage of actual cases of harassment, and intimidation. These few instances occur even though the perpetrators are well aware such retaliation is unlawful and contrary to the policies of their employer. Often, at the heart of these instances of retaliation are intense personality conflicts unrelated to "protected activity," the nature of which are such that there is little licensees or the NRC can do to completely eliminate the occurrence of these violations.

Moreover, it must also be recognized that on occasion employees within our industry seek to take advantage of the process for illegitimate reasons and will raise unsupported or frivolous claims. Before any changes to the current process are made, the NRC must carefully consider whether such changes will create additional opportunities for abuse of the process, placing additional unnecessary burdens on licensees, the NRC and the United States Department of Labor (DOL), and further exacerbating the frustration caused by these cases of abuse.

## II. DISCUSSION

In response to the August 2, 1993 Federal Register notice, Georgia Power Company has organized the following specific comments under the general subject headings which appeared in the notice.

### A. Responsiveness and Receptiveness of Licensees to Employee Concern So That Employees Will Feel Free to Raise Safety Issues Without Fear of Retaliation

Georgia Power Company has a well-publicized and practiced management philosophy of openly and frankly identifying and communicating potential problems in order to maximize awareness and to facilitate resolutions at the earliest possible stage. The internal mechanisms for soliciting, addressing and resolving concerns over nuclear safety, as well as other workplace concerns, are found at both plant and corporate levels. At the plant level, we operate a Quality Concern Program, dedicated to acceptance and investigation of nuclear safety or quality concerns.

Confidentiality is offered and non-retaliation is guaranteed. Each plant also maintains a "Deficiency Card" system and a "Major Problems List," through which plant employees or managers can document and notify their supervision of a potential quality or safety concern, and require that the concern be formally addressed and, if necessary, resolved by appropriate management.

At the corporate level, we maintain the Corporate Concern Program, a direct outgrowth of the success of the nuclear plant Quality Concern Program. The Corporate Concern Program allows any employee to by-pass plant management and file a concern at a level reporting directly to the Company's executive officers. Once again, confidentiality and non-retaliation are assured.

Employees may also utilize the company's Internal Auditing and Corporate Security Functions or call or contact management, including the President, directly to have their concerns investigated. Finally, the Company maintains and encourages, at both the plant and corporate levels, open and frequent communication with the NRC and its resident inspectors.

The company has implemented the employee concerns program in a manner that ensures each employee is aware of the company's commitment to provide a work environment where they can feel free to raise safety concerns without fear of retaliation. At each plant, before each employee is badged, he or she received orientation training concerning the Quality Concern Program. Each employee then receives a letter from the plant General manager which explains the program and the employee's obligation to identify quality or safety concerns to their supervisor, or if they feel uncomfortable discussing it with their supervisor, to the next level of management or with the Quality Concern Program. The letter also explains that employees have the right to bring their concerns the attention of NRC Resident Inspectors, and their respective phone numbers are provided. With respect to acts of harassment or intimidation, the letter advises employees to be aware of their rights to report such acts to the NRC or the DOL, as described on NRC's Form 3. Each new employee is required to sign an acknowledgement form indicating that they have reviewed the plant General Manager's letter and that they are aware of the existence of the Quality Concern Program and their obligations to report quality or safety concerns, as well as their rights to report harassment or intimidation to the NRC or DOL. In addition, upon each employee's separation from employment, they attend an exit interview (or are provided an exit acknowledgement form) to provide an opportunity to identify any concerns which they feel have not been addressed or any acts of harassment or intimidation. <sup>1/</sup> A similar

---

<sup>1/</sup> Copies of the Plant Vogtle General Manager's Letter, the Quality Concern Program orientation acknowledgement form and the exit interview acknowledgement form are attached for information. Similar forms are used at Plant Hatch.

procedure is in place at the corporate office. Finally, the employee concern programs at the plant and the corporate office are audited annually and, periodically, Company management reviews a summary of concerns which have been submitted.

In conclusion, Georgia Power Company has established sufficient programs to ensure that any legitimate safety concerns held by its employees are identified and promptly resolved. Furthermore, Georgia Power Company believes its policies and programs adequately convey its position to employees that those who raise concerns are considered vital to the safe and reliable operation of its nuclear plants. Thus, Georgia Power believes that its employees do feel free to raise concerns without fear of retaliation.

Based on the above, Georgia Power Company does not believe that the NRC should order, or provide prescriptive regulations or policy statements requiring licensees to adopt an employee concerns program. First, there is insufficient justification for imposing such requirements on the industry as a whole. Second, imposing such requirements will impose substantial resource burdens on licensees, most of whom already have some kind of concerns program, to conform their programs to such requirements. Third, substantial NRC Staff resources, which the NRC has recently observed are shrinking, will be unnecessarily consumed. Fourth, such requirements are not likely to make a difference where the licensee already has a similar program. Finally, as Chairman Selin observed in his remarks to the Senate Subcommittee, it is the licensee's corporate culture, rather than any particular program or procedure, that will make the difference in whether employees feel free to raise concerns. If the employees do not receive the day-to-day encouragement from their management to raise safety concerns, the most elaborate concerns program in the world will not allay their fears of retaliation. In sum, the issuance of such new regulations would place form over substance, and require a major investment on the part of both licensees and the NRC without any meaningful increase in nuclear safety or employee welfare.

#### B. Responsiveness and Receptiveness of the NRC to Allegations

The Federal Register notice seeks comments on the NRC policy of referring allegations to licensees and actions which NRC can take to minimize compromising the identity of the alleged.

Georgia Power believes it is appropriate for the NRC to promptly refer allegations to the licensee which affect safety. This is the most expedient way to ensure that legitimate safety concerns are swiftly resolved. While Georgia Power respects the desires of some employees who raise safety concerns to have their identities kept confidential, this

should not be a critical matter in a corporate atmosphere which encourages its employees to bring their concern to management. In those cases where the corporate atmosphere discourages employees from raising concerns, the issue should not be how to protect the confidentiality of allegers, but how to improve the licensee's corporate culture.

NRC resident inspectors are in an excellent position to determine whether licensee's corporate culture is such that employees feel free to raise concerns. Because these inspectors are located at the plants, they have daily contact with plant employees at all levels in the organization. The residents are able to accurately determine whether special precautions should be taken to protect the identity of an employee who brings them an allegation. With rare exceptions, we believe that the NRC's current procedures for protecting the identities of allegers are adequate. The NRC should not permit the exception to swallow the rule here, and undermine the significant achievements of licensees in the voluntary non-retaliatory resolution of safety concerns.

#### C. Potential for Discrimination

Georgia Power Company believes that the NRC should always advise a licensee when employees express a reluctance to raise safety concerns for fear of retaliation. This information is important in assessing the licensee's corporate culture as well as the effectiveness of its concerns programs. Of course, the NRC should also advise the licensee whether it believes such information is indicative of a widespread problem or is an exception to the views of most employees.

With respect to those employees who inform the NRC that they have safety concerns, but will not disclose them, the NRC should inform such employees of their obligations under NRC regulations to report significant safety issues to the NRC. The NRC could also offer these employees confidentiality, pursuant to a written agreement, under their current procedures. At the same time, the licensee, who presumably does not know the identity of the employee, could issue a general notice to all employees urging them to bring forward any safety concerns and assuring them that harassment and intimidation will not be tolerated.

These steps should be adequate to ensure the disclosure of any legitimate safety concerns and alert licensee management to the potential for a retaliation situation. On the other hand, the NRC must be cautious not to create increased opportunities for those who abuse the system. Even a cursory review of the whistleblower case law and DOL's experience under the Energy Reorganization Act establishes that licensees have produced an exemplary record in the non-retaliatory treatment of legitimate whistleblowers. At the same time, licensees must be free to take those

employment actions which they reasonably deem necessary to ensure that their workforces are competent, trustworthy and willing to abide by regulatory requirements and that a free flow of information in their workplaces is assured.

#### D. NRC Investigations During DOL Process

There appears to be little dispute that duplicative NRC and DOL investigations of retaliation claims will be counterproductive. Not only would it require a substantial commitment of additional NRC resources, but it would likely work to delay the resolution of such claims and, at least up through the hearing stage, DOL has a commendable record for timeliness. NRC should await the completion of the DOL process through the hearing stage and the NRC should utilize the record, to the extent it is developed, by the DOL Administrative Law Judge (ALJ).

In a DOL case where the ALJ does not reach a finding on the merits, as when the case is settled, the NRC should make its own determination, based on the facts gathered to that stage of the proceeding and any additional facts it may develop, as to whether enforcement action is appropriate. The NRC should not automatically take enforcement action based on a DOL compliance officer's finding against a licensee. Fairness and due process require that the NRC afford licensee the opportunity to demonstrate that a violation of NRC requirements did not occur. Without such an opportunity, licensees will perceive that, with an adverse finding from a DOL compliance officer, settlement of the case should not be considered because the compliance officer's report will be used by the NRC as a basis to take enforcement action. This adversely affects the interests of both licensees and DOL complainants. Duplicative or parallel processes by the NRC would also allow illegitimate whistleblowers the opportunity to expand and frustrate the adjudicatory process, heaping delay and expense upon licensees. The result is that well-meaning licensees are punished without due process.

#### E. Earlier NRC Enforcement Action

As noted above, the NRC should await the completion of the DOL hearing process before initiating enforcement action. Early enforcement action will require the licensee to defend its actions on two fronts which is inherently unfair, jeopardizing the ability of the licensee to present a full defense, while allowing whistleblowers to impose undue litigation costs upon the licensee. The NRC should not encroach upon the DOL process

which, at least through the hearing stage, works as well or better than any whistleblower resolution process under federal law. Moreover, the DOL hearing process allows for a full and independent assessment of the credibility of both the whistleblower and the accused management.

#### F. Chilling Effect Letters

Georgia Power Company's observation is that the so called "chilling effect" letters serve an important function and are adequate. However, NRC's current practice of issuing those letters at the time of an initial DOL investigation finding of discrimination creates misconceptions concerning the merits of the case as well as the extent to which NRC has been kept informed. Such a "chilling effect" letter can create a perception among employees that the licensee has already been found guilty of misconduct, and that potential filers of safety concerns should fear for their job security. This is clearly not the message the NRC should be sending, and it punishes licensees without due process and well before any determination of wrongdoing has been rendered. Furthermore, the issuance of a formal "chilling effect" letter with respect to a given DOL complaint may give the impression that the NRC and the licensee have not communicated and that the NRC is uninformed of the facts of the case and unaware of the licensee's general corporate culture, which Georgia Power submits is not the case. The NRC should take steps, including the timing and message of such letters, to minimize the potential for these misconceptions.

#### G. NRC Civil Penalties

NRC civil penalties for violations do provide deterrence for retaliation. Any violation of NRC regulations carries with it criticism from local public officials and the community at large. A violation for retaliation adds the stigma of an employer mistreating its employees.

Georgia Power Company does not believe there is sufficient justification to increase the Severity Level or the amount of civil penalties for retaliation violations. This will escalate the enforcement process increasing the burdens on the licensee as well as the NRC staff.<sup>2/</sup>

---

<sup>2/</sup> A similar conclusion was expressed by Chairman Selin at the July 15, 1993 Senate Subcommittee hearing when he said:

[T]here has been a lot of discussion about heavier penalties at the end and things like that. We'll look at these, but heavier penalties mean higher standards of proof, which mean a longer process and not a shorter process, so there is a real trade-off between hitting people with a bigger stick at the end and moving more quickly at the beginning, and that has to be looked at very carefully... and more use of criminal [penalties] has the same problems.

Tr. at 139.

U. S. Nuclear Regulatory Commission

Page Eight

It is unlikely that such escalation will have any substantial effect on those few cases of actual harassment and intimidation which will occur.

H. Use of Deliberate Misconduct Rule

The comments expressed above with respect to increased enforcement sanctions apply with even greater force to the use of the deliberate misconduct rule in cases of retaliation. These actions will be hotly contested, and resolution will be more difficult, when the careers of individuals are at stake. Licensee disciplinary policies are capable of adequately addressing individual misconduct. The NRC should limit its oversight to whether the licensee has taken appropriate actions to address the problem.

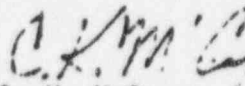
III. CONCLUSION

For the reasons expressed above, Georgia Power Company does not believe there is sufficient justification for the NRC to impose additional requirements upon licensees to protect licensee employees who would raise safety concerns. The overwhelming weight of the evidence is that licensees recognize such employees as valuable contributors and only a small percentage of industry employees file retaliation claims each year.

Among the Section 211 cases which are filed, there are few actual cases of retaliation and, because of the nature of those that do occur, imposition of requirements for employee concerns programs and procedures is not likely to prevent their occurrence. Additionally, imposition of such requirements on licensees are likely to increase the opportunities for those who seek to abuse the process for illegitimate purposes. An increase in the number of cases of abuse will be a source of frustration for licensees who will be targets of such abuse, and will further burden the limited resources of the DOL and NRC.

Georgia Power Company agrees with the observation of Chairman Selin that it is the licensee's corporate culture, more than anything, which will effect whether employees feel free to raise safety concerns. The commitment of substantial NRC and licensee resources to prescriptive requirements for employee concerns programs would do little to ensure an appropriate corporate culture, and therefore, would not be fruitful.

Respectfully submitted,

  
C. K. McCoy

CKM/JDK

HL-3474  
LCV-0165

333 Piedmont Avenue  
Atlanta, Georgia 30303  
Telephone 404 526 3195

ATTACHMENT 8

Mailing Address  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 868-5581

W. G. Hairston, III  
Executive Vice President  
Nuclear Operations

1110 SOUTHWEST AVENUE, SUITE 1110

May 11, 1994

## TO ALL GEORGIA POWER EMPLOYEES

By now each of you have been made aware of the recent Notice of Violation and proposed imposition of a \$200,000 civil penalty against Georgia Power Company. The Company is still evaluating this document, both its factual conclusions and the legal options, and will prepare an appropriate response. The purpose of this letter, though, is to assure all of our employees that Georgia Power Company remains firmly committed to a full, open, complete and accurate communications policy with the Nuclear Regulatory Commission, any of the Company's regulatory authorities, and with each other. Regardless of the outcome of the Notice of Violation, all of us should consider it our personal responsibility that when called upon to communicate with the Nuclear Regulatory Commission or its staff, whether orally or in writing, we will do our best to ensure that the information provided is complete and accurate in all material respects. This is our obligation by law, this is our obligation by the terms of our licenses, but more importantly, it is the right thing to do.

We should all remember, and take seriously, that the policy of Georgia Power Company is to conduct its business affairs in an honest, ethical manner and to comply with all laws and regulations affecting the Company. Important to our success as a company is our success at compliance with our legal obligations.

If you have a concern which you wish to raise, then you are encouraged to do so. Georgia Power Company's policy is to encourage its employees, and employees of its contractors, to communicate their concerns to their supervisors, which they are free to do at any time. If an employee concern cannot be resolved through this traditional channel, or if the employee wishes to pursue the matters through the concerns program, then use of that program is encouraged. In short, the Company wants you to feel free to raise any concern which you may have and has provided

All Georgia Power Employees  
May 11, 1994

multiple ways for you to do so. You will be treated with respect, you will be treated with courtesy, and a fair and reasonable response will be provided promptly and completely. Of course, you may always go directly to the Nuclear Regulatory Commission if you wish and the way to do this, as well as the relevant phone numbers, is posted on numerous bulletin boards throughout the work areas. Rest assured that you may raise your concerns without any fear of penalty or retaliation.

Let's all work together as a team, and dedicate ourselves to safe and efficient nuclear plant operations. We all have a community of interest in the success of our company, we all have a community of interest in full, open, complete and accurate communication with ourselves and with our regulatory authorities. Let's pursue these goals to the best of our individual abilities.

*W.G. Hairston III*  
W.G. Hairston, III

Georgia Power Company  
Tower Building 24th Floor  
333 Peachtree Street  
Atlanta, Georgia 30303  
Telephone 404-522-7559

H. Allen Franklin  
President  
Chief Executive Officer

The Southern Electric System

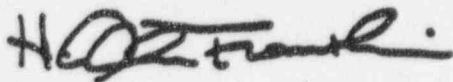
October 3, 1995

TO: GEORGIA POWER OFFICERS AND NUCLEAR EMPLOYEES

Georgia Power Policies on Raising Safety and Regulatory  
Compliance Concerns

As you may be aware, Georgia Power is currently involved in several litigated matters in which former employees allege that Georgia Power retaliated against them in 1990 for raising concerns about compliance with Nuclear Regulatory Commission requirements. These proceedings continue, but regardless of their outcome, you should know that it is Georgia Power's longstanding policy to encourage its employees to identify and to report compliance concerns. No retaliation for raising a compliance concern will be tolerated. Any employee, including a supervisor, manager or officer, who retaliates or penalizes an individual for submission or voicing of a concern will be subject to appropriate disciplinary action.

Georgia Power is deeply committed to open and effective communication in its business, in particular emphasizing "upward communication" so that personnel freely bring issues to the attention of their supervision. In the mid-1980s the Company developed "Quality Concerns" programs at its nuclear plants to foster an open atmosphere where employee concerns may be raised, reviewed and corrected. A Company-wide "Corporate Concerns" program was implemented later, based on the success of the nuclear plant programs, to give employees who have concerns of an ethical nature or concerns otherwise related to their jobs an option, in addition to going through line management, to pursue those concerns. Southern Nuclear has also set up an Employee Concerns program in Birmingham for nuclear-related concerns. Concerns may be submitted anonymously, if desired, to these programs. In addition, employees who have nuclear-related concerns about our nuclear plants may contact the NRC Resident Inspectors who have offices at each of the nuclear plants, or call the NRC's Regional Office at Atlanta.



H. Allen Franklin

# News

## *Reich hands down Mosbaugh decision, Georgia Power will appeal*

Overruling the 1992 decision of a Department of Labor administrative law judge, Labor Secretary Robert Reich has ruled in favor of Allen Mosbaugh, the former Georgia Power employee who was fired in 1990 for secretly tape recording conversations with his co-workers. After he was fired, Mosbaugh had brought a claim against Georgia Power at the Department of Labor. The department's administrative law judge ruled in 1992 that Georgia Power acted reasonably when it fired Mosbaugh.

In overruling that decision, Reich remanded the issue to the administrative law judge for a variety of remedies to be determined at a subsequent hearing. Those various remedies would include reinstatement with back pay, reimbursement for attorney's fees and compensatory damages.

Georgia Power expressed disappointment at Secretary Reich's "rejection of his own administrative law judge — whose conclusions were based on his having presided over the trial of this case three and a half years ago. The decision does not appear to be based on the evidence or well-established law and policy. We will appeal this order."

February 1, 1996

and the Secretary's finding, and providing GPC's views and a root cause evaluation. (Because the Motion to Reopen (Attachment 1 to Enclosure 3) is voluminous and was previously forwarded to the Board by Mr. Lamberski on December 19, 1995, it is not included in this BN).

This information is being brought to the attention of the Licensing Board and All Parties, as it may be relevant and material to issues pending before the Licensing Board.

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

Enclosures:

1. S. Ebnetter letter to W. Hairston, 1/12/96
2. W. Hairston letter to S. Ebnetter, 12/21/95
3. W. Hairston letter to S. Ebnetter, 1/19/96

cc w/encls:  
See next page

February 1, 1996

and the Secretary's finding, and providing GPC's views and a root cause evaluation. (Because the Motion to Reopen (Attachment 1 to Enclosure 3) is voluminous and was previously forwarded to the Board by Mr. Lamberski on December 19, 1995, it is not included in this BN).

This information is being brought to the attention of the Licensing Board and All Parties, as it may be relevant and material to issues pending before the Licensing Board.

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

Enclosures:

1. S. Ebnetter letter to W. Hairston, 1/12/96
2. W. Hairston letter to S. Ebnetter, 12/21/95
3. W. Hairston letter to S. Ebnetter, 1/19/96

cc w/encls:  
See next page

DISTRIBUTION

Docket File  
PUBLIC  
PDII-2 RF

DOCUMENT NAME: G:\VOGTLE\HEARING\DOLEA2.BN

OFFICE	DRPE/PD22/PM	DRPE/PD22/D	OE/D *	OGC	DRPE/D	RII
NAME	D. HOOD DSH	E. LAMERO	J. LIEBERMAN		S. MARGA	BY E-MAIL
DATE	1/31/96	1/31/96	1/31/96	1/31/96	1/21/96	1/31/96
COPY	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

OFFICIAL RECORD COPY

\* 01/31/96 e-mail concurrence by J.Gray, OE for J.Lieberman, OE DSH

February 1, 1996

and the Secretary's finding, and providing GPC's views and a root cause evaluation. (Because the Motion to Reopen (Attachment 1 to Enclosure 3) is voluminous and was previously forwarded to the Board by Mr. Lamberski on December 19, 1995, it is not included in this BN).

This information is being brought to the attention of the Licensing Board and All Parties, as it may be relevant and material to issues pending before the Licensing Board.

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

Enclosures:

1. S. Ebnetter letter to W. Hairston, 1/12/96
2. W. Hairston letter to S. Ebnetter, 12/21/95
3. W. Hairston letter to S. Ebnetter, 1/19/96

cc w/encls:  
See next page

Georgia Power Company

cc:

Mr. J. A. Bailey  
Manager - Licensing  
Georgia Power Company  
P. O. Box 1295  
Birmingham, Alabama 35201

Mr. J. B. Beasley  
General Manager, Vogtle Electric  
Generating Plant  
P. O. Box 1600  
Waynesboro, Georgia 30830

Regional Administrator, Region II  
U. S. Nuclear Regulatory Commission  
101 Marietta Street, NW., Suite 2900  
Atlanta, Georgia 30323

Office of Planning and Budget  
Room 615B  
270 Washington Street, SW.  
Atlanta, Georgia 30334

Office of the County Commissioner  
Burke County Commission  
Waynesboro, Georgia 30830

Mr. J. D. Woodard  
Senior Vice President -  
Nuclear Operations  
Georgia Power Company  
P. O. Box 1295  
Birmingham, Alabama 35201

Mr. C. K. McCoy  
Vice President - Nuclear  
Vogtle Project  
Georgia Power Company  
P. O. Box 1295  
Birmingham, Alabama 35201

Vogtle Electric Generating Plant

Harold Reheis, Director  
Department of Natural Resources  
205 Butler Street, SE. Suite 1252  
Atlanta, Georgia 30334

Attorney General  
Law Department  
132 Judicial Building  
Atlanta, Georgia 30334

Mr. Thomas P. Mazingo  
Program Manager  
Nuclear Operations  
Oglethorpe Power Corporation  
2100 East Exchange Place  
P. O. Box 1349  
Tucker, Georgia 30085-1349

Charles A. Patrizia, Esquire  
Paul, Hastings, Janofsky & Walker  
12th Floor  
1050 Connecticut Avenue, NW.  
Washington, DC 20036

Arthur H. Domby, Esquire  
Troutman Sanders  
NationsBank Plaza  
600 Peachtree Street, NE.  
Suite 5200  
Atlanta, Georgia 30308-2216

Resident Inspector  
U. S. Nuclear Regulatory Commission  
8805 River Road  
Waynesboro, Georgia 30830

Board Notification: 96- 01

Dated: February 1, 1996

cc:

J. Taylor, EDO  
J. Milhoan, DEDR  
H. Thompson, DEDS  
G. Tracy, EDO (Region II Plants)  
W. Russell, NRR/F. Miraglia, NRR  
R. Zimmerman, NRR  
A. Thadani, NRR  
D. Crutchfield, NRR  
T. Martin, RI  
S. Ebnetter, RII  
H. Miller, RIII  
J. Callan, RIV  
K. Perkins, Field Office, RIV  
L. Chandler, OGC  
OGC (3)  
C. Cater, SECY (3)  
J. Cordes (A), OCAA  
ACRS  
R. Ingram, NRR  
S. Varga, NRR  
J. Zwolinski, NRR  
H. Berkow, NRR  
D. Matthews, NRR  
D. Hood, NRR  
R. Hoefling, OGC  
M. Young, OGC  
C. Barth, OGC  
J. Rutberg, OGC  
J. Goldberg, OGC  
L. Robinson, RII  
R. Crlenjak, RII  
P. Skinner, RII  
E. Merschoff, RII  
C. Evans, RII  
J. Lieberman, OE  
R. Pedersen, OE  
J. Gray, OE  
D. Murphy, OI

BOARD NOTIFICATION NO. 96-01

GEORGIA POWER COMPANY, *et al.*  
(Vogtle Electric Generating Plant, Units 1 and 2)  
Docket Nos. 50-424-OLA-3, 50-425-OLA-3

Peter B. Bloch, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Thomas D. Murphy  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. James H. Carpenter  
Administrative Judge  
933 Green Point Drive  
Oyster Point  
Sunset Beach, NC 28468

Dr. James H. Carpenter  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, Dc 20555

James E. Joiner  
John Lamberski, Esq.  
Arthur H. Domby, Esq.  
Trautman Sanders  
NationsBank Building, Suite 5200  
600 Peachtree Street, NE  
Atlanta, GA 30308

David R. Lewis, Esq.  
Ernest Blake, Esq.  
Shaw, Pittman, Potts and Trowbridge  
2300 N Street, NW  
Washington, DC 20037

Mr. Steven A. Westby  
Suite 900  
191 Peachtree Street, N.E.  
Atlanta, GA 30303

Michael D. Kohn, Esq.  
Stephen M. Kohn, Esq.  
Kohn, Kohn and Calapinto, P.C.  
517 Florida Avenue, NW  
Washington, DC 20001

Office of Commission Appellate  
Adjudication  
Mail Stop: O-16 G15  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Adjudicatory File (2)  
Atomic Safety and Licensing Board  
Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing Board  
Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Office of the Secretary (2)  
Attn: Docketing and Service Branch  
Mail Stop: O-16 G15  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Director, Environmental Protection  
Division  
Department of Natural Resources  
205 Butler St., S.E.  
Suite 1252  
Atlanta, GA 30334

Mr. Bruce H. Morris  
Finestone, Morris & Wildstein  
Suite 2540 Tower Place  
3340 Peachtree Road, N.E.  
Atlanta, GA 30326



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
101 MARIETTA STREET, N.W., SUITE 2800  
ATLANTA, GEORGIA 30323-0180

January 12, 1996

EA 95-277

Georgia Power Company  
ATTN: Mr. W. George Hairston, III  
Executive Vice President  
Post Office Box 1295  
Birmingham, Alabama 35201

SUBJECT: DEPARTMENT OF LABOR CASE NOS. 91-ERA-01 and 91-ERA-11

Dear Mr. Hairston:

By letter dated December 21, 1995, you requested that the Nuclear Regulatory Commission (NRC) defer the response to an apparent violation related to the subject Department of Labor (DOL) case, until your Motion to Reopen the Record and for Further Hearings filed with DOL on December 13, 1995 is finalized. The apparent violation of 10 CFR 50.7, Employee Protection, which was identified in our letter to you dated December 12, 1995, involved GPC's termination of Mr. Allen Mosbaugh. The Secretary of Labor, in his Decision and Remand Order dated November 20, 1995, concluded that Georgia Power terminated Mr. Mosbaugh for engaging in protected activities. We have reviewed your request and the Motion to Reopen that you filed with the Secretary of Labor and we have concluded that deferral of the response to the apparent violation is not warranted. Therefore, we request you to comply with our letter of December 12, 1995 which required a response to the apparent violation.

In your letter of December 21, 1995, you stated that although you agreed that a predecisional enforcement conference was not needed in this case, Georgia Power would like an opportunity to address the NRC with regard to the Secretary of Labor's Decision and Remand Order and point out other relevant information that the NRC should reconsider prior to an enforcement decision. Therefore, as discussed in a January 11, 1996 telephone call between Mr. C. K. McCoy, Vice President, Vogtle Project, and Mr. Pierce Skinner of the NRC, your response to the apparent violation should be submitted by January 19, 1996. Your response should explain your views on the apparent violation, its root causes, and a description of planned corrective actions. In addition, you may point out any disagreement with the facts and findings presented in the Secretary of Labor's decision and any other information you consider relevant to the NRC's enforcement decision. We also understand that you will address the NRC's concern with regard to the potential chilling effect associated with the Secretary of Labor's decision by January 19, 1996.

Your response should be submitted under oath or affirmation and may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been sought and granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference. You will be advised by separate correspondence of the results of our deliberations on this matter.

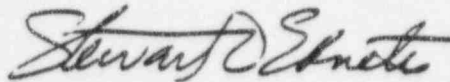
Enclosure 1

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

The response to the apparent violation is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.511.

Should you have any questions concerning this letter, please contact Mr. Pierce Skinner at (404) 331-6299 as soon as possible.

Sincerely,



Stewart D. Ebnetter  
Regional Administrator

Docket Nos. 50-424, 50-425  
License Nos. NPF-68, NPF-81

cc:

J. D. Woodard  
Senior Vice President  
Georgia Power Company  
P. O. Box 1295  
Birmingham, AL 35201

J. B. Beasley  
General Manager, Plant Vogtle  
Georgia Power Company  
P. O. Box 1600  
Waynesboro, GA 30830

J. A. Bailey  
Manager-Licensing  
Georgia Power Company  
P. O. Box 1295  
Birmingham, AL 35201

Nancy G. Cowles, Counsel  
Office of the Consumer's  
Utility Council  
84 Peachtree Street, NW, Suite 201  
Atlanta, GA 30303-2318

cc cont'd: (See next page)

cc cont'd:  
Office of Planning and Budget  
Room 615B  
270 Washington Street, SW  
Atlanta, GA 30334

Office of the County Commissioner  
Burke County Commission  
Waynesboro, GA 30830

Harold Reheis, Director  
Department of Natural Resources  
205 Butler Street, SE, Suite 1252  
Atlanta, GA 30334

Thomas Hill, Manager  
Radioactive Materials Program  
Department of Natural Resources  
4244 International Parkway  
Suite 114  
Atlanta, GA 30354

Attorney General  
Law Department  
132 Judicial Building  
Atlanta, GA 30334

Thomas P. Mozingo  
Manager of Nuclear Operations  
Oglethorpe Power Corporation  
2100 E. Exchange Place  
Tucker, GA 30085-1349

Charles A. Patrizia, Esq.  
Paul, Hastings, Janofsky & Walker  
10th Floor  
1299 Pennsylvania Avenue  
Washington, D. C. 20004-9500

Georgia Power Company  
333 Peachtree Avenue  
Atlanta, Georgia 30308  
Telephone 404 528-3175

Mailing Address:  
40 Inverness Center Parkway  
Post Office Box 1285  
Birmingham, Alabama 35202  
Telephone 205 866-4551

W. G. Heinsten, III  
Executive Vice President  
Nuclear Operations

December 21, 1995

LCV-0725

Docket No. 50-424 and 50-425

Mr. Stewart D. Ebner  
Regional Administrator  
U. S. Nuclear Regulatory Commission  
Region II  
101 Marietta Street, N. W.  
Suite 2900  
Atlanta, Georgia 30323-0199

RE: Department of Labor Case Nos. 91-ERA-01 and 91-ERA-11 (EA 95-277)

Dear Mr. Ebner:

This letter responds to your letter of December 12, 1995, received on December 18, 1995. Georgia Power confirms that a predecisional enforcement conference relative to the above-referenced Decision and Remand Order of the Secretary of Labor is not needed.

Because Georgia Power disagrees with the Secretary of Labor's decision, it recently filed a Motion to Reopen the Record and for Further Hearings with the Department of Labor and based this motion upon information which was not available to Georgia Power at the time of the DOL hearing in 1992. Copies of Georgia Power's Motion have been provided to the NRC, including your office, because of the relevancy that this evidence has to both the DOL decision and any possible enforcement action. Of course, Georgia Power would like the opportunity to address the NRC concerning the Secretary of Labor's Decision and Remand Order, however, to avoid a piecemeal review of the DOL record and for administrative efficiency, we respectfully request that such a response be deferred until our Motion to Reopen is finalized. Undoubtedly, there will be additional evidence taken at the remand hearing on the issue of the appropriate remedy and this, too, may be pertinent to any enforcement decision. In addition, Georgia Power anticipates requesting that the NRC consider other relevant information already in its possession, prior to making any enforcement decision.

Notwithstanding this deferral request, and in conformance with your correspondence, Georgia Power will address your concern about the potential "chilling effect" associated with the matter on or before January 11, 1996.

Enclosure 2

12

Mr. Stewart D. Ebner  
December 21, 1995  
Page 2

Should you have any questions concerning our request for a deferral of our response, please feel free to contact either me or C. K. McCoy, Vice President, Vogtle Project (205) 877-7122. Thank you for your consideration of our request.

If you concur with our request, please notify us at your earliest convenience so that we may avoid duplicative and unnecessary activity.

Sincerely yours,

  
W. G. Hairston, III

Enclosure

cc: Georgia Power Company  
Mr. J. B. Bensley, Jr.  
Mr. M. Shabani  
NORMS

U. S. Nuclear Regulatory Commission  
Mr. S. D. Ebner, Regional Administrator  
Mr. L. L. Wheeler, Licensing Project Manager, NRR  
Mr. C. L. Ogle, Senior Resident Inspector, Vogtle

Georgia Power Company  
333 Piedmont Avenue  
Atlanta, Georgia 30308  
Telephone 404 526-3195

Mailing Address:  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 868-5581

January 19, 1996

W. G. Hairston, III  
Executive Vice President  
Nuclear Operations

LCV 0725-A

Docket No. 50-424 and 50-425

Mr. Stewart D. Ebnetter  
Regional Administrator  
U. S. Nuclear Regulatory Commission, Region II  
101 Marietta Street, N. W., Suite 2900  
Atlanta, Georgia 30323-0199

Re: Department of Labor Case No. 91-ERA-01 and 91-ERA-11  
Mosbaugh v. Georgia Power Company (EA 95-277)

Dear Mr. Ebnetter:

This letter is in further response to your letters of December 12, 1995 and January 12, 1996 and supplements our December 21, 1995 letter concerning the U. S. Department of Labor Secretary's Decision and Remand Order of November 20, 1995. This letter addresses in detail your concern about the potential "chilling effect" associated with the termination of Mr. Allen Mosbaugh and the issuance of the Secretary of Labor's findings. Our views of the apparent violation and a root cause evaluation are also presented. Based on the discussion below, Georgia Power Company denies this apparent violation.

#### The Secretary's Decision

Georgia Power believes that the Secretary of Labor's decision holding that Mr. Mosbaugh's surreptitious tape recording was lawful and constituted evidence gathering in support of a nuclear safety complaint is legally and factually incorrect. Therefore, Georgia Power will appeal the Secretary's final decision (after the required remand(s) for further determinations), if it is unfavorable to Georgia Power. Moreover, Georgia Power has moved to reopen the Department of Labor record on the basis of new and material information which was not available prior to the close of the hearing record in 1992. The new information includes portions of tape recordings withheld from disclosure by the NRC in the normal course of its investigative efforts and documentation provided to the NRC by Mr. Mosbaugh. As more fully explained in its Motion to Reopen the Record (Attachment 1), Georgia Power contends that Mr. Mosbaugh willfully caused violations of NRC regulations and the Atomic Energy

Enclosure 3

Stewart D. Ebnetter  
January 19, 1996  
Page 2

Act, that he falsely testified at the Department of Labor hearings, and that his taping was indiscriminate, unreasonable and, in some instances, unlawful.

It is ironic that the Secretary of Labor has deemed Mr. Mosbaugh's extensive taping over approximately eight months, including his conversations with NRC investigators and inspectors, as "protected activity that constituted evidence gathering in support of a nuclear safety complaint." (Decision and Remand Order at 13.) As further explained in this letter, the validity of this decision is, in fact, the crux of our legal dispute with the Secretary of Labor's order. Our evidence clearly demonstrates that during this 1990 time frame Georgia Power was emphasizing its policy of open, honest communication with the NRC and encouraging its employees to cooperate fully with NRC's investigations, while recognizing their personal rights in the investigative process. In fact, Vogtle Project personnel were informed that they may request that the NRC tape record investigative interviews. (April 5, 1990 "OI Interview Guidelines," pg. 2, (Attachment 2)). Mr. Mosbaugh, on the other hand, decided to make his own tape (Tape 251) of his OI interview on August 15, 1990, without informing the NRC. Similarly, he tape recorded NRC Resident Inspectors (Tape 107; Tape 172) and NRC Regional Inspectors (Tape 87). Furthermore, Mr. Mosbaugh did not limit his taping to documenting evidence of safety violations. Rather, when his tape recorder was "on", it captured those conversations within its range; even those in which Mr. Mosbaugh was not an active participant. This is not the kind of tape recording that can be reasonably characterized as evidence gathering in support of a nuclear safety complaint. It also clearly is not the kind of taping which the NRC would have contemplated or asked Mr. Mosbaugh to do, as suggested by the Secretary (Decision and Remand Order at 14, footnote 4). To the contrary, it is the type of taping which breeds distrust and chills open communications.

The narrow issue of secret tape recording of conversations in the nuclear work place and when such tape recording is "protected activity" was addressed by former Chairman Selin in his July 14, 1993 letters to the members of the U.S. Senate Subcommittee on Clean Air and Nuclear Regulation. Chairman Selin observed that "lawful taping of conversations to which the employee is a party to obtain safety information, carried out in a limited and reasonable manner, for the purpose of promptly bringing such material to the attention of the licensee or the NRC, should not be a valid basis for terminating an employee." As the NRC knows from its own review of the tape recordings, Mr. Mosbaugh simply taped daily events over the course of many months as they unfolded. The tape recording was not limited in either duration or scope, nor was it selective. Mr. Mosbaugh did not promptly disclose the existence of the tapes to the NRC; only when ordered to compel the release of the tapes to Georgia Power did he inform the NRC of their relevance to ongoing regulatory reviews.

In our view, the Secretary had an inadequate and incomplete factual basis for evaluating Mr. Mosbaugh's tape recording, even against the standards set out in Chairman Selin's guidance. With the benefit of the whole story, including the facts set forth in our Motion to Reopen, the Secretary should find that Mr. Mosbaugh's taping did not meet the criteria set forth by Chairman Selin; it was not carried out in a limited and reasonable manner, nor did he promptly advise the NRC of his taping or the information on his tapes. Furthermore, the tape recordings do not support Mr. Mosbaugh's Department of Labor claims and demonstrate his own significant contribution to the violation of NRC regulations, which was the subject of one of his major allegations, i.e. the April 19, 1990 Licensee Event Report. These facts, Georgia Power submits, are reasons why Mr. Mosbaugh did not promptly disclose the existence of his tape recordings to either the licensee or the NRC, and why his actions were not "protected." A copy of former Chairman Selin's letter is enclosed (Attachment 3). Georgia Power notes that Chairman's Selin letter does not rise to the standard of a rule, regulation, or order as contemplated by Section 161b of the Atomic Energy Act. Further, Georgia Power questions whether the criteria set forth in Chairman Selin's letter would be judicially upheld as adequately protecting the rights of employers in similar situations.

#### Root Cause Evaluation

If there is a violation, then its apparent root cause is the difference between the legal positions of Georgia Power (with which the Department of Labor Administrative Law Judge agreed in 1992) and of the Secretary of Labor in 1995 regarding "protected activity" under the Energy Reorganization Act. A contributor to this difference of positions is the lack of a complete and accurate record before the Secretary of Labor resulting, to a significant degree, from the lack of relevant evidence available to Georgia Power prior to the close of the Department of Labor record.

#### Potential "Chilling Effect" on Safety Concerns

From the outset, Georgia Power has been careful to separate Mr. Mosbaugh's taping actions from various courses of action available to Vogtle employees who may want to raise safety-related concerns. Georgia Power contends that Mr. Mosbaugh's taping, under the circumstances, was inappropriate. However, Georgia Power also recognizes that the voicing of concerns is not only appropriate, but should be encouraged. Georgia Power has encouraged its employees to maintain open and frank communications within its organization and with the NRC and to promptly report safety or operational issues. As further explained in our letter of January 10, 1991, Georgia Power recognized that its employees might associate Mr. Mosbaugh's administrative leave and termination of employment with his identification of safety concerns. Early Georgia Power initiatives were designed to preclude possible misunderstandings and to make clear that Mr. Mosbaugh's discipline was associated with surreptitious taping of conversations and was not the result of his raising concerns. A copy of

Stewart D. Ebnetter  
January 19, 1996  
Page 4

Georgia Power's January 10, 1991 letter is attached hereto as Attachment 4 for your convenience.

Georgia Power has repeatedly stressed that no adverse action was taken against Mr. Mosbaugh as a result of submission of his concerns to his employer or to the NRC. Significantly, the Secretary of Labor did not find any retaliation for raising of concerns and specifically concluded Mr. Mosbaugh's average interim performance rating in August 1990 and removal of his company car when assigned to SRO school were not retaliatory for raising concerns. (Decision and Remand Order at 15-16.) In our prior January 1991 letter to you we pointed out that at the time Mr. Mosbaugh was placed on administrative leave, he had been previously selected and assigned to SRO training and the Manager-in-Training program. The training had been listed as his first choice on his list of career options developed on April 30, 1990. These facts were emphasized to our employees in a January 2, 1991, letter from Mr. Bill Shipman. (Attachment E to Georgia Power's January 10, 1991 letter).

Georgia Power disclosed the existence of Mr. Mosbaugh's massive tape recordings to its employees on September 19, 1990, shortly after learning of the taping (see Attachment A to Georgia Power's January 10, 1991 letter). This was consistent with Georgia Power's attempts to foster better internal communications during this time frame. In a similar manner, Georgia Power's Plant General Manager issued a memorandum to employees in August 1990 (prior to knowledge of Mr. Mosbaugh's taping activity) which informed them that all allegations of wrongdoing reviewed by a special NRC inspection team had been found to be unsubstantiated. The General Manager also emphasized Georgia Power's policy of cooperation and openness with the NRC:

The NRC appropriately investigates allegations of wrongdoing which bear on matters of safety or public health in a thorough and deliberate manner. While a formal interview [of an employee] may be disconcerting or stressful, these reviews are sometimes necessary. Georgia Power encourages cooperation in these investigations and views it as essential that the NRC obtain the relevant and material facts.

(Attachment 5, August 21, 1990 letter from G. Bockhold, Jr. to plant employees). Such factual disclosures to employees, we believe, foster a more trusting work environment. Indeed, the Southern System's nuclear plants have common principles for nuclear operations, including the principle that "we maintain open and candid relationships with each other, regulatory agencies and others with which we interact"(Attachment 6).

Stewart D. Ebnetter  
January 19, 1996  
Page 5

On a more general level, Georgia Power has taken several measures over the years which assure that safety and compliance-related issues are raised and addressed by our employees. Foremost, Georgia Power has a well-publicized and practiced management philosophy of openly and frankly identifying and communicating potential problems in order to maximize awareness and to facilitate resolutions at the earliest possible stage. The internal procedures for soliciting, addressing, and resolving concerns over nuclear safety and compliance, as well as other work place concerns, are found at both the plant and corporate office. We described these procedures in a September 30, 1993 letter from the Vice President-Vogtle, Mr. C. Ken McCoy, to the NRC (Attachment 7).

Plant Vogtle maintains a "Deficiency Card" system through which Vogtle employees or managers can document and notify their supervision of a potential quality or safety concern, which requires that the concern be formally addressed and, if necessary, resolved by appropriate management. Literally hundreds of Deficiency Cards are developed and resolved each year. The identification of these potential issues also is reinforced by Vogtle's "Major Problems List" which specifically identifies the most significant problems which the Plant faces and the steps designed to resolve the problems. In other words, management sets an example by self-identifying matters of concern.

Vogtle also maintains a Quality Concerns program; a very similar program is available to nuclear employees in the corporate office in Birmingham. These programs are designed to allow any employee to raise any concern, including anonymous concerns. The program at Vogtle provides for employees to take safety concerns to the Birmingham program if they are uncomfortable using Vogtle's program. In Atlanta, Georgia Power maintains a "Corporate Concerns" program, which allows any employee to file a concern at a level reporting directly to the Company's executive officers. This is yet another avenue available to employees in 1990 and today to express opinions, including non-nuclear matters, to upper management and demonstrates a management philosophy of openness and receptivity. At Vogtle, filled-out concern forms including anonymous ones, can be placed in any of several "drop boxes" located in the Plant. With respect to those quality-related concerns that are not submitted anonymously, there is an acknowledgment section on the form which seeks feedback on the satisfaction of the submitter as to the resolution of the concern. A high percentage of those individuals returning this acknowledgment reflect such satisfaction.

We are confident that Vogtle's Quality Concerns program is effective and viewed as a legitimate vehicle for raising concerns by our employees. The NRC staff shares our view. In May 1995 the NRC reviewed Vogtle's Quality Concern program (Inspection Report No. 50-424/425 95-14, dated June 22, 1995). The NRC Inspectors concluded that Vogtle's Quality Concerns program was effective in handling and resolving employee safety concerns. The Inspectors found the Vogtle Concerns program files to be notably well organized and

Stewart D. Ebnetter  
January 19, 1996  
Page 6

information related to the concerns was very thoroughly documented. Concerns were clearly identified and addressed. Closeout letters to the concerned individuals were well written and timely. The Inspectors also interviewed approximately 20 employees from various levels at Vogtle. The NRC Inspectors observed:

The . . . employees interviewed all stated that they would report safety concerns. All said they would report such concerns first to their supervisor/management, and would have confidence that the supervisor/manager would adequately resolve the concerns. Most said that all such concerns in the past have been adequately resolved by the supervisor/management. All said that they had not been intimidated or harassed by management for raising safety concerns. Most said that management was very receptive to safety concerns.

(Inspection Report 95-14, Report Details, page 6 (emphasis supplied)).

In addition, Vogtle employees are trained as part of their orientation on their right to raise concerns with the NRC. The NRC-prescribed forms are posted around the plant as are notices signed by the General Manager of Vogtle providing information concerning the reporting of quality concerns.

Georgia Power has responded to matters associated with Mr. Mosbaugh's concerns and allegations in a manner designed to avoid any "chilling effect." For example, in May 1994 the NRC issued a Notice of Violation associated with one of Mr. Mosbaugh's principal allegations. I issued a memorandum to nuclear employees which reinforced Georgia Power's policy of openly communicating their concerns to supervisors or through the Quality Concerns program. Employees were reminded that the Nuclear Regulatory Commission is an alternate avenue, and numerous bulletin boards throughout the work areas provide information about that avenue. The memorandum assures employees that they may raise concerns "without any fear of penalty or retaliation." The Senior Vice President, Mr. Jack Woodard, made a presentation to nuclear employees at Vogtle (and Plants Hatch and Farley) to underscore my message. Similarly, in October 1995 the Secretary of Labor issued a Decision in the Hobby v. Georgia Power matter. Shortly thereafter, in order to assure the Decision was not misconstrued, the President and Chief Executive Officer of Georgia Power, Mr. H. Allen Franklin, issued a memorandum re-emphasizing our policies on raising safety and regulatory compliance concerns. Mr. Franklin's letter included the following statement:

No retaliation for raising a compliance concern will be tolerated. Any employee, including a supervisor, manager or officer, who retaliates or penalizes an individual for submission or voicing of a concern will be subject to appropriate disciplinary action.

Stewart D. Ebnetter  
January 19, 1996  
Page 7

Copies of my May 11, 1994 memorandum and Mr. Franklin's October 3, 1995 memorandum are included in Attachment 8.

We have continued to keep our employees informed of developments in the Department of Labor proceeding. Enclosed is a general News Update made available to Birmingham and Plant Vogtle employees shortly after the Secretary of Labor's November 20, 1995 decision (Attachment 9).

### Conclusion

In summary, Georgia Power disagrees that Mr. Mosbaugh's taping was protected activity based, in part, on evidence not in the Department of Labor record and currently known to the NRC, and based in part on the NRC Chairman's letter of July 14, 1993. No finding was made by the Secretary that Georgia Power illegally discriminated against Mr. Mosbaugh because he raised safety concerns; instead, this matter is primarily a legal dispute about the meaning of the law and its application to controverted facts. Consequently, Georgia Power respectfully disagrees that it violated ERA Section 211 or NRC regulations. Even if ultimately proven wrong, history reveals that Georgia Power acted reasonably and in good faith in 1990 without the benefit of any clear NRC precedence. In 1992, the Administrative Law Judge agreed, thereby confirming the reasonableness of Georgia Power's position.

As discussed above, the Secretary had an inadequate record to determine the nature of Mr. Mosbaugh's taping activities or, as addressed in the Motion to Reopen, to determine whether Mr. Mosbaugh willfully violated NRC regulations. Georgia Power has repeatedly stressed that it never discriminated against Mr. Mosbaugh for raising or pursuing safety or compliance concerns, and continues to emphasize the need to raise such concerns through its established policies and procedures.

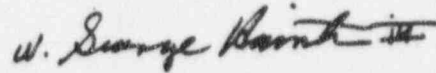
As discussed above, Georgia Power believes the Secretary of Labor's November 20, 1995 decision is in error and will appeal the final order of the Secretary if it is unfavorable to Georgia Power. Georgia Power also has moved to reopen the record to admit evidence which was not available to it at the close of the 1992 Department of Labor hearing. Georgia Power prohibits retaliation for the submission or voicing of concerns, and has attempted to keep its employees informed of developments in these matters. We believe that these efforts have avoided, or minimized to the extent practical, any employee perception that Mr. Mosbaugh was retaliated against for voicing concerns.

This letter was reviewed by me and others familiar with these historical events. While I do not have personal knowledge of all the matters addressed, the foregoing information and opinions are true and correct to the best of my knowledge and belief. We are available to provide any

Stewart D. Ebnetter  
January 19, 1996  
Page 8

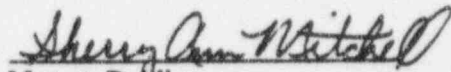
clarification, expansion, or verification which you should desire. As the Executive Vice President - Nuclear of Georgia Power, I am authorized to execute this letter on behalf of Georgia Power.

Yours very truly,



W. George Hairston, III

Sworn to and subscribed before  
me this 19<sup>th</sup> day of January, 1996.



Notary Public

My Commission Expires:

12/15/96

xc: Georgia Power Company  
Mr. J. Brasley, Jr.  
Mr. M. Shabani  
NORMS

U.S. Nuclear Regulatory Commission  
Mr. J. Lieberman, Director, Office of Enforcement  
Mr. L. L. Wheeler, Licensing Project Manager  
Mr. C. R. Ogle, Senior Resident Inspector, Vogtle  
Document Control Desk

Date: April 5, 1990  
Re: Vogtle Electric Generating Plant  
OI Interview Guidelines  
Log: GMV-00065  
Security Code: NC  
From: C. K. McCoy  
To: Vogtle Project Personnel

When investigations are being conducted by the Nuclear Regulatory Commission's Office of Investigations (OI), OI investigators may contact you at home or at work to set up an interview. There will be no restrictions placed by Georgia Power Company on your communications with NRC personnel. The purpose of the following guidelines is to advise Georgia Power Company employees of their rights and obligations in dealing with NRC investigations.

#### NRC Interview Request

You do have the right to decline to be interviewed. Georgia Power discourages this action and encourages individuals to cooperate fully with the NRC.

If contacted off the job site or during off duty hours, individuals may postpone any interview until the next work day. The company will pay you for your time when the interview is onsite.

#### Management Notification

If contacted by NRC investigators at work, notify your supervisor to arrange an interview. If contacted off the jobsite, Georgia Power Company suggests that you notify your supervisor to arrange an interview, however supervisory notification is strictly on a voluntary basis.

#### Representation

Georgia Power Company strongly recommends that you have representation at any interview with NRC investigators.

You may demand to have a lawyer, coworker, or friend of your choice at any onsite or offsite interview.

You may request management to arrange for a company lawyer to confer with you before an interview and to represent you during the interview. This will be at no cost to you.

### Recording the Interview

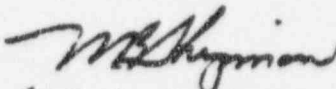
You may request to have the NRC tape-record the interview. Georgia Power Company recommends that you request a copy of the transcript from the NRC.

### Sworn Statements

You may be asked by the NRC for a signed, sworn statement. If you provide such a statement, it should be reviewed very carefully and you should make any changes you wish so that the statement is correct and fully reflects your position. If you sign, you are entitled to a copy for your records.

You may have a lawyer review or prepare your statement with you for accuracy and legal effect.

Remember, our policy is to be open, honest and to cooperate fully with the Nuclear Regulatory Commission.

  
for C. K. McCoy

CKM:WBS:mjc

cc: NORMS



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

ATTACHMENT 3

July 14, 1993

The Honorable Joseph I. Lieberman, Chairman  
Subcommittee on Clean Air and Nuclear Regulation,  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter of June 11, 1993, in which you requested the Nuclear Regulatory Commission's views on whether one-party taping of conversations by employees of NRC licensees could constitute, in some circumstances, protected activity under section 211 of the Energy Reorganization Act of 1974. You also suggested that it would be appropriate for the NRC to communicate its views on this issue to the Department of Labor.

In general, the NRC believes that attempts by employees of NRC licensees, contractors, or subcontractors ("employee") to gather evidence relating to nuclear safety concerns at NRC-regulated facilities or to gather evidence of discrimination related to the reporting of safety issues for purposes covered by section 211 of the Energy Reorganization Act, 42 U.S.C. Sec. 5851, are activities subject to protection under that section. In the context of the Committee's letter, the NRC believes that legal surreptitious taping by an employee of personal conversations, to which the employee is a party, with the intent of providing the information obtained to the licensee or the NRC, is an activity subject to protection under section 211.

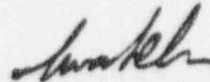
Although the activity may be within the scope of activities protected under section 211, employment may still be terminated (or other employment action taken), if the employer can demonstrate by clear and convincing evidence that it would have taken the same unfavorable action in the absence of such behavior; i.e., for legitimate, non-discriminatory reasons, including whether the activity was carried out in an unreasonable manner or in violation of law. Thus, while the Commission recognizes that attempts by an employee to gather evidence of safety violations or related discrimination in some respects could have a disruptive effect on the workplace, the mere potential for interruption of routine conduct of operations that may be caused by reasonable whistleblower activities should not be a basis for disciplinary action against an employee. For this reason, determination of whether an employer may terminate or take other employment action against an employee who has engaged in an activity subject to protection under section 211 will

depend on the specific facts and circumstances of the particular case. Lawful taping of conversations to which the employee is a party to obtain safety information, carried out in a limited and reasonable manner, for the purpose of promptly bringing such material to the attention of the licensee or the NRC, should not be a valid basis for terminating an employee.

Once an employee has acted to gather evidence, the employee should inform either the licensee or the NRC, of the employee's actions. Prompt notification is in the public's interest because it enables the NRC and/or the licensee to act promptly to protect public health and safety, to recognize and correct any possible safety violation, or to address any possible discrimination. Surreptitious taping properly carried out under the direction of the NRC should afford the employee protection under section 211 of the ERA for such action.

By copy of this letter, we are communicating our views on these issues to the Department of Labor and are also serving it upon the parties participating in the Department of Labor proceeding, *Mosbaugh v. Georgia Power Company*.

Sincerely,

  
Ivan Selin

cc: The Honorable Robert B. Reich  
Parties to the Mosbaugh proceeding  
(Alan Mosbaugh)  
(Georgia Power Company)

Georgia Power Company  
333 Piedmont Avenue  
Atlanta, Georgia 30308  
Telephone 404 526-3195

ATTACHMENT 4

Mailing Address  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 668-5551

W. G. Hairston, III  
Senior Vice President  
Nuclear Operations

January 10, 1991

ELV-02428  
0792

Docket Nos. 50-424  
50-425

U. S. Nuclear Regulatory Commission  
Document Control Desk  
Washington, D. C. 20555

Gentlemen:

**VOGTLE ELECTRIC GENERATING PLANT  
ALLEGED EMPLOYEE DISCRIMINATION**

This letter is in response to your letter, dated December 11, 1990, concerning the U. S. Department of Labor's Wage and Hour Division, November 16, 1990 letter regarding a complaint filed by a former employee of Georgia Power Company's (GPC) Vogtle Electric Generating Plant (VEGP). The Wage and Hour Division found that "the weight of the evidence to date" indicated that the former employee was "engaged in protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise his complaint." The basis for the Wage and Hour Division's conclusion was that the former employee filed a petition with the Nuclear Regulatory Commission on September 11, 1990, and provided tape recordings of conversations to the NRC on September 13, 1990, and that on September 15, 1990 the employee was placed on administrative leave and subsequently terminated from VEGP employment on October 11, 1990.

Georgia Power Company has requested a full, de novo, evidentiary hearing on this complaint. Counsel for GPC has kept NRC General Counsel representatives informed of all stages of the investigation and proceedings in this matter. In addition, the NRC has been kept informed by GPC concerning two prior complaints filed with the Department of Labor (DOL) under the Energy Reorganization Act by this former employee. These prior complaints were filed June 7, 1990, and August 23, 1990. In both instances, the Wage and Hour Division found that allegations of impermissible adverse employment action were without merit. The employee has appealed those findings.

Your letter requests an explanation of the basis for the employment action regarding the former employee and copies of any investigative reports regarding the circumstances of the action.

U. S. Nuclear Regulatory Commission  
ELY-02428  
Page 2

Georgia Power Company, although maintaining various documents pertaining to the employment action, has no specific "investigative report" associated with the employment action. The available documents include, for example, copies of the request for proceeding, documentation associated with allegations contained in the request, and the partial deposition of the employee taken on September 11, 1990. Other relevant and material documentation is anticipated to be entered into the record of the evidentiary hearing. In the meantime, should you desire to review any of this information, please feel free to contact me.

With respect to the employment action taken, the former employee's surreptitious taping of co-workers and employees of your agency, its negative effect upon open communications, and the implications of the tape recording relative to the trustworthiness of the employee constitute the basis for the former employee's discharge. The NRC is now well aware of the nature and extent of the tape recording. However, up until September 12, 1990, the NRC apparently was unaware of the taping even though the former employee had access to and was interviewed by the NRC concerning his allegations on several prior occasions. Georgia Power Company notified the NRC of the tapes existence early on September 12, 1990, after learning of their existence on September 11, 1990. The former employee and his counsel notified the NRC of the tapes existence late on September 12, 1990, only after the DOL administrative judge ordered the tapes to be provided to GPC.

The former employee's conduct in indiscriminately tape recording conversations over a period of approximately eight (8) months placed him in a position where he could no longer effectively manage employees, rendering him incapable of effectively performing his assigned duties in the work place. This is because employees at a nuclear power plant must be able to share facts, ideas, problems, and opinions of both a business and interpersonal as well as personal nature. Effective working relationships depend upon mutual trust and candor with an expectation of privacy on those matters of an interpersonal or personal nature and certain business matters. The actions of the former employee violated these cardinal principles. In this regard, it is important to note that the former employee had ample opportunities on numerous occasions to provide the tapes to the NRC. Moreover, the former employee tape recorded representatives of your agency who were investigating allegations submitted by himself and taped subordinate employees who reported to, and were subject to his instructions. Our discovery of these activities on September 11, 1990, was the sole reason for his termination of employment. In fact, at the time the former employee was placed on administrative leave on September 15, 1990, he had been selected and assigned to Senior Reactor Operator training and the "Manager-in-Training" program as of July, 1990. The training had been listed as his first choice on his list of career options developed on April 30, 1990.

Regarding the other alleged "protected activity" of requesting the NRC to initiate a proceeding based upon allegations, as early as June, 1990, the employee had provided the NRC with his concerns. More specifically, the General Manager (VEGP) asked the NRC Resident Inspector to meet with him and the former employee so that the former employee could articulate all potential concerns.

That meeting was held on June 19, 1990 and the employee was requested to air all his concerns in the presence of the Resident Inspector. The employee provided no specific issues at that time but stated that he had some technical and managerial concerns which he had not fully formulated in his own mind. Georgia Power Company tasked the corporate concerns manager to meet with the former employee to obtain and investigate all concerns. During that effort, on July 3, 1990, it became clear that the former employee was withholding concerns. Therefore, the General Manager, on July 6, 1990, directed the former employee in writing to provide his concerns to the NRC. By the time the request for proceeding was filed with the NRC on September 11, 1990, the NRC, as the former employee knew, had already conducted an extensive review of his allegations.

Your letter also requested the licensee to describe actions, if any, taken or planned to assure that the employment action regarding the former employee does not have a "chilling effect" on the raising of perceived safety concerns by other licensee or contractor employees. Several actions have been taken, and others are anticipated. All are designed to inform our employees of the reason for the employment action taken and to inform them of their right and responsibility to raise any safety concerns which they may have. This information dissemination was intended to foster open, honest communication and minimize or preclude any "chilling effect." At the time the employment action was taken, GPC recognized that employees might attribute the administrative leave and termination of employment as being associated with the former employee's identification of safety concerns. Employees who were involved with these historic concerns readily understood the legitimate basis for the employment action. In contrast, many workers without first-hand knowledge of these details might misconstrue the employment action. Accordingly, informal oral presentations were made to both VEGP site employees and VEGP corporate employees which explained the basis for the administrative leave. The primary points made in these presentations are contained in Attachment A, which was used by the General Manager and Vice President - Vogtle in their statements. Questions from employees were solicited and answered. These early initiatives were designed to preclude misinformation, were concurrent with the employment action taken, and were effective. More specifically, employees are believed to understand the distinction between discipline associated with the former employee's surreptitious taping of conversations and improper employment action.

Information GPC had placed in the public domain also established the basis for GPC employment action and differentiated between furtive tape recording by the former employee and the raising of legitimate safety concerns. Prior to the former employee's discharge on October 11, 1990, GPC, by letter dated September 28, 1990, provided the NRC with preliminary comments on the former employee's September 11, 1990 request to initiate an administrative action against GPC. Georgia Power Company specifically addressed its view of the surreptitious taping as "a blatant disregard for the legitimate norms and expectations of co-workers and employees of your agency". Moreover, this September 28, 1990, letter included a July 6, 1990, memorandum from the General Manager (VEGP) to the former employee tasking him with providing safety-related concerns to the NRC which he was withholding from GPC management.

Subsequent to the former employee's termination from employment, GPC refrained from responding fully to press inquiries. GPC's position in the matter was provided to the press, but detailed interviews were not granted. This approach was designed to minimize any residual chilling effect and the potential appearance of retribution.

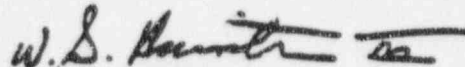
Later, however, (during November, 1990) the former employee pursued media coverage of his safety concerns. In light of the inquiries from the media, the former employee apparently was attempting to portray his concerns as substantial and his motives as altruistic. Detailed interviews, therefore, were provided by the Vice President - Vogtle to the major newspapers. In these interviews, the Vice President continued to differentiate between the basis for the former employee's discharge and impermissible discipline based upon the raising of safety concerns. Also, the Vice President distinguished between the raising of bona fide concerns and the concerns raised by the former employee by disclosing for the first time the fact that in early June, 1990, the former employee's counsel had proposed a large financial settlement in exchange for his forbearance in pursuing a DOL claim and in submitting concerns to the NRC. News articles in the Augusta and Atlanta newspapers, and other associated media coverage, raised the issue of motive. Editorials in the Augusta newspapers which followed these articles focused on the distinction between bona fide concerns and concerns submitted for financial gain (Attachment B). Georgia Power Company believes, based upon information provided by the media and the Company, that our employees distinguish between the raising of bona fide safety concerns and the motives and actions of the former employee.

In addition to the manner in which GPC publicized the basis for its employment action, GPC also broadly addressed the merits of the allegations. First, the September 28, 1990 letter deals with the allegations themselves. Second, the allegation "hyped" to the media by the former employee and his counsel was addressed directly in intra-company newsletters. Specifically, the allegation of material false statements provided to the NRC regarding the reliability of the emergency diesel generators at VEGP was addressed in a posting for employees on October 31, 1990, (Attachment C) and in mid-November 1990 employee news articles (Attachment D). These articles, among other things, provided details to employees who would not have ready access to the information. The articles acknowledged an error in the original data submitted to the NRC but, specifically avoided a discussion of the degree to which the former employee might have precluded the error, how he was tasked personally to resolve the error, and the fact that he proposed a revised Licensee Event Report which would not have materially differed from the original submittal. In other words, the articles purposefully avoided attacks on the former employee and, by doing so, permitted other employees to view the technical merits of the allegation in a non-adversarial context, which was, less likely to chill open communication.

The duration of the NRC's on-going review (including several requests for follow-on employee interviews) and other activities associated with the review might dissuade some employees from raising safety or operational issues. Attachment E, enclosed, was provided to VEGP employees on January 2, 1991 to reinforce open communication and timely identification and resolution of safety and operational issues. The various options for reporting concerns are expressly set forth in the statement. The statement also anticipates Georgia Power Company's vigorous defense of the former employee's 50.7 allegations in the DOL proceeding.

In conclusion, GPC has addressed this matter in a manner designed to mitigate and preclude a "chilling effect" on the raising of bona fide concerns by employees. Removal of the former employee from the plant site by placing him on administrative leave and subsequently terminating his employment actually served to foster open communications among plant employees. Georgia Power Company firmly believes that it has been successful in differentiating the former employee's inappropriate taping actions from appropriate courses of action available to all those employees who may have concerns. Concomitant with that effort, GPC has encouraged employees to maintain open and frank communications and to promptly report safety or operational issues.

Sincerely,



W. G. Hairston, III

WGH,III/JAB/gm

xc: Georgia Power Company

Mr. C. K. McCoy  
Mr. W. B. Shipman  
Mr. P. D. Rushton  
Mr. R. M. Odom  
NORMS

U. S. Nuclear Regulatory Commission

Mr. S. D. Ebnetter, Regional Administrator  
Mr. D. S. Hood, Licensing Project Manager, NRR  
Mr. B. R. Bonser, Senior Resident Inspector, Vogtle

ATTACHMENT A

9-19-90

Last Saturday, George Bockhold met with Allen L. Mosbaugh and told him that the Company had learned of his actions in taping conversations with a large number of people over an extended period of time. Under these circumstances, Ken McCoy decided it was in the best interest of Allen Mosbaugh and all concerned that he not be on the plant site for the next 30 days. He is now on administrative leave with pay for that time, and all of his employment benefits will remain unchanged during these 30 days.

As we have said many times before, and as I want to reemphasize, each one of you has a duty to maintain the safety of this plant. In order to accomplish this paramount goal of safety, it is absolutely essential that all employees feel free to communicate, and do communicate with one another openly, trustfully and without hesitation.

Any issue related to the safety of the plant needs to be addressed and resolved. We have set up multiple systems for the resolution of concerns. They can be addressed with management, and any of you are free to take issue to higher management if immediate management is not responsive. They can be addressed in the Quality Concern Program or the Corporate Concern Program. You can use the Deficiency Card system. Certainly, any one is free to and is encouraged to go to the NRC on any issue you feel is appropriate. All of these methods and other methods available here can be used anonymously if you feel that is

ATTACHMENT A (CONTINUED)

appropriate. This dedication to safety and open communication remains a fundamental commitment on the part of this Company. I want you to take steps to re-affirm this same message with your subordinates.

# SONOPCO Project News

## From The Augusta Chronicle

Editorial Page 4-A

Friday, December 7, 1990

### Wait on NRC report

Well-meaning employees upset about a company's operations have the option to speak out if they have exhausted redress through the internal company chain-of-command.

But does nuclear engineer Allen Mosbaugh of Grovetown fall into such a whistle-blower category?

He was a Plant Vogtle worker who made no bones about wanting to move away after a stint here — and he was dissatisfied with his employer's attitude toward a pay settlement. So for several months he began secretly tape recording the comments of hundreds of co-workers.

Not surprisingly, he uncovered some dirt.

Mosbaugh then went to the Nuclear Regulatory Commission with his safety gripes and, to be fair, he uncovered disturbing things. However, his employer — the Georgia Power Co. — readily admitted some key problems were due to human or mechanical error.

Initially, Mosbaugh was put on administrative leave but, in our opinion, this fellow should have been axed outright.

He later was fired, but not because of whistle-blowing to the NRC. The power company says it was due to the manner in which he taped

comments from unsuspecting people.

Workers in safety-related jobs could have become more reluctant to talk with one another after the taping was revealed — and communication problems are the last thing needed in a nuclear facility!

Surprisingly, U.S. Labor Department probes claim Mosbaugh was fired illegally; his sleuth work was justifiable. This is being appealed.

Yet the engineer's motives and timing raise questions.

Georgia Power underscores that Mosbaugh didn't go to the NRC until after his lawyers had failed to negotiate a sizable cash settlement with the company. (His anti-nuclear attorneys used to work for the left-wing Government Accountability Project. They naturally have an ax to grind.)

We also couldn't find where Mosbaugh took grievances through company channels for redress. If he was sincere, and not motivated by money, why didn't he simply take his problem-list to Vogtle's various safety and problem-concerns programs?

Mosbaugh's allegations make good newspaper copy. But let's wait for the final NRC report to see if all his claims stand up to scrutiny.

ATTACHMENT B (CONTINUED)

FROM THE AUGUSTA HERALD  
Monday, December 10, 1990

## *Whistle's sour notes*

Employees should be encouraged to blow the whistle when their company ignores or evades proper rules and procedures, but weight also has to be given to whistle-blowers' motives which can have a direct impact on their credibility.

There's no doubt that nuclear engineer Allen Mosbaugh of Grovetown has exposed some safety lapses at Plant Vogtle that it readily admits to and is moving to correct. Other charges it denies and their veracity will be determined by a Nuclear Regulatory Commission investigation.

What troubles us is the way the whistle-blower went about his work. Upset because Vogtle would not give him what he considered a generous severance settlement when he wanted to leave, Mosbaugh took to secretly taping co-workers' conversations and then brought the allegedly incriminating evidence directly to the NRC without ever going through the company's redress channels.

Whatever the truth of Mosbaugh's charges, he surely doesn't fit the image of the altruistic whistle-blower. He obviously had his own fish to fry — namely to embarrass the company he felt had wronged him.

Is that he has succeeded, but we think the company was still right to fire him, not for blowing the whistle, but for taping private conversations. Amazingly, the U.S. Labor Department disagrees and says he was illegally fired.

ATTACHMENT C:

EMPLOYEE NOTICE

10-31-90

Statements by Allen Mosbaugh recently reported in the news media are inaccurate. The statements relate to Georgia Power's reports to the NRC regarding diesel generator testing following the March 20 Site Area Emergency. Mosbaugh, a former Georgia Power employee who worked at Plant Vogtle, was fired earlier this month for his conduct in secretly taping conversations with other employees and with NRC personnel.

Georgia Power has acknowledged that there was a numerical error in data conveyed to the NRC about the testing of diesel generators at Plant Vogtle. However, as soon as Georgia Power determined a potential error in this data, it verbally notified the NRC of the potential error and subsequently corrected the data with the NRC in writing.

The NRC reviewed and was completely briefed on the diesel generator testing after the March 20 site area emergency and before the restart of the unit.

At no time has Georgia Power intentionally made false statements or attempted to mislead the NRC about the diesel generator, and Georgia Power promptly identified and rectified the reporting error, keeping the NRC verbally apprised during the process.

Mr. Mosbaugh filed his request for NRC proceedings under a regulation that permits anyone to file such a request, regardless of merit.

ATTACHMENT C (CONTINUED)

Before he filed his request, Mr. Mosbaugh also brought claims against Georgia Power at the U. S. Department of Labor, seeking monetary compensation. His claims have alleged that adverse employment action was improperly taken against him. Following two independent investigations, the Department of Labor determined that his claims were without merit. He has appealed those determinations.

Georgia Power has and will continue to keep the NRC fully and promptly informed. We will continue to encourage all employees to maintain openness in our communications and to promptly report and resolve any concerns about safety or operational issues.

## World War II plane

continued from page 1

In his spare time, Dan likes to go flying. Following a rough start in aviation, crashing his ultralight, he bought a small airplane and started taking lessons. In August, Dan earned a private pilot's license.

Currently, Dan owns a World War II Army plane which was built in 1944. This fall, he went to "fly-ins" (informal airplane conventions) in Dublin and Carrollton, sleeping under the wing of his plane in a small tent.

In October, Dan put his antique plane on "static display" at the Robins Air Force Base air show. "I bought a leather flying helmet and goggles a long time ago. I've always wanted an open cockpit biplane....it's the only way to fly," stated Dan. He has recently located just such a plane in Missouri and is planning to trade his Army plane for it. □

## Georgia Power clarifies recent publicity about Vogtle diesel generators

**R**ecent news media reports have stated that Georgia Power attempted to mislead the Nuclear Regulatory Commission (NRC) earlier this year when providing data about the reliability of emergency diesel generators at Plant Vogtle. "That is not true," stated Ken McCoy, vice president of the Vogtle Project.

"The original data submitted was in error, but we had no intent to mislead the NRC. As soon as Georgia Power determined that there was a concern about that data, the Company verbally notified them of the concern and subsequently provided a written correction."

This issue concerned the number of times two backup diesel generators successfully operated during testing. "The NRC had people there while we were running the tests,

and they reviewed the results. In their review, the NRC had all of the same information we had," McCoy said.

Problems in getting a generator started contributed to the March 20, site-area emergency at the plant. But contrary to recent news media reports, the NRC reviewed and was briefed on the diesel generating testing after the March 20, incident and before the restart of Unit 1.

Georgia Power had originally submitted information that said one of the generators successfully started 18 times, while the second generator successfully started 19 times without failures or problems occurring.

Actually, it was determined later that the employees who gathered and prepared the data for the NRC did not use all available information in determining successful generator starts.

Instead, they used data from the operators' logs only. Operators consider a test "successful" if the diesel generator starts up. Based on that, the operators logged these start attempts as successful for both generators. But, a subsequent review of an engineer's log showed that some of the start-up tests did in fact have problems or failures after operating for a period of time.

"That's the basis of the confusion," McCoy said. "Our first report was based on an incomplete review of the logs."

The erroneous statement is one issue raised in a petition filed with the NRC by Allen Mosbaugh, a former Georgia Power employee. The NRC is treating Mosbaugh's filing as a petition pursuant to federal regulations that permit anyone to file a request to the NRC regardless of merit. The petition is based on false and inaccurate statements, and the issues raised in the petition have already been reviewed and dismissed by the Commission.

### HATCH GAZETTE

Published Bi-Weekly by the

Edwin I. Hatch Nuclear

Information Center

For and About

Plant Hatch Employees

Lewie Sumner .... General Manager

Plant Hatch

John Magon ..... Editor

Sybil Lee ..... Assistant Editor

#### CORRESPONDENTS

Linda Jacobs ..... Health Physics

Loraine Bell ..... Quality Control

Beverly Burch ..... Administration

John Layne ..... Maintenance

Mary Anne Durbin ..... Training

Sharon Stone ..... Materials

Celene Hart ..... Maintenance

Jeanette Owens ..... Engineering

Margaret Hughes ..... Security

Regina Swanson ..... Recreation Area

Dale Gendron ..... Nuclear Safety

Susan Gray ..... Operations

Elmer Oakes ..... S&amp;E

John Graham ..... Building and Grounds

Mavis Thomas ..... Outage &amp; Planning

Copyright 1990 by Hatch Nuclear Information Center. All rights reserved.

GEORGIA POWER

NOVEMBER 16, 1990

# THIS WEEK

BZ  
V-File

## GPC clarifies recent publicity on Vogtle diesel generators

**G**eorgia Power did not intend to mislead the Nuclear Regulatory Commission about the reliability of Plant Vogtle's emergency diesel generators, according to Ken McCoy, vice president of the Vogtle project.

"The original data submitted was in error, but we didn't intend to mislead the NRC. As soon as we determined there was a concern, the Company orally notified the NRC

and subsequently provided a written correction."

The issue concerned the number of times two backup diesel generators operated successfully during testing. "The NRC had people there while we were running the tests, and they reviewed the results. In their review, the NRC had all of the same information we had," McCoy says.

Problems in getting a generator started contributed to the March 20

site-area emergency at the plant. However, contrary to recent news media reports, the NRC reviewed and was briefed on the diesel generating testing after the March 20 incident and before the restart of Unit 1.

Georgia Power had originally submitted information that said one of the generators successfully started 18 times, while the second generator successfully started 19 times without failures or problems occurring. It was learned later that employees preparing the data for the NRC did not use all the available information in determining successful generator starts.

Instead, they used data from the operators' logs only. Operators consider a test "successful" if the diesel generator starts up. Based on that, the operators logged these start attempts as successful for both

generators. A subsequent review of an engineers' log showed that some of the start-up tests did in fact have problems or failures after operating for a period of time.

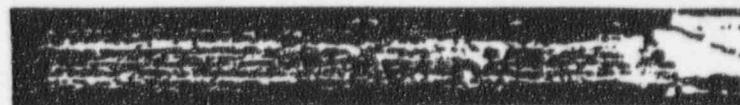
"That's the basis of the confusion," McCoy says. "Our first report was based on an incomplete review of the logs."

The erroneous statement is one issue raised in a petition filed with the NRC by Allen Mosbaugh, a former Georgia Power employee. The NRC is trusting Mosbaugh's filing as a petition pursuant to federal regulations that permit anyone to file a request to the NRC regardless of merit. McCoy says the petition is based on false and inaccurate statements, and the issues raised in the petition have already been reviewed and discussed by Georgia Power with the NRC. ▴


## Vogtle completes refueling outage

**T**he Unit 2 refueling outage at Plant Vogtle, which began at midnight on Sept. 14, is now complete. The unit was reconnected to the grid Nov. 14. During the outage, employees completed plant design modifications, maintenance activities and various tests and inspections. Engineers from Southern Company Services and various contractors assisted in the outage.

"Several major jobs were undertaken after the start of the outage, which added to its original scope," says Ken McCoy, vice president of the Vogtle project. "This work should pay dividends in future performance. The outage was a success because of the dedication and teamwork of all plant employees and others who supported them." ▴



Interoffice Correspondence

Georgia Power 

DATE: January 2, 1991  
RE: Open Communication  
FROM: W. B. Shipman  
TO: Vogtle Employees

Recent news reports have focused on litigation between Allen L. Mosbaugh, a former employee at this plant, and Georgia Power Company. In a Department of Labor (DOL) proceeding, Mr. Mosbaugh contends that he was placed on administrative leave and subsequently terminated from employment as a result of his engaging in "protected activity," including submission of safety concerns to the Nuclear Regulatory Commission. In that litigation, Georgia Power denies these assertions; Mr. Mosbaugh was terminated from employment after it was learned that he had surreptitiously tape recorded conversations with other plant workers and with NRC personnel over a substantial period of time. Georgia Power Company, therefore, intends to vigorously defend the DOL action brought by Mr. Mosbaugh.

I want to emphasize to all Vogtle employees that Georgia Power's concern about Mr. Mosbaugh's surreptitious conduct is because of its negative effect on open communications at this plant, and not because of his raising of safety issues. Open and frank communications are essential in our industry. When Georgia Power learned that Mr. Mosbaugh had concerns that he had not disclosed, he was directed to submit his concerns to the NRC in July, 1990. No adverse action was taken as a result of the submission of these or other concerns. Indeed, Mr. Mosbaugh had been selected and assigned to Senior Reactor Operator training and was enrolled in the "Manager in Training" program at the time that his secret tape recording became known.

Georgia Power is fully cooperating with the NRC's review of Mr. Mosbaugh's concerns and allegations. Interviews of plant personnel and review of documents have been conducted and additional interviews may be requested by the NRC. Employees are reminded that Georgia Power encourages individuals to cooperate with the NRC in its investigations, even though individuals have a legal right to decline to be interviewed. Employees also are reminded that they have the right to have a lawyer, co-worker or friend of his/her choice at any on-site or off-site interview with governmental investigators. If requested, management will arrange for an attorney to confer with you before an interview and to represent you during the interview. This will be at no cost to you. At no time are you restricted from your communications with NRC personnel.

ATTACHMENT E (CONTINUED)

Page Two

I encourage and request all of you to maintain openness in your communications and to promptly report and help resolve any concerns about safety or operational issues. In addition to your "chain of command" reporting of concerns, the Quality Concerns Program (telephone number 1-800-225-2055) will accept anonymous allegations (numerous drop boxes exist throughout the plant, or the concerns can be submitted by telephone or personally by contacting Bill Lyon--Quality Concerns Coordinator). The Nuclear Regulatory Commission Resident Inspectors were recently highlighted in the Vogtle Voice and also may be contacted (extension 4116). The NRC also maintains an off-site telephone number, 301/951-0550 (call collect).

Please remember, the identification of issues which may adversely affect safety or health is a fundamental responsibility of each employee. In any complex human endeavor, such as running these plants, technical deficiencies or weaknesses may be identified. Only by your identification of such problems can they be resolved and help assure our foremost goal -- safe operation of the Vogtle Electric Generating Plant.



WBS/tdm

December, 1990

Vogtle Voice

# Meet your inspectors

by Herb Beecher

Who is the Nuclear Regulatory Commission (NRC)? Why are NRC residents on site? In this article, we will answer these questions and introduce you to our resident inspectors.

The resident inspector program originated after the Three Mile Island (TMI) accident. The NRC regulates the civilian use of nuclear materials in the United States to protect the public health and safety and the environment. This mission is accomplished through:

- the licensing of nuclear facilities and the possession, use and disposal of nuclear materials,
- the development and implementation of requirements governing licensed activities, and
- the inspection and enforcement activities to assure compliance with these requirements.

A site resident's responsibilities include:

- Establishing NRC presence on-site on a daily basis.
- Being thoroughly familiar



Brian Bonser



Brian Bonser

with site and facility characteristics, licensee procedures, and licensee and contractor personnel.

- Being aware of day-to-day site activities.
- Responding to site events to serve as the initial NRC observer.
- Communicating on a daily basis with Regional management and the Nuclear Reactor Regulation's (NRR) licensee project manager.
- Performing inspection programs and writing monthly reports.
- Acting as a point-of-contact for local media, government officials and the public, as needed.
- Evaluating the licensee performance.

Vogtle has three resident inspectors on site. They are Brian Bonser, Robert "Doug" Starkley and Pete Salzman.

Brian is a graduate of Georgia Tech and holds a bachelor's degree in chemical engineering

and a master's degree in industrial management. He has 16 years of experience in the nuclear industry, the last 5 1/2 with the NRC. Brian is married and has two children.

Doug holds a bachelor's degree in business from Mississippi College and a certificate in nuclear studies from Memphis State University. His experience includes 8 1/2 years in the nuclear field, the last four being with the NRC. Doug is married and has two children.


Pete holds a bachelor's and master's degree in nuclear engineering from Georgia Tech. He has spent the past five years with the NRC. Pete is married and enjoys jogging in his spare time.

The NRC inspectors are here to ensure Vogtle is operated in a safe manner and that public health and safety are not jeopardized. If you have a concern, please contact either your supervisor or call the NRC at (404) 554-9901 or site ext. 4116.



Pete Salzman

## Interoffice Correspondence

Georgia Power 

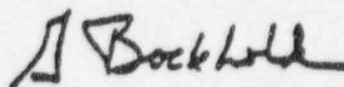
DATE: August 21, 1990  
RE: Operational Assessment Inspection  
FROM: G. Bockhold, Jr.  
TO: Plant Employees

As many of you know, the NRC recently concluded an Operational Assessment Inspection. The inspection, among other things, included investigation of a number of allegations of "wrongdoing," such as intentional violations of NRC requirements. Some VEEP employees were interviewed formally in "on the record" interviews.

The NRC appropriately investigates allegations of wrongdoing which bear on matters of safety or public health in a thorough and deliberate manner. While a formal interview may be disconcerting or stressful, these reviews are sometimes necessary. Georgia Power encourages cooperation in these investigations and views it as essential that the NRC obtain the relevant and material facts.

We have been informed that all allegations of wrongdoing by VEEP employees were found to be unsubstantiated. At the same time, the Operational Assessment team identified several technical items where potential violations of NRC requirements may have occurred. For example, the NRC observed at least one instance in which a Deficiency Card was not issued for equipment repair, contrary to our practices. We must remember to use our Deficiency Card system; only by identifying potential deficiencies can we achieve our high standards of excellence in all of the areas which support this plant. All of us need to be reminded to pay strict attention to detail -- to dot all the i's and cross all the t's -- in each of our daily tasks.

I want to thank all of you who worked diligently to support the Operational Assessment team. Your cooperation during this difficult time is greatly appreciated. I, personally, am very proud of the professionalism shown by each of you and encourage you to maintain those high standards as we move forward to fulfill our goal of efficient and, foremost, safe operation of the Vogtle Electric Generating Plant.



AD/TVG/GB/tcm

## SOUTHERN COMPANY

### Principles for Nuclear Operations

*We are America's best nuclear operations.* Our successful employees exhibit the behaviors and values of *The Southern Style*. Our approach to nuclear operations is guided by the principles outlined below.

- **SAFETY**

As a matter of personal and moral responsibility, we take conservative measures to safeguard the health and safety of our employees and the public. This responsibility is never compromised in the interests of production or cost.

- **CONTINUOUS IMPROVEMENT**

We are dedicated to the optimum operation, maintenance, engineering, and support of each of our nuclear plants, hour-by-hour, day-by-day, to ensure safe, reliable and economical performance. We strive to achieve simple and standard work practices. We maintain open and candid relationships with each other, regulatory agencies and others with whom we interact. We build upon our past achievements and experiences, as well as those of others, to achieve continuous improvement.

- **PROBLEM FOCUS**

We recognize that the methodologies used in the design, construction, and operation of any large, complex production facility, such as a nuclear plant, are a less-than-perfect application of knowledge and skills. We also recognize that we are not infallible in the application of knowledge and skills. These imperfections may evolve into problems that we must be prepared to overcome in order to accomplish our mission. Therefore, we are "problem-oriented." We maintain our day-to-day -- as well as long-term -- focus on detecting existing and potential problems before they become significant. We take action to resolve these problems safely and cost-effectively, taking into consideration the relative importance and priority of every aspect of our work.

- **RESPONSIBILITY AND ACCOUNTABILITY**

We recognize that our success depends on each individual's performance. We set high goals for ourselves. We accomplish our goals through teamwork, with each individual having assigned work and the authority, responsibility and accountability for performance of that work. We act with speed and professionalism, and we dedicate our individual initiatives and unique capabilities to the achievement of our personal, team and company objectives. Each of us will be independently responsible for our professionalism.

- **SPIRIT**

We will be mutually and collectively supportive to maintain a strong, positive team spirit in striving to achieve our goal as "America's Best Nuclear Operations."

# The Southern Style

## **Ethical Behavior**

We tell the truth.  
We keep our promises.  
We deal fairly with everyone.

## **Customer First**

Our business is customer satisfaction. We will think like customers...

## **Shareholder Value**

... and act like owners. We work to increase the value of our investment.

## **Great Place to Work**

We are a first-name company. We enjoy our work and celebrate our successes. We seek opportunities to learn.  
We do not compromise safety and health.

## **Teamwork**

We communicate openly and value honesty. We listen.  
We respect all opinions and expect differing viewpoints as we work together toward common goals. We emphasize cooperation - not turf.

## **Superior Performance**

We continue to set high goals for ourselves. We take personal responsibility for success. We act with speed, decisiveness, and individual initiative to solve problems. We use change as a competitive advantage.

## **Citizenship**

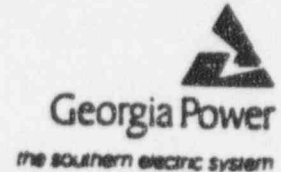
We are committed to the environment and to the communities we serve.

Georgia Power Company  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 877-7122

ATTACHMENT 7

C. K. McCoy  
Vice President, Nuclear  
Vogtle Project

September 30, 1993



Docket Nos. 50-321 50-424  
50-366 50-425

HL-3474  
LCV-0165

The Chief  
Rules Review and Directives Branch  
Mail Stop: P-223  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Comments on  
Whistleblower Protection  
(58 Federal Register 41108 of August 2, 1993)

Dear Sir:

On August 2, 1993 the Nuclear Regulatory Commission (NRC) requested comments from the public on whether the NRC has taken sufficient steps within its authority to create an atmosphere where whistleblowers feel free to engage in protected activity without fear of retaliation (58 FR 41108). The Nuclear Utility Management and Resources Council (NUMARC) has submitted comments in response to the NRC's request. Georgia Power Company endorses NUMARC's comments and herein provides supplemental comments based on Georgia Power's experience as a licensee.

1. INTRODUCTION

Georgia Power Company supports the NRC's efforts to ensure that employees within the industry who have safety concerns feel free to raise those concerns with their management, without fear of retaliation. These employees are a critical element in identifying and resolving potential unsafe conditions. Georgia Power recognizes that it has a vital stake in assuring that its employees feel free to identify issues which, if left unresolved, will have an adverse impact on the safe and reliable operation of its nuclear plants. For that reason, Georgia Power has made it an obligation, not just a right, of each employee to raise legitimate safety concerns.

In Georgia Power's opinion there is not sufficient justification for NRC to impose further requirements on licensees. It is apparent the overwhelming majority of industry employees feel free to raise safety concerns without fear of reprimand. Through the numerous concerns programs and opportunities for voicing concerns maintained by licensees, the empirical and anecdotal evidence is conclusive that the process is working and that the individuals who identify potential nuclear safety issues are viewed and treated as important contributors to the achievement of compliance and operational excellence. In an industry populated primarily by highly skilled, well-educated and assertive professionals, the fact that annually only about one tenth of one percent (0.1%) of industry employees

file Section 211 claims is a remarkable testament to the industry's success in promoting the open and frank exchange of ideas and information. Indeed, NRC's Chairman Selin observed in his testimony on July 15, 1993 before the Senate Subcommittee on Clean Air and Nuclear Regulation of the Committee on the Environment and Public Works (hereinafter "Senate Subcommittee") that "[m]ost of the employees that submit allegations to the NRC or raise issues to licensees do so without retaliation... [i]n almost every case [the NRC resident inspectors I spoke with at two-thirds of our plants told me] that the [licensees] employees seem to feel reasonably free coming to the [NRC resident] inspector." Tr. at 123, 148.

Among the section 211 cases filed, there is an even smaller percentage of actual cases of harassment, and intimidation. These few instances occur even though the perpetrators are well aware such retaliation is unlawful and contrary to the policies of their employer. Often, at the heart of these instances of retaliation are intense personality conflicts unrelated to "protected activity," the nature of which are such that there is little licensees or the NRC can do to completely eliminate the occurrence of these violations.

Moreover, it must also be recognized that on occasion employees within our industry seek to take advantage of the process for illegitimate reasons and will raise unsupported or frivolous claims. Before any changes to the current process are made, the NRC must carefully consider whether such changes will create additional opportunities for abuse of the process, placing additional unnecessary burdens on licensees, the NRC and the United States Department of Labor (DOL), and further exacerbating the frustration caused by these cases of abuse.

## II. DISCUSSION

In response to the August 2, 1993 Federal Register notice, Georgia Power Company has organized the following specific comments under the general subject headings which appeared in the notice.

### A. Responsiveness and Receptiveness of Licensees to Employee Concern So That Employees Will Feel Free to Raise Safety Issues Without Fear of Retaliation

Georgia Power Company has a well-publicized and practiced management philosophy of openly and frankly identifying and communicating potential problems in order to maximize awareness and to facilitate resolutions at the earliest possible stage. The internal mechanisms for soliciting, addressing and resolving concerns over nuclear safety, as well as other workplace concerns, are found at both plant and corporate levels. At the plant level, we operate a Quality Concern Program, dedicated to acceptance and investigation of nuclear safety or quality concerns.

Confidentiality is offered and non-retaliation is guaranteed. Each plant also maintains a "Deficiency Card" system and a "Major Problems List," through which plant employees or managers can document and notify their supervision of a potential quality or safety concern, and require that the concern be formally addressed and, if necessary, resolved by appropriate management.

At the corporate level, we maintain the Corporate Concern Program, a direct outgrowth of the success of the nuclear plant Quality Concern Program. The Corporate Concern Program allows any employee to by-pass plant management and file a concern at a level reporting directly to the Company's executive officers. Once again, confidentiality and non-retaliation are assured.

Employees may also utilize the company's Internal Auditing and Corporate Security Functions or call or contact management, including the President, directly to have their concerns investigated. Finally, the Company maintains and encourages, at both the plant and corporate levels, open and frequent communication with the NRC and its resident inspectors.

The company has implemented the employee concerns program in a manner that ensures each employee is aware of the company's commitment to provide a work environment where they can feel free to raise safety concerns without fear of retaliation. At each plant, before each employee is badged, he or she received orientation training concerning the Quality Concern Program. Each employee then receives a letter from the plant General manager which explains the program and the employee's obligation to identify quality or safety concerns to their supervisor, or if they feel uncomfortable discussing it with their supervisor, to the next level of management or with the Quality Concern Program. The letter also explains that employees have the right to bring their concerns the attention of NRC Resident Inspectors, and their respective phone numbers are provided. With respect to acts of harassment or intimidation, the letter advises employees to be aware of their rights to report such acts to the NRC or the DOL, as described on NRC's Form 3. Each new employee is required to sign an acknowledgement form indicating that they have reviewed the plant General Manager's letter and that they are aware of the existence of the Quality Concern Program and their obligations to report quality or safety concerns, as well as their rights to report harassment or intimidation to the NRC or DOL. In addition, upon each employee's separation from employment, they attend an exit interview (or are provided an exit acknowledgement form) to provide an opportunity to identify any concerns which they feel have not been addressed or any acts of harassment or intimidation. <sup>1/</sup> A similar

---

<sup>1/</sup> Copies of the Plant Vogtle General Manager's Letter, the Quality Concern Program orientation acknowledgement form and the exit interview acknowledgement form are attached for information. Similar forms are used at Plant Hatch.

procedure is in place at the corporate office. Finally, the employee concern programs at the plant and the corporate office are audited annually and, periodically, Company management reviews a summary of concerns which have been submitted.

In conclusion, Georgia Power Company has established sufficient programs to ensure that any legitimate safety concerns held by its employees are identified and promptly resolved. Furthermore, Georgia Power Company believes its policies and programs adequately convey its position to employees that those who raise concerns are considered vital to the safe and reliable operation of its nuclear plants. Thus, Georgia Power believes that its employees do feel free to raise concerns without fear of retaliation.

Based on the above, Georgia Power Company does not believe that the NRC should order, or provide prescriptive regulations or policy statements requiring licensees to adopt an employee concerns program. First, there is insufficient justification for imposing such requirements on the industry as a whole. Second, imposing such requirements will impose substantial resource burdens on licensees, most of whom already have some kind of concerns program, to conform their programs to such requirements. Third, substantial NRC Staff resources, which the NRC has recently observed are shrinking, will be unnecessarily consumed. Fourth, such requirements are not likely to make a difference where the licensee already has a similar program. Finally, as Chairman Selin observed in his remarks to the Senate Subcommittee, it is the licensee's corporate culture, rather than any particular program or procedure, that will make the difference in whether employees feel free to raise concerns. If the employees do not receive the day-to-day encouragement from their management to raise safety concerns, the most elaborate concerns program in the world will not allay their fears of retaliation. In sum, the issuance of such new regulations would place form over substance, and require a major investment on the part of both licensees and the NRC without any meaningful increase in nuclear safety or employee welfare.

#### B. Responsiveness and Receptiveness of the NRC to Allegations

The Federal Register notice seeks comments on the NRC policy of referring allegations to licensees and actions which NRC can take to minimize compromising the identity of the allegor.

Georgia Power believes it is appropriate for the NRC to promptly refer allegations to the licensee which affect safety. This is the most expedient way to ensure that legitimate safety concerns are swiftly resolved. While Georgia Power respects the desires of some employees who raise safety concerns to have their identities kept confidential, this

should not be a critical matter in a corporate atmosphere which encourages its employees to bring their concern to management. In those cases where the corporate atmosphere discourages employees from raising concerns, the issue should not be how to protect the confidentiality of alleged, but how to improve the licensee's corporate culture.

NRC resident inspectors are in an excellent position to determine whether licensee's corporate culture is such that employees feel free to raise concerns. Because these inspectors are located at the plants, they have daily contact with plant employees at all levels in the organization. The residents are able to accurately determine whether special precautions should be taken to protect the identity of an employee who brings them an allegation. With rare exceptions, we believe that the NRC's current procedures for protecting the identities of alleged are adequate. The NRC should not permit the exception to swallow the rule here, and undermine the significant achievements of licensees in the voluntary non-retaliatory resolution of safety concerns.

#### C. Potential for Discrimination

Georgia Power Company believes that the NRC should always advise a licensee when employees express a reluctance to raise safety concerns for fear of retaliation. This information is important in assessing the licensee's corporate culture as well as the effectiveness of its concerns programs. Of course, the NRC should also advise the licensee whether it believes such information is indicative of a widespread problem or is an exception to the views of most employees.

With respect to those employees who inform the NRC that they have safety concerns, but will not disclose them, the NRC should inform such employees of their obligations under NRC regulations to report significant safety issues to the NRC. The NRC could also offer these employees confidentiality, pursuant to a written agreement, under their current procedures. At the same time, the licensee, who presumably does not know the identity of the employee, could issue a general notice to all employees urging them to bring forward any safety concerns and assuring them that harassment and intimidation will not be tolerated.

These steps should be adequate to ensure the disclosure of any legitimate safety concerns and alert licensee management to the potential for a retaliation situation. On the other hand, the NRC must be cautious not to create increased opportunities for those who abuse the system. Even a cursory review of the whistleblower case law and DOL's experience under the Energy Reorganization Act establishes that licensees have produced an exemplary record in the non-retaliatory treatment of legitimate whistleblowers. At the same time, licensees must be free to take those

employment actions which they reasonably deem necessary to ensure that their workforces are competent, trustworthy and willing to abide by regulatory requirements and that a free flow of information in their workplaces is assured.

#### D. NRC Investigations During DOL Process

There appears to be little dispute that duplicative NRC and DOL investigations of retaliation claims will be counterproductive. Not only would it require a substantial commitment of additional NRC resources, but it would likely work to delay the resolution of such claims and, at least up through the hearing stage, DOL has a commendable record for timeliness. NRC should await the completion of the DOL process through the hearing stage and the NRC should utilize the record, to the extent it is developed, by the DOL Administrative Law Judge (ALJ).

In a DOL case where the ALJ does not reach a finding on the merits, as when the case is settled, the NRC should make its own determination, based on the facts gathered to that stage of the proceeding and any additional facts it may develop, as to whether enforcement action is appropriate. The NRC should not automatically take enforcement action based on a DOL compliance officer's finding against a licensee. Fairness and due process require that the NRC afford licensee the opportunity to demonstrate that a violation of NRC requirements did not occur. Without such an opportunity, licensees will perceive that, with an adverse finding from a DOL compliance officer, settlement of the case should not be considered because the compliance officer's report will be used by the NRC as a basis to take enforcement action. This adversely affects the interests of both licensees and DOL complainants. Duplicative or parallel processes by the NRC would also allow illegitimate whistleblowers the opportunity to expand and frustrate the adjudicatory process, heaping delay and expense upon licensees. The result is that well-meaning licensees are punished without due process.

#### E. Earlier NRC Enforcement Action

As noted above, the NRC should await the completion of the DOL hearing process before initiating enforcement action. Early enforcement action will require the licensee to defend its actions on two fronts which is inherently unfair, jeopardizing the ability of the licensee to present a full defense, while allowing whistleblowers to impose undue litigation costs upon the licensee. The NRC should not encroach upon the DOL process

which, at least through the hearing stage, works as well or better than any whistleblower resolution process under federal law. Moreover, the DOL hearing process allows for a full and independent assessment of the credibility of both the whistleblower and the accused management.

#### F. Chilling Effect Letters

Georgia Power Company's observation is that the so called "chilling effect" letters serve an important function and are adequate. However, NRC's current practice of issuing those letters at the time of an initial DOL investigation finding of discrimination creates misconceptions concerning the merits of the case as well as the extent to which NRC has been kept informed. Such a "chilling effect" letter can create a perception among employees that the licensee has already been found guilty of misconduct, and that potential filers of safety concerns should fear for their job security. This is clearly not the message the NRC should be sending, and it punishes licensees without due process and well before any determination of wrongdoing has been rendered. Furthermore, the issuance of a formal "chilling effect" letter with respect to a given DOL complaint may give the impression that the NRC and the licensee have not communicated and that the NRC is uninformed of the facts of the case and unaware of the licensee's general corporate culture, which Georgia Power submits is not the case. The NRC should take steps, including the timing and message of such letters, to minimize the potential for these misconceptions.

#### G. NRC Civil Penalties

NRC civil penalties for violations do provide deterrence for retaliation. Any violation of NRC regulations carries with it criticism from local public officials and the community at large. A violation for retaliation adds the stigma of an employer mistreating its employees.

Georgia Power Company does not believe there is sufficient justification to increase the severity level or the amount of civil penalties for retaliation violations. This will escalate the enforcement process increasing the burdens on the licensee as well as the NRC staff.<sup>2/</sup>

---

<sup>2/</sup> A similar conclusion was expressed by Chairman Selin at the July 15, 1993 Senate Subcommittee hearing when he said:

[T]here has been a lot of discussion about heavier penalties at the end and things like that. We'll look at these, but heavier penalties mean higher standards of proof, which mean a longer process and not a shorter process, so there is a real trade-off between hitting people with a bigger stick at the end and moving more quickly at the beginning, and that has to be looked at very carefully... and more use of criminal [penalties] has the same problems.

Tr. at 139.

It is unlikely that such escalation will have any substantial effect on those few cases of actual harassment and intimidation which will occur.

H. Use of Deliberate Misconduct Rule

The comments expressed above with respect to increased enforcement sanctions apply with even greater force to the use of the deliberate misconduct rule in cases of retaliation. These actions will be hotly contested, and resolution will be more difficult, when the careers of individuals are at stake. Licensee disciplinary policies are capable of adequately addressing individual misconduct. The NRC should limit its oversight to whether the licensee has taken appropriate actions to address the problem.

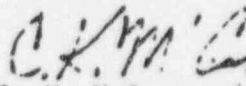
III. CONCLUSION

For the reasons expressed above, Georgia Power Company does not believe there is sufficient justification for the NRC to impose additional requirements upon licensees to protect licensee employees who would raise safety concerns. The overwhelming weight of the evidence is that licensees recognize such employees as valuable contributors and only a small percentage of industry employees file retaliation claims each year.

Among the Section 211 cases which are filed, there are few actual cases of retaliation and, because of the nature of those that do occur, imposition of requirements for employee concerns programs and procedures is not likely to prevent their occurrence. Additionally, imposition of such requirements on licensees are likely to increase the opportunities for those who seek to abuse the process for illegitimate purposes. An increase in the number of cases of abuse will be a source of frustration for licensees who will be targets of such abuse, and will further burden the limited resources of the DOL and NRC.

Georgia Power Company agrees with the observation of Chairman Selin that it is the licensee's corporate culture, more than anything, which will effect whether employees feel free to raise safety concerns. The commitment of substantial NRC and licensee resources to prescriptive requirements for employee concerns programs would do little to ensure an appropriate corporate culture, and therefore, would not be fruitful.

Respectfully submitted,

  
C. K. McCoy

CKM/JDK

HL-3474  
LCV-0165

333 Piedmont Avenue  
Atlanta, Georgia 30303  
Telephone 404 526-3195

ATTACHMENT 8

Mailing Address  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 868-5581

THE SOUTHERN BELL SYSTEM

W. G. Hairston, III  
Executive Vice President  
Nuclear Operations

May 11, 1994

## TO ALL GEORGIA POWER EMPLOYEES

By now each of you have been made aware of the recent Notice of Violation and proposed imposition of a \$200,000 civil penalty against Georgia Power Company. The Company is still evaluating this document, both its factual conclusions and the legal options, and will prepare an appropriate response. The purpose of this letter, though, is to assure all of our employees that Georgia Power Company remains firmly committed to a full, open, complete and accurate communications policy with the Nuclear Regulatory Commission, any of the Company's regulatory authorities, and with each other. Regardless of the outcome of the Notice of Violation, all of us should consider it our personal responsibility that when called upon to communicate with the Nuclear Regulatory Commission or its staff, whether orally or in writing, we will do our best to ensure that the information provided is complete and accurate in all material respects. This is our obligation by law, this is our obligation by the terms of our licenses, but more importantly, it is the right thing to do.

We should all remember, and take seriously, that the policy of Georgia Power Company is to conduct its business affairs in an honest, ethical manner and to comply with all laws and regulations affecting the Company. Important to our success as a company is our success at compliance with our legal obligations.

If you have a concern which you wish to raise, then you are encouraged to do so. Georgia Power Company's policy is to encourage its employees, and employees of its contractors, to communicate their concerns to their supervisors, which they are free to do at any time. If an employee concern cannot be resolved through this traditional channel, or if the employee wishes to pursue the matters through the concerns program, then use of that program is encouraged. In short, the Company wants you to feel free to raise any concern which you may have and has provided

All Georgia Power Employees  
May 11, 1994

multiple ways for you to do so. You will be treated with respect, you will be treated with courtesy, and a fair and reasonable response will be provided promptly and completely. Of course, you may always go directly to the Nuclear Regulatory Commission if you wish and the way to do this, as well as the relevant phone numbers, is posted on numerous bulletin boards throughout the work areas. Rest assured that you may raise your concerns without any fear of penalty or retaliation.

Let's all work together as a team, and dedicate ourselves to safe and efficient nuclear plant operations. We all have a community of interest in the success of our company, we all have a community of interest in full, open, complete and accurate communication with ourselves and with our regulatory authorities. Let's pursue these goals to the best of our individual abilities.

*W.G. Hairston III*  
W.G. Hairston, III

Georgia Power Company  
Tower Building 24th Floor  
333 Peachtree Center  
Atlanta, Georgia 30308  
Telephone 404-522-2222

H. Allen Franklin  
President  
Chief Executive Officer

The Southern Electric System

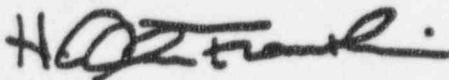
October 3, 1995

TO: GEORGIA POWER OFFICERS AND NUCLEAR EMPLOYEES

Georgia Power Policies on Raising Safety and Regulatory  
Compliance Concerns

As you may be aware, Georgia Power is currently involved in several litigated matters in which former employees allege that Georgia Power retaliated against them in 1990 for raising concerns about compliance with Nuclear Regulatory Commission requirements. These proceedings continue, but regardless of their outcome, you should know that it is Georgia Power's longstanding policy to encourage its employees to identify and to report compliance concerns. No retaliation for raising a compliance concern will be tolerated. Any employee, including a supervisor, manager or officer, who retaliates or penalizes an individual for submission or voicing of a concern will be subject to appropriate disciplinary action.

Georgia Power is deeply committed to open and effective communication in its business, in particular emphasizing "upward communication" so that personnel freely bring issues to the attention of their supervision. In the mid-1980s the Company developed "Quality Concerns" programs at its nuclear plants to foster an open atmosphere where employee concerns may be raised, reviewed and corrected. A Company-wide "Corporate Concerns" program was implemented later, based on the success of the nuclear plant programs, to give employees who have concerns of an ethical nature or concerns otherwise related to their jobs an option, in addition to going through line management, to pursue those concerns. Southern Nuclear has also set up an Employee Concerns program in Birmingham for nuclear-related concerns. Concerns may be submitted anonymously, if desired, to these programs. In addition, employees who have nuclear-related concerns about our nuclear plants may contact the NRC Resident Inspectors who have offices at each of the nuclear plants, or call the NRC's Regional Office at Atlanta.



H. Allen Franklin

# New

## *Reich hands down Mosbaugh decision, Georgia Power will appeal*

Overruling the 1992 decision of a Department of Labor administrative law judge, Labor Secretary Robert Reich has ruled in favor of Allen Mosbaugh, the former Georgia Power employee who was fired in 1990 for secretly tape recording conversations with his co-workers. After he was fired, Mosbaugh had brought a claim against Georgia Power at the Department of Labor. The department's administrative law judge ruled in 1992 that Georgia Power acted reasonably when it fired Mosbaugh.

In overruling that decision, Reich remanded the issue to the administrative law judge for a variety of remedies to be determined at a subsequent hearing. Those various remedies would include reinstatement with back pay, reimbursement for attorney's fees and compensatory damages.

Georgia Power expressed disappointment at Secretary Reich's "rejection of his own administrative law judge — whose conclusions were based on his having presided over the trial of this case three and a half years ago. The decision does not appear to be based on the evidence or well-established law and policy. We will appeal this order."

