



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 14, 1994

MEMORANDUM FOR: William T. Russell, Director
Office of Nuclear Reactor Regulation

FROM: Lawrence J. Chandler
Assistant General Counsel
for Hearings and Enforcement

SUBJECT: COMMISSION ORDER, CLI-94-05, AFFIRMING IN PART
AND REVERSING IN PART LBP-94-6 REGARDING RELEASE
OF THE OFFICE OF INVESTIGATIONS REPORT

On April 7, 1994, the Commission issued a Memorandum and Order, CLI-94-05, 39 NRC ____ (1994) (attached) that granted the Staff's petition for review of the Licensing Board Order, LBP-94-6, 39 NRC ____ (March 3, 1994), which (1) ordered prompt release of the factual information the Office of Investigations' (OI) report on the alleged false reports of diesel generator starts, and (2) ordered the later release of the remainder of the report under which a protective order. The Commission affirmed that part of the order which released the factual information in the OI report, (i.e., the exhibits to the report), but reversed the part which released the OI report, finding that the OI report may be withheld until the issuance of an enforcement action (or a decision to take no enforcement action) regarding the matters investigated.

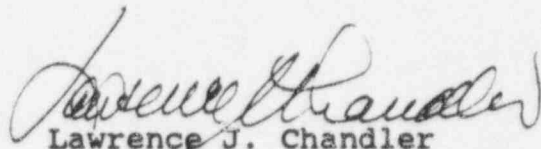
In LBP-94-6, the Board ordered the Staff to make the factual information in the OI report immediately available to the parties to the proceeding, Georgia Power Company (GPC) and intervenor Allen L. Mosbaugh, and also ordered release of the full OI report to the parties under a protective order by April 4, 1996. The Staff had filed several motions in which it resisted disclosure of the entire report, including the underlying factual information, pending the outcome of the agency's deliberations on possible enforcement action to be taken as a consequence of the investigative results.

The Commission determined that the OI report is both a predecisional and deliberative document and, therefore, the deliberative process privilege applies to the OI report. CLI-94-05 at 13. The report is predecisional as the Staff will use the report to determine, in part, whether to take an enforcement action, but the report's conclusions are neither precedential nor binding upon the Staff or the Commission. *Id.* The report is a deliberative document because it contains OI's evaluative and subjective conclusions on evidence accumulated during the investigation and these subjective evaluations constitute a significant part of the deliberations that will lead to an

April 14, 1994

enforcement decision. *Id.* at 14. However, the Commission decided there is no basis for withholding release of the factual exhibits which are not intertwined with OI's analyses. *Id.* at 15. It further determined that since a Commission decision on enforcement action is imminent and, therefore, there would only be a minor delay in the release of the report, neither the interests of the parties nor the need for a prompt decision outweighed the reasons to withhold the document. *Id.* at 16-20.

Thus, the Commission ordered the Staff: (1) within seven (7) days of the date of the Order, to make available to the parties for inspection and copying the documents and materials identified in the list of exhibits to the OI report (Case No. 2-90-020R) with redactions necessary to protect personal privacy information or the identity of confidential sources; and (2) when an enforcement action issues (or upon a decision to take no enforcement action), to make available to the parties for inspection and copying OI's report of investigation with redactions necessary to protect personal privacy information or the identity of confidential sources.



Lawrence J. Chandler
Assistant General Counsel
for Hearings and Enforcement

Attachment: as stated

cc w/attachment:

James Taylor, EDO
Karen Cyr, OGC
Stewart Ebnetter, Region II
James Lieberman, OE
Ben Hayes, OI

DUPE MICRO-MINIS IN MY POSSESSION

AS OF
3/7/94

1		21	31		51	61		81
2	12	22	32		52	62	72	82
3	13	23	33		53	63	73	
4	14	24	34		54	64		84
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6	16	26	36	46		66		86
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91		111	121	131		151	161	171
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100	110	120	130	140	150		170	180

189

MICRO MINI DUKES IN MY POSSESSION

AS OF 3/7/94

181	191		211	221	231	241
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185	195		215	225	235	245
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188	198	208	218	228	238	248
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