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UNITED STATES OF AMERICA

'92 NOV -9 P3:43

NUCLEAR REGULATORY COMMISSION

In the Matter of

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

GEORGIA POWER COMPANY'S ANSWER
TO THE OCTOBER 22, 1992
PETITION OF ALLEN L. MOSBAUGH AND MARVIN B. HOBBY
TO INTERVENE IN A LICENSE AMENDMENT PROCEEDING

John Lamberski
Counsel for
Georgia Power Company

November 6, 1992

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UNITED STATES OF AMERICA

NUCLEAR RECULATORY COMMISSION

In the Matter of

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

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TO INTERVENE IN A LICENSE AMENDMENT PROCEEDING

I. Introduction.

This proceeding involves an application of Georgia Power Company ("GPC") to amend the operating licenses of Vogtle Electric Generating Plant ("VEGP"), Units 1 and 2 in order to add Southern Nuclear Operating Company ("Southern Nuclear") to those licenses as the exclusive operating licensee (the "Application"). Following notice of the Application in the Federal Register by the Nuclear Regulatory Commission ("NRC" or "Commission"), Messrs. Allen L. Mosbaugh and Marvin B. Hobby petitioned the NRC for leave to intervene in this proceeding. GPC strongly opposes such

petition on the grounds that petitioners lack standing under the NRC's Rules of Practice to intervene in this proceeding. Furthermore, because petitioners' assertions of standing are so deficient, as set forth in detail herein, GPC requests that the Commission forego the step of establishing a licensing board and deny the petition outright for lack of standing.

II. Background.

On October 14, 1992, the Commission published in the Federal Register a biweekly notice of "Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." 57 Fed. Reg. 47127. Among the several applications noticed therein was the Application of GPC, acting for itself and as agent for Oglethorpe Power Corporation, the Municipal Electric Authority of Georgia and The City of Dalton, Georgia (collectively, the "Owners"). The Application, filed with the NRC on September 18, 1992, seeks to amend the operating licenses of VEGP, Units 1 and 2 to allow Southern Nuclear to become the exclusive licensed operator of VEGP.[1] 57 Fed. Reg. 47135.

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[1] Presently, GPC is the sole licensed operator of VEGP acting for itself and the other Owners which are licensed to possess but not operate VEGP.

Southern Nuclear, like GPC, is a wholly owned subsidiary of The Southern Company. No change in ownership of VEGP would occur. GPC and the other Owners would continue to own the assets of VEGP in the same percentages as they do now. The Owners would remain NRC licensees, licensed to possess, but not operate, VEGP Units 1 and 2. Importantly, as stated in the Application, there would be no material change in the VEGP nuclear personnel or support organizations engaged in licensed activities. Once the proposed license amendments become effective, the VEGP on-site organization consisting of GPC employees would be administratively transferred intact to the personnel ranks of Southern Nuclear.

The present VEGP offsite organization, consisting of officers, managers and support personnel is located in Birmingham, Alabama. These offsite officers are employed as officers of both Southern Nuclear and GPC. Currently, VEGP line management reports to the President of GPC in Atlanta, Georgia, and ultimately to the Board of Directors of GPC. Upon issuance of the license amendments, the offsite line management of VEGP in Birmingham would cease serving as GPC officers, would continue to be officers of Southern Nuclear only and would no longer report to the President of GPC or

the GPC Board. Instead, this line management would report to the Board of Directors of Southern Nuclear.[2]

The NRC's October 14, 1992 Federal Register notice states that the NRC has made a proposed determination that the Application involves no significant hazards considerations. 57 Fed. Reg. 47136. The notice also states that "[t]he transfer of any right under the operating licenses is subject to NRC approval pursuant to 10 CFR 50.80(a). Such approval is proposed to be given through an Order approving this transfer." Id.

The notice further provides that any person whose interest may be effected by the proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene in accordance with the NRC's Rules of Practice in 10 CFR Part 2. 57 Fed. Reg. 47127. Finally, the notic sets forth specific requirements of 10 CFR § 2.714 applying to petitions for leave to intarvene. Id. at 47127-28.

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[2] Southern Nuclear is currently licensed to operate Plant Farley, owned by Alabama Power Company, a subsidiary of The Southern Company. In addition to VEGP, Southern Nuclear will be responsible for operation of Plant Hatch pursuant to a similar license amendment application filed on September 18, 1992 with NRC. The changes to the offsite organization described herein assume that the Plant Hatch and the VEGP operating licenses will be amended concurrently.

On October 22, 1992, Messrs. Allen L. Mosbaugh and Marvin B. Hobby filed a "Petition to Intervene and Request for Hearing" with respect to the GPC Application (the "Petition"). The Petition asserts that Southern Nuclear management does not have the character, competence or integrity to become the licensee of VEGP.

As is elaborated in more detail in Section III, below, the petitioners' allegations are the same allegations that they have raised before the NRC concerning the existing management of VEGP and are unrelated to the proposed license amendments. These allegations will not be resolved by a denial of GPC's Application to transfer operating responsibility to Southern Nuclear. Further, the petitioners' allegations are the subject of an on-going 10 CFR § 2.206 proceeding which is the appropriate forum to address their concerns.

III. Standing of the Petitioners.

A. Standards for Intervention.

The NRC's Rules of Practice contained at 10 CFR § 2.714 require that a petition for leave to intervene set forth with particularity the following:

1) The interest of the petitioner in the proceeding;

2) How that interest may be affected by the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the following factors:

a) the nature of petitioner's right under the Atomic Energy Act (the "Act") to be made a party to the proceeding;

b) the nature and extent of petitioner's property, financial, or other interest in the proceeding; and

c) the possible effect of any order that may be entered in the proceeding on the petitioner's interest; and

3) The specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

10 CFR § 2.714(a)(2) and (d)(1).[3] The Petition has failed to fully satisfy the requirements of the NRC's Rules of Practice with respect to both of the petitioners.

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[3] We note in passing that petitioners are represented by counsel with experience in Commission matters. Consequently, the observations of some licensing boards concerning liberal application of these pleading requirements for inexperienced or pro se litigants are wholly inapplicable. To the contrary, this Licensing Board should expect and require in this proceeding firm compliance with the procedural obligations of intervenors.

In Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976), the NRC ruled that judicial concepts of standing apply in determining whether to grant a petition for leave to intervene under the Act. Judicial concepts of standing require a showing that (a) the action sought in the proceeding will cause "injury-in-fact," and (b) the injury is arguably within the "zone of interests" protected by the Act. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983). In other words, the petitioners must establish (1) that they have personally suffered, or will suffer, a distinct and palpable harm that constitutes an injury-in-fact (i.e. petitioners could incur real harm of the kind protected by the Atomic Energy Act); (2) that the injury can be traced to the challenged action (i.e. the harm which petitioners will incur flows directly from (is causally related to) the proceeding in which they seek to intervene); and (3) that the injury is likely to be remedied by a favorable decision granting the relief sought (i.e. if petitioners are granted the relief they request their concerns will be resolved). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 185-86 (1991) citing Dellums v. NRC 863 F.2d 968, 971 (D.C. Cir. 1988); see also Nuclear

Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

Generally, a petitioner may base his standing upon a showing that his residence is within the geographical zone that might be affected by an accidental release of fission products. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 55-56 (1979). Under limited circumstances, distances between the home of a petitioner and a licensed facility of as much as 50 miles have been held to fall within such zone. However, this "proximity presumption" is applied by the Commission only in instances

> involving an obvious potential for offsite consequences. Those include applications for construction permits, operating licenses or significant amendments thereto such as the expansion of the capacity of a spent fuel pool. Those cases involve the operation of the reactor itself, or major alterations to the facility with a clear potential for offsite consequences. Absent situations with obvious potential for offsite consequences, a petitioner must allege some specific injury in fact that will result from the action taken.

Long Island Lighting, 33 NRC at 186 citing Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

The "injury in fact" sufficient to support standing must be actual or imminent, not "conjectural" or

"hypothetical" Whitmore v. Arkansas, 495 U.S. 149, at 155, 110 S.Ct. 1717, 1723 (1990), quoted favorably in Lujan v. Defenders of Wildlife, ___ U.S. ___, 112 S. Ct. 2130, 2136 (1992). The injury articulated by the petitioners ("releases of radiation" and "risk of serious accident") is too remote and speculative to satisfy the Commission's pleading requirements. [illegible] even the potential for these injuries can be [illegible] as a result of the organizational changes proposed by the VEGP license amendments.

Moreover, particularity of pleading the injury is absent from the Petition; the claims are so general, so lacking in specific detail, that they cannot serve as a basis for standing. Review of the Petition illustrates that this pleading is in the hypothetical sense rather than an assertion of fact: the Petition merely states that Mr. Mosbaugh could be affected "if it [Southern Nuclear] indeed does lack the integrity, competence and character to safely operate a nuclear facility;" transfer of the license "may" effect Mr. Hobby's financial interests "if [Southern Nuclear] does not have the necessary character, competence and integrity . . . ." Thus, petitioners appear to seek a hearing to determine whether their interests could be affected, and have failed to plead with particularity how

their interests could be affected by the proposed license amendments.[4]

Relative to this proceeding, the change sought by the Application is the addition of a licensee (Southern Nuclear) in contemplation of consolidating nuclear-related expertise in one corporate entity, without any change in the operational activities presently authorized (and being performed) at the licensed facility. For such an organizational change -- one totally devoid of the type of direct, significant change attendant initial construction or operation or major alteration of the facility itself which would support application of the 50-mile rule -- particularization of how the interests of the petitioners will be adversely affected by the proposed license amendments is a critical pleading requirement which the Petition has failed to satisfy.

In the case of the GPC Application, an incremental increase in the potential for any adverse offsite consequences arising from the assumption of operating responsibilities by Southern Nuclear is non-existent. On

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[4] Clearly the petitioners need not prove at this pleading stage that, in fact, the amendments would result in adverse impact. Assertions of fact are required, however, to show a logical, proximate sequence of events arising from the amendments which could result in injury-in-fact. The Licensing Board should neither presume nor provide essential facts which are not plead.

October 27, 1992, the NRC Staff issued an "Environmental Assessment and Finding of No Significant Impact" in connection with the proposed VEGP license amendments. In that Environmental Assessment the Commission concludes that the proposed license amendments would result in no radiological or nonradiological environmental impact. Again, there will be no change to the facility and virtually no change in the individual personnel who, on a day to day basis, operate and manage the VEGP Units. The only anticipated change in personnel at this time is that the Executive Vice President of GPC (who is also the President of Southern Nuclear) will no longer report to the President of GPC but will instead report solely to the Board of Directors of Southern Nuclear.[5] Administratively, VEGP on-site personnel will be transferred to the ranks of Southern Nuclear and the VEGP offsite officers in Birmingham will serve as Southern Nuclear officers only and will no longer be officers of GPC.

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[5] Significantly, the President of GPC is, and will remain, a member of the Board of Directors of Southern Nuclear.

B. Allen Mosbaugh Lacks Standing to Intervene: Insufficiency of Pleadings and Lack of Basis.

The Petition asserts that Mr. Mosbaugh has standing to intervene, as follows:

> Mr. Mosbaugh owns property and resides at 1701 Kings Court, Grovetown, Georgia, 30813. Said property is within 50 miles of the VEGP [footnote omitted]. The health, safety, property rights and personal finances of Mr. Mosbaugh and his family could be affected by an order granting GPC's request to transfer control of the VEGP to SONOPCO if it indeed does lack the integrity, competence and character to safely operate a nuclear facility. Mr. Mosbaugh and his family live, work, recreate and travel in the environs of VEGP. They eat food produced in an area that would be adversely affected by normal and accidental releases of radioactive materials from the operation of VEGP. and they are a part of the VEGP's rate base.

Mr. Mosbaugh's alleged basis for standing fails to demonstrate any distinct and palpable harm he will suffer which is traceable to the challenged action. Mr. Mosbaugh's basis for standing is similar to the petitioner in Boston Edison Company (Pilgrim Nuclear Power Station), LBP 85-24, 22 NRC 97, 98-99, aff'd on other grounds, ALAB-816, 22 NRC 461 (1985), where standing was denied in an operating license amendment proceeding to one who resided 43 miles from the nuclear plant in question. In that case, the Board found that the petitioner had failed to establish a scenario whereby the risk of radiological harm to him was increased due to a proposed increase in the allowable effective reactivity of the spent fuel pool. Likewise, Mr. Mosbaugh

has not, and cannot, establish a distinct and palpable harm he will suffer which is traceable to the proposed license amendments when (1) no change to the facility or to the personnel operating the facility will occur as a result of the proposed license amendments, and (2) Mr. Mosbaugh's only connection with VEGP is that he owns, but does not reside at, property located approximately 35 miles from the plant.[6]

Mr. Mosbaugh should be denied standing for the further reason that he does not reside and is not employed within 50 miles of VEGP. On information and belief: Mr. Mosbaugh owns a single family house which is approximately 35 miles from VEGP; this house is not Mr. Mosbaugh's primary residence; Mr. Mosbaugh principally resides with his family in the State of Ohio at an address to which his GPC electric bills have been sent since July 1992; his children attend school in Ohio; and Mr. Mosbaugh only visits his realty in

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[6] Mr. Mosbaugh is, however, a former GPC employee and worked at VEGP. Mr. Mosbaugh filed three complaints against GPC under Section 210 of the ERA between, approximately, June 4, 1990 and September 19, 1990. After voluntary dismissal of the first complaint by the complainant in early 1991, the two remaining complaints, as supplemented, were consolidated for hearing. After discovery and an evidentiary hearing held on March 10-13, 1992, the presiding Administrative Law Judge (the Honorable Robert M. Glennon) issued a Recommended Decision and Order on October 30, 1992. Judge Glennon concluded that Mr. Mosbaugh failed to establish a violation of the whistleblower protection provision of the ERA and recommended dismissal of Mr. Mosbaugh's complaints (Allen Mosbaugh v. Georgia Power Company, DOL Case Nos. 91 ERA-1 and 91 ERA-11).

Grovetown, Georgia approximately three or four days every other month.

Mr. Mosbaugh's occasional visits to the Augusta area should be found insufficient as a basis for standing in this proceeding. In Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 337-38 (1979), the Board denied standing to a petitioner, Mr. Roll, who resided several hundred miles from the nuclear plant but made occasional visits to a farm located within 10-15 miles of the plant which he owned. The Board found that Mr. Roll's interest was based "primarily on speculative financial loss" and that "[a]n occasional trip (unspecified) by Mr. Roll to his farm is insufficient to determine his health and safety would be endangered." Id. Mr. Mosbaugh's interest is even less compelling than that of Mr. Roll.

The Petition also states that food eaten by Mr. Mosbaugh would be adversely affected by radiological releases. Such generalized statements that a proposed action will cause radiologically contaminated food which a person may consume have been held to be too remote and too generalized to provide a basis for standing. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1449 (1982); Boston Edison Company, supra, 22 NRC at 98. This is especially true when,

as we believe is the case here, the petitioner does not live and is not employed within 50 miles of the facility which is the subject of the license amendment proceeding.

Based on the foregoing, GPC submits that Mr. Mosbaugh has failed to establish that he will suffer a distinct and palpable harm which is traceable (causally related) to the proposed license amendments.

C. Mr. Hobby Lacks Standing to Intervene.

The Petition states that Mr. Hobby has standing to intervene, as follows:

> Mr. Hobby holds ownership of GPC stock. His personal finances may be adversely affected by the transfer of control of the VEGP to a corporate entity which does not have the character and competence to operate a nuclear facility. Specifically, if SONOPCO does not have the necessary character, competence and integrity to operate the VEGP, then transfer of GPC's license to SONOPCO may risk a serious accident adversely affecting Mr. Hobby's financial interest. Additionally, pursuant to Section 210 of the ERA, Mr. Hobby seeks reinstatement as a General Manager with responsibility over GPC's nuclear facilities. Transfer of the license would directly affect Mr. Hobby's legal and financial interests based on the pendency of his Section 210 case with the Secretary of Labor.

On information and belief, Mr. Hobby's assertion that he owns GPC stock is false. Furthermore, even if Mr. Hobby had an economic interest in GPC or The Southern Company such economic interest is insufficient to confer standing in an operating license amendment proceeding. "It has long been

held that protection of financial interests such as excessive electric rates or higher fuel costs is not within the zone of interests sought to be protected either by the Atomic Energy Act or NEPA." Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-92-23, 18 (1992 NRC Lexis 40; August 20, 1992) citing Portland General Electric Co., supra, 4 NRC at 614; see also Long Island Lighting Company, supra, 33 NRC at 194 (a school district's organizational interest as a ratepayer and a tax recipient were held to be economic concerns outside of the Commission's jurisdiction).

An economic interest by virtue of ownership of stock in The Southern Company is not the kind of interest sought to be protected by the Act. In Detroit Edison Company (Fermi Atomic Power Plant), LBP-78-11, 7 NRC 381, 385, aff'd, ALAB-470, 7 NRC 473 (1978), a ratepayer and equity owner of a cooperative purchasing power from another cooperative which was a proposed co-owner of the Fermi 2 plant sought to intervene in a proceeding convened to review the addition of the latter cooperative as a co-owner. The Licensing Board held that "none of [petitioner's] concerns such as 'loss of equity,' 'threat of bankruptcy,' 'higher rates,' 'cost of replacement power,' or 'loss of property taxes' is 'arguably within the zone of interests' protected by the Atomic Energy

Act of 1954, as amended. The protected interests under the Atomic Energy Act relate to radiological health and safety." 7 NRC at 385. On appeal, the Appeal Board affirmed stating "the Commission's responsibility is to protect the public health and safety - not the pocketbooks of owners or customers of the electric utilities involved." 7 NRC at 476.

With respect to Mr. Hobby's employment "interest" in GPC by virtue of his pending Department of Labor ("DOL") action, such an interest is not cognizable since it essentially amounts to nothing more than the limited right to appeal a recommended order of a DOL Administrative Law Judge who held that Mr. Hobby was lawfully discharged.[7]

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[7] Mr. Hobby filed a complaint with the U.S. Department of Labor ("DOL") under Section 210 of the Energy Reorganization Act of 1974 ("ERA") on or about February 6, 1990. This complaint, which was supplemented on February 28, 1990, generally alleged that Mr. Hobby's job was eliminated as a result of his engagement in "protected activity." Following an evidentiary hearing, a Department of Labor Administrative Law Judge (the Honorable Joel R. Williams) issued a Recommended Decision and Order on November 8, 1991 (Marvin B. Hobby v. Georgia Power Company, DOL Case No. 90-ERA-30). In the Recommended Decision and Order, Judge Williams concluded that GPC was not motivated in its adverse employment action relative to Mr. Hobby "either in whole or in part, by any protected activity . . . 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 . . . ." Accordingly, his Recommended Order was to dismiss Mr. Hobby's complaint with prejudice.

Moreover, such an "interest" is not within the zone of interests protected by the Act, even if actual employment were assumed. Such an assumed employment interest is similar to that of a union's economic interest in maintaining contractually protected employment rights which were held insufficient for standing in Consumers Power Company (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247, 250-251 (1981), vacated, CLI-82-18, 16 NRC 50 (1982).

Further, Mr. Hobby has not adequately plead how he will suffer a distinct and palpable harm traceable to the challenged action. A reduction in the price of his stock by virtue of the transfer of operating responsibilities to Southern Nuclear is clearly conjectural and cannot serve as a basis for standing. The proposed action is a change only in the corporate entity which will operate and manage VEGP. No change in the facility will occur; no change in operating personnel are anticipated; and no change in ownership will occur. Mr. Hobby has failed to establish that his alleged injury is causally related to this license amendment proceeding.

D. A Favorable Decision by the Licensing Board Will Have No Effect on Petitioners' Interest.

The Commission's pleading requirements, as set forth in § 2.714(a)(2) and (d)(1)(iii), requires petitioners to set forth with particularity "the possible effect of any order [of the Board] that may be entered in the proceeding on the petitioner's interest," i.e., how the injury alleged is likely to be remedied by a favorable decision granting the relief requested. The reason for this pleading requirement is intuitively obvious. If the Board's review of a matter is pursued only to result in an order which fails to redress the injury complained of, the Board's decision in such a case becomes ineffective relative to the subject matter which the parties litigate. As stated in Lujan v. Defenders of Wildlife, 112 S. Ct. at 2136, it must be "likely," as opposed to merely "speculative," that the injury will be redressed by a favorable decision.

In Public Service Company of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-68 (1991), the Commission upheld a denial of standing to an intervenor which failed to satisfy its burden of showing that the harm it alleged would abate if it were granted relief on the operating license amendment at issue.

In this proceeding, a favorable decision of the Board rejecting the amendments sought by the applicants would

preserve the status quo, including the continued management by GPC officers located in Birmingham, Alabama over licensed activities at VEGP, reporting to the President of GPC in Atlanta, Georgia. If, on the other hand, the amendments are approved, the Executive Vice President of GPC (Mr. R. Patrick McDonald) and those subordinate officers would remain officers of Southern Nuclear only and report to Southern Nuclear's Board of Directors. In either case, Mr. McDonald and his subordinates will have the same responsibilities to manage the myriad of activities and tasks associated with operation and maintenance of VEGP which come within "licensed activities." The Board's denial of the amendments, then, would not redress the injury complained of by petitioners and demonstrates the lack of an injury traceable, or causally related, to the proposed license amendments.

IV. This Proceeding is an Inappropriate Forum in which to Address the Petitioners' Allegations.

A. The Petition Presents Non-Adjudicatory Questions.

Petitioners seek a hearing "to determine whether [Southern Nuclear] has the requisite character, competence and integrity to become the licensed operator of the VEGP . . . . " Petition at 4. This is the same relief requested in a petition filed with the Commission over two years ago

by these same petitioners. More specifically, in early September, 1990 Messrs. Hobby and Mosbaugh filed a petition pursuant to 10 C.F.R § 2.206 which contained numerous statements, admittedly designated "allegations."[8] After initial review, on October 23, 1990 the Director of the Office of Nuclear Reactor Regulation concluded that "no immediate action by the NRC, other than certain actions already undertaken [investigations and reviews], is necessary regarding the matters raised in the petition." 55 Fed. Reg. 46114 (November 1, 1990). Thereafter, on January 22, 1992, the NRC's Executive Director for Operations notified counsel for the petitioners that (1) additional staff effort was needed to evaluate information relevant to the petition before issuing a Director's Decision, and (2) action regarding the specific issues raised by the Section 2.206 petition would be taken "within a reasonable time."[9]

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[8] Among other things, petitioners' September 11, 1990 petition requested the Commission to institute licensing proceedings to determine whether GPC "[h]as the character, competence, fundamental trustworthiness and commitment to safety to operate a nuclear facility."

[9] The NRC has closed the vast majority of the specific allegations of willful failure to comply with NRC technical requirements contained in the Section 2.206 petition. To date, the NRC has found no willful misconduct associated with these closed allegations. However, as a result of the NRC's review of these allegations, covering events from October, 1988 through August, 1990, the NRC cited three unintentional technical violations of NRC requirements.

Georgia Power Company submits that, in light of the prior allegations of the petitioners and the NRC Staff's ongoing review of those allegations, it would be inappropriate for an Atomic Safety and Licensing Board to adjudicate the petitioners' allegations where, at bottom, petitioners seek to adjudicate whether the current VEGP operating licensee is in compliance with NRC regulatory requirements. See The Detroit Edison Company, supra, 7 NRC at 386 (in the context of a construction permit amendment proceeding, the responsibility for determining whether a license or permit was violated rested with the Director of Nuclear Reactor Regulation, pursuant to 10 CFR §§ 2.200-2.206, and not with the Licensing Board). Furthermore, to GPC's knowledge, the petitioners cannot identify any final agency action which found any act of lack of candor, truthfulness or willingness of the VEGP management to abide by regulatory requirements applicable to operations of a nuclear facility.

While the investigative inquiry sought by the petitioners might be appropriate for the NRC Staff, it is wholly inappropriate for an adjudicatory panel. To date, the NRC Staff has completed much of its investigatory review associated with petitioners' 1990 petition. Not only would

it be a misallocation of finite Agency resources for a Licensing Board to re-investigate such matters, but litigation over the merits of such matters is fundamentally unfair, subjecting the licensee to the expenditure of financial and managerial resources associated with such a review.

B. The Petition Constitutes an Impermissible Appeal of Ongoing Agency Action.

Significantly, to date, the NRC Director of Nuclear Reactor Regulation has declined to take action on the petitioners' Section 2.206 petition, filed over two years ago. The Petition in this matter, if granted, while facially associated with the license amendments, actually will serve as a vehicle to appeal the actions of the Director to date with respect to the petitioners' Section 2.206 petition. Such a result was clearly not intended by the NRC's Rules of Practice. Cf. 10 CFR § 2.206(a)(c)(2)("no petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission"). At a minimum, the possibility of a de facto collateral appeal of the Director's declination of a requested hearing requires a rigid application of the Commission's pleading requirements for intervention to avoid the Board's duplicative review of

specific factual matters already passed upon by the Commission.

V. Petitioners are Not Entitled to a Hearing Prior to the "Transfer" and Amendment of the VEGP Licenses.

Petitioners broadly assert that "the Commission is required to 'grant a hearing upon the request of any person whose interest may be affected by the proceeding'" in arguing that the petitioners are "entitled" to a hearing. Petition at 4. The Atomic Energy Act, in fact, provides for the transfer of control of any license upon the consent of the Commission without the offer of a pre-effective or "prior" hearing. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI 92-04, 35 NRC 69 (1992). No hearing is required under the Act, only the Commission's "consent." Moreover, in this instance, the license may be amended by an immediately-effective license amendment upon a Staff finding of no significant hazards considerations. 10 CFR § 50.91(a)(4). The NRC Staff has proposed such a finding, which is entirely appropriate and reasonable, and the offer for a hearing after effectiveness, assuming procedural requirements are met by petitioners, fully complies with Section 189a of the Atomic Energy Act. Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), LBP-90-06, 31 NRC 85, 90-91 (1990).

In this instance, no potentially significant public health and safety issues have been raised in light of the fact that the control over licensed activities at VEGP will be exercised on a day to day basis after the transfer and amendments by the same individuals as before the transfer.

VI. Conclusion.

For the reasons stated above, GPC requests that the October 22, 1992 Petition to Intervene and Request for Hearing of Allen L. Mosbaugh and Marvin B. Hobby be denied.

VII. Service.

Pursuant to 10 C.F.R. § 2.708, GPC requests that service upon the GPC be made at the following addresses:

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Respectfully submitted,

John Lamberski

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Counsel for Georgia Power Company

DATED: November 6, 1992

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et al.	*	Docket Nos. 50-424
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	*	
(Vogtle Electric	*	
Generating Plant,	*	
Units 1 and 2)		

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the Courts of the State of Georgia and the United States District Court for the Northern District of Georgia, hereby enters his appearance as counsel on behalf of Georgia Power Company in proceedings related to the above-captioned matter. This is the 6th day of November, 1992.

John Lamberski

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CERTIFICATE OF SERVICE

This is to certify that copies of the within and foregoing "Georgia Power Company's Answer to the October 22, 1992 Petition of Allen L. Mosbaugh and Marvin B. Hobby to Intervene in a License Amendment Proceeding" and "Notice of Appearance" of John Lamberski were served by depositing same with an express mail delivery service or in the United States Mail, First Class, with sufficient postage thereon to ensure proper delivery to all those listed on ths attached service list.

This is the 6th day of November, 1992.

John Lamberski

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SERVICE LIST

Chief Administrative Law Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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