



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0198

May 29, 1996

EA 95-171 and EA 95-277

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

SUBJECT: NOTICE OF VIOLATION
(DEPARTMENT OF LABOR CASE NOS. 90-ERA-30, 91-ERA-001, AND
91-ERA-011)

Dear Mr. Hairston:

On August 4, 1995, the Secretary of Labor issued a Decision and Remand Order in Department of Labor (DOL) Case No. 90-ERA-30, Marvin B. Hobby v. Georgia Power Company. The Secretary of Labor found that, in 1990, senior managers of Georgia Power Company (GPC or licensee) discriminated against Mr. Hobby, former General Manager of GPC's Nuclear Operations Contract Administration (NOCA), when Mr. Hobby's position was eliminated and he was forced to resign from GPC. In addition, the Secretary of Labor found that other acts of discrimination occurred such as relocation of Mr. Hobby's office, restrictions on his access to the building, and revocation of his executive parking privileges. The Secretary of Labor determined that GPC terminated Mr. Hobby for engaging in protected activities, which included his raising safety concerns related to the operation of the Vogtle Electric Generating Plant in an April 27, 1989 memorandum that Mr. Hobby provided to GPC's Vice President of Bulk Power. In the memo and during meetings, Mr. Hobby expressed concerns that the actual organizational structure governing operation of the licensee's nuclear facilities violated NRC requirements. This Decision and Remand Order rejected the Department of Labor's Administrative Law Judge's Recommended Decision and Order issued on November 8, 1991, which found that actions taken against Mr. Hobby were not motivated by his engaging in protected activity. Our concerns regarding the apparent violation of NRC requirements and a copy of the Secretary of Labor's Decision and Remand Order were transmitted to you by letter dated September 1, 1995.

A predecisional enforcement conference regarding this matter was conducted in the Region II office on October 4, 1995, to discuss the apparent violation, the root cause, and your corrective actions to preclude recurrence. This conference was open for public observation in accordance with Section V of the NRC Enforcement Policy, NUREG-1600. A report summarizing the conference was sent to you by letter dated October 11, 1995.

By Decision and Remand Order, dated November 20, 1995, in DOL Case Nos. 91-ERA-001 and 91-ERA-011, Allen L. Mosbaugh v. Georgia Power Company, the

Secretary of Labor concluded that GPC discriminated against Mr. Mosbaugh when GPC terminated him. In his decision, the Secretary of Labor concluded that Mr. Mosbaugh had engaged in protected activity "by making lawful tape recordings that constituted evidence gathering in support of a nuclear complaint" and that other employees' potential unwillingness to communicate with Mr. Mosbaugh was not a legitimate reason for discharging him. This Decision and Remand Order rejected the DOL Administrative Law Judge's Recommended Decision and Order issued on October 30, 1992, which found that Mr. Mosbaugh did not establish that GPC violated the Energy Reorganization Act. A copy of the Secretary of Labor's decision was sent to you under separate cover on December 12, 1995.

On December 11, 1995, during a telephone conversation between you and Messrs. Ellis Merschoff and Bruno Uryc of my staff concerning Mr. Mosbaugh's case, you advised that a predecisional enforcement conference was not required at that time. On December 12, 1995, a letter was sent to you requesting that you provide an explanation of your views on the apparent violation, its root causes, and a description of planned corrective actions. In addition, you were given an opportunity to point out any disagreement with the facts and/or findings presented in the Secretary of Labor's decision. You also were asked to address the potential chilling effect that Mr. Mosbaugh's termination may have had on other employees. On December 13, 1995, GPC filed a Motion to Reopen the Record and for Further Hearings with DOL in this case¹. In your December 21, 1995 response to the NRC's December 12 letter, you requested that the NRC allow GPC to defer its response to the apparent violation until its Motion to Reopen is ruled upon. After review of GPC's Motion to Reopen and the December 21, 1995 request, the NRC concluded that deferral of the response to the apparent violation was not warranted. By letter dated January 12, 1996, the NRC requested that you provide a full response to the apparent violation and potential chilling effect by January 19, 1996. Your response of January 19, 1996 denied the apparent violation and addressed the potential chilling effect associated with the Secretary of Labor's findings.

Based on the Decision and Remand Orders issued by the Secretary of Labor, the

¹ We note that, in the Motion to Reopen, GPC has argued that Mr. Mosbaugh deliberately violated NRC requirements and that, as a consequence, pursuant to Section 211(g) of the Energy Reorganization Act, the protections of section 211 do not apply to Mr. Mosbaugh. The NRC recognizes that it found that Mr. Mosbaugh was involved in some of the performance failures that resulted in the submittal of inaccurate or incomplete information to the NRC -- see Modified Notice of Violation C.3 (EA 93-304, NRC letter dated March 13, 1995): " . . . the Acting Assistant General Manager - Plant Support, the General Manager for Plant Support, and the Technical Support Manager failed to clarify and verify the starting point of the successful consecutive DG starts reported in the April 19, 1990 LER" However, the NRC did not there find that Mr. Mosbaugh deliberately violated any requirement. It is the NRC's view that, but for Mr. Mosbaugh's activities in raising concerns and taping meetings and conversations among GPC personnel, the evidence to support the enforcement actions with regard to GPC's submittals of inaccurate and incomplete information would not have been obtained.

violations involve the failure to adhere to the requirements of 10 CFR 50.7, Employee Protection, which prohibits discrimination against employees engaging in protected activities. During the predecisional enforcement conference and in your letter of January 19, 1996, GPC denied the violations involving Messrs. Hobby and Mosbaugh. Despite those denials, it is our view, based on the Secretary of Labor's decisions, that the facts support the conclusion that GPC violated the regulations applicable to employee protection as stated above. Therefore, the NRC adopts the Secretary of Labor's decisions in these cases and finds that the actions taken against Messrs. Hobby and Mosbaugh were acts of discrimination for their having engaged in protected activities.

These violations are of very significant regulatory concern because they involved acts of discrimination by senior corporate management. The NRC places a high value on the freedom provided to nuclear industry employees to raise potential safety concerns to licensee management or to the NRC. Section 210 (now 211) of the Energy Reorganization Act and 10 CFR 50.7 establish strict requirements for the protection of employees against discrimination for raising nuclear safety issues and the NRC Enforcement Policy calls for significant enforcement action in cases where senior corporate management violate these requirements. Therefore, these violations have been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level I.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$100,000 is considered for Severity Level I violations. Because the Statute of Limitations for imposing a civil penalty has expired, no civil penalty is being proposed for the violations. Had the Statute of Limitations not expired, we would have considered the circumstances surrounding these matters, including corrective actions and efforts to avoid a chilling effect, to determine whether to impose civil penalties to the full extent of NRC's statutory authority in these cases.

To emphasize the importance of ensuring that employees who raise real or perceived safety concerns are not subject to discrimination for raising those concerns and that every effort is made to provide an environment in which all employees may freely identify safety issues without fear of retaliation, harassment, intimidation, or discrimination, I have been authorized, after consultation with the Commission, to issue the enclosed Notice which includes two violations, each categorized at Severity Level I.

You are required to respond to the enclosed Notice and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Although we recognize that the U.S. District Court for the Northern District of Georgia recently ruled that the Secretary's Order with regard to Mr. Hobby is not final or now immediately enforceable, we are, nevertheless, concerned that your decision in the Hobby and Mosbaugh cases -- that GPC would not immediately reinstate Messrs. Hobby and Mosbaugh as stated in the Decision and Remand Orders of the SOL -- may itself have a chilling effect on other employees. Therefore, in your response to this letter, you should describe any steps you intend to take to ensure that this decision by GPC will not create a chilling effect. After

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reviewing your response to the Notice, including any actions you have taken to address the potential chilling effects, and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Stewart D. Ebner".

Stewart D. Ebner
Regional Administrator

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

Enclosure: Notice of Violation
cc w/encl: (See next page)

Georgia Power Company

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cc w/encl:

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