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the southern electric system

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

June 27, 1996

LCV-0829

Docket No. 50-424
50-425

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

VOGTLE ELECTRIC GENERATING PLANT
REPLY TO NOTICE OF VIOLATION
DEPARTMENT OF LABOR CASE NOS. 90-ERA-30, 91-ERA-001, and 91-ERA-011;
EA 95-171 and EA 95-277

Ladies and Gentlemen:

Pursuant to 10 C.F.R. § 2.201, Georgia Power Company ("GPC") submits this reply to the Notice of Violation ("NOV") issued by the Nuclear Regulatory Commission ("NRC") letter dated May 29, 1996. The NOV alleges two separate violations of 10 C.F.R. § 50.7, "Employee Protection," based on two Secretary of Labor ("Secretary") Decision and Remand Orders, one issued on August 4, 1995 (DOL Case No. 90-ERA-30) involving Mr. Marvin B. Hobby, and the other issued November 20, 1995 (DOL Case Nos. 91-ERA-001 and 91-ERA-011), involving Mr. Allen L. Mosbaugh. The NRC's policy is to base enforcement action on Secretary decisions when the NRC has no independent investigatory findings. As a consequence, the NRC has adopted the Secretary's determinations that both of these employees were terminated from GPC employment because they engaged in "protected activities."

The NRC's May 29, 1996, letter acknowledges that the Secretary rejected prior Administrative Law Judges' Recommended Decisions and Orders ("ALJ RDO's") which found that GPC did not violate the law. These ALJ RDO's are instructive and, by reference, are put forth by GPC as correctly analyzing the pertinent facts addressed by these NOV's. For example, in the Administrative Law Judge's Recommended Decision and Order, issued November 8, 1991 ("Hobby ALJ RDO"), Judge Joel R. Williams set out the "True Reason For Employment Decision" in terminating Mr. Hobby:

IE01

1/1

Distribution per: Jean Lee

> I conclude that the Respondent [GPC] was not motivated to eliminate the Complainant's position, change his office, revoke his executive parking privileges and limit his access within the headquarters building either in whole or in part, by any protected conduct. The Employer [GPC] has established to my satisfaction that the sole reason for eliminating the position, which on the Complainant's own volition triggered his departure from the company, was because it was an expensive, unnecessary position and that actions taken subsequent to the filing of this complaint were justified for security reasons.

Hobby ALJ RDO at 54. Consequently, in the Hobby proceeding, the Secretary's own Administrative Law Judge -- who presided at the actual hearing, observed the witnesses as they testified, and personally heard the tenor, tone, and conviction of their testimony -- found that GPC's motivation was fully justified as an economic and efficiency measure to eliminate Mr. Hobby's position as General Manager of the Nuclear Operations Contract Administration ("NOCA") group. Hobby ALJ RDO at 44.

Similarly, the NRC's letter observed that Administrative Law Judge Robert Glennon, who presided at the Mosbaugh hearings, issued a RDO favorable to GPC on October 30, 1992. This Administrative Law Judge found that Vogtle management's dealings with Mr. Mosbaugh were "even handed and fair up to the time he was assigned to SRO school." Recommended Decision and Order ("Mosbaugh ALJ RDO") at 36. Judge Glennon also concluded, based on the Secretary's own precedent, that formal legal avenues are available for obtaining evidence of illegal conduct in the workplace and Mr. Mosbaugh's continuation of widespread taping after he had provided information, including his testimony, to the NRC, was no longer reasonable and, as a result, was not protected. Mosbaugh ALJ RDO at 35.

The NRC's rationale for inserting footnote 1 into the May 29, 1996, letter, commenting on GPC's December 13, 1995, Motion to Reopen the Record in the Mosbaugh DOL case, is unclear. As addressed in detail in our Motion to Reopen, included as Attachment 1 to our January 19, 1996, letter to the NRC, GPC contends that Mr. Mosbaugh's taping activities were unreasonable, including illegal non-party taping of conversations and telephone calls and the tape recording of safeguards information in a manner that violated NRC regulations and GPC procedures. Such taping is clearly outside the bounds of reasonable taping and should be held to be unprotected pursuant to former NRC Chairman Selin's July 14, 1993, letter, a copy of which is included as Attachment 3 to our January 19, 1996, letter. Because the Secretary's remand order did not consider these facts, the NRC is in a better position to judge the merits of this case based on the ALJ RDO and the additional evidence which has come to light as set forth in our Motion to Reopen.

As is discussed in more detail in the enclosed Reply, the Company does take issue with the NRC's reliance on Secretary decisions that are not yet final. More evidence remains to be heard and evaluated -- it is simply too soon for final agency action by the NRC. Moreover, returning either Mr. Hobby or Mr. Mosbaugh to the workforce during this interim period would create disruption in the workforce while the final decision is unknown. As explained herein, GPC feels that a fully appropriate anti-chilling result has been achieved without reinstatement. In any event, we believe the NOV should explicitly acknowledge our right to appeal the Secretary's decisions when they become final and that it should provide for the withdrawal of the NOV in the event our appeals are successful.

For the reasons discussed in the attached Reply to Notice of Violation, GPC denies the violations. We trust that you will review the underlying Department of Labor Hobby and Mosbaugh records in their entirety, including our Motion to Reopen in the Mosbaugh case, all of which is incorporated herein by reference, as well as the enclosed information, in your consideration of this Reply.

This letter was reviewed by me and others familiar with these historic events. While I do not have personal knowledge of all the matters addressed, the information and opinions herein are true and correct to the best of my knowledge and belief. We are available to provide any clarification, expansion, or verification which you should desire. As the Executive Vice President - Nuclear of Georgia Power Company, I am authorized to execute this letter on behalf of Georgia Power Company.

Very truly yours,

W. George Hairston III

W. George Hairston, III

Sworn to and subscribed before me this
27 day of June, 1996.

12-15-96
My commission expires

Sherry A. Mitchell
NOTARY PUBLIC

Enclosure

cc: Georgia Power Company
Mr. C.K. McCoy
Mr. J.B. Beasley, Jr.
Mr. M. Sheibani
NORMS

U.S. Nuclear Regulatory Commission
Mr. S.D. Ebneter, Regional Administrator
Mr. L.L. Wheeler, Licensing Project Manager - NRR
Mr. C.L. Ogle, Senior Resident Inspector, Vogtle
Mr. James Lieberman, Director, Office of Enforcement

ENCLOSURE

VOGTLE ELECTRIC GENERATING PLANT - UNITS 1&2
REPLY TO NOTICE OF VIOLATION
NRC NOTICE EA 95-171 AND 95-277

The following is a transcription of the violations as cited in the Notice of Violation.

"As a result of Secretary of Labor decisions dated August 4, 1995 (90-ERA-030) and November 20, 1995 (91-ERA-001 and 91-ERA-011), violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

> 10 CFR 50.7 prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. Protected activities are described in Section 210 (now 211) of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or Energy Reorganization Act."

VIOLATION A

> The following is a transcription of Violation A as cited in the NOV:
>
> "Contrary to above, in January and February 1990, Georgia Power Company (Licensee) discriminated against Mr. Marvin B. Hobby, then an employee of the Georgia Power Company, as a result of his having engaged in protected activities. The protected activities included Mr. Hobby's expressed concerns that the actual organizational structure governing operation of the Licensee's nuclear facilities violated NRC requirements. The Licensee terminated Mr. Hobby on February 23, 1990 and took other adverse actions as a result of his having engaged in these protected activities. The Secretary of Labor issued a Decision and Remand Order in Department of Labor case 90-ERA-30 on August 4, 1995, which found that Mr. Hobby's discharge as well as his office relocation, the denial of executive parking privileges and loss of access were acts of retaliation for engaging in these protected activities. (01011)
>
> This is a Severity Level I violation (Supplement VII)."

ENCLOSURE

VOGTLE ELECTRIC GENERATING PLANT - UNITS 1&2
REPLY TO NOTICE OF VIOLATION
NRC NOTICE EA 95-171 AND 95-277

RESPONSE TO VIOLATION A

Admission or Denial of the Violation:

Georgia Power Company denies the violation.

Reason for the Violation:

As a general response, GPC incorporates herein by reference its October 4, 1995, presentation at the predecisional enforcement conference, as well as its January 19, 1996, letter to the NRC concerning Mr. Mosbaugh. Specific portions of those submittals are occasionally emphasized and/or supplemented in this Reply.

Violation A, involving Mr. Hobby, is not based on substantial evidence in the Department of Labor's record. In reviewing that record, the Secretary rendered conclusions which are not supported by articulate, cogent or reliable analysis. The Secretary's factual analysis misconstrues the record, and pieces together rationales based on improper and illogical inferences. GPC addressed several of the more egregious examples at the predecisional enforcement conference and provided you with some of the relevant testimony and exhibits from the record.

We are troubled with the Secretary's rejection, after the passage of many years, of recommended decisions by impartial administrative law judges who observed the demeanor of witnesses on the stand and made credibility decisions based on their observations. The NRC in the application of its Enforcement Policy should not always use a mechanistic approach and simply adopt the Secretary's decisions in these matters. Instead, each case should stand on its own merits and, in this case, the merits favor GPC.

GPC respectfully requests the NRC to review the Secretary's decision to determine whether escalated enforcement action is warranted in this case. First, the Secretary implicitly views Mr. Hobby's concerns as having had exceedingly high regulatory significance at the time. GPC contends that the record establishes that these concerns were of such speculative nature and minimal significance -- and not even viewed as Mr. Hobby's concerns -- that GPC officers would not "fear" them or his April 27, 1989, memo, contrary to the findings of the Secretary. Below, we provide you with additional information in this regard. Second, the Secretary repeatedly characterizes GPC's actions and motivations as designed to remove Mr. Hobby from his position when, in fact, overwhelming evidence

shows clearly that the lack of need for Mr. Hobby's position was the driving force behind the termination of his employment. In our presentation at the predecisional enforcement conference, we addressed this point with the NRC, and we discuss in more detail below only the Secretary's finding that Mr. Hobby was "replaced." Third, GPC vigorously contests the Secretary's unsupported conclusion that GPC limited Mr. Hobby's privileges in order to hinder his ERA lawsuit. Hobby, Secretary's Decision and Remand Order ("D&RO") at 28. The fact that GPC officers were aware of Mr. Hobby's ERA complaint is irrelevant; these officers would have taken the same action in the absence of any protected activity. As the Administrative Law Judge found (Hobby ALJ RDO at 44, 53), their actions were based on reasonable security concerns (T. 496-97 (Boren); T. 435-36 (Williams)).

A. The Regulatory Significance Of Mr. Hobby's April 27, 1989 Memo

At the October 4, 1995, pre-decisional enforcement conference we provided you with a photocopy of Mr. Hobby's two memoranda to Fred Williams, dated April 26 and 27, 1989. The Secretary viewed the April 27, 1989, memo as "detailing and documenting Complainant's problems with McDonald's interference and warning Respondent about the potential regulatory violation" associated with the McDonald-Dahlberg reporting structure. The Secretary also belittled Mr. Williams' view that the memo was a set of "gripes." Hobby, Secretary's D&RO at 24.

GPC contends that the vast majority of the April 27, 1989, memo is of no regulatory significance. Judge Williams quoted the memo in toto in his recommended decision because he believed that it amply demonstrated "its obvious complaining style." He further observed that the protected reporting concern in the memo was raised the previous day and that the memo was retained in GPC's files. He concluded that he believed Mr. Fred Williams' testimony that Mr. Williams was attempting to help Mr. Hobby be a better manager. Hobby ALJ RDO at 42.

The final issue raised in Mr. Hobby's memo is "cooperation." In this section, Mr. Hobby ascribes to others a "significant concern" about Mr. McDonald's management direction. He specifically associates Oglethorpe Power and the NRC with the concern in his memo, as well as overheard discussions at "high levels" at Georgia Power Company. The unreliability of the Secretary's decision is revealed when he states that by April 27, 1989, Mr. Hobby, too, had questioned the lines of authority. Hobby, Secretary's D&RO at 14. GPC contends otherwise. It is undisputed that he addressed Oglethorpe Power's concern in May and explained to Oglethorpe Power that Mr. McDonald reported to Mr. Dahlberg. Hobby ALJ RDO at 26; T. 245-248 (Hobby). For Oglethorpe Power, this resolved the issue. T. 886-7 (Smith). In his April 27, 1989, memo, Mr. Hobby states his belief that it is essential

that GPC and Alabama Power Company be in control of their respective plants. But this statement is a statement of the obvious. Moreover, coming on the heels of Mr. Hobby's April 26, 1989, memo (Attachment 1) Mr. Williams would have logically associated this concern with Mr. Smith of Oglethorpe Power, rather than with Mr. Hobby. In fact, Mr. Hobby testified that Mr. Williams associated this protected reporting concern with Oglethorpe Power, not Mr. Hobby. T. 152 (Hobby).

The Secretary postulates that the concerns expressed in the memo "inherently would have included Complainant's accusations of wrongdoing and predictions of NRC intervention as a corollary to McDonald's lack of cooperation with NOCA." Hobby, Secretary's D&RO at 24. In other words, the Secretary viewed the April 27, 1989, memo as highly volatile and sensitive relative to compliance with NRC requirements. The NRC was provided a copy of the April 27, 1989, memo by Mr. Hobby on March 9, 1990, during his interview in Region II offices. Clearly, the NOCA group was irrelevant with regards to compliance with NRC requirements, and the Final Safety Analysis Report at the time placed nuclear operational authority in McDonald and the line management reporting to him, not Mr. Hobby. Even assuming that lack of cooperation with NOCA might have been a management issue, the matter was of minimal, if any, regulatory significance. The Secretary improperly treated NOCA as an NRC-mandated organization, subservient to the Executive Vice President of Nuclear Operations, Mr. McDonald. He quotes the December 27, 1988, memo creating NOCA as demonstrating that Mr. Hobby's protected reporting complaint was implicit in complaints about McDonald's lack of cooperation with NOCA. Hobby, Secretary's D&RO at 22. This leap is unsupported by any evidence in the record. A perceived lack of cooperation with NOCA carried with it no reasonable implication of a violation of NRC requirements. As the NRC Staff has observed, the NOCA group had no relation to the safe operation of the Vogtle facilities. NRC Staff Proposed Findings of Fact, Conclusions of Law, and Order, Georgia Power Company (Vogtle Electric Generating Plant), Docket 50-424/425-OLA-3, March 6, 1995, at 29 and 33. In sum, the Secretary is inferring adverse discrimination motivated by inferred fears of regulatory significance based on inferred NRC requirements. In actuality, there was no NRC requirement associated with NOCA and no regulatory significance associated with a perceived lack of cooperation between NOCA and Mr. McDonald.

B. The Secretary's Finding That Mr. Hobby Was Replaced Is Not Based On Substantial Evidence

In addition to the materials which GPC has already provided the NRC at the predecisional enforcement conference concerning the errors in the Secretary's decision, the Secretary's conclusion that Mr. Hobby was "replaced" by another GPC employee is not supported by the record.

The Secretary is under the misconception that Georgia Power "appointed a replacement" for Mr. Hobby and, therefore, a function "necessarily existed" for Mr. Hobby. Hobby, Secretary D&RO at 22. The evidence relied on by the Secretary is Mr. Hobby's testimony:

> [On January 25, 1990] Mr. Williams told me that Mr. Bill Smith, one of his managers, was going to take responsibility for all the activities that I had been doing, and at the conclusion of the meeting if I remember correctly Mr. Williams and Mr. Smith came into my office, and he told me that, and asked me for any and all files that I had, that he would like to turn them over to Mr. Smith.

Tr. 207 (Hobby) (emphasis supplied). This testimony does not establish that Mr. Hobby was "replaced." Mr. Smith merely assumed whatever activities were being performed by Mr. Hobby. In fact, Mr. Hobby held a General Manager's Level 20 position with three employees. Mr. Smith was a Level 17 Manager of Bulk Power Marketing Services with significant existing responsibilities, including supervision of approximately ten employees prior to the addition of the three NOCA employees, with an approximately 20% lower midpoint salary. GPC contends that these facts demonstrate why Mr. Hobby's position was no longer justified. The functions of his position were quite easily assumed by a lower level manager who had other significant functions.

Based on the foregoing, as well as the information previously provided to the NRC, GPC requests that the NRC reconsider Violation A.

Corrective Steps Which Have Been Taken and Results Achieved:

GPC addressed the potential impact of the Secretary's decision in the Hobby proceeding in an October 3, 1995, letter from H. Allen Franklin to Georgia Power Company officers and nuclear employees (Attachment 2). Pertinent to this, also, is a January 19, 1996, letter by Mr. Hairston to Mr. Stewart Ebneter (Attachment 3 (without attachments)) which details GPC's extensive anti-chilling efforts. Employees were told that the proceedings involving "former employees" who alleged retaliation for raising safety concerns were continuing. As further explained, regardless of the outcome of these proceedings, Georgia Power Company encouraged the identification and reporting of concerns, and is committed to open and effective communications so that issues are brought to the attention of supervision. "No retaliation for raising a compliance concern will be tolerated," Mr. Franklin stated. Other avenues of raising concerns, including contacting the NRC, were identified.

ENCLOSURE

VOGTLE ELECTRIC GENERATING PLANT - UNITS 1&2
REPLY TO NOTICE OF VIOLATION
NRC NOTICE EA 95-171 AND 95-277

Your May 29, 1996, letter noted NRC concern that GPC had not immediately reinstated Messrs. Hobby and Mosbaugh and that such action might have a chilling effect on our employees. At the pre-decisional enforcement conference held on October 4, 1995, we provided you with various, established Georgia Power Company policies and practices for the treatment of employee concerns and associated with GPC's prohibition of retaliation for raising concerns. Among those policies was Georgia Power Company's Code of Ethics, adopted in 1988 (Attachment 4), which contains a quote of Preston Arkwright, an early company leader in the early 1900's. Mr. Arkwright stated:

> This Company will not wrong anyone intentionally. If by chance it commits a wrong, it will right it voluntarily.

GPC continues to adhere to this philosophy.

GPC's Code of Ethics also contains philosophical characteristics desired by GPC in its employees. This Code of Ethics has been provided to all nuclear employees. One characteristic is "Truth," which envisions the accurate, complete and candid exchange of information within the company and which recognizes the critical importance of that exchange in the company's business. Raising safety or regulatory concerns, then, is entirely consistent with the qualities we seek in our employees. We also provided you with a copy of Georgia Power's Corporate Concerns Program Guideline that was in effect during 1989 and 1990. The Guideline begins: "It is the Company's policy to provide a means for employees to express concerns without fear of retaliation." In other words, the sharing of information, including potential safety-related problems, is a recognized imperative for GPC to succeed in achieving its long-term goals.

If GPC believed that the Secretary's remand orders were objective and factually and legally correct, GPC would have taken remedial action specific to these two former employees. The two RDO's of the Administrative Law Judges -- whom we consider impartial -- concluded that GPC had committed no wrong. It is those findings in which we see the truth. As your letter acknowledged, the Secretary's decisions are not final and, as the U.S. District Court for the Northern District of Georgia has held with respect to Mr. Hobby's remand order, such non-final orders are not enforceable. GPC will pursue its rights to contest Secretary decisions adverse to it, and to fully present its positions on remedies in any remand hearings. We understand that the NRC is not faulting GPC for pursuing those rights, as spelled out in the District Court's order. Reinstatement, however, is contrary to our legal positions.

ENCLOSURE

VOGTLE ELECTRIC GENERATING PLANT - UNITS 1&2
REPLY TO NOTICE OF VIOLATION
NRC NOTICE EA 95-171 AND 95-277

Corrective Steps Which Will Be Taken:

No additional corrective action is considered necessary. GPC will continue to apply and enforce its policies and practices on employee safety and compliance concerns and its prohibition on harassment or retaliation for raising concerns. We will tolerate no breaches of this standard.

Date When Full Compliance Will Be Achieved:

Although GPC denies this violation, GPC will comply with the final order of the Department of Labor subject to its legal right to appeal any such final order which is adverse to GPC.

VIOLATION B

The following is a transcription of Violation B as cited in the NOV:

"Contrary to the above, in September and October 1990, the Licensee discriminated against Mr. Allen L. Mosbaugh, then an employee of the Georgia Power Company, as a result of his having engaged in protected activities. The protected activities included making tape recordings that constituted evidence gathering in support of a nuclear complaint. The Secretary of Labor issued a Decision and Remand Order in Department of Labor cases 91-ERA-001 and 91-ERA-011 on November 20, 1995 finding that Mr. Mosbaugh's suspension and discharge were acts of retaliation for engaging in protected activity. (02011)

This is a Severity Level I violation (Supplement VII)."

ENCLOSURE

VOGTLE ELECTRIC GENERATING PLANT - UNITS 1&2
REPLY TO NOTICE OF VIOLATION
NRC NOTICE EA 95-171 AND 95-277

RESPONSE TO VIOLATION B

Admission or Denial of the Violation

Georgia Power Company denies the violation.

Reason for the Violation:

As a general response, GPC incorporates herein by reference its January 19, 1996, letter to the NRC, as well as its October 4, 1995, presentation at the predecisional enforcement conference concerning Mr. Hobby. Specific portions of those submittals are occasionally emphasized and/or supplemented in this Reply.

GPC previously addressed the basis for denial of this violation in our letter of January 19, 1996 (Attachment 3). We will not repeat here the extensive discussion which we provided the NRC in that letter. However, we provide the following brief points. Today, it is evident that, with the benefit of all the facts -- not just those available at the time of the 1992 DOL hearing -- Mr. Mosbaugh's taping activity in 1990 did not meet the standards set out in NRC Chairman Selin's July 14, 1993, letter, addressing when surreptitious taping should be protected. In addition, neither the NRC's regulation, nor the NRC's actions at the time of Mr. Mosbaugh's termination, gave Georgia Power Company fair warning that Mr. Mosbaugh's covert tape recording of conversations with co-workers and NRC representatives constituted "protected activity." Assuming that the Secretary's interpretation of the ERA's scope is permissible, the further requirements of due process mandate that, prior to being subjected to enforcement action, a regulated entity, acting in good faith, should be able to identify the prohibited conduct. In the case of Mr. Mosbaugh, the imposition of a Severity Level I is significant, and elementary fairness compels that the standard of conduct against which GPC's actions are being judged must have been clear. That is, before enforcement action can reasonably be taken against GPC, it must have been fairly notified of the NRC's interpretation of its regulation. See General Electric Co. v. U.S. EPA, 53 F.3d 1324, 1329 (D.C. Cir. 1995).

GPC notified the NRC about Mr. Mosbaugh's tape recordings on September 12, 1990, after learning of their existence on September 11, 1990. GPC believes that only thereafter did Mr. Mosbaugh and his counsel notify the NRC about the tapes. Shortly thereafter, the NRC intervened in the Department of Labor proceeding and obtained the tape recordings. GPC placed Mr. Mosbaugh on administrative leave and, on October 11, 1990, terminated his employment for his covert taping

activities. The NRC was notified of this action and its rationale, as reflected in the NRC's publication "Calendar of Events" (Attachment 5):

> ... on October 11, an alleger at Georgia Power Company's Vogtle Electric Generating Plant was terminated from employment with GPC. The alleger's termination was due to his "surreptitious taping of conversations between GPC employees and NRC personnel, which was not in keeping with the GPC philosophy of mutual trust and open communications."

The pertinent NRC regulation, 10 C.F.R. § 50.7, states that "certain protected activities" may not form the basis of discrimination against an employee. The regulation states that protected activities include but are not limited to specific actions: providing allegations to the NRC or an employer; refusing to engage in alleged illegal activities; requesting the NRC to initiate action against a licensee; testifying to the Commission or Congress; and assisting or participating in or being about to assist or participate in, these specifically-described activities. Consequently, the regulation itself did not fairly inform GPC of the agency's perspective concerning surreptitious tape recording in 1990.

It was not until July 14, 1993, to GPC's knowledge, that the NRC addressed the issue of whether surreptitious taping of conversations by employees of NRC licensees can constitute, under some circumstances, a "protected activity" under the ERA. GPC was provided a copy of then-Chairman Selin's views concerning the scope of protected activity and tape recording (Attachment 6). Thereafter, in what appears to be a rare occurrence, the NRC sent out a special notice (Attachment 7), addressing this topic. Had the regulation or prior NRC practices given notice that the scope of "protected activities" encompassed surreptitious tape recording under any circumstances, this notice would not have been necessary. Neither the NRC nor GPC in 1990 could have reasonably foreseen that the Secretary of Labor would conclude that the scope and nature of Mr. Mosbaugh's taping should be afforded a special, "protected" status. The reasonableness of our position is reflected in the Administrative Law Judge's 1992 recommended decision, in which he agreed with GPC that the continuation and scope of Mr. Mosbaugh's tape recording became so egregious and potentially disruptive to the workplace that it lost any protected status it may have once possessed. Mosbaugh ALJ RDO at 35. Chairman Selin's letter, issued after the Mosbaugh ALJ RDO, shares the theme of the ALJ RDO that taping must be reasonable to be protected.

GPC contends, also, that safeguards regulations were violated by Mr. Mosbaugh in his surreptitious taping process. Such an event bears close scrutiny by the NRC since to do otherwise would send confusing signals about the role of taping in the nuclear workplace and the boundaries of

the Selin letter's standard for protected taping (e.g., "lawful taping of conversations to which the employee is a party").

Corrective Steps Which Have Been Taken and Results Achieved:

Much of the discussion of Corrective Steps Which Have Been Taken and Results Achieved contained in our reply to Violation A respecting Mr. Hobby is equally applicable to Violation B and GPC incorporates it herein by reference. In particular, our January 19, 1996, letter to the NRC provided an extensive discussion of our anti-chilling efforts. Mr. Franklin's October 3, 1995, letter (Attachment 2) to nuclear operations employees, we believe, was sufficiently broad to address the Secretary's subsequent decision in the Mosbaugh proceeding. By informing our employees about the Company's positions as events unfolded, an appropriate message of "open communications" was re-emphasized.

Corrective Steps Which Will Be Taken:

No additional corrective action is considered necessary. GPC will continue to apply and enforce its policies and practices on employee safety and compliance concerns and its prohibition on harassment or retaliation for raising concerns. We will tolerate no breaches of this standard.

Date When Full Compliance Will Be Achieved:

Although GPC denies this violation, GPC will comply with the final order of the Department of Labor subject to its legal right to appeal any such final order which is adverse to GPC.

ATTACHMENT 1

Georgia Power

Interoffice Correspondence

DATE: April 26, 1989

TO: Mr. Fred D. Williams

FROM: M. B. Hobby

At the April 19 Subcommittee for Power Generation meeting, Mr. Dan Smith requested a response to the following. The wording is taken from the minutes exactly as Dan stated.

"Dan Smith requested that Oglethorpe be provided an organization presentation by SONOPCO on the reporting chain up through the Board of Directors for Mr. George Hairston, Mr. R. P. McDonald, Mr. Joe Farley. He specifically asked how Mr. Farley fits into the picture and who he reports to up through the Board."

As we discussed, I am forwarding the question to you for reply.

Regy,

Marcia Hobby

/blm

c: Mr. G. F. Head

Georgia Power Company
Tower Building, 24th Floor
333 Piedmont Avenue
Atlanta, Georgia 30308
Telephone 404 [illegible]

ATTACHMENT 2

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

ATTACHMENT 3

Georgia Power Company
333 Piedmont Avenue
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40 Inverness Center Parkway
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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. Ebneter
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. Ebneter:

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

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

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).

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

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.

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

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

W. George Hairston, III

Sworn to and subscribed before
me this 19th day of January, 1996.

Sherry Ann Mitchell
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

plier or customer to take any political action that is inconsistent with his personal beliefs.

Conflict of Interest Every employee should avoid any activity in which his or her personal interests are at odds with the company's interests. As employees, we must exhibit at all times loyalty to our company. Engaging in any activity that dilutes employees' attention or loyalty to their careers and the company, even if only in appearance, constitutes a conflict of interest and cannot be allowed to continue.

Safe and Responsible Behavior Competent and safe performance on the job is part of every employee's daily duty. In the interest of the safety and well being of ourselves, our fellow workers and our customers, we will be careful and responsible. Included in this is employees' responsibility to keep themselves while at work totally free from the influence of alcoholic beverages and at all times totally free from the influence of illegal drugs.

"This Company will not wrong anyone intentionally. If by chance it commits a wrong, it will right it voluntarily." —Preston Arkwright, 1922

Georgia Power Company

Code of Ethics

"This Company will not wrong anyone intentionally If by chance it commits a wrong, it will right it voluntarily." —Preston Arkwright, 1922

are wholeheartedly dedicated to pro-
ing our service in an ethical manner so
all who interact with us—our custom-
our employees, our shareholders, our
ulators, our suppliers and our competi-
, as well as the public at large—can
t the company to deal with them in an
iest and open manner in all
isactions.

The commitment to honesty and integ-
at Georgia Power goes back to our
liest history as a company. It is reflected
he speeches of Preston Arkwright, the
npany's first president. In a speech in
2 he said, "Men in business should not
get that their character and self-respect
invested in the enterprise as well as
ir money and their work. Their reputa-
for moral character, in addition to the
sonal happiness it brings, has for them
stinct commercial value. We have an
n greater need than men generally for
rict adherence to moral principles." On
ther occasion Arkwright noted, "This
npany will not wrong anyone inten-
ally. If by chance it commits a wrong,
ill right it voluntarily."

Following this long-standing manage-
nt philosophy, we must have the con-
nce and courage to recognize our duty
ur customers, our employees and the
mmunities we serve.

This summary of the character of the
npany is for the guidance of those just
ing the company, to remind ourselves
he importance of our most important
ource—our integrity—and so that the
sons for many of our policies based on
code of ethics will be understood.

Fairness Above all else, it is our intention to treat everyone in a fair and equitable manner. No action of the company will be undertaken that does not meet this test. No person representing Georgia Power shall take unfair advantage of any customer, employee, or representative of any concern with which we do business. Furthermore, we will display dignity and courtesy in business dealings with those inside and outside the company.

An organization this size must have numerous policies and procedures to ensure as nearly as possible consistent business behavior. In no case, however, should a policy or procedure of the company be used as an excuse for treating an employee, customer or shareholder in an unfair manner. Common sense and our sense of ethics should prevail.

Resources The resources of the company, including its money, its property and the time and talent of its employees, are to be used for conducting our business and meeting the needs of those we serve. These resources are to be handled prudently by those to whom they are entrusted. They most certainly are not to be diverted to the personal use of any of us.

Information We have a great deal of information available to us about the company, its customers, its employees, its shareholders and its business transactions. All who have dealings with Georgia Power should know that we will not use this information for any purpose except that for which it was developed or given.

Truth The internal and external reporting and exchange of information is a critical part of the conduct of our business. We will be complete, candid and accurate in our internal and external communication and take all practical steps to ensure that reliable information is provided by this company.

Business Relationships All decisions made on behalf of Georgia Power are to be made in the best interest of the company, its customers, its shareholders and the public at large. Thus the acceptance in a business context of gifts, loans, entertainment, personal favors or anything that would influence a business decision, or appear to influence a business decision, must be avoided. Since our families have enormous influence over us, it is necessary that family members also avoid such compromising situations.

We will not make illegal payments, whether as money, services or other considerations, to persons to influence their actions regarding the company.

Laws and Regulation The company and its officials, employees and representatives will obey all laws and regulations.

Politics Employees should feel free to personally support political activities as citizens of a free nation. However, it is in some cases illegal for the company to support political candidates. No company asset can be used to support any political candidate. Furthermore, no official of the Company shall coerce any employee, sup

ATTACHMENT 5

Region II
Items of Interest
Week Ending October 12, 1990

1. South Carolina Electric and Gas Company

On October 9, the Regional Administrator met with the Vice President Nuclear Operations, South Carolina Electric and Gas Company, to discuss organizational changes pertaining to the Summer facility.

2. Enforcement Conference

On October 10, the Deputy Director, Division of Radiation Safety and Safeguards; the Director, Enforcement and Investigation Coordination Staff; and other members of the Regional staff conducted an Enforcement Conference at the Cabell Huntington Hospital in Huntington, West Virginia regarding the findings of the NRC Inspection conducted on September 13, 1990.

3. Tennessee Valley Authority - Watts Bar

On October 11, Chairman Carr, accompanied by the Regional Administrator, was at the Watts Bar facility to review the status of the facility.

4. Tennessee Valley Authority- Sequoyah

On October 10 a special Augmented Inspection Team (AIT) was dispatched to the Sequoyah nuclear power plant to examine events associated with the failure of three main steam line check valves at Unit 1, to evaluate their significance with respect to system performance and safety, and to evaluate any damage the valve discs may have done after becoming dislodged. The problem was detected when plant personnel reported hearing an unusual noise in one of the steam lines. The unit was safely shut down and will remain so until the cause of the problem has been established and corrective action has been completed.

5. Hurricane/Tropical Storm Watch

On October 10, 1990 Region II dispatched a region-based project inspector to Crystal River Power plant to aid the resident in preparing for tropical storms in the area.

The Region is also monitoring tropical storm Lili and Marco, and has contacted nuclear power plants and fuel facilities in Region II where the storms may approach over the weekend of October 13-14, 1990.

5. Georgia Power Company - Vogtle

On October 11, George Bockhold, the General Manager, Plant Vogtle (Site Manager), was reassigned to the position of Manager, Advanced Reactor

Designs, effective immediately. This new position is with Georgia Power Company's (GPC) parent organization, Southern Company Services.

Until a permanent replacement is identified, William (Bill) Shipman will act in the capacity of Vogtle General Manager. Mr. Shipman has been the Manager, Plant Support, Vogtle Project, in the GPC headquarters in Birmingham, Alabama.

On October 11, an alleger at Georgia Power Company's Vogtle Electric Generating Plant was terminated from employment with GPC. The alleger's termination was due to his "surreptitious taping of conversations between GPC employees and NRC personnel, which was not in keeping with the GPC philosophy of mutual trust and open communications."

6. Entergy Operations, Inc. (Grand Gulf)

On October 4, with the plant in mode 5 refueling, the steam dryer became lodged approximately five feet above its seated position, during lifting. The dryer had rotated slightly out of alignment with its guide rods preventing further lifting of the dryer. (Similar problems were encountered while removing the dryer during the last refueling outage. A bent guide tab near the bottom of the dryer was believed to be the principal cause of that problem and was removed prior to reinstallation.) The dryer was successfully repositioned on October 7 and removed. Upon removal of the dryer, an inspection of the steam separator and guide rods was conducted. The guide rods had been bent and seven holddown bolts to the separator assembly were found damaged. Special remote hand tools were fabricated and all but two holddown bolts were removed. A hydraulic cutter and supporting hand tools have been fabricated to cut and remove the two remaining bolts. At present, removal of the separator (critical path steps) is about 115 hours behind schedule. The licensee expects this operation to be completed on October 12. The vessel work is being performed by GE, and GE will be involved in the resolution of the problem. The resident inspector will continue to follow licensee resolution of this problem.

ATTACHMENT 6

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

CHAIRMAN

July 14, 1993

The Honorable Robert B. Reich
Secretary of Labor
Washington, D.C. 20210

Dear Mr. Secretary:

The Nuclear Regulatory Commission has been requested by the Senate Committee on Environment and Public Works to provide its views on whether one-party taping of conversations by employees of NRC licensees could constitute, under some circumstances, protected activity under Section 211 of the Energy Reorganization Act of 1974, as amended. The Committee also requested that NRC communicate its views on this issue to the Department of Labor. Enclosed, please find a copy of our letter to the Committee expressing our views concerning this issue.

Since this communication touches on issues raised in a case pending before you, *Mosbaugh v. Georgia Power Company*, 91-ERA-1 and 92-ERA-11, we are also serving a copy of this letter upon the parties to that proceeding.

Sincerely,

Ivan Selin

Ivan Selin

Enclosure:
As stated

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

CHAIRMAN

July 14, 1993

The Honorable Max Baucus, Chairman
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

Ivan Selin

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