

January 14, 1994

John Lamberski
Troutman Sanders

The attached documents are in response to Item No. 54 of your document request. These documents consist of OI notes, telephone memos, and other documents relating to interviews, meetings and conversations between Mosbaugh and/or his attorney and representatives of OI, through September 15, 1993, that fall within the scope of the License Amendment proceedings. These documents do not include the computer printed allegations, received by NRC from Mosbaugh, that have already been provided to your office by NRC in this discovery process. If you have any questions, please contact Charles Barth, Office of General Counsel, NRC.

Larry L. Robinson
Office of Investigations

LISTING OF DOCUMENTS
PROVIDED TO GPC (TROUTMAN, SANDERS)
IN RESPONSE TO ITEM NO. 54
OF DOCUMENT REQUEST

1. Cover Memorandum to J. Lamberski, Troutman-Sanders, dated January 14, 1994. (1 Page)
 2. Copies of Excerpts from Case Chronology, OI Case No. 2-90-020. (6 Pages)
 3. Copy of draft, dated "8/28" of letter from GPC to NRC dated August 30, 1990. (7 Pages)
 4. Copy of Evidence/Property Custody Document, showing OI receipt of tapes from Mosbaugh, dated September 13, 1990. (1 Page)
 5. Memorandum to Case File, dated January 25, 1991 regarding telephone call from Mosbaugh to Robinson. (1 Page)
 6. Memorandum to Case File, dated February 14, 1991 regarding partial return of tapes to Mosbaugh by OI. (2 Pages)
 7. Notes from August 30, 1991 telephone call from Mosbaugh to Robinson. (1 Page)
 8. Copy of computer-printed letter from Mosbaugh to NRC (Uric) (sic), dated November 4, 1991 regarding McDONALD and McCOY participation in preparation of LER 90-006. (3 Pages)
 9. Copy of Mosbaugh's notes from Vogtle daily status meeting on February 6, 1990. (2 Pages)
 10. Copy of pages 88 and 89 of Deposition of Kenneth McCOY, dated September 12, 1990. (3 Pages)
 11. Copy of notes of meeting between Robinson and Mosbaugh in NRC office, dated October 25. (1 Page)
 12. Copy of portion of Memorandum to Case File, dated July 15, 1992, regarding telephone call from Mosbaugh to Tate regarding Mosbaugh being interviewed by NBC. (1 Page)
 13. Copy of notes of telephone call from Mosbaugh to Robinson, November 15, 1993 regarding various issues in investigation. (2 Pages)
 14. Copy of computer-printed document, received by Robinson from Mosbaugh on August 16, 1993 regarding definition of "comprehensive test program". (8 Pages)
- B/85

15. Copy of portion of computer-printed document from Mosbaugh, undated, regarding Vogtle "...operations approach to schedule versus compliance..." (1 Page)
16. Copy of notes, undated, of Mosbaugh conversation with Robinson regarding various issues in investigation. (3 Pages)
17. Copy of Fax, dated September 13, 1990, from Kohn to Robinson, regarding Department of Labor (DOL) grant of Motion to Compel. (2 Pages)
18. Copy of Fax, dated September 13, 1990, from Mosbaugh to Robinson, regarding DOL Motion for Protective Order. (3 Pages)
19. Copy of Fax to Kohn from Robinson, dated September 13, 1990, regarding Declaration of Larry L. Robinson. (3 Pages)
20. Copy of notes, dated June 27, 1990 of conversation between Mosbaugh and Robinson regarding various allegations by Mosbaugh. (3 Pages)
21. Copy of notes, dated October 14, of conversation between Mosbaugh and Robinson regarding MAJORS and CASH. (1 Page)
22. Copy of Fax, dated March 22, 1991, and note dated March 26, 1991 regarding Mosbaugh allegation of false statement by McDONALD to DOL. (16 Pages)
23. Copy of Fax, dated August 29, 1990 from WARD to BOCKHOLD, regarding Summary of Calcon Switch Problems at Vogtle, provided to Robinson by Mosbaugh on June 13, 1991. (14 Pages)
24. Copy of notes of conversation between Robinson and Mosbaugh in NRC office on November 15 regarding investigation. (2 Pages)
25. Copy of notes, dated November 5, 1991 regarding Mosbaugh conversation with Robinson and Tate regarding HAIRSTON and MCCOY participation on 4/19/90 phone call. (1 Page)
26. Copy of July 29, 1992 letter to Kohn from Hayes (signed by Fortuna) (1 Page)

1

2

EVIDENCE/PROPERTY CUSTODY DOCUMENT

OFFICE OF INVESTIGATIONS

(Instructions contained in Investigative Procedures (IP-004))

2-40-012

DOCKET NUMBER

RECEIVING ACTIVITY

OFFICE OF INVESTIGATION R II

LOCATION

101 HAZIETH ST SUITE 2700

NAME, GRADE AND TITLE OF PERSON FROM WHOM RECEIVED

☒ OWNER ALLEN L. MOSBAUGH

☐ OTHER

ADDRESS (Include Zip Code)

1701 KINGS COURT

LOQUETOWN, GA 30213

LOCATION FROM WHERE OBTAINED

HAIRPTON INN Rm 265
3030 WASHINGTON ST
ALBUQUERQUE, NM 87107

REASON OBTAINED

EVIDENCE

TIME/DATE OBTAINED

13 Sept 90
2100

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES (Include model, serial number, condition and unused marks or scratches)
1	3	Three SENTRY-MODEL 1100 FIRE PROOF KEY LOCK CARRYING CASES WITH KEY CONTAINING 277 MICRO-CASSETTES PROVIDED BY ALLEN L. MOSBAUGH-272-44-1387

CHAIN OF CUSTODY

ITEM NO.	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1	13 Sept 90	SIGNATURE <i>Allen L Mosbaugh</i>	SIGNATURE <i>E. L. Williamson</i>	EVALUATION A- EVIDENCE
		NAME, GRADE OR TITLE Allen L Mosbaugh	NAME, GRADE OR TITLE E. L. Williamson JR RT	
1	10-1-90	SIGNATURE <i>E. L. Williamson</i>	SIGNATURE <i>Allen L Mosbaugh</i>	EVALUATION A- EVIDENCE
		NAME, GRADE OR TITLE E. L. Williamson JR RT	NAME, GRADE OR TITLE Allen L Mosbaugh	
		SIGNATURE	SIGNATURE	
		NAME, GRADE OR TITLE	NAME, GRADE OR TITLE	
		SIGNATURE	SIGNATURE	
		NAME, GRADE OR TITLE	NAME, GRADE OR TITLE	
		SIGNATURE	SIGNATURE	
		NAME, GRADE OR TITLE	NAME, GRADE OR TITLE	
		LOCATION	DOCUMENT NUMBER	

3

Larry

This is a draft of
the COA correction
letter. Final rev.
was PRB approved
on about 9-30-90
GB*ran*the PRB meeting

4

missing

5

MEMORANDUM TO CASE FILE

TYPE ACTION <input checked="" type="checkbox"/> RECORD OF CONVERSATION <input type="checkbox"/> CASE REVIEW / STATUS <input type="checkbox"/> OTHER	PARTICIPANTS	FILE NO.
	4A. MOSBAUGH & L. ROBINSON	2-90-020
	CONFIDENTIALITY REQUESTED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE 1-25-91
		TIME (AT RESIDENCE) 4:00 PM

SUMMARY

MOSBAUGH CALLED (TIC) LLR TO RESIDENCE AND ADVISED THAT HE WAS BEING REQUIRED BY D.O.L., AS A PART OF HIS DISCRIMINATION COMPLAINT, TO TURN OVER TO BRL (TROUTMAN, SANDERS LAW FIRM) ALL DOCUMENTS IN HIS POSSESSION THAT RELATED TO PLANT VOGTLE IN ANY WAY. HE ADVISED HE HAD 15 DAYS TO COMPLY WITH THIS D.O.L. ORDER WHICH WAS DATED 1/22/91, WHICH HE RECEIVED THROUGH THE REGULAR MAIL (NOT CERTIFIED) ON THURSDAY, 1/24/91. HE STATED THAT HE HAD A COPY OF HIS TRANSCRIPT OF INTERVIEW BY NRC ON 7/18-19/90, AND THOUGHT HE WOULD HAVE TO TURN IT OVER.

HE STATED HE HAD CLEANED OUT HIS OFFICE AT VOGTLE WHEN HE WAS FIRED, AND HE HAD MANY BOXES OF VOGTLE RELATED DOCUMENTS. HE SAID HE WAS COMING TO ATLANTA ON MONDAY 1/28/91, AND WOULD CONTACT LLR BEFORE TURNING DOCUMENTS OVER. LLR TOLD MOSBAUGH TO PULL OUT THE TRANSCRIPT, AND ANY OTHER DOCUMENTS THAT WERE PERTINENT TO PENDING OI ISSUES, AND WE WOULD TALK ABOUT THE DISPOSITION OF THEM ON MONDAY.

PREPARED BY

LARRY L. ROBINSON

DATE

1/28/91

ACTION REQUIRED

REVIEWED BY

DATE

OFFICIAL USE ONLY

DO NOT DISCLOSE

6

MEMORANDUM TO CASE FILE

TYPE ACTION <input checked="" type="checkbox"/> RECORD OF CONVERSATION <input type="checkbox"/> RECORD REVIEW / STATUS <input type="checkbox"/> OTHER	PARTICIPANTS	FILE NO.
	L.L. ROBINSON, CT. TATE	72-90-020
	ALIEN L. MOSBAUGH	DATE 2/14/91
CONFIDENTIALITY REQUESTED		TIME 11:30 AM

SUMMARY: ON 2/14/91, NRC OF INVESTIGATORS ROBINSON AND TATE ATTEMPTED TO RETURN EVIDENCE TO MOSBAUGH. THIS EVIDENCE IS DESCRIBED AS 201 MICRO-CASSETTE TAPE RECORDINGS, CONTAINED IN THREE, KEY-LOCK, FIREPROOF CARRYING CASES. MOSBAUGH ASKED IF THE NRC HAD LISTENED TO ALL THESE TAPES AND WAS SATISFIED THAT THERE WAS NO SAFEGUARDS INFORMATION ON ANY OF THEM. ROBINSON TOLD MOSBAUGH THAT HE WAS NOT CERTAIN OF THE EXACT STATUS OF THE SAFEGUARDS REVIEW OF THOSE TAPES, AND COULD NOT CERTIFY THAT ALL OF THE 201 TAPES HAD RECEIVED AN NRC REVIEW FOR SAFEGUARDS. ROBINSON REMINDED MOSBAUGH OF HIS EARLIER STATEMENT THAT, TO THE BEST OF HIS KNOWLEDGE, THERE WAS NO SAFEGUARDS MATERIAL ON ANY OF THE ENTIRE ITT TAPES TURNED OVER TO NRC. MOSBAUGH REFUSED TO RECEIVE THE 201 TAPES WITHOUT CONSULTATION WITH HIS ATTORNEY REGARDING HIS PERSONAL LIABILITY IF HE, WAS NOT BEING CURRENTLY EMPLOYED BY GPC, WOULD ACCEPT THE TAPES AND THEN, SHOULD GPC FIND SAFEGUARDS INFORMATION ON THEM AND TAKE ACTION AGAINST HIM. ATTEMPTS TO CONTACT MOSBAUGH'S ATTORNEY AT THE TIME, WERE NEGATIVE. MOSBAUGH STATED HE WOULD CONTACT HIS ATTORNEY, AND SUBSEQUENTLY CONTACT ROBINSON ON 2/15/91 REGARDING THE DISPOSITION OF THE TAPES. ROBINSON RETAINED POSSESSION OF THE TAPES AND CARRYING CASES AND RETURNED THEM TO THE EVIDENCE LOCKER ON 2/15/91.

PAGE 1 OF 2

PREPARED BY	DATE
L.L. ROBINSON	2/15/91

ACTION REQUIRED

REVIEWED BY	DATE

OFFICIAL USE ONLY — DO NOT DISCLOSE

MEMORANDUM TO CASE FILE

TYPE ACTION () RECORD OF CONVERSATION () CASE REVIEW / STATUS () OTHER	PARTICIPANTS	FILE NO.
	L.L. ROBINSON, C.T. TATE	2-90-020
	ALLEN L. NOSBAUGH	DATE 2/14/91
	CONFIDENTIALITY REQUESTED	TIME 11:30 AM

SUMMARY

ROBINSON HAD NOSBAUGH REVIEW THE INDEX OF
ALL DOCUMENTS THAT NRC HAD REQUESTED BE
WITHHELD FROM DISCOVERY BY GPC IN NOSBAUGH'S
FOI ACTION.

NOSBAUGH STATED THAT ITEMS #12, 13, AND 14
ON THIS INDEX (COPY ATTACHED) HAD ALREADY
BEEN TURNED OVER TO GPC AT AN EARLIER
DISCOVERY HEARING.

ROBINSON ADVISED VORSE AND SC. MULLINS, NRC,
OBC OF THIS INFORMATION ON 2/15/91.

ON 2/15/91, AT 9:15 AM, ALLEN NOSBAUGH CALLED (T/C)
ROBINSON AND ADVISED THAT, AFTER CONSULTATION
WITH HIS ATTORNEY, HE DECIDED TO RECEIVE THE
201 TAPES. HE STATED THAT HE PLANS TO BE IN
ATLANTA ON TUES. 2/19/91 TO ACCEPT CUSTODY. HE
STATED HE WOULD COME TO THE OI OFFICE AND
ACCEPT THE TAPES. ADVISED VORSE & MULLINS OF THIS T/C.
ALSO ADVISED MULLINS THAT OI DID NOT PROVIDE NOSBAUGH
A COPY OF HIS 8/15/90 SPECIAL INSPECTION INTV. TRANSCRIPT. - PAGE 2 OF 2

PREPARED BY L.L. ROBINSON DATE 2/15/91

ACTION REQUIRED

REVIEWED BY

DATE

OFFICIAL USE ONLY

DO NOT DISCLOSE

7

8/30/91 A.M. FROM

REVIEWING RETURNED TAPES

- CONV ON DIL VALVES SKIP, JGA, CASH

#181 6/25/90 #2 SIDE A @ 80%

- GB STATES REASON WHY HADNT YET
REVISED LER

CONV W TYNAN ON BACKDATING

#172 6/19/90 #2 A 30% GB
70% TYNAN

- ROGGE - A.M. - JGA

AM TELLING ROGGE ABOUT
FALSE STMTS.

JGA SAYS REVISING LER

JGA SAY- HE TOLD TROCHINE

#172 6/19/90 #2 B 5%

8

CONFIDENTIAL

FORWARDED TO RII
AICS, 11/5/91 LAR

To: The United States Nuclear Regulatory Commission
(attention Bruno Uric, Allegations Coordinator)

From: Allen Mosbaugh

Allen L. Mosbaugh

11-4-91

Pat McDonald, Ken McCoy, and Georgia Power/SONOPCO
lie in sworn statements about "key participants" role and
whereabouts in preparing LER 90-006 rev.0

In a sworn statement during his deposition on 9-17-90
for DOL proceedings (Mosbaugh vs. Georgia Power), Pat
McDonald was ask under oath:

pg. 11

Q Have you ever read the LER regarding the diesel
generator ?

A I read it, yes, I did read it.

Q Prior to its submission ?

A No.

Q You read it after it was submitted ?

A Yes.

pg. 12

Q After you read it did you discuss it with anyone ?

A Not that I recall.

Q Did you discuss it with anyone before you read it ?

A Not that I recall.

pg. 13

Q So can you tell me what your role was in drafting
the LER, reviewing the LER, or changing the LER
other than reading it once ?

A I don't believe that I had any definable role
towards activities.

In direct contradiction with the above sworn statements by
Pat McDonald, Bill Shipman in conversations late in the day
on 4-19-90 (before LER 90-006 rev.0 was sent out) with site
personnel discusses Pat McDonald's very detailed comments on
the LER.

Mr. Shipman mentions Pat's name several times as the
originator of the comments.

Documentation of these conversations as well as the
contradictory deposition transcripts are in the possession
of the NRC OI.

It is clear from the conversations with Mr. Shipman that
Pat McDonald not only read the draft of the LER 90-006
rev. 0 but was substantially involved in shaping and
commenting on the LER prior to it's initial submittal.

In a sworn statement during his deposition on 9-12-90 for DOL proceedings (Mosbaugh vs. Georgia Power), Ken McCoy was ask under oath:

pg 88

- Q Did Mr. Mosbaugh tell you in April of 1990 that he believed there were false statements made in the corrective action letters sent to the NRC ?
- A I do not remember him telling me that. I was told, I believe, by Bill Shipman that Allen Mosbaugh had expressed that concern. That's my recollection.
- Q What did you do after you learned about that concern ?
- A Actually I think I was out of town of(sic) something at the time that was raised and that Bill Shipman and George Hairston responded to that including revising the LER and ordering a QA audit to be sure that it was completely accurate.

In addition to McCoy's above statement of being "out of town", GPC/SONOPCO previously submitted written answers to NRC questions posed during the NRC's OSI in August 1990. GPC/SONOPCO's written answers (in the possession of the NRC OI) fail to identify Ken McCoy as a participant of the "late afternoon phone call" in which the LER 90-006 wording was revised and finalized.

The above is in direct contradiction with documentation in the possession of the NRC OI which shows that the date that Mr. Mosbaugh raised concerns with Bill Shipman over the COA letter and the LER was 4-19-90. Additional documentation in the possession of the NRC OI clearly shows that Ken McCoy was not "out of town" but was in the SONOPCO offices in Birmingham on that day and a key participant on the "late afternoon phone call".

The omission of McCoy's name from the white paper was not a simple mistake or clerical error. The NRC's questions were posed in a meeting that McCoy chaired during the OSI inspection. Answers were drafted by the group of GPC and SONOPCO managers including Ken McCoy. In McCoy's presence, the list of participants who were on the late afternoon call was compiled and reviewed. McCoy did not speak up or add his name to the list in any way.

Mr. McCoy's statements from his deposition acknowledges Mosbaugh's raising concerns with Shipman over the false statements in the LER on the diesel generator start counts, an event which took place on 4-19-90 before the LER was submitted.

Surprisingly this contradicts Pat McDonald's sworn statements in GPC's 4-1-91 response to the 2.206 petition which states, on page 4 section IIB, "Not until April 30

CONFIDENTIAL

1990 does it appear that Mr. Mosbaugh articulated for the benefit of his management that the start count data contained in the LER was inaccurate".

Returning to Pat McDonald's sworn deposition of 9-17-90, Pat McDonald's was ask:

pg. 6

Q Do you know if you were in your office on or about April 18th, 1990 ?

A I don't remember.

pg. 7

Q Could you look at it and see if that helps refresh your recollection ?

A Okay.

A April the 18th I believe I was-- my calendar shows that I was in Atlanta for a meeting in Atlanta.

Q On April 19, were you ?

A April 18.

Q I know. I'm asking about April 19.

A April 19th I believe I was in Atlanta in a meeting with Mr. Billy Klack, State Emergency Director.

When you combine the sworn statements from the above depositions with the sworn statements of GPC/SONOPCO in their 2.206 petition response and the "white paper" and look at what GPC/SONOPCO is saying about the top 3 Vice Presidents in charge of Vogtle, it is not only patently false but their claim of collective absence and non-participation demonstrates a total lack of integrity:

McDonald didn't have anything to do with LER 90-006

McDonald was out of town at the time.

McCoy was out of town at the time.

Hairston was not a participant on the "late afternoon call"

The documentation in the possession of the NRC clearly shows the whereabouts of the Vice Presidents as well as their real roles, indeed intimate roles, in preparing and modifying LER 90-006 rev. 0, roles they are now trying (unsuccessfully) to cover up. How many lies under oath by SONOPCO executives does it take for the NRC to conclude that SONOPCO executive management does not possess the integrity, character and fundamental trustworthiness to operate nuclear power plants as addressed in 10 CFR2 Appx. C. VI .

I request the NRC to take the immediate, strong and appropriate action that is warranted and required under NRC regulations.

UNITED STATES OF AMERICA
BEFORE THE UNITED STATES DEPARTMENT OF LABOR

ALLEN MOSBAUGH,)	
)	
COMPLAINANT,	)	NO. 90-ERA58
)	
VS.)	
)	
GEORGIA POWER COMPANY)	
)	
RESPONDENT.)	

- - - - -
DEPOSITION OF KENNETH MCCOY

taken by Counsel for the Complainant
before Judy S. Burnett, Certified Court Reporter
at Plant Vogtle, Waynesboro, Georgia
on Wednesday, September 12, 1990, commencing at 1:45 p.m.

- - - - -

APPEARANCES OF COUNSEL

FOR THE COMPLAINANT:

Mr. Michael D. Kohn
KOHN, KOHN & COLAPINTO
577 Florida Avenue, NW
Washington, D.C.

FOR THE RESPONDENT:

Mr. Jesse P. Schaudies, Jr.
TROUTMAN, SANDERS, LOCKERMAN
& ASHMORE
127 Peachtree Street, NE
Atlanta, Georgia 30313-1810

CULPEPPER REPORTING SERVICE, INC.
551 GREENE STREET - PATIO LEVEL
AUGUSTA, GEORGIA 30901
(404) 722-3746

1 including engineering licensing folks and that sort of thing.

2 But I think it was ultimately resolved in the
3 quality concern program.

4 Q. Doesn't the quality concern program require the
5 resolution to notification to go to the person involved in
6 quality concern?

7 A. Yes, that's the standard program. To see if the
8 concern, the person that expressed the concern, was satisfied.

9 Q. If that notice wasn't sent down, then the quality
10 concerns department hadn't finished their investigation.

11 Is that what you're saying?

12 A. Either that or they've had an oversight in their
13 regular program. But that's the normal functioning of that
14 program. I would not know about that notice.

15 Q. Did Mr. Mosbaugh tell you in April of 1990 that he
16 believed there were false statements made in the corrective
17 action letters sent to the NRC?

18 A. I do not remember him directly telling me that. I
19 was told, I believe, by Bill Shipman that Allen Mosbaugh had
20 expressed that concern. That's my recollection.

21 Q. What did you do after you learned about that
22 concern?

23 A. Actually I think I was out of town of something at
24 the time that was raised and that Bill Shipman and George
25 Hairston responded to that including revising the LER and

1 ordering a QA audit to be sure that it was completely accurate.

2 Q. I'm talking about the corrective action letter, not
3 the LER. There's a corrective action letter and an LER. Do
4 you remember learning that there were false statements
5 contained in the corrective action letter?

6 A. What I understand is that Allen brought this up to
7 Bill Shipman. That he felt that what was in the corrective
8 action letter was in error. And what was in the LER that was
9 being submitted was also, he thought, in error.

10 So as a result of that, they did a QA audit to
11 verify that the LER was correct and we made a statement as I
12 recall in the transmittal that said that we wanted to clarify
13 our position on the original letter because there was confusion
14 about the terms used and that sort of thing. And so that was
15 attempted to be clarified by the LER. That's my recollection
16 of it.

17 Q. Was there ever an investigation as to how false
18 information got into the corrective action letter or the LER?

19 A. Yes, the QA audit reviewed all of that and
20 concluded that there were several factors that led to that.

21 Q. Where are the QA audit results? Were they turned
22 over to the NRC?

23 A. Yes, and we have a QA audit report that they were
24 provided to the NRC team that investigated that allegat.

25 Q. That's quality assurance audit?

11

A.M. @ OFFICE ON 10/25

ON 4/17/90 PRB, LER COMES W NO

EDGE COUNT NO'S. NSAC DIDN'T
WANT TO PUT 'IN' INFO NOT SURE OF
LACEY SAYS "THINKS SHOULD BE NO'S"

- NSAC GOES & ADDS NO'S

4/18/90 PRB

DRAFT COMES BACK W NO'S TO
ANOTHER PRB

~~THE~~ NSAC (POSS AUFDENFARBE)

SAYS NO'S ARE COA #'S, PLUS
NO'S SINCE 4/29

- NOW ANOTHER PRB - MOSB LATE - DECLINED
TO VOTE

WENT OVER TAPE SE TO ID
SHIPMAN'S VOICE.

CAUGHT REF'S TO McDONALD'S
REVIEW OF LER SAYING HE ONLY
READ IT AFTER IT WAS

9/17/90
"IN THE TESTS" 1544

9 missing

10

12

MEMORANDUM TO CASE FILE

TYPE ACTION <input checked="" type="checkbox"/> RECORD OF CONVERSATION <input type="checkbox"/> CASE REVIEW / STATUS <input type="checkbox"/> OTHER	PARTICIPANTS TC ALAN MOSBAUGH TO TATE (FOR ROBINSON) CONFIDENTIALITY REQUESTED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	FILE NO. 2-90-020 7-15-92 TIME 1253 TO 1302
--	---	---

SUMMARY

Asked if I was still working on case, which would
 Robinson return?
 Called to advise.
 I was interviewed by NBC news on 7-14-92.
 NBC asked about tapes - Mosbaugh indicated NBC's interests,
 did not discuss.
 only discussed what was already in press.
 will see on NBC news this Sat. 6-6:30 PM

13

NEWIR
873-9000

T/C

MOSBAUGH - CLR

11/15/93

MFSS NOT CREATED IN BOTTOM-UP
FASHION - BUT TOP DOWN

VISITOR TO 6/29 PRB
DISCUSS W GREENE

4/19 LAST CALL

ALM (AFTER HE HEARS
SHIPMAN READ WORDS)

SAYS IT SOUNDS TO
ALM LIKE STARTING
POINT WAS AFTER
J V TEST.

SHIPMAN
DID NOT
FOLLOW
ON ALM
VERIFY
W KOCHERY

2 ASSIGNMENTS GIVEN

TO MOSBAUGH (OPERATOR @

DIESEL & VERIFY ^{>20} STARTS.)

OP RESPONSE WOULD NOT BE RESTART
ISSUE - BUT HE GETS INTO
PERSONAL DETAIL W OPERATOR

ON RESTART ISSUE - NO

DETAIL GOTTEN BY CORPORATE

WE GOT STARTS - WE DIDN'T
~~HAVE~~ NO TRIPS?

14

Larry Robinson - A Preliminary Copy " for your information.

new 8/16/93 F.1
11:33 AM
LJR

THE DEFINITION OF THE "COMPREHENSIVE TEST PROGRAM" (CTP)
IN RELATION TO SOUTHERN NUCLEAR'S MATERIAL FALSE STATEMENTS

MATERIAL FALSE STATEMENTS BY COMMISSION

4-19-90 --- CTP phrase is first created and submitted to the
NRC

On 4-19-90 Bockhold stated that the 18 & 19 starts from his 4-9-90 presentation were all after the completion of the CTP. "The were not before that time". Thus the subsequent to the CTP language was applicable to the 4-9-90 presentation and the 4-9-90 COA as well as the 4-19-90 LER. If the 4-9-90 presentations were false (which Southern Nuclear personnel acknowledged on 4-19-90), then the LER which was intended to repeat the same numbers as the 4-9-90 presentation (18 & 19), which were then consolidated to "at least 18 times each" was intended to be false as well because it was based on information known to be false.

STRANKEFELLOW
SH/PAAN?

Bockhold's statements on 4-19-90 indicate his understanding of the CTP. They can be taken one of 2 ways:

Either the "Special Testing" described in Bockhold's transparency constitutes the comprehensive test program itself and the 18 and 19 starts are claimed to have occurred after that testing.

OR

The comprehensive test program ended before the testing described and listed under columns "1A" and "1B" and the number of starts under those columns are intended to constitute and add up to the 18 & 19 numbers of "Successful Starts" at the bottom.

George Bockhold has claimed that the starts in the columns are not intended to add up to the 18 and 19 at the bottom. As a result one must conclude the former interpretation, that the CTP consists of those tests described in the transparency and:

FOR DIESEL GENERATOR A ---- CTP ended before start 169

The significant problem with this is that there was only 1 start after the completion of the CTP and the 4-9-90 presentation. As this definition applies to the LER there were only 5 starts after the completion of the CTP and the end of the day on 4-19-90.

FOR DIESEL GENERATOR B ----- CTP ended before start 148

The significant problem with this is that there was only 1 start after the completion of the CTP and the 4-9-90 presentation. As this definition applies to the LER there were only 7 starts after the completion of the CTP and the end of the day on 4-19-90.

Reconsidering the second interpretation of the CTP :

FOR DIESEL GENERATOR A ---- CTP ended before start 142

Using Bockhold's transparency, the CTP ended before start 142 (5 starts before the UV run, start 147, of 3-29-90).

-- The significant problem with this is that there was no comprehensive testing before start 142 because starts numbers 139, 140, and 141 were the 3 attempts to start the diesel on 3-20-90 during the site area emergency itself.

-- Another problem is that there was an unexpected trip from a jacket water temperature switch on start 148, after the completion of the CTP.

-- Yet another inconsistency is that there were 27 starts after start 141 and 4-9-90 presentation as opposed to the 18 shown on the slide.

FOR DIESEL GENERATOR B ----- CTP ended before start 137

Again using Bockhold's transparency the CTP ended before start 137 (the E-run bubble test of 3-27-90 at 16:49)

--The significant problem with this is that there were only 12 starts after start 136 and the 4-9-90 presentation as opposed to the 19 shown on the transparency.

-- A "problem" with the Control air system (low control air pressure < 41 psi.) caused a "Maintenance Lockout alarm" between start 145 and 146.

April 30 1990 -----Based on Mosbaugh's 4-30-90 memo.
Bockhold directs Mosbaugh to correct the
LER 90-006.

Bockhold directs Mosbaugh by memo to correct the LER.

INTERESTING! Mosbaugh discusses the 4-30-90 memo, that indicates the start count information in the NRC correspondence is false, with Bockhold. Bockhold does not present his understanding of the CTP definition. Bockhold does not argue that based on his understanding of the CTP the LER start count is correct

(that there were more than 18 starts after the CTP).
Bockhold agrees that a revision of the start count is
warrented.

May 8-10 1990---- The PRB struggles with the definition of
the CTP

On about May 8 the PRB reviewed the proposed revision to the
LER 90-006. There is confusion with the CTP language and no
member, including Aufdenkampe, has a clear understanding of
what was intended by the words. The PRB concludes that the
earliest piont a CTP completion could be claimed was just
before the UV test (start 162 and 141 respectively). The PRB
approves a revision of the start information based on that
definition and fowards it to Bockhold. Bockhold initials off
on the revision and the revision is sent to corporate .
Bockhold never presented his claimed understanding from 4-
19-90 of the CTP definition to the PRB or questioned the
need to revise the start count.

June-90 ----NRC states its understanding of Licensee's CTP

*LOOK AT
THESE
SECTIONS*

Section J-12 & J-13 of NUREG 1410 "Loss of vital AC Power
and Residual Heat Removal System During Mid-Loop Operations
at Vogtle Unit 1 on March 20, 1990 describes the licensee's
testing of "Control System Functional Testing" to include:
tests to recreate the event, tests of individual pneumatic
elements, leak tests, multiple starts, logic functional
test, a UV test, and "lastly., the 6-month operability
testing required by the plant Technical specifications".

Nureg 1410 then states that, "The licensee believed that
this series of tests, combined with the planned sensor
testing, provided a comprehensive trouble shooting plan for
the root cause determination that encompassed all suspect
equipment involved with the incident."

FOR DIESEL GRENERATOR A ----CTP ended before start 165

FOR DIESEL GENERATOR B ----CTP ended before start 144

6-29-90 ---- Southern Nuclear redefines the CTP

In the cover letter to the revision of LER 90-006
It states "If the criteria for the completion of the

test program is understood to be the first successful test in accordance with Vogtle Electric Generating Plant (VEGP) procedure 14980-1 "Diesel Generator Operability Test". It should be noted that this new definition is consistent with the NRC statements in the NUREG 1410 above. The cover letter indicates the errors were made because of the "the definition of the end of the test program".

FOR DIESEL GENERATOR A -- CTP ended before start 165

--The problem with this is that there were only 4 starts of the diesel after this CTP and the 4-9-90 presentation.

--The second problem with this is that there were only 9 starts of the diesel after this CTP and the 4-19-90 LER.

FOR DIESEL GENERATOR B -- CTP ended before start 144

-- The problem with this is that there were only 5 starts of the diesel after this CTP and the 4-9-90 presentation.

-- The second problem with this is that there were only 11 starts of the diesel after this CTP and the 4-19-90 LER.

-- A problem with the Control air system (low control air pressure < 41 psi.) caused a "Maintenance Lockout alarm" between start 145 and 146.

8-9-93 ----- Southern Nuclear redefines the CTP again.

In its response to Interrogatories from the NRC in proceeding ASLBP No. 93-671-01-OLA-3 Southern Nuclear stated in response to Question 1 " The "test program" which is referred to in the sentence from the April 19, 1990 LER and Quoted in interrogatory no. 1, was intended by Mr. Bockhold to refer to the testing of the diesel control system which did not require diesel starts . i.e., the calibration of the Calcon sensors and the logic testing of the control systems." This late date explanation that Bockhold really meant on 4-19-90, that the CTP was sensor and logic testing not requiring diesel starts belies reason. Bockhold reviewed and personally signed off on the draft revision, from PRB meeting 90-86, to the LER 90-006 that clarified the point of counting starts, ("Subsequent to this test program"), to begin with start 163 for Diesel A and start 142 for Diesel generator B.

If Bockhold had indeed believed Southern Nuclear's 6-9-93 definition of the CTP in 1990, no revision of the LER start count statements would have been warranted. Thus Bockhold

did not hold in 1990 that the CTP ended before starts 148 and 137 and further believed that start 148 and 137 were too early in the sequence to claim completion of a comprehensive test program. Notwithstanding the above, for the 8-9-93 definition:

FOR DIESEL GENERATOR A -----CTP ended before start 148
3-30-90 @ 19:20

--The first problem with this definition is that there was testing "which did not require diesel starts, i.e., the calibration of the calcon sensors" ect. performed after start 148.

From the IIT report NUREG 1410 page J-10, the jacket water temperature switches ITSH-19111 and 19112 caused DG1A to trip on 3-30-90. Quoting from the report, "A jacket water temperature malfunction alarm was received when the emergency diesel generator was started"----- "the trip confirmed that a problem existed in one of the other sensing lines or sensors". The report then states "Sensors ITSH-19111 and 19112 were Quarantined by the Team and were replaced later on March, 31 1990. The leak testing on the jacket water sensing lines was completed after the new sensors had been installed". MWO's 19001883 and/or 19001863 are believed to document the calibration of these Calcon sensors. Vogtle MWO's are initiated sequentially and No's 19001883 and /or 19001863 are after 19001576 referenced in Southern Nuclear's interrogatory response. NUREG 1410 further describes activities of the still ongoing efforts in calibrating the calcon sensors on April 2, 1990 and the discovery of a new aspect of the CALCON calibration problems, a loose spacer tube. According to NUREG 1410 page J-25 " The effect of the spacer tube loosing is to lower the trip setpoint".

It appears that the latest 8-9-93 definition of the CTP is yet another false statement by Southern Nuclear.

--The second problem with this definition is that there were 4 tests of the diesel before start 148 that required starting of the diesel.

--The third inconsistency is that there were 21 starts between this CTP and the 4-9-90 presentation as opposed to the 18 shown on the transparency.

FOR DIESEL GENERATOR B----- CTP ended before start 137

--- The first problem with this definition is that there were 12 test of the diesel before start 137 that required starting of the diesel.

--- The second problem with this definition is that the number of starts known to have occurred between 4-9-90 and 4-19-90 by the participants to the 4-19-90 conference call was 2 starts. The 2 start difference was stated to the call participants by Aufdenkampe. Therefore with both the definition of the CTP and the knowledge of the number of starts between 4-9-90 and 4-19-90 known at the time on 4-19-90 was 2, Bockhold should have concluded that there were only 14 starts after the CTP and 4-19-90.
-- Participants probably didn't know about the starts that were occurring on 4-19-90 at the time they formulated the language.

THE BASIS OF RELIABILITY FOR DIESEL GENERATORS

The NRC requires that a plant's diesel generators have a reliability of 95% per diesel. This is required by Generic Letter 84-15. NRC Branch technical Position EICSB 2, "Diesel Generator Reliability Qualification Testing" dated 11-24-75 of the Standard Review Plan Appx 7-A of NUREG 75-087, further requires that a plant's diesel generator system have a 99% reliability at a 50% confidence level.

NRC recognizes only "Valid successful tests"

The NRC only recognizes "valid successful tests" per Regulatory Guide 1.108 to establish reliability of diesel generators.

No matter how Southern Nuclear now defines its "Comprehensive test program" there was only 1 valid successful test of the A diesel and 2 valid successful tests of the B diesel after the site area emergency and 4-9-90. This few tests only establishes a 50% and a 71% reliability at a 50% confidence level respectively as defined by NRC regulations, far too few for the NRC to grant permission to allow resumption of power operations on 4-12-90.

By 4-19-90 diesel generator A had completed only 6 valid successful tests and diesel generator B had completed 7 valid successful tests. These few tests establishes only a 89% and a 91% reliability respectively.

It requires 14 consecutive successful valid tests without problems of failures to achieve the 95% reliability at a 50% confidence level on a diesel as required by NRC regulations.

Southern nuclear's "successful starts" are illegitimate

Notwithstanding the NRC's recognition of only "Valid successful tests", the tests that Southern Nuclear included

in the counts of starts without "problems or failures" is scientifically illegitimate in attesting to reliability for Vogtle's diesel generators after the site area emergency. Southern Nuclear's tests numbers include runs of the diesel for as little as 60 sec. duration as well as tests without having any load on the diesel generator. Because the root cause of the failure of the diesel in the site area emergency was misoperation of the Calcon jacket water temperature switches due to downward setpoint drift of the high temperature trip, it was scientifically essential that the diesel tests reached the steady state and maximum jacket water temperatures to manifest the problems. In other words running a diesel unloaded for a few minutes will not cause the coolant (jacket water) to heat up significantly and thus not approach the CALCON Jacket water Hi-Temp trip setpoint (required to be 200 F \pm 4 F), even if the setpoint has drifted dangerously low as 186 F as was found on the Quarantined DG1A switch that tripped the diesel during the site area emergency. Jacket water in a stopped diesel may be as low as 150 F. Heating of only a few degrees from this point would be expected from short unloaded runs, thus never challenging and exposing the hidden safety problem. Therefore all these short unloaded tests are meaningless in attesting to the Vogtle diesel reliability.

Fifteen (15) out of the 26 tests on DG1A occurring between Southern Nuclear's latest (8-9-93) CTP definition and 4-19-90 were unloaded and less than 10 minutes. Six (6) out of the 18 tests on DG1B occurring between the the latest CTP definition and 4-19-90 were unloaded and less than 10 minutes.

To include these tests as attesting the diesel reliability is improper and illegitimate from an engineering perspective.

Whatever point Southern Nuclear claims ended the comprehensive test program, reliability can not be established until the trouble shooting was complete, design changes incorporated, and the root cause corrected.

It makes no engineering sense to take credit for consecutive successful tests to attest to reliability before the underlying problems were corrected.

The underlying problem that tripped the Diesel generator was the Calcon switches. The underlying problems with the Calcons were determined to be calibration techniques, dirt and debris in the switches from installation techniques, loose spacer tubes, orifice sizing, and leaking pneumatic air lines.

The correction of these problems was not complete by start 148 and 137 as claimed by Southern Nuclear.

According to NUREG 1410 Appendix J Section 3, the "Troubleshooting for root cause of the emergency diesel generators trips" did not complete until the conduct of the 6 month operability test, start 164 for diesel A and start 143 for diesel B.

MATERIAL FALSE STATEMENTS BY OMISSION

Southern Nuclear admits they never informed the NRC that the "successful starts" in their presentations were not a result of "valid tests".

Southern Nuclear never informed the NRC that among the "successful starts" and starts without problems and failures were a large fraction of the tests of extremely short duration, unloaded, and of no real value in demonstrating reliability.

Southern Nuclear failed to inform the NRC in their written and oral presentations on 4-9-90 and 4-19-90 of the continuing diesel generator trips and problems that were potentially associated with the root cause of the Site Area emergency.

Southern Nuclear failed to inform the NRC that the 4-9-90 presentation and COA were false promptly upon recognition of that fact by their senior management.

15

The above examples portray the operations approach to schedule versus compliance. The following is a quote made by an operations superintendent and a OSOS on 3-22-90 at 8:00 PM EST in the small conference room of the Vogtle Service Building at the end of the evening OSOS meeting. Approximately 20 personnel were in attendance.

Ops. Supt.-- "We've got a lot of work to do."

OSOS -- "It can be done - as long as you
can take the LER's."

Plant Vogtle has one of the highest LER rates in the Region but also has one of the highest capacity factors in 1989 as well as some of the shortest outages. These statistics may be related. The cost of a LER is small. The value of at power hours and critical path outage time is high. The above examples and statements from such high level operations personnel suggest that this relationship is not only recognized but in practice at Vogtle.

Management rewards the non-conservative and questionable compliance practices with praise for meeting schedule and takes no action to critically investigate these events, discipline the responsible personnel or reverse the dangerous course that Vogtle is on. These occurrences are reminiscent of 1987 when the drive for schedule overrode safety, conservatism, and regulation.

16

AL CHAFFEE, IIT TEAM

AIR QUAL — \$ MEMO TO BOCK
"BLOWN OFF"

DIESEL STARTS — MEMO TO BOCK
\$ MEMO 4/30 → "CONFIRM YOUR INFO W/OPS
— "DONE" — CONF

REVISE LER?

SITE EMERG.
(LER HAD FALSE
4/19/90 ELV 01545

COA LTR
WRITTEN BY CORP.
W/O SITE INVOLV.
ISSUED ON 4/9
4/10 — ~~MEMO~~ TO GEO,
LER 4/19

4

CORRECTED LER

SENT TO CORP

5/15

HAS YET TO

BE ISSUED OUT

OF CORP.

LOTS OF PHONE CALLS BACK & FORTH

NOW HAVE INSTRUCTIONS

TO TOTALLY REWRITE

LER

- COA RESPONSE
- LER — MAT'L FALSE — ^{PROB} CARELESS DIS.
- VERBAL PRESENT. @ REGION / ^{WILFULL & INTENT} MISLEADING ^{DIESEL} ISSUE

HAIRSTON ORDERED QA AUDIT (THIS PAST MONDAY)
OF DIESEL START LOGS -

REWRITE OF LER BEING
DONE BY TOM WEBB

STILL RELIABILITY PROB W/ DIESELS

TWO WEEKS AGO
B MACHINE EXHIBITS SAME FAILURE
CHAR. OF A

PUT. NEW RECAL^{TEMP.} SWITCHES
ON & GOT TRIPS
DECLARED LCO & INOP.
PUT OLD SWITCHES BACK ON

17

KOHN, KOHN & COLAPINTO, P.C.
ATTORNEYS AT LAW
817 FLORIDA AVENUE, NW
WASHINGTON, DC 20001
(202) 234-4663

MICHAEL D. KOHN**
STEPHEN M. KOHN***
DAVID E. COLAPINTO***

OF COUNSEL:
DANIEL I. O'BRYEN**
ANNETTE R. KRONSTADT*

TELECOPY REQUEST FORM

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CLIENT CASE NO. _____



IN THE MATTER OF

ALLEN MOSBAUGH,

Complainant

v.

GEORGIA POWER COMPANY,

Respondent

Date: September 4, 1990

Case No: 90-ERA-58

ORDER GRANTING MOTION TO COMPEL

Respondent, on August 31, 1990, moved for an Order compelling Complainant to submit to a deposition and to produce documents on the grounds that Complainant's twice scheduled deposition has been postponed and that Movant has cause to believe that Complainant's deposition, now scheduled for September 7, 1990, will also be postponed.

Respondent asserts that, since approximately one-half of the time available for discovery has been dissipated by Complainant's delays, it has been prejudiced in the preparation of defenses. I agree. While the schedules of busy attorneys are not overlooked, prosecution of this expedited case should not have been accepted unless it neatly fit within Counsel's available time. Respondent's right to depose Complainant and to obtain relevant documents is beyond question and any further attempt to hinder or interfere therewith invites the imposition of harsh sanctions. Thusly, Repondent's Motion To Compel is well taken and must be favorably entertained.

WHEREFORE, IT IS ORDERED that, unless Counsel agree to the contrary, Complainant shall appear for the taking of his deposition by oral examination and he shall produce specified, relevant documents on September 7, 1990, pursuant to Notice issued on August 30, 1990. Complainant's failure to comply herewith and/or to cooperate fully in discovery shall constitute sufficient grounds to dismiss this case and to institute proceedings authorized and contemplated by 29 C.F.R. 18.29(b).

Bernard J. Gilday, Jr.
BERNARD J. GILDAY, JR.
ADMINISTRATIVE LAW JUDGE

15

07.27 9-13-90

Fax to: Larry Robinson

NRC Office of Investigations

Please hand deliver immediately

617

265 PM

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Allen Mosbaugh, :
v. : Case No. 90-ERA-58
Georgia Power Co. :

MOTION FOR PROTECTIVE ORDER

Comes now, complainant and hereby requests a protective order concerning the production of tape recordings.

On September 12, 1990, this Court issued its order to compel production of certain tape recordings. Complainant did not find out about this order until late in the day, when a copy was provided by respondent. At or about 7pm, complainant's counsel returned to his hotel room and for the first time retrieved a message from a representative of the Nuclear Regulatory Commission (NRC) Office of Investigations (OI). Mr. Kohn contacted the NRC official at his residence. At that time the NRC official informed Mr. Kohn that he had not as of yet obtained or reviewed a copy of the September 12, 1990 Order issued by this Court, but that the NRC's OI wished to subpoena Mr. Mosbaugh's tape recordings because the NRC had been advised that certain portions of said tapes concerned on-going criminal investigations or investigations into alleged illegal conduct on the part of respondent.

The NRC further requested that complainant not turn over tape recordings of the conversations between Mr. Mosbaugh and the NRC because such conversations are covered under an express grant of confidentiality granted Mr. Mosbaugh by the NRC and because release of such tapes would interfere with an on-going investigations of illegal conduct (including additional allegations which have not as of yet been disclosed to respondent by either the NRC or complainant).

The NRC OI stated that a subpoena or other legal documentation would likely be served on complainant sometime before midnight, September 13, 1990 or that some form of protective order might be filed by the NRC with this Court. The NRC requested and were given Mr. Mosbaugh's "beeper" number so they could immediately notify him orally as soon as a subpoena would be issued and they further requested that complainant honor oral notice of the existence of such a subpoena as soon as such notice was provided to Mr. Mosbaugh.

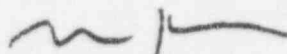
Complainant notes that tapes related to the truth or veracity of Mr. Mosbaugh's allegations are altogether irrelevant to this proceeding. Moreover, the conversations many or all of the conversations with the NRC occurred after the above-captioned case was filed with the Department of Labor. As such, respondent is not entitled to tape recording related to the veracity of the allegations OI is currently investigating, particularly inasmuch as a confidentiality agreement exists between complainant and the NRC.

Moreover, respondent stated on the record during the course of Mr. Mosbaugh's deposition that the cutoff date on discoverable matters in this case (because it was not consolidated with a subsequent complaint pending with the Wage and Hour Division) would be the date of the complaint filed in the above-captioned case (indeed, after that fact was discussed, Mr. Kohn agreed to cancel a deposition of Mr. Lee Glenn after Mr. Schaudies observed that involvement in this case began after the complaint was filed). Thus, tapes created after the filing of the complaint which are irrelevant to the allegations contained in the complaint should be excluded from the ordered production.

Moreover, tapes between Mr. Mosbaugh and his attorneys are also included in the tapes ordered to be produced. These tapes have not been identified and production of all of the tapes would result in the inadvertent disclosure of attorney-client conversations.

WHEREFORE, complainant requests that production of the tapes be placed in abeyance until Monday, September 17, 1990 so complainant can: 1) physically locate and exclude the tape recordings of conversations between him and the NRC and between him and his counsel; 2) so that the NRC can intervene or otherwise seek a protective order in this proceedings before disclosure of critical facts related to the on-going investigation would occur by the immediate transmission of the tapes to respondent.

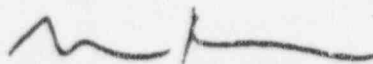
Respectfully Submitted,



Michael D. Kohn
517 Florida Ave., NW
Washington, D.C. 20001

Certificate of Service

I certify that a copy of the foregoing was hand-delivered on Jesse Schaudies this 13th day of September 1990.



19

19

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DECLARATION OF LARRY L. ROBINSON

I, Larry L. Robinson, do hereby declare that the following is true and correct, under penalty of perjury, to the best of my ability.

1. My name is Larry L. Robinson. I am employed as an Investigator with the Office of Investigations, United States Nuclear Regulatory Commission. My duties include the conduct of investigations of licensees, applicants, their contractors or vendors, including the investigation of all allegations of wrongdoing by other than NRC employees and contractors.
2. I make these statements based upon my own personal knowledge, or upon knowledge obtained by me during the course of my employment, and is relied upon by me in the performance of my official duties.
3. The Office of Investigations (OI), Region II (RII), NRC, currently has two pending investigations regarding allegations of intentional wrongdoing on the part of Georgia Power Company (GPC) Managers at the Vogtle Electric Generating Plant (VEGP). These investigations basically involve allegations of deliberate Violations of Technical Specifications, and Material False Statements. If these allegations are substantiated, they could constitute violations of NRC regulations enacted to protect the public health and safety. In addition, a recent Special Inspection, conducted by NRC at VEGP during the period August 6-17, 1990, addressed additional related allegations of wrongdoing by GPC Management at VEGP that will, in all likelihood, be referred to OI in the near future.
4. On September 12, 1990, Stephen Kohn, of the Law Offices of Kohn, Kohn, and Colapinto, telephoned me and advised me that their client, Allen L. Mosbaugh, a GPC employee at VEGP, was in possession of audio tape recordings that he, Mosbaugh, had made of conversations with VEGP Managers that may be pertinent to the ongoing NRC investigations/Special Inspection. Kohn advised me that Mosbaugh had been officially ordered to turn these tapes over to the Law Offices of Troutman, Sanders, Lockerman, and Ashmore, representatives of GPC in a Department of Labor (DOL) Case, No. 90-ERA-58, initiated by Mosbaugh. Kohn stated that his understanding was that Mosbaugh was going to have to over these tapes on Sept. 13, 1990.
5. Allen L. Mosbaugh had been interviewed by me on February 8, 1990, during the course of my investigation of one of the aforementioned allegations.
6. On September 12, 1990, I telephoned Mosbaugh, and he verified that he did make such tape recordings, that he was in possession of them, that he had been ordered by a DOL Administrative Law Judge to turn them over to the Troutman, Sanders Law Firm. Mosbaugh told me that, in his opinion, some of these tapes show evidence of intentional wrongdoing on the part of GPC Management at VEGP, and GPC Management at the offices of SONOPCO Project, Birmingham Alabama, in connection with the allegations in the ongoing OI investigations and the Special Inspection.
7. Also on September 12, 1990, in response to my message, Michael Kohn, also with the Law Firm of Kohn, Kohn, and Colapinto, telephoned me at my residence and advised me that his client, Mosbaugh, per an order from DOL Administrative Law Judge Bernard J. Blday, Jr., was required to turn over the tapes to the

GPC attorneys by midnight, September 13, 1990. Michael Kohn said that he had not been able to personally review all the tapes, but that it was his understanding from conversations with his client that there was evidence of wrongdoing on the part of GPC Management, pertaining to the ongoing investigation/Special Inspection issues, contained in the conversations on the tapes. Kohn stated that his client would be willing to turn the tapes over to NRC for review for evidentiary purposes. Kohn stated that he would prefer to have the NRC subpoena the tapes.

8. The Office of Investigations has reasonable cause to believe that these tapes contain direct evidence of intentional violations of regulatory requirements by GPC personnel that pertains to ongoing NRC investigations/inspections.

9. OI has reasonable cause to believe that the review of these tapes by GPC personnel, or their representatives, prior to the completion of the aforementioned investigations, would severely compromise the integrity of these investigations.

Further, declarant sayeth naught.

Dated this 13th day of September, 1990 at Atlanta, Georgia.


Larry V. Robinson

20

6/27/90

SEP. LTR TO EBNETER

KITCHENS PUBLIC CRITICISM OF \$'S PERF.
IN BIG MEET W V.P.

LICENSEE REF. STUFF COMES THRU \$
DON'T KNOW IF EB TOLD HAINSTON/ROCK

2ND VALUE ALLEG (^{HAND} DEL. TO RES'S)

VALUES NOT LOCKED

KITCHENS CHARADE ABOUT NOT
KNOWING WHERE VALUES EVEN
WERE. ^{TO AUFDENKAMPE (IN CASH'S)}

CASH - DOCI ALTERATION

LTR FROM ROCK 11/3

ABOUT SENIORITY OF OSOS'S
RELATES TO CARTER AS OSOS "TRUE LER'S"

CHANGE TO LER (PT, F. 4)

USE OF "VALID" IN CHANGE - APPLIES TO
NOT A "LAYMAN START" ORANGES

IF ORIG LTR
STATED IN VALID
TERMS - WOULD
LOOK BAD

HAIRSTON,
SHIPMAN, STRINGFELLOW, MCCOY, BOCKHOLD
AUF.

MADE
THEM AWARE OF DISCREP. IN
D.G. FAIL - BEFORE
REV ~~Q~~ OF LER
WRITTEN

MCCOY
CALLED BROCKMAN
DURING CONF. CALL
TOLD HIM ABOUT

GB & CASH DID "REV" OF START
DATA

INTIM INDIC - IN REV'D LTR
FROM BOCKHOLD RE
SPLIT PRB DECIS

FORMER
T.S. INTERP
SAYS "72 HR
LCO"
WHEN SEQUENCED
OUT

INTERP NOW "ONE"
ENGR'S

GEO. "BLOWING OFF"
PRIOR SEQUENCED
OUTAGES

TUES - FORCED MEET W BOCK & ROGGE
11:00 AM (WON' UARM.
PRB DECIS)
THURS OF LAST WEEK

LEE GLEN, CORP QC PROG
BILL LYONS, SITE QC "

NEW, HIGHEST PRIOR, SPEC. ASSIGN.

WAS TO WORK WITH LEE GLEN

ON "OTHER CONCERNS" (MENTIONED ON
TUES.)

MET W GLEN @ 1:00 THURS
UNTIL QUIT TIME

TALKED ABOUT ALREADY
EXISTING

WILL PROB. TALK MORE ABOUT
EXISTING ID'D CONC'S, BUT

WILL TELL GLEN THAT HE

"PLANS" TO PURSUE OTHER
ISSUES WITH NRC.

21

MOSBAUGH 10/14 ON MAJORS

BHAM

LIC. ENG - BHAM

J. G. AUF WOULD HAVE
HAD MOST CONTACT

CASH : BACHELOR'S FROM ~~6~~
NO ADVANCED
DEGREE

=

MOSB 10/14

22

KOHN, KOHN & COLAPINTO, P.C.
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MICHAEL D. KOHN**
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DAVID K. COLAPINTO**

OF COUNSEL:
DANIEL I. DEHTOY**
ANNETTE R. KRONSTADT*

March 22, 1991

* ADMITTED IN PA
* ADMITTED IN NJ
* ADMITTED IN DE
* ADMITTED IN MA

CONFIDENTIAL

Via Facsimile

Larry Robinson
Office of Investigations
U.S. Nuclear Regulatory Commission

Dear Mr. Robinson:

While reviewing depositions taken earlier during Mr. Allen Mosbough's Section 210 case, I have found evidence demonstrating, at a minimum, that Mr. R.P. McDonald made a false statement regarding his knowledge about the NRC-OI investigation into the "mid loop" issue.

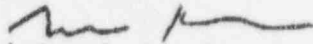
Attached hereto, are excerpts of deposition transcripts of Mr. Arthur Domby and Mr. R.P. McDonald. The depositions were taken under oath. See, McDonald Depo. Tr. at p. 4 and Domby Depo. Tr. at p. 4.

Mr. Domby testified that he first learned of the NRC-OI "a few days prior to...January 30th when the first interviews were held," and that he learned of it from "Mr. R. Patrick McDonald." Domby Depo. Tr. at p. 6. Mr. McDonald apparently testified falsely when he stated that the first he learned about the NRC-OI investigation was "when the OI investigator came to Plant Vogtle." McDonald Depo. at 19. Mr. McDonald stated that his "starting knowledge" of the investigation commenced when the "OI inspector came on site." Id., at p. 22.

My clients, Mr. Allen L. Mosbaugh and Mr. Marvin B. Hobby, request that NRC-OI investigate whether Mr. McDonald knowingly made a false statement under oath (i.e. whether he, in fact, had knowledge of NRC-OI's investigation prior to NRC-OI's arrival on site).

On behalf of Messrs. Mosbaugh and Hobby, I remain

Sincerely,


Michael D. Kohn

65b/rob

1 BEFORE THE UNITED STATES DEPARTMENT OF LABOR
2 UNITED STATES OF AMERICA

3 ALLEN MOSBAUGH,

4 Complainant,

5 vs.

6 GEORGIA POWER COMPANY,

7 Respondent.

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) CASE NUMBER:
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) 90-ERA-58
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14 DEPOSITION OF
15 ARTHUR H. DOMBY
16 - - -
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23 BULL & ASSOCIATES
24 COURT AND DEPOSITION REPORTERS
25 4651 Roswell Road, N.E., Suite F-504
 Atlanta, Georgia 30342
 (404) 256-2886

 BULL & ASSOCIATES

Deposition of ARTHUR H. DOMBY,
taken on behalf of the Complainant,
before Susan E. Reynolds, Registered
Professional Reporter, Certified
Court Reporter and Notary Public, at
127 Peachtree Street, N.E., Atlanta,
Georgia, commencing at approximately
10:15 a.m., Monday, September 17,
1990.

1 APPEARANCES OF COUNSEL:

2 FOR THE COMPLAINANT:

KOHN, KOHN & COLAPINTO, P.C.

3 By: Michael D. Kohn

Attorney at Law

4 517 Florida Avenue, N.W.

Washington, D.C. 20001

5 and

Sandra Michaels

6 Attorney at Law

40 Marietta Street

7 Suite 1720

First Federal Building

8 Atlanta, Georgia 30303

9 FOR THE RESPONDENT:

10 TROUTMAN, SANDERS, LOCKERMAN & ASHMORE

11 By: Jesse P. Schaudies

Attorney at Law

12 127 Peachtree Street, N.E.

Atlanta, GA 30303-1810

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17 ARTHUR H. DOMBY,

18 being first duly sworn, was deposed and
19 testified as follows:

20 EXAMINATION

21 BY MR. KOHN:

22 Q Mr. Domby, could you please state
23 your full name for the record?

24 A Arthur Howard Domby.

25 Q Who is your current employer?

1 A I am currently self-employed as a
2 partner at Troutman, Sanders, Lockerman and
3 Ashmore.

4 Q Mr. Domby, did you represent Mr.
5 Mosbaugh personally during an NRC Office of
6 Investigation investigation?

7 A I did.

8 Q When did you commence representing
9 Mr. Mosbaugh?

10 A Relative to what?

11 Q When was the first time you ever
12 represented Mr. Mosbaugh?

13 A It was sometime in 1987.

14 Q And what representation was that?

15 A Mr. Mosbaugh was interviewed in an
16 NRC office of investigations matter concerning
17 security events. I think the matter you're
18 referring to is a February 8th, 1990 interview
19 with Mr. Mosbaugh by the NRC Office of
20 Investigations.

21 Q And you represented Mr. Mosbaugh at
22 that time also?

23 A Individually that's correct.
24 They're two separate matters.

25 Q Other than OI investigations have

1 you represented Mr. Mosbaugh in any other
2 matters?

3 A No, I have not.

4 Q When did you learn OI was coming on
5 site to do an investigation?

6 MR. SCHAUDIES: Are you
7 referring to 1990?

8 MR. KOHN: Yes. The February
9 1990 investigation.

10 A The specific date I am not exactly
11 sure of. It was a few days prior to, I
12 believe, January 30th when the first interviews
13 were held.

14 Q (By Mr. Kohn) How did you learn of
15 the investigation?

16 A My client, Georgia Power, called me.

17 Q Who in particular?

18 A Mr. R. Patrick McDonald. He's
19 executive vice president of Georgia Power.

20 Q And prior to speaking with Mr.
21 McDonald had you heard of any possibility of
22 there being an OI investigation?

23 A No, I had not.

24 Q Prior to your conversation with Mr.
25 McDonald did anyone at Georgia Power Company

1 anticipate an investigation?

2 MR. SCHAUDIES: I'm going to
3 object to the form of the question.

4 MR. KOHN: I'll withdraw that.

5 Q (By Mr. Kohn) When did you first
6 meet Mr. Mosbaugh with relation to the February
7 1990 OI investigation?

8 A It began January 30th or thereabouts
9 in terms of my knowledge. The manner?

10 Q Right.

11 A I believe it was February 8th.

12 Q Do you recall where you met with Mr.
13 Mosbaugh?

14 A Yes. It was on the second floor of
15 the administrative building at Plant Vogtle
16 near Waynesboro, Georgia.

17 Q All right. Was this prior to Mr.
18 Mosbaugh's giving a statement to the NRC?

19 A Yes, it was.

20 Q How long did that meeting last?

21 A Somewhere in the order of 15 minutes
22 to a half an hour.

23 Q Is there any place in particular on
24 the second floor of the administration
25 building -- or where did you meet there?

1 BEFORE THE UNITED STATES DEPARTMENT OF LABOR
2 UNITED STATES OF AMERICA

3 ALLEN MOSBAUGH,)

4 Complainant,)

5 vs.)

6 GEORGIA POWER COMPANY,)

7 Respondent.)
8
9

CASE NUMBER:

90-ERA-58

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14 DEPOSITION OF
15 ROBERT PATRICK MCDONALD
16 - - -
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23 BULL & ASSOCIATES
24 COURT AND DEPOSITION REPORTERS
25 4651 Roswell Road, N.E., Suite F-504
Atlanta, Georgia 30342
(404) 256-2886

BULL & ASSOCIATES

1 Deposition of ROBERT PATRICK
2 MCDONALD, taken on behalf of the
3 Complainant, before Susan E.
4 Reynolds, Registered Professional
5 Reporter, Certified Court Reporter
6 and Notary Public, at 127 Peachtree
7 Street, N.E., Atlanta, Georgia,
8 commencing at approximately 2:30
9 p.m., Monday, September 17, 1990.
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4 By: Michael D. Kohn

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16 TRUTMAN, SANDERS, SCHAUDEL & ASHMORE

17 By: Jesse P. Schaudies

18 Attorney at Law

19 127 Peachtree Street, N.E.

20 Atlanta, GA 30303-1810

21 - - -

22 ROBERT PATRICK McDONALD,

23 having been first duly sworn, deposed and
24 testified as follows:

25 EXAMINATION

BY MR. KOHN:

Q Mr. McDonald, could you state your
full name for the record?

A Robert Patrick McDonald.

Q And you're currently employed by
Georgia Power Company?

1 Company's nuclear power plants?

2 A I am not the chief operating
3 officer..

4 Q Who would that be?

5 A There isn't such a position.

6 Q Who is ultimately responsible for
7 the day-to-day operation of the nuclear power
8 plants of Georgia Power Company?

9 A I'm responsible to Bill Dahlberg who
10 is the chief executive officer and he has not
11 designated a chief operating officer with
12 functions so defined.

13 Q Mr. McDonald, you are aware that
14 there was an OI investigation in January,
15 February of 1990; is that correct?

16 A There was an OI investigation. I am
17 not certain of the dates.

18 Q And that OI investigation concerned
19 the opening of certain valves, dilution valves,
20 during mid-loop of the facility?

21 A That's correct.

22 Q How did you first learn about the OI
23 investigation?

24 A When the OI investigator came to
25 Plant Vogtle.

1 Q When was that?

2 A I don't remember, whenever the first
3 day he came and announced that he was looking
4 into it.

5 Q There was no prior notice? No phone
6 call?

7 A No.

8 Q One day an OI investigator showed up
9 at Georgia Power Company's doorstep?

10 A Correct.

11 Q Did they show up at the site?

12 A Correct.

13 Q Were you at the site at that time?

14 A No.

15 Q You were in your office?

16 A I don't remember where I was.

17 Q Well, who told me he had shown up
18 on site?

19 A Well, I don't remember specifically
20 who told me.

21 Q Did they conduct interviews the
22 first day they showed up on site?

23 A I don't know. If I did know it
24 once, I don't remember.

25 Q You were aware of the timing of the

1 dilution valves prior to the OI's
2 investigation?

3 A No.

4 Q The first time that you learned that
5 there was any issue relating to any possible
6 violation of technical specifications regarding
7 opening of the dilution valves was when you
8 learned of the OI investigation?

9 A That's correct.

10 Q And you no longer know who told you
11 about it or the date that occurred?

12 A I don't remember.

13 Q If you looked at your calendar
14 would that refresh your recollection?

15 A It would not.

16 Q What did you do after you learned
17 about the OI investigation?

18 MR. SCHAUDER: I'm going to
19 object to the form of the question.
20 What did you do after you learned
21 with regard to what?

22 MR. KOHN: The OI investigation.

23 A What did I do?

24 Q (By Mr. Kohn) What was your
25 use to learning of the OI investigation?

1 A I became aware of it.

2 Q Excuse me?

3 A I became aware of it.

4 Q Did you tell Mr. Hairston about it?

5 A He probably knew about it already.

6 Q Did you have a meeting about the OI
7 investigation?

8 A Not that I remember.

9 Q Did you speak with Weinstein and
10 [redacted] about the OI investigation?

11 A I don't remember.

12 Q Did you speak to Mr. Kitchens about
13 the OI investigation?

14 A Not that I remember.

15 Q Were you aware that Mr. Kitchens was
16 suspected of opening the radiation valve?

17 [redacted] to the
18 first [redacted] at [redacted] the OI [redacted] [redacted]

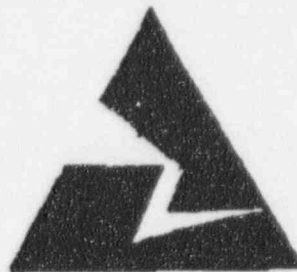
19 [redacted] That was my
20 starting [redacted] of the issue.

21 Q Well, after you learned about it did
22 [redacted] or meet with Mr. Skip
23 [redacted] OI investigation?

24 [redacted] did not.

25 [redacted] state to Mr. Skip [redacted]

23



GEORGIA POWER COMPANY
Inverness Building 40
P.O. Box 1295
Birmingham, Alabama 35242

REC'D 6/13/91
FROM A.
MOSBAUGH,
JRR

TELECOPY COVER SHEET

SONOPCO-VOGTLE -- 4TH FLOOR
Telecopier: (205)-877-7885
Verfiy : (205)-877-7897

DATE: August 29, 1990
NUMBER OF PAGES: 13
(Excluding Cover Page)

RECIPIENT: Please notify us if you have problems receiving this telecopy.

FROM:
NAME: Lewis Ward
EXTENSION: 7802
LOCATION: Inverness

TO:
NAME: George Bockhold
EXTENSION: 3118
LOCATION: Admin Bldg.
Plant Vogtle
TELECOPIER J:

SENDER: Should this document be returned to you after it has been sent?

XX YES

___ NO

COMMENTS:

SUMMARY OF DIESEL GENERATOR

PRESSURE SENSOR (CALCON) PROBLEMS AT VOGTLE

- A. Statement of Problem: NUREG-1410 lists _____ Calcon pressure switch problems, which far exceeded industry experience. This precursor indicator to the 3/20/90 event had not been adequately addressed.
1. Pressure Switch Out-of-calibration problems:
 - . 12 DG pressure switches have been out-of-calibration and have required readjustment over the lifetime history of Vogtle from NUREG-1410.
 - . This covers a population of 24 sensors (6 on each of 4 engines), over a lifetime of about 92 sensor-years.
 - . Typical out-of-calibration values range from _____ to _____ psig.
 - . This data does not reveal any unexpected results based on the device type (hydraulic-pneumatic), setpoint drift amount, or frequency. Thus, a formal root cause evaluation would not be warranted.
 2. Pressure Switch (Defective) problems:
 - . 5 pressure switches were replaced (prior to 3/26/90) due to being termed "defective" by the technician.
 - . For 4 of these sensors, no reason for the failure was determined.
 - . After the 5th "failure" (P-3 relay removed from DG 1A on 3/25/90 as part of post-event troubleshooting), the switch was sent to Cooper Industries for failure root cause determination. The sensor was determined to be operating properly.
 - . Subsequent to the 3/20/90 event, all 3 low lube oil pressure switches were removed from the 1A DG to investigate a sensor malfunction alarm that had occurred during the event. The switches were tested by Cooper Industries on May 30 and 31, 1990 with the following results:
 - A. The "B" and "C" switches were operating properly and were set correctly.
 - B. The "A" switch was stuck in the tripped condition. This condition was stated by Cooper to be the same as reported by Cooper's 10CFR21 report addendum of May 12, 1988. The Part 21 states "Devices that are already installed and operating after several hours between tests have demonstrated their reliability. IMO Delaval recommends that all devices not installed, or that are installed but have not operated for several hours between tests, be returned to IMO Delaval for remachining, inspection and testing."

- C. In 1988 VEGP reviewed this Part 21 and returned all spare sensors for rework. Installed sensors were not returned since they were believed to have met the reliability conditions stated in the Part 21.
- D. Following the May 31, 1990 testing results from Cooper, modified switches were ordered to replace all installed Calcon pressure switches. These switches (6 per engine) were received, calibrated and installed; with the last DG completed on June 15, 1990.
- E. Cooper was requested by Georgia Power Company to clarify the original Part 21 notification. On June 8, 1990, Addendum 3 was issued stating:

"Our recommendation of May 12, 1988 may have been confusing and in light of this failure after 9 years, it is appropriate to restate our recommendation. Cooper Industries recommends that all pressure sensor devices, Cooper P/N F-573-156, be modified or replaced by devices identified as Calcon P/N B4400B."

B. Root Cause

- . A design deficiency existed in the Calcon pressure switches. Replacement switches had not been installed due to mis-interpretation on the May 1988 Part 21 notice.

C. Corrective Action

- . All Calcon pressure switches have been replaced with the improved model within the last 6 months.
- . The Part 21 was reissued for clarification.

D. Significance of Problem

- . None in fact. Multiple simultaneous failures were unlikely, but could have rendered one or more DG inoperable.

E. Conclusion:

- . Georgia Power Company took prompt actions to identify and correct the observed switch failure in 1990.

SUMMARY OF DIESEL GENERATOR

TEMPERATURE SENSOR (CALCON) PROBLEMS AT VOGTLE

- A. Statement of Problem: NUREG-1410 lists _____ Calcon temperature switch problems, which far exceeded industry experience. This precursor indicator to the 3/20/90 event had not been adequately addressed.
- . Following the 3/20/90 event, all 3 Jacket Water Temperature Switches were removed from the 1A DG for testing.
 - . A test program to determine the as-found condition and failure mechanism of these switches was developed. The purposes of the test were:
 1. Determine the reliability and potential failure mechanisms of two new sensors.
 2. Determine the cause of failure of the installed switches.
 - . This test program was conducted at Wyle Laboratories in Huntsville, Alabama from 4/23/90 to 5/4/90. Copies of the report were furnished to the NRC and all TDI Owners through the Owners Group. Pertinent conclusions from this test program include:
 1. Insufficient temperature stabilization period prior to calibration - The sensor exhibits a setpoint shift as the sensor body and internal components change temperature. Note: Failure to recognize this phenomena and properly compensate for it during switch calibration was a contributing cause of one switch trip on DG 1A on 3/20/90, and subsequently on DG 1B on 5/22/90 during switch replacement. Note: This phenomena is undesirable in a sensor that is designed to sense temperature.
 2. Contaminants on the temperature sensor (tip) - Direct immersion of the sensor tip in a calibration bath can result in residue buildup that can affect the setpoint. Although this is not a standard practice, isolated cases may have occurred during previous calibrations, which could have contributed to the numbers on the chart.
 3. Water bath heatup rate - A slow, controlled bath heatup rate is necessary to allow the sensor temperature and bath temperature to be approximately the same, while avoiding excessive sensor heatup. Previous calibration procedures did not recognize this affect. This affect could have produced some of the previous setpoint adjustments that contributed to the numbers on the chart.
 4. Thermowell setscrew tightness - This produced a 2° setpoint shift. Although not large, in relation to the tolerance band of $\pm 4^\circ$, it could have been a factor in making previous setpoint adjustments that contributed to the numbers on the chart.

5. Spacer-tube tightness - The spacer tube can self-loosen when not locked with thread-sealant, which produces a setpoint shift of about 80° per turn. This could have been a direct contributor to some of the past failures or setpoint shifts. The vendor has stated that all new switches are supplied with sealant; however, this deficiency has continued to be observed.

6. Internal contaminants - Several switches had internal contaminants in the poppet valve area, consisting of thread sealant material and metal slivers apparently from the inlet air port threads. Subsequent examination of new switches at the plant site revealed similar contamination, concluding that the manufacturer or vendor can be introducing contaminants during calibration. Internal contamination was the direct cause of one switch failing on DG 1A on 3/20/90, and was a contributor to the second failure.

. Upon completion of the above Wyle testing program, a calibration procedure was written specifically for these switches to include:

1. Disassembly of the switch, internal cleaning, and provisions to prevent re-contamination.
2. Inspection and application of thread-sealant to the spacer tube.
3. Requirements for the sensor to be calibrated in a thermowell.
4. Temperature stabilization prior to calibration.

. The new procedure was used to calibrate 3 new jacket water temperature sensors, which were installed on DG 1B on 5/22/90. During the subsequent maintenance start of the engine, these sensors tripped. They were then removed and carried to Wyle Laboratories where as-found setpoint testing showed all 3 to trip between 160° - 166°F.

. Subsequent evaluation of the differences between Wyle and plant test techniques led to the following conclusions:

1. The plant bath had internal flow blockage that did not permit a uniform temperature or heatup rate in the bath. This produced several degrees difference at the reference vs. test specimen locations.
2. The soak temperature requirement was poorly worded. Although the minimum soak times from the Wyle report had been observed, the sensors had been soaked too long (up to 6 hours) at near the setpoint (200°F). This resulted in further adjustments, longer soak, and more adjustment; producing switches that were far out of adjustment when subsequently returned to their normal ambient operating condition.

. Upon correction of the above bath and procedural deficiencies, consistent settings were obtained at the site on the same switches that had been reset at Wyle Labs.

- . All jacket water temperature switches on all DG's were removed, cleaned and recalibrated per the latest procedure in early June 1990.
- . A copy of the latest procedure, with lessons learned, was provided to the TDI Owners Group in June 1990.

B. Root Cause

- . Internal contamination can cause a properly calibrated switch to trip.
- . Calibration of the switches was inadequate to ensure the desired setpoints.

C. Corrective Action

- . A calibration procedure that cleans and properly controls the calibration requirements has been written and implemented.
- . Reliability of the basic switch component was established at an independent laboratory.
- . Switches have been defeated in the emergency start mode.
- . Currently evaluating replacement of pneumatic sensors with the vendor.

D. Significance of Problem

- . Trip of DG 1A on 3/20/90, and trip of DG 1B on 5/22/90.

E. Conclusion

- . Georgia Power Company took prompt action to identify the cause of temperature switch malfunctions, following the 3/20/90 event.
- . Prior to the 3/20/90 event, in retrospect, the previous calibration drift and failure history should have been recognized as a problem to be resolved. However, discussions with the switch manufacturer did not produce any clues that the switch has to be inspected, cleaned and calibrated under the conditions that Georgia Power subsequently developed. In fact, the 10CFR21, Addendum 3, June 8, 1990 update to the NRC states: "While no specific component failures have occurred, the setting and verification of same, is procedure sensitive." Note that this was after VEGP had resolved the issue internally.

**DIESEL GENERATOR AIR START VALVE
FAILURE AND ROOT CAUSE EVALUATION**

A. History of Problem:

- . 1/24/90 - DG 2A rolled but failed to start during routine surveillance testing. One air receiver had been isolated to test independent starting on the other bank. The operator noticed an air leak on one of the air start valves solenoids, unisolated the second bank, and successfully started the engine.
- . 1/25/90 (a) DG 2A start was attempted to satisfy Tech Spec action requirements. The engine slow rolled but did not start. A second start attempt was successful.

(b) In order to isolate the cause of the start failure, troubleshooting was conducted including: replace air start distributor filters, checking operation of the governor, fuel racks, fuel system and cylinder air start valves. No apparent problems were found.

(c) The engine was started 3 more times with no problems.
- . 4/12/90 - DG 2A rolled but did not start during normal surveillance. Operators decided that the start pushbutton had not been depressed long enough and reran the test. The engine successfully started, which seemed to confirm the operator's decision. The first attempt was not considered to have been valid, and was not reported.
- . 7/5/90 - A similar event occurred on DG 1B during surveillance testing. Again, the operator attributes this to short pushbutton action, and did not log or report the start attempt or failure.
- . 7/11/90 - DG 2A again slow rolled and failed to start. The system engineer had developed a test plan for troubleshooting the start pushbutton and seal-in circuit root cause of the previous observed problems on 2A. This investigation led to the following conclusion:
 - (a) The seal-in circuit for the start pushbutton seals in any attempted start. Operator belief that the start pushbutton had to be depressed for a certain minimum time period stemmed from a simulator phenomena, and does not exist in the plant.
 - (b) Discussions with Cooper Industries resulted in parallel investigations in the air start solenoid valves, air start distributors, air line routing, and individual cylinder air start valves.
 - (c) Several individual cylinder air start valves were determined to be sticking in the open position. If the engine crankshaft position was such that a particular combination of stuck valves also occurred, then certain cylinders would be opposing each other and

the engine would not start. This likelihood would be increased if half the cylinders were isolated, as in done during the surveillance test.

- (d) During disassembly of the cylinder air start valves for troubleshooting, some of the pistons had to be removed with air pressure or excessive physical force, indicating that the pistons were binding in the valve caps.
- (e) Detailed measurements of the pistons and caps were made for vendor review. These concluded that several caps were machined with the bore slightly oval-shaped and tapered by several mils. this distortion was subsequently observed in several new caps in the warehouse.
- (f) Vendor direction to correct the binding was to polish each piston to provide at least 1 mil clearance with its matched cylinder cap, followed by an engine run to heat the assemblies to normal engine temperatures, followed by a pop test of each valve to ensure that it was cycling freely.
- (g) This corrective action was taken on all 4 DG's.
 - 7-13-90 DG 2A completed
 - 7-18-90 DG 1B completed
 - 7-21-90 DG 1A completed
 - 7-23-90 DG 2B completed.
- (h) Based on this problem, Cooper Industries issued a Part 21 report to the NRC on July __, 1990. Long term corrective actions have not been finalized but include areas such as:
 - (1) Factory QC check of cap dimensions.
 - (2) Possible material changes in the piston or cap.
 - (3) Expanded testing during routine overhauls.
- (i) An Event Critique Team reviewed the July 11, 1990 start failure. This team concluded that the April 12, 1990 start failure should have been critiqued, but was not. Additional conclusions from the review process include:
 - (1) Clarification of plant vs. simulator pushbutton delay times for licensed operators.
 - (2) Instructions to operators to consider and log all attempted DG starts.

B. Root Cause of Events

- . Manufacturing defect in individual air start valves, resulting in occasional binding in the open position.

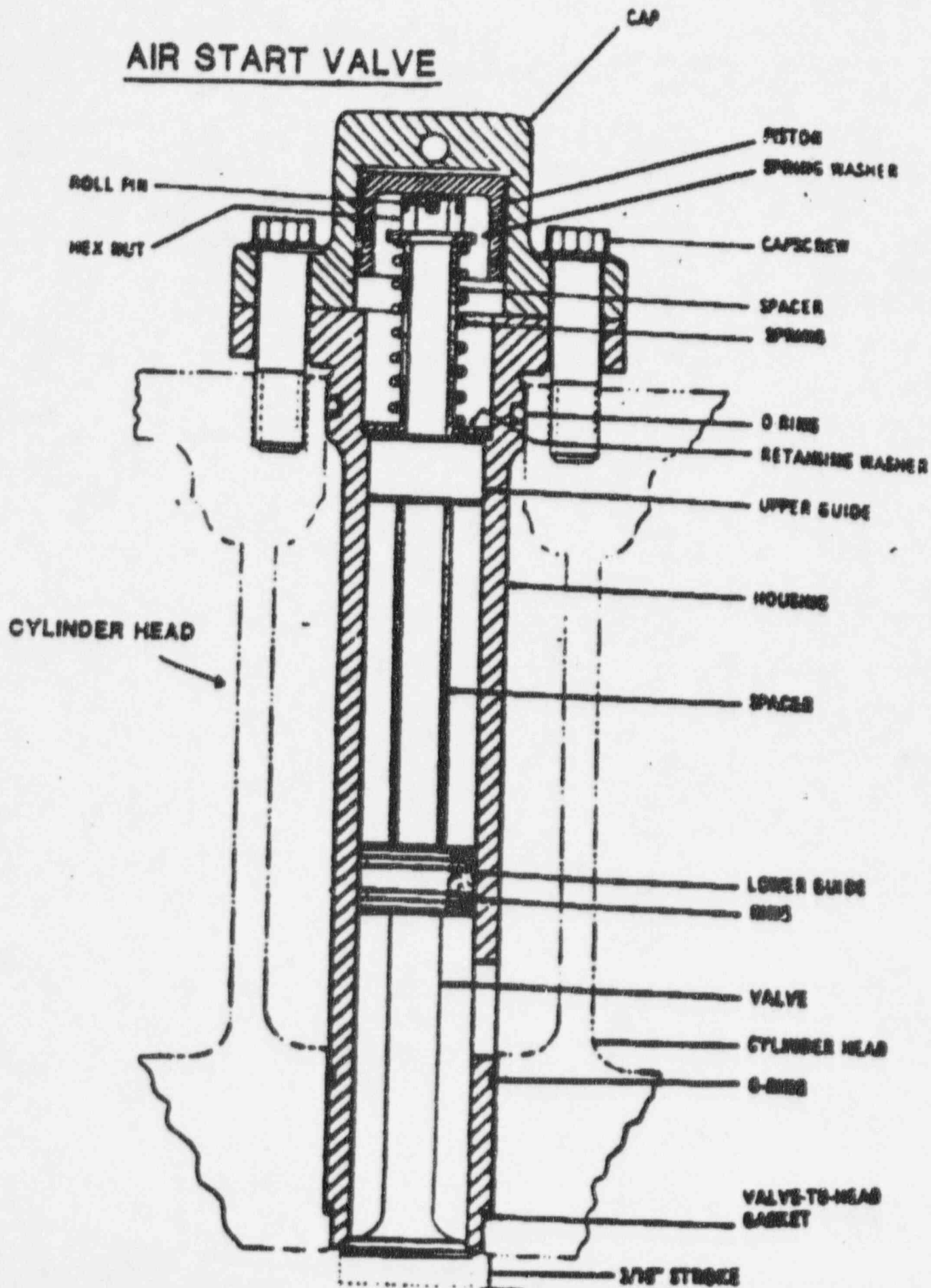
C. Corrective Action

- . Increase clearance in valves to prevent binding, and verify.
- . Notify vendor for Part 21 issue.
- . Long-term correction not yet completed by vendor.

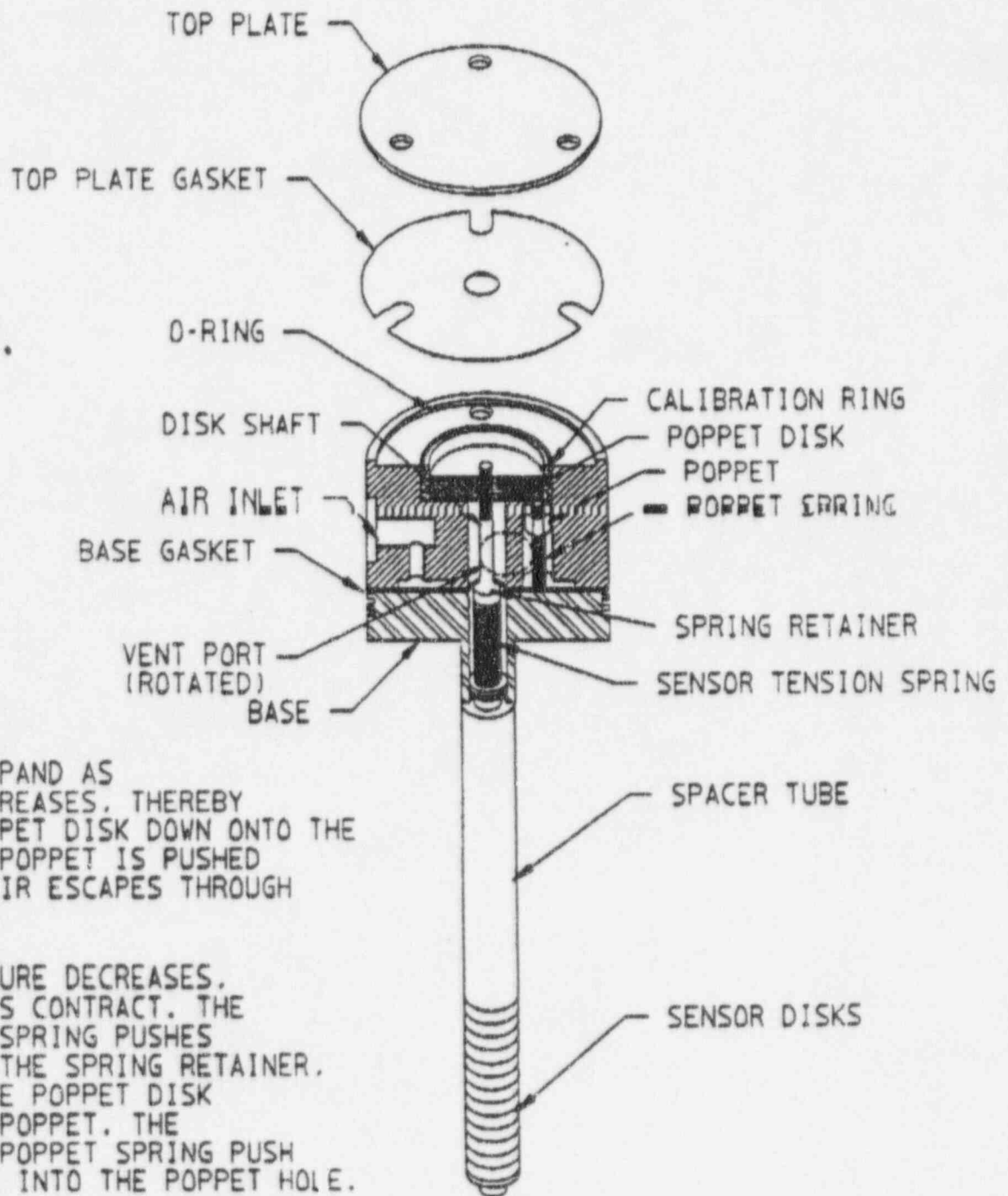
D. Significance of Problem

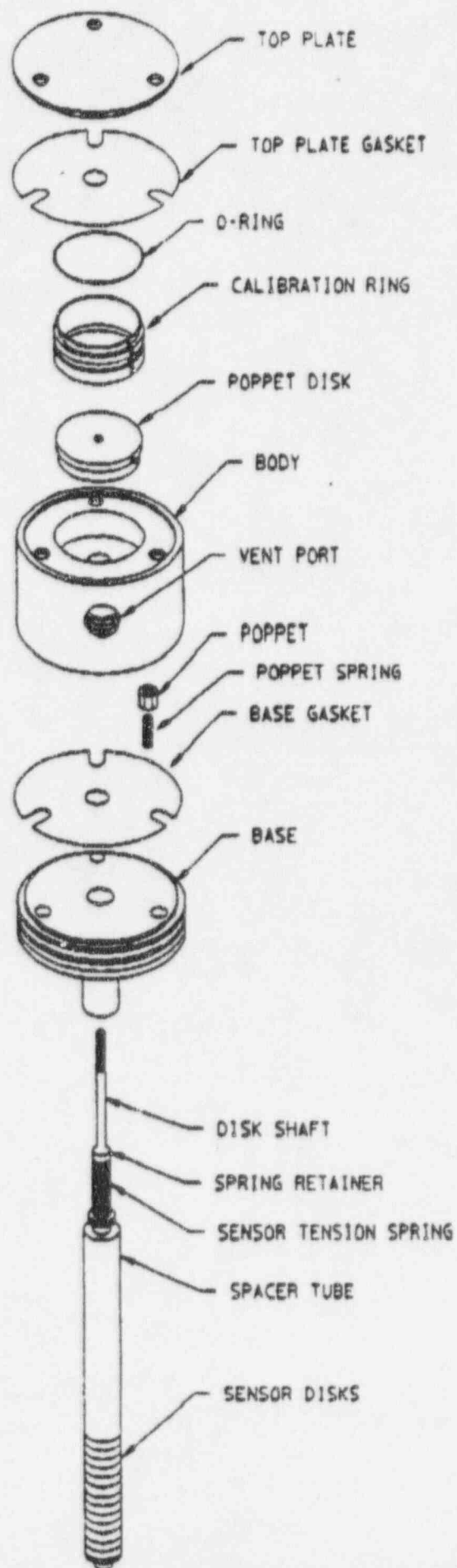
- . DG would not start if a particular crankshaft alignment and stuck air valve combination existed. This condition was ex_____ during surveillance testing when half of the cylinders were isolated from starting air.

AIR START VALVE



CALCON TEMPERATURE SENSOR MODEL A3500-W3







INSTRUMENT FUNCTION	PROBLEM	UNIT 1	UNIT 2	UNIT 1 (R)	UNIT 1 CYCLE 2	POST
		CONSTRUCTION/STARTUP (8/85-12/86)	CONSTRUCTION/STARTUP (1/88-12/88)	(9/88-10/88)	PRE- OUTAGE (PRE- EVENT)	OUTAGE (EVENT)	EVENT 3/20 - 3/25/90
Jacket Water Temp.	Out-of-calibration	8	7	4	4	2
Jacket Water Temp.	Defective	1		6		1
Lube Oil Temp.	Out-of-calibration		1		1	1
Bearing Temp.	Defective			10	1	
Miscellaneous						
Vibration Sensors	Defective		3			

SUMMARY OF DIESEL GENERATOR
PRESSURE SENSOR (CALCON) PROBLEMS AT VOGTLE

INSTRUMENT FUNCTION	PROBLEM	TIME FRAME				POST- EVENT (3/20 - 3/25/90)	POST-MREG 3/26/90 - PRESENT
		UNIT 1 CONSTRUCTION/STARTUP (8/85-12/87)	UNIT 2 CONSTRUCTION/STARTUP (1/88-12/88)	UNIT 1 1989 (9/88-10/88)	UNIT 1 1990 (1/89-2/89)		
Oil Pressure	Out-of-calibration	4		2			<div style="border: 1px solid black; padding: 5px; text-align: center;"> POST-MREG 3/26/90 - PRESENT (need to summarize subsequent #'s) </div>
Oil Pressure	Defective	1			(1)		
Oil Pressure	Out-of-calibration	1	1				
Oil Pressure	Defective				1		
Oil Pressure (P-3)	Out-of-calibration			1			
Oil Pressure (P-3)	Defective			1		1	
Water Pressure	Out-of-calibration	1		1		1	

24

11/5

A MOSBAUGH IN OFFICE

TEMP TYGON CAUSED 4/9 PROB (CRIMP)

PERMANENT DESIGN CHANGE INSTALLED

SIH. MINTZ SONOPCO/ENG.

AWARE

PURING END
OF 90 OUTAGE

(~~DATA~~)
HAD "BLIND
SPOT" IN CRIT
RANGE.)

(INADEQUATE
CORR ACT.

JOKE W AUF/MCSB.

PROB. SOMETHING
THAT HAD TO BE
DONE DURING AN
OUTAGE.

DON'T KNOW IF VEGP
WAS TRYING TO
CORRECT IN THIS
OUTAGE OR NOT

COMMONALITY W

LOSS OF RHR

SHUTDOWN COOLING
EVENTS

- MID LOOP {
- OUTAGES (CRIT PATH PRESSURE)

THE "WHITE PAPER" (GIVEN TO NRC)
RE PARTICIP. IN 4/19 PHONE
CALL

1) WHITE PAP DOES NOT SAY
MCCOY OR HAIRSTON ON
CALL

(MCCOY PRESENT AT MEETING
WHICH PREP'D WHITE PAPER)

HAIRSTON NOT PRESENT AT
PREP

25

11-5-91

p. 2

WDSBAUGH

(m) delivered new allegations to Robinson - (computer print-out).

Also, "white paper" applies to Hairston, as well (his name wasn't on it & he was present. McCoy was present when the question was asked (who was on the call). - McCoy headed meeting. Hairston wasn't present at the meeting, but was present (on phone) during the call.

Kirk ran into Shaw Pittman - lawyer - who was aware of 10th case - wanted to know what was on the tapes.

Critique team members had to split responsibility (like Briney).

26



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20001

July 29, 1992

Via Facsimile and First Class Mail

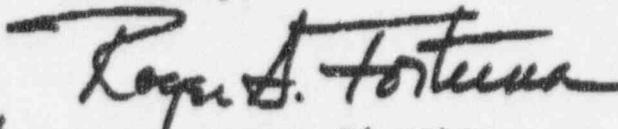
Mr. Michael D. Kohn
Kohn, Kohn & Colapinto, P.C.
517 Florida Ave., NW
Washington, D.C. 20001

Re: Mosbaugh v. Georgia Power Company

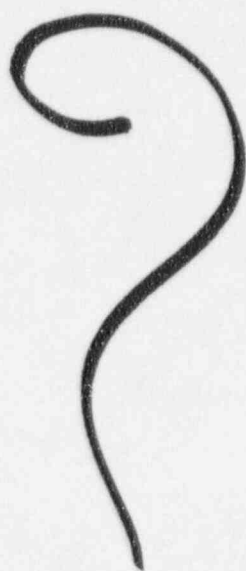
Dear Mr. Kohn:

This letter responds to your July 26, 1992, facsimile to Daryl M. Shapiro of the Office of the General Counsel concerning your release of certain documentation pertaining to an Office of Investigations (OI) investigation of Georgia Power Company. It is our belief that your letter inaccurately represents earlier conversations with OI. This office would prefer that all information concerning this investigation remain in strict confidence in order to protect the integrity of the investigative process. Nonetheless, it is not our intention to interfere with any official congressional investigation. Our discussions should not be construed as giving any type of instructions to you concerning any official congressional inquiries.

Sincerely,

for 
Ben B. Hayes, Director
Office of Investigations

9610070001 1P



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THE FOLLOWING ARE ENTRIES FROM THE CASE CHRONOLOGY OF OI CASE NO. 2-90-020 THAT REFLECT OI COMMUNICATIONS WITH THE INTERVENOR THAT PERTAIN TO DIESEL GENERATOR ISSUES, OR TO THE COMPETENCE, CHARACTER, OR INTEGRITY OF GPC/SONOPCO EXECUTIVES.

OFFICIAL USE ONLY

CASE CHRONOLOGY		
FILE NUMBER	DATE OPENED	OPENED BY
2-90-020	11-6-90	ROBINSON
DATE	ACTIVITY	
11/6-8/90	LLR & CTT WENT OVER ⁶ TAPES (W/ ASSOC. TRANSCRIPTS) WITH MOSBAUGH FOR CLARIFICATION OF CONTENT AND IDENTIFICATION OF SPEAKERS. IDENTIFIED ADDITIONAL 63 TAPES OF POTENTIAL EVIDENTIARY VALUE. MOSBAUGH PROVIDED COPIES OF PERTINENT VEGP UNIT 1 CONTROL LOGS REGARDING DIESEL GENERATORS.	
1/25/91	T/C MOSBAUGH-LLR RE HAVING TO TURN OVER TO TSLA ALL DOCUMENTS RELATING TO VEGP	
2-14-91	LLR & CTT ATTEMPTED TO RETURN 201 TAPES TO MOSBAUGH. MOSBAUGH REFUSED TO ACCEPT.	
2-15-91	T/C MOSBAUGH TO ROBINSON. MOSBAUGH SAID HE WOULD, AFTER COUNSELING WITH HIS ATTORNEY, TAKE HIS TAPES.	
2-21-91	LLR & CTT RETURNED 201 TAPES TO MOSBAUGH AT HIS RESIDENCE.	
4-30-91	MONITORED MOSBAUGH'S ID. OF SPEAKERS ON TAPES (2100-2410)	
5-1-91	MONITORED MOSBAUGH'S ID. OF SPEAKERS ON TAPES (2000-2310)	

5-15-91

T/C MOSBAUGH-LLR MOSBAUGH WILL BE AVAILABLE TO ASSIST W/ TAPE REVIEW NEXT WEEK.

5-22-91

IDENTIFIED SPEAKERS AND CLARIFIED TAPE TRANSCRIPTS WITH MOSBAUGH IN AUGUSTA, GA. (1530-1700) (2030-24

5-24-91

T/C MOSBAUGH TO ROBINSON. MOSBAUGH SENDING IN 18 PAGE ALLEGATION OF MFS BY GPC IN GPC 2.206 RESPONSE.

5-28-91

MTG: MOSBAUGH, ROBINSON, TATE. MOSBAUGH HAND-DELIVERED ALLEGATIONS OF MFS IN GPC 2.206 RESPONSE. HE ALSO PROVIDED HIS OWN AMPLIFIED TAPE OF THE 4-19-90 CONF CALL WITH VEGP SITE AND SONOPCO PERSONNEL ON LE

5-28-91

T/C M. KOHN TO ROBINSON. KOHN WILL BE MAKING SOME TYPE OF WRITTEN SUBMISSION TO DOL REGARDING MOSBAUGH'S 5/28/91 MFS ALLEGATIONS. KOHN WANTED TO KNOW IF THERE WERE ANY DIRECT QUOTES FROM THE TAPES THAT HE DID NOT WANT GPC TO BE AWARE OF. I TOLD HIM THAT I'D LET HIM KNOW IN TWO DAYS.

6-3-91

REVIEWED TAPES WITH MOSBAUGH (2030-2330)

6-3-91

MOSBAUGH GAVE LLR SECOND WRITE-UP OF ALLEGATIONS OF MFS BY GPC IN GPC RESPONSE TO 2.206

6-4-91

REVIEWED TAPES WITH MOSBAUGH (2000-2300)

6-5-91

REVIEWED TAPES WITH MOSBAUGH (1530-1730) (1900-20

6-11-91

REVIEWED TAPES WITH MOSBAUGH (2000-2300)

6-12-91

REVIEWED TAPES WITH MOSBAUGH (1530-1730)

7-2-91

T/C M. KOHN-LLR. KOHN MAILING DOCUMENT ALLEGEDLY SHOWING KNOWLEDGE ON PART OF TSLA & GPC THAT, IN REALITY, NUC OPS. SHIFTED TO SONOPCO PRIOR TO OFFICIAL TRANSFER OF LICEN

8-27-91

T/C MOSBAUGH TO LLR - MOSBAUGH ADVISED LLR OF ORGANIZATIONAL CHANGES AT VOGTIE. MOSBAUGH ASKED IF PROBLEM CALLING LLR TO TESTIFY AT DOL TRIAL. LLR SAID YES, FED AGENCIES DON'T NORMALLY HAVE THEIR INVESTIGATORS TESTIFY IN TOPICS NOT COMPLETELY PERTAINING TO A CASE INVESTIGATED BY THEIR AGENCY. MOSBAUGH ASKED IF ANY RESTRICTIONS ON USE OF INFO ON TAPES STILL BEING HELD BY NRC, IN HIS DOL TRIAL DISCREDIT GPC WITNESSES. I TOLD HIM NO RESTRICTIONS.

8-30-91

T/C MOSBAUGH-LLR. MOSBAUGH RENEWING TAPES RETURNED TO HIM. TAPE 181, SIDE A, @ 80% THROUGH, AUFDENKAMP TALKS TO AM. ABOUT CASH & KITCHENS "CHARADE" ABOUT NOT KNOWING WHERE DILUTION VARNES WERE. TAPE 172, SIDE B, (6/19/90) MOSBAUGH TELLS ROGGE ABOUT FALSE STATEMENTS IN LER

10-17-91

T/C LLR-MOSBAUGH; HIS 10/22/91 HEARING (DOL) CANCELLED. MOSBAUGH BEING REQUIRED TO PROVIDE TAPES. (1845-1945)

10-25-91

HTG: MOSBAUGH, LLR, CTT IN CI OFFICES. MOSBAUGH DID ADDITIONAL VOICE ID ON TAPE #58.

11-12-91

T/C MOSBAUGH-LLR RE NEWSPAPER ARTICLE ON NRC INVESTIGATION INTO ALLEGATIONS THAT VOGTLE OFFICIALS PROVIDED INCORRECT INFO. TOLD HIM NO MORE THAN WHAT WAS IN ARTICLE.

2-3-92

T/C MOSBAUGH-ROBINSON. DISCUSSED FORMULAS FOR DIESEL RELIABILITY

6-2-92

T/C MOSBAUGH-LLR. ADVISED HE WOULD BE ON VACATION FOR 3 WEEKS, STARTING THE LAST WEEK IN JULY. ADVISED HE WOULD BE IN AUGUSTA NEXT WEEK. ASKED WHAT WAS HAPPENING ON HIS ALLEGATIONS OF FALSE STATEMENTS IN GPC'S 2,206 RESPONSE

7-2-92

T/C MICHAEL KOHN TO LLR; KOHN ADVISED THAT AN NBC AFFILIATE IN WASH DC IS LOOKING TO DO A STORY ON THE NRC/DOJ INVESTIGATION INTO GPC/SONOPCO. ADVISED HIM DOJ CONTACT IS AUSA SALLY YATES, USATTY'S OFFICE, ATLANTA, GA

87-8-92

(202) 234-4663
T/C M. KOHN - LLR; KOHN ADVISED THAT NBC NEWS (LINDA VESTER) WAS ASKING HIM TO RELEASE SOME DUPE TAPES IN HIS POSSESSION, RELATING TO THE NRC INVESTIG. LLR TOLD KOHN NOT TO RELEASE ANY OF THE "DUPED" SEGMENTS TO THE MEDIA WITHOUT NRC; "OI APPROVAL. HE SAID HE WOULD NOT RELEASE ANYTHING WITHOUT CONTACT. LLR FIRST. KOHN STATED THAT HE HAS APPROXIMATELY A CASSETTES THAT CONTAIN SEGMENTS OF MOSBAUGH'S ORIGINAL TAPES. HE STATED THAT HE DID NOT WANT TO TURN THESE DUPES OVER TO NRC BECAUSE HE MAY NEED THEM TO PREPARE FUTURE FILINGS IN THE "DOL. PROCEEDS. HE STATED THAT HE COULD NOT SPECIFICALLY IDENTIFY WHICH "OI TAPE NUMBERS (NRC NUMBERS) THE "DUPED EXCERPTS WERE FROM, BUT HE GAVE THE 4/19 CONVERSATION BETWEEN MOSB, AUFDENKAMPE AND STRINGFELLOW AS AN EXAMPLE, SO HE HAS SOME EXCERPTS FROM TAPES THAT OI HAS RETAINED AS EVIDENCE IN THIS CASE. KOHN STATED THAT HE WAS NOT TOO CLEAR ON HOW NBC KNEW HE HAD TAPE EXCERPTS, BUT THAT IT PROBABLY CAME OUT IN HIS CONVERSATION WITH VESTER.

7-8-92

T/C LLR - MOSBAUGH; MOSBAUGH HAS BEEN CALLED BY VESTER MOSBAUGH COMING TO GEORGIA TO BE INTERVIEWED BY VESTER FRIDAY. MOSBAUGH ADVISED BY LLR THAT ANY DISCUSSION WITH VESTER ABOUT CASE WILL NOT BE BENEFICIAL TO ITS RESOLUTION, BUT THAT NRC CANNOT PREVENT HIM BEING INTERVIEWED IF HE DECIDES TO DO SO. LLR ALSO TOLD

7-8-92

(CONT'D) MOSBAUGH THAT ANY ACTIONS OF HIS DOL ATTORNEY(S) WILL BE ATTRIBUTABLE TO HIM.

7-9-92

(0610 - 0700) REVIEW GRAND JURY MATERIAL.

7-9-92

T/C ROBINSON - M. KOHN. LLR TOLD KOHN THAT NRC CANNOT RESTRICT WHAT HE DOES OR DOES NOT TELL, OR RELEASE TO THE NEWS MEDIA. LLR INFORMED KOHN THAT DISCUSSIONS WITH THE NEWS MEDIA ABOUT ISSUES UNDER INVESTIGATION WOULD NOT BE HELPFUL TO THE ONGOING INVESTIGATION.

7-20-92

T/C MOSBAUGH - LLR; MOSBAUGH SAID THAT NBC TV SPOT WILL BE ON NEXT SAT. EVE (7/25). HE SAID HE DID NOT TELL

7-20-92

(CONT'D) NBC NEWS (LINDA VESTER) ANYTHING THAT HAD NOT ALREADY BEEN IN THE NEWS.

7-21-92

T/C KOHN-LLR. KOHN ADVISED THAT TWO MEMBERS OF CONGRESSMAN DINGELL'S STAFF (JIM PATRESE AND HIS "BOSS" CHAFIN SOUNDED FAMILIAR) CAME TO KOHN'S OFFICE 7/20 AND ASKED ABOUT CASE.

LLR TOLD KOHN THAT NRC COULD NOT RESTRICT WHAT HE TOLD EITHER THE MEDIA OR CONGRESSIONAL INVESTIGATORS

KOHN SAID THE CONGRESSIONAL INVESTIGATORS WANTED DOCUMENTS (NFI) PERTINENT TO THE INVESTIGATION. KOHN DID NOT VOLUNTEER WHAT HE HAS ALREADY DIVULGED, OR WILL DIVULGE TO THE PRESS OR TO DINGELL'S STAFF. LLR DID NOT PRESS FOR THAT INFO FROM KOHN

7-29-92

T/C KOHN-LLR; TOLD KOHN DIDN'T APPRECIATE HIS MISREPRESENTATION OF OUR CONVERSATION REGARDING RELEASE OF MAT'L TO DINGELL STAFF IN HIS LETTER TO SHAPIRO. LLR TOLD KOHN TO CONTACT SHAPIRO IN THE FUTURE.

10/23/92

FAX: TO LLR FROM M. KOHN - COPY OF MOSBAUGH-HOBB PETITION TO INTERVENE IN GPC TRANSFER OF VEGP LICENSE TO SONDPCC.

11/24/92

T/C MOSBAUGH - LLR; MOSBAUGH ADVISED THAT GPC EMPLOYEES J. AUFDENKAMPE & M. HORTON HAVE BEEN TOLD THAT "THEY DON'T HAVE JOBS FOR THEM AT VOGTLE".

12/2/92

T/C MOSBAUGH - LLR; MOSBAUGH WANTED NUMBERS OF TAPES RETAINED BY OI. PROVIDED NUMBERS.

1/15/93

T/C MOSBAUGH - LLR; MOSBAUGH SAID WHILE AT PRE-HEARING CONFERENCE IN AUGUSTA AN NRC ATTORNEY, THOUGHT TO BE BILL BARTH'S SUPERVISOR, MADE THE STATEMENT THAT "NRC CANNOT SAY WHETHER GPC IS IN COMPLIANCE WITH ITS LICENSE (VOGTLE)". MOSBAUGH'S CONTENTION IS THAT IF IT IS INDETERMINATE AS TO WHETHER OR NOT A LICENSEE IS IN COMPLIANCE, THERE ARE REGULATIONS THAT SAY THE PLANT

1/15/93 (CONT'D)

SHOULD BE SHUT DOWN UNTIL COMPLIANCE IS DETERMINED TO BE ACHIEVED. MOSBAUGH SAID THIS COMMENT WAS MADE IN THE CONTEXT OF THE INABILITY OF THE NRC TO MAKE A DEFINITE CONCLUSION REGARDING THE CHARACTER, COMPETENCE, AND INTENT OF GPC/SONOPCO OFFICIALS

2/24/93

T/C MOSBAUGH-LLR: DISCUSSED ASLB MEMO'S ORDER OF 2/18/93.

Standard Breakout Schedule

Purpose: Improve plant material condition by working together to complete open work items.

Tuesday - "Info Only" LCO's - Operations

Wednesday - Control Room Instruments OOS - Maintenance

Thursday - Temp. Mods. - Engineering

Friday - Fire Protection LCO's - Operations

9:30

skip
GB
look
Santia
Lester
Horton
Amy
JGA

OI - coming back "Larry Roberson"
Wed to Fri.
Talk to ops
At some point talk to PAB -

Dandy - Court Recorder

Gossen
J.D. Williams
J.B. Cash
Boulton
Mr. Dale Roberts
Acme
Sutton

Strip: "This is no different than thousands of decisions we make all the time."

Strip: Jim you make several of these every day/week

- Get Package -

GB: I told them it's a technical issue.
We have a whole organization in back of this decision

Strip: "If you have to get comp. eng review, we review for these type things. You would never make any electrical

That may be fair for decision made last Sept. But the question is what did we have when we opened this

- EICS
February 4, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
	)	Docket Nos. 50-424-OLA-3
GEORGIA POWER COMPANY, <i>et al.</i>	)	50-425-OLA-3
)	
(Vogtle Electric Generating Plant	)	Re: Licensee Amendment
Units 1 and 2)	)	(Transfer to Southern Nuclear)
)	

NRC BRIEF ON RELEASE OF OI REPORT
REQUESTED IN LICENSING BOARD ORDER
OF FEBRUARY 1, 1994

Following a prehearing conference on January 27, 1994, this Licensing Board issued a Memorandum and Order, dated February 1, 1994, which provides in part:

2. By COB Friday, February 4, 1994, the Board and parties will receive any briefs that the parties may submit concerning Intervenor's request that the Board should release the entire OI Report, with or without protective orders, and whether the Board should conduct an in camera status briefing by the Staff (including the presentation of documents in camera) prior to determining whether to release allegedly privileged Staff documents.

This brief and the attached affidavit of James M. Taylor is submitted in response to that Order.

DISCUSSION

The Intervenor has requested that the Board order the release of an Office of Investigation (OI) Report No. 2-90-020R, that is presently being evaluated to determine whether an enforcement action should be commenced with respect to matters associated with the reporting of diesel generator starts by Georgia Power Company (GPC).

B/86

Although it is a report on investigation into facts relevant to this proceeding, it is also a predecisional document upon which the NRC will, in part, determine whether to take enforcement actions. See attached Affidavit of James M. Taylor.

Predecisional documents upon which government decisions are formulated are privileged. See *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 150 (1975); *Carl Zeiss Stiftung v. V.E.B. Earl Zeiss, Jana*, 40 F.R.D. 318 (D.D.C. 1966), *aff'd* 384 F.2d 979 (D.C. cir.), *cert. denied*, 389 U.S. 952 (1967). It has long been recognized that this privilege can prevent the release of documents sought in discovery in NRC proceedings. See *Long Island Power Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984); see also *Virginia Electric Power Co.* (North Anna Power Station, Units 1 and 2), CLI-74-16, 7 AEC 313 (1974); *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-33, 4 AEC 701 (1971).

The privilege on release of predecisional documents is a qualified privilege which can be overcome by a showing of an overriding need for the documents. *Shoreham, supra*. Once the privilege is properly invoked, the party seeking the documents has the burden of showing that overriding need. *Id.* See also 10 C.F.R. § 2.744(c)(3).

At the Prehearing Conference on January 27, 1994, the Staff indicated that the OI report reflected the views of only one NRC office. It was not the Staff position, Tr. 169, and it was made clear that the report may not ultimately reflect the Staff position. *Id.* The OI report is under Staff review, Tr. 171, and along with all the evidence collected by the Office of Investigations, the discovery that has occurred in this proceeding, and other information, will all be weighed together in arriving at an enforcement decision.

Id. The OI report is an integral part of the material upon which the Executive Director for Operations will make his (the Staff's) recommendation as to whether an enforcement action is warranted. Thus, the report and the other materials sought are predecisional material, *see* Affidavit of James M. Taylor, attached, subject to the deliberative process privilege.

In addition, the Intervenor has not established an overriding need for the OI report. Mr. Mosbaugh, as a basis for his contentions, claimed he was privy to the misrepresentation on which his contentions are based. He has not introduced any evidence to show there is the "overriding" need for the report at this stage of the proceeding, before the Staff has determined whether to recommend to the Commission the initiation of enforcement actions. All we presently have are bare statements, which lack any support concerning the present need for the OI report. Plainly, the Intervenor has not sustained his burden.¹

Where the Staff objects to the production of a document in discovery upon a claim that it is exempt from disclosure as a predecisional document or for other reasons, 10 C.F.R. § 2.744(c) provides the procedure to be followed in determining if the document should be released:

If the Executive Director for Operations objects to producing a record or document, the requesting party may apply to the presiding officer, in

¹ Similarly, GPC has not sustained a burden of showing an "overriding" need for the factual attachment or exhibits to the report. The letters between GPC and the Staff are in the possession of GPC. To the extent copies of interviews with GPC employees and officers are sought, the matters sought are within the knowledge of such individuals, who can be contacted by GPC. Moreover, GPC had an attorney present at most of those interviews and, thus, cannot claim any lack of knowledge of the matters there discussed.

writing, to compel production of that record or document. The application shall set forth the relevancy of the record or document to the issues in the proceeding. The application shall be processed as a motion in accordance with § 2.730 (a) through (d). The record or document covered by the application shall be produced by the "in camera" inspection of the presiding officer, exclusively, if requested by the presiding officer and only to the extent necessary to determine:

- (1) The relevancy of that record or document;
- (2) Whether the document is exempt from disclosure under § 2.790;²
- (3) Whether the disclosure is necessary to a proper decision in the proceeding;
- (4) Whether the document or the information therein is reasonably obtainable from another source.

Therefore, before any documents which the Staff has objected to producing are ordered produced in discovery, the documents must be examined *ex parte in camera* by the Board to determine if the documents should be released under the standards set out in that regulation. The Staff already has offered to provide the documents for such an examination. See Board Notification No. 94-1, January 3, 1994. Further, the Commission has indicated that should the Staff and Licensing Board disagree on the release or the disclosure of such investigative material after the material is presented by OI or the Staff to the Licensing Board in a transcribed *ex parte, in camera* session, the Board is to certify the record of that session to the Commission for a determination of

² The matters to which objection has been made fall under 10 C.F.R. § 2.790(a)(5) being interagency memoranda relevant to the deliberative process. See *Shoreham*, 19 NRC at 1341. The exemptions in 10 C.F.R. § 2.790(a) to the release of information, are the same as in section 552(b) of the Administrative Procedure Act, 5 U.S.C. § 552(b).

whether the investigative material is to be released. See Commission's Statement of Policy: Investigations, Inspections and Adjudicatory Proceedings 49 Fed. Reg. 36,032, 36,033-34 (September 13, 1984); cf 10 C.F.R. § 2.744(d). The policy statement establishes procedures to be followed which would allow a Licensing Board to be apprised of investigatory matters which might affect a proceeding, and yet not cause those matters to be revealed in a premature manner so as to compromise the investigation. Those procedures are applicable here to guard against the premature disclosure of investigatory material so as not to compromise possible enforcement actions. Therefore, should the Board determine that there is a present need for the release of the documents sought in this proceeding, it should refer the record to the Commission for final resolution.

Further, as indicated in the attached affidavit of James M. Taylor, this predecisional material should not be made available to the other parties under a protective order. GPC is the subject of the possible enforcement action and release of the report to GPC would be contrary to the entire purpose of the privilege. / Len Mosbaugh is a principal involved in the incidents covered in the report, and the report should not be released to him either at this time. Further, it would be unfair and without purpose to release the report to Mr. Mosbaugh, but not GPC.

Notwithstanding the foregoing, much can be accomplished now even before the OI report is released. Tr. 179. GPC has proposed that they submit their corrections to the transcript of Mosbaugh tapes numbered 57 and 58 to the other parties and that these parties review these corrections to see if a transcript of tapes 57 and 58 can be stipulated

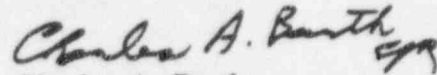
to by the parties. Staff counsel agreed to this. Tr. 158. Mr. Mosbaugh has six tapes which allegedly highlight wrongdoing. Again, the Staff is willing to review transcripts of those six tapes to see if a transcript of those tapes can be agreed upon. Other tapes may be relevant. There is a very large number of documents that will be relevant in addition to the OI Report. Staff counsel has suggested that the parties prepare lists of the documents and stipulate as to their authenticity. Tr. 201. The Board has suggested depositions be taken regarding the issues involving the alleged illegal take-over by Southern Nuclear Operating Company, Inc. (Tr. 219), and that discovery proceed on that issue. Tr. 215. The Staff has no objections to these actions. The Staff has further suggested that GPC and Intervenor proceed with their case prior to the Staff setting forth its position. Tr. 222.

CONCLUSION

The OI report contains opinions and recommendations which are now being reviewed by the Staff as but one element, albeit an important element, in the Staff's deliberative process by where it will reach a position on whether an enforcement action is warranted. It is exempt from disclosure. *See Shoreham, ALAB-773, supra*. No party has established a need for the report at this time. Discovery between GPC and Mr. Mosbaugh may proceed without the OI report. Some evidentiary stipulations (tapes 57 and 58, Mosbaugh's six tapes of highlights, and documents) may proceed now among all three parties. The Staff reiterates its offer to provide an *ex parte in camera*

presentation regarding the OI report by to the Licensing Board. Should the Board then determine the OI Report should now be released, it should refer the *in camera* record to the Commission.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles A. Barth". The signature is written in dark ink and includes a stylized flourish at the end.

Charles A. Barth
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of February 1994

February 4, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
GEORGIA POWER COMPANY, <i>et al.</i>	)	Docket Nos. 50-424-OLA-3
	)	50-425-OLA-3
(Vogtle Electric Generating Plant)	
Units 1 and 2)	)	Re: Licensee Amendment
	)	(Transfer to Southern Nuclear)

AFFIDAVIT OF JAMES M. TAYLOR

James M. Taylor, having first been duly sworn, hereby states:

1. I am the Executive Director for Operations, U.S. Nuclear Regulatory Commission. I am responsible to the Commission for the operation of its Staff, which is under my direction and control.
2. I submit this affidavit to set forth the reasons why the NRC Staff cannot release the Office of Investigation Report on case No. 2-90-020R, or certain of the exhibits to that report until a determination has been made on whether any enforcement actions should be instituted concerning the matters subject to that investigation. The investigation documented in the OI Report No. 2-90-020R concerns the reporting of diesel generator starts by Georgia Power Company following a March 20, 1990, incident at the Vogtle Electric Generating Plant. I am aware that the matter concerning the reporting of the generator starts is germane to this proceeding. I have been informed that

counsel for Allen Mosbaugh has sought the entire report and that counsel for the Georgia Power Company has sought the factual attachments or exhibits to that report.

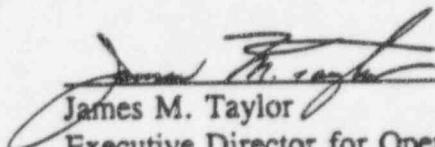
3. I have directed the NRC Staff not to release this material, absent direction of the Commission, because, in my opinion, to do so at this time would not only prejudice consideration of any enforcement action which may be appropriate regarding this matter, but would have a deleterious effect on the Commission's deliberative processes concerning possible enforcement actions. Although neither party has objected to the release of this predecisional material, its release prior to a decision on possible enforcement actions would comprise the Commission's ability to freely deliberate and consider possible enforcement actions prior to the release of these materials. The materials, at this point, are predecisional materials which should not be released before an enforcement decision is made, in order to protect this agency's regulatory functions under the Atomic Energy Act.

4. The release of the predecisional materials here involved to the parties, even under a protective order which would prevent their further dissemination, would not serve the purpose of having predecisional material withheld prior to a decision on possible enforcement actions. Both other parties are deeply involved in this matter and releasing the predecisional material to them would not insulate the Commission or me while making an enforcement decision. On the other hand, revelation of these matters to the Board in an *ex parte* manner, as provided in 10 C.F.R. § 2.744(c) and the Commission's Statement of Policy: Investigations, Inspections and Adjudicatory Proceedings, 49 Fed.

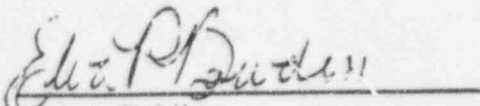
Reg. 36,032 (September 13, 1984), would protect the Commission's deliberative process, and the NRC Staff has offered to reveal the material to the Board as provided in that regulation and policy statement. *See also* Board Notification No. 94-1, January 3, 1994.

5. I recognize that this proceeding has been delayed by the Staff's inability to set forth a position or take part in discovery until it determines if an enforcement action is appropriate, and that the Staff had represented that it would be able to move forward with this proceeding some time ago. The Staff has released the tapes and the transcripts of those tapes which were sought in discovery. The Office of Investigation report was only issued on December 17, 1993. This matter is complex, and the final review and development of recommendations on possible enforcement actions are being completed expeditiously. It is estimated that the Staff will make its recommendations to the Commission on possible enforcement actions concerning this matter by the end of March 1994.

The foregoing is true and correct to the best of my knowledge and belief.


James M. Taylor
Executive Director for Operations

Subscribed and sworn to before me
this 4th day of February 1994


Notary Public

My commission expires: 12/1/95

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
	)	Docket Nos. 50-424-OLA-3
GEORGIA POWER COMPANY, <i>et al.</i>	)	50-425-OLA-3
)	
(Vogtle Electric Generating Plant	)	Re: License Amendment
Units 1 and 2)	)	(Transfer to Southern Nuclear)
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC BRIEF ON RELEASE OF OI REPORT REQUESTED IN LICENSING BOARD ORDER OF FEBRUARY 1, 1994" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk by facsimile this 4th day of February 1994.

Peter B. Bloch, Chairman**
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
(301) 492-7285

Judge James H. Carpenter
933 Green Point Drive
Oyster Point
Sunset Beach, North Carolina 28468

Thomas D. Murphy*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
(301) 492-7285

John Lamberski, Esq.**
Arthur H. Domby, Esq.
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Shaw, Pittman, Potts and Trowbridge
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(202) 663-8007

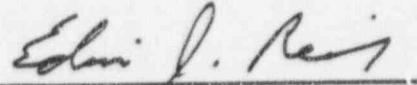
Michael D. Kohn, Esq.**
Stephen M. Kohn, Esq.
Kohn, Kohn and Colapinto, P.C.
517 Florida Avenue, N. W.
Washington, D. C. 20001
(202) 462-4145

Office of Commission Appellate
Adjudication*
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Adjudicatory File* (2)
Atomic Safety and Licensing Board
Panel
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Panel*
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Office of the Secretary* (2)
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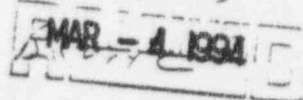
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

Office of Public Affairs

DATE 3-4-94



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LBP-94-06

March 3, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Peter B. Bloch, Chair
Dr. James H. Carpenter
Thomas D. Murphy

In the matter of

GEORGIA POWER COMPANY,
et al.

(Vogtle Electric Generating
Plant, Units 1 and 2)

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

Re: License Amendment
(Transfer to Southern
Nuclear)

ASLBP No. 93-671-01-OLA-3

MEMORANDUM AND ORDER

(Discovery Related to Office of Investigation Report)

Before us is the "NRC Staff Motion to Defer Certain Prehearing Activities Until the Staff Has Formulated a Position," January 24, 1994 (Staff Motion). The principal question is whether we should order the Staff of the Nuclear Regulatory Commission (Staff) — before it has decided whether to take possible enforcement action — to produce for discovery all or part of a report of the Office of Investigation concerning the Mosbaugh allegations that are the kernel of this case.

The Staff of the Nuclear Regulatory Commission claims that the document sought is a privileged pre-decisional

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document. Tr. 172; Staff Motion at 1; see 10 CFR § 2.790(a)(5) (Exemption 5 to the Freedom of Information Act). It does not claim that the document is exempt pursuant to 10 CFR § 2.790(a)(7) (Exemption 7 to the FOIA), which protects information compiled for law enforcement purposes.

On January 3, 1994, the Office of Nuclear Reactor Regulation issued Board Notification No. 94-01, stating that the investigation of the Mosbaugh Allegations had been completed. The Staff stated that on December 17, 1993, the NRC Office of Investigation (OI) issued its report on OI Case No. 2-90-020R. In addition, the Staff withheld the report from public release, citing consistency with the Commission's Statement of Policy on Investigations.

Staff argues:

The Staff is still reviewing Office of Investigations (OI) Report, Case No. 2-90-020R. The Staff requests that the proceeding be delayed and that no further Staff documents be produced so that the Staff, with the advice of the Commission, may determine whether to institute enforcement proceedings without the premature disclosure of the OI report or other aspects of the matter. Public disclosure of the OI Report and its supporting documentation, at this time, and any disclosure of contemporary internal Staff predecisional views could adversely affect the Commission's deliberative process in determining whether to institute an enforcement action. . . . The Commission's rules do not directly apply to the stay requested by the Staff here.¹ [Emphasis added.]

The claim of a pre-decisional privilege in this case is affected by the Staff's representation to us that the OI

¹Staff Motion at 1-2.

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Report (Case No. 2-90-020R) has been produced by the Office of Investigations after extensive investigative work. Based on our knowledge of similar reports, we are confident that this Office of Investigation report is carefully prepared and is extensive in its documentation. It is a report that the Staff has already decided is destined to be released. Tr. 169.

The Law²

Under the NRC's Rules of Practice, if a document is relevant and not covered by an exemption under 10 CFR § 2.790 and is not otherwise privileged, it must be produced. Further, even if the document is covered by an exemption, it must be produced if necessary to a proper decision in the proceeding. 10 C.F.R. § 2.744(d). Thus, the applicability of an exemption must be weighed against a litigant's need, and is equivalent to traditional privilege in civil proceedings. Consumers Power Co. (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 119-20 (1980).

In our Rules, there is a deliberative process exemption, which protects from disclosure intragency memoranda "which would not be available by law to a party other than an agency in litigation with the Commission." See Long

²We have borrowed language for this section from Georgia Power Company's Brief Concerning NRC Staff Release of Certain Investigatory Material, February 4, 1994 (GP Brief), at 2-5.

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Island Lighting Co. (Shoreham Nuclear Power Station, U.S. 1), ALAB-773, 19 NRC 1333, 1341 (1984). The U.S. Supreme Court has observed the purposes of the exemption.

The point, plainly made in the Senate Report, is that the "frank discussion of legal or policy matters" in writing might be inhibited if the discussion were made public; and that the "decision" and "policies formulated" would be the poorer as a result. S. Rep No. 813, p. 9. See also HR Rep No. 1497, p. 10; EPA v Mink, [410 U.S. 73, 87, 93 S. Ct. 827 (1973)]. As lower courts have pointed out, "there are enough incentives as it is for playing it safe and listing with the wind," Ackerly v Ley, 137 US App DC 133, 138, 420 F2d 1336, 1341 (1969), and as we have said in an analogous context, "[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decision making process." United States v Nixon, 418 US 683, 705, 41 L Ed 2d 1039, 94 S Ct 3090 (1974) (emphasis added).

The deliberative process privilege is not absolute:

The [deliberative process] privilege may be invoked in NRC proceedings. It is a qualified privilege, however, which can be overcome by an appropriate showing of need. A balancing test must be applied to determine whether a litigant's demonstrated need for the documents outweighs the asserted interest in confidentiality. In this respect, the government agency bears the burden of demonstrating that the privilege is properly invoked, but the party seeking the withheld information has the burden of showing that there is an overriding need for its release.

Shoreham, supra, ALAB-773, 19 NRC at 1341 (citations omitted).

It is settled law that factual material "must be segregated and released unless 'inextricably intertwined' with privileged communications, or the disclosure of such factual material would reveal the agency's decision making

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process." Id. at 1342 (citations omitted).

In determining the need of a litigant seeking the production of documents covered by the [deliberative process] privilege, an objective balancing test is employed, weighing the importance of the documents to the party seeking their production and the availability elsewhere of the information contained in the documents against the government interest in secrecy.

Long Island Lighting Co (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1164-65 (1982) citing United States v. Leggett & Platt, Inc., 542 F.2d 655, 658-59 (6th Cir. 1976), cert. denied, 430 U.S. 945 (1977).

The Staff seems to think that the "Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings," 49 Fed. Reg. 36032-34 (1984) provides some support for its position. However, the relevant portion of that document states, at p. 36033:

When staff or OI believes that it has a duty in a particular case to provide an adjudicatory board with information concerning an inspection or investigation, or when a board requests such information, staff or OI should provide the information to the board and parties unless it believes that unrestricted disclosure would prejudice an ongoing inspection or investigation, or reveal confidential sources³ [Emphasis added.]

³The cited text appears near the bottom of the Statement of Policy, following a paragraph that begins: "Until completion of the rulemaking [that the Commission directed the staff to commence], the following will control the procedure to be followed" The quoted language differs somewhat from the following earlier language — which appears to be in the nature of a preamble and not to be operative language — in the Statement of Policy:

However, the need to protect information developed in investigations or inspections usually ends once the investigation or inspection is completed and evaluated

Conclusions

The OI Report is central to the resolution of this case because it reflects the most exhaustive investigation that has been conducted and is highly likely to help to bring the light of truth into our deliberations. This report, and the factual information contained in it, is important to this Board. It is likewise essential that each of the parties see this document, use it in discovery activities, and ascertain its relevance to their cases.

There is no privilege covering factual information contained in this document and not inextricably intertwined with privileged communications. This principle is settled law. We expected that the Staff would voluntarily release this factual, unprivileged information. If this had been a Freedom of Information Act case, rather than a discovery case, the Staff would have been operating under statutory deadlines to release this factual information. Its delay in not releasing this information seems to have delayed the litigation of this case unnecessarily.*

We also would not follow the Staff's suggestion that we apply the intra-agency communication exemption to the opinions found in the Office of Investigation Report. Tr. 172. The opinions of the people who wrote the OI Report already are destined to see the light of day. Releasing

them now to the parties, under protective order, would have no additional detrimental impact on discussion in the agency. Senior officials such as direct the Office of Investigation are performing a public function and understand, from the outset, that their work will be carefully scrutinized by their superiors and the public. Scrutiny of their work is highly unlikely to embarrass anyone or to interfere with agency deliberative processes.

What the Staff is really asserting here seems to us to be a privilege not covered by the FOIA or by the Statement of Policy. Staff does not claim that disclosure "would prejudice an ongoing inspection or investigation, or reveal confidential sources." There is no ongoing investigation.

Staff is asking for a delay in publicity to permit it to make its decision before this matter reaches the press, the public or the Congress. Tr. 171. The Staff, in short, is asking to be able to deliberate privately about this important enforcement matter.

Since the Staff seeks this privilege and it is consistent with a fair trial of this case, we need not deny its claim. In this instance, we are able to offer some protection from public influence by requiring the production of the OI Report subject to a protective order. That order will require the parties to hold the information in confidence and will shelter the Staff (and the Commission) from

that each of the parties is trustworthy and that the protective order is highly likely to be observed.

We have weighed the factors set forth in our Memorandum and Order (Motion to Compel Production of Documents by the Staff), August 31, 1993.' At this point, the Staff is requesting about one month in which to determine whether or not to take an enforcement action. After that, there is an indeterminate period of time within which the Commission may act on this same question. The reason for the delay at this time stems from the extended time consumed in a complex investigation that has been ongoing for almost four years. On the other side of the ledger, there is a need for a prompt determination of this proceeding. Intervenor is prepared to conduct depositions during the first week of April. The Report of the Office of Investigation could be relevant to those depositions.

After balancing these factors, we have determined that the harm to Mr. Allen L. Mosbaugh and to Georgia Power from delaying the release of the requested information is tangible. On the other hand, the harm to the Staff has never been explicitly stated so that we can understand it and can consider it to be tangible. In consequence, we have decided that, on balance, the requested information should be released. The factual information in the OI Report should be released.

order. The release of the allegedly privileged opinion portions of the OI Report shall be required by the April 4, 1994,⁶ thus giving the Staff an opportunity for internal deliberations before production (subject to protective order) shall occur.

ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 2nd day of March, 1993, ORDERED, that:

1. The Staff of the Nuclear Regulatory Commission (Staff) shall promptly release to Georgia Power and Allen L. Mosbaugh all of the 'easy-to-separate'⁷ factual information that is contained in the Office of Investigation's Report in Case No. 2-90-020R and that is not inextricably intertwined with privileged material.
2. On April 4, 1994, the Staff shall release the remainder of the Office of Investigation's Report, subject to protective order.
3. The Staff shall promptly serve a proposed form of protective order on the parties and the Board.'

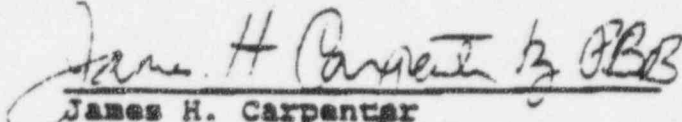
⁶James M. Taylor, Executive Director for Operations of the NRC, in his affidavit of February 4, 1994, attached to "NRC Brief on Release of OI Report Requested in Licensing Board Order of February 1, 1994," (at p. 3) estimated that the Staff would make its recommendations to the Commission by the end of March 1994. Our Order accommodates this estimate. If the Staff schedule is delayed, it may show cause why the estimate has been exceeded and a further extension should be granted.

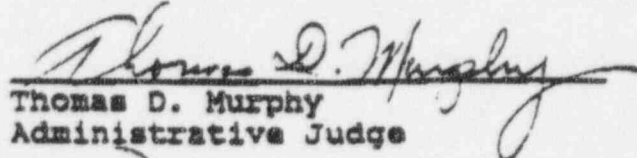
⁷Since the whole report will be released, the Staff should review it and release portions that they can reasonably determine to be factual, without extensive editing and redacting.

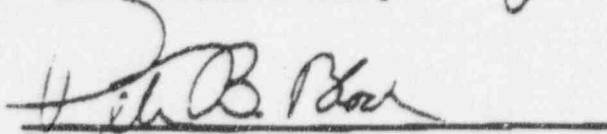
- 10 -

The parties shall sign the protective order, either as drafted by the Staff or as amended by this Board. The release provided for in paragraph 2 shall not occur until the signed protective orders have been served.

THE ATOMIC SAFETY AND LICENSING BOARD


James H. Carpenter
Administrative Judge

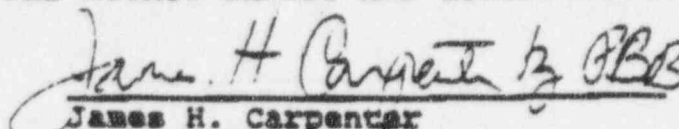

Thomas D. Murphy
Administrative Judge

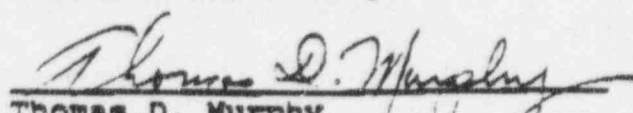

Peter B. Bloch
Chair

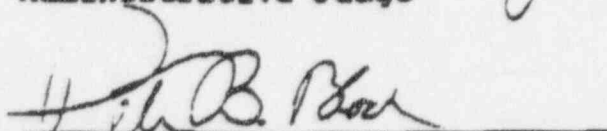
Bethesda, Maryland

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THE ATOMIC SAFETY AND LICENSING BOARD


James H. Carpenter
Administrative Judge


Thomas D. Murphy
Administrative Judge


Peter B. Bloch
Chair

Bethesda, Maryland



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

March 24, 1994

DocRef Nos. 50-424-OLA-3
50-425-OLA-3

Board Notification 94- 07

MEMORANDUM FOR: The Chairman
Commissioner Rogers
Commissioner Remick
Commissioner de Planque
Atomic Safety and Licensing Board and All Parties

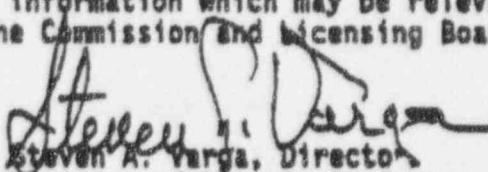
FROM: Steven A. Varga, Director
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

SUBJECT: NEW INFORMATION POTENTIALLY RELEVANT AND MATERIAL TO BOARD
PROCEEDING IN THE MATTER OF VOGTLE ELECTRIC GENERATING
PLANT, UNITS 1 AND 2

In conformance with the Commission's policy on notification of the Commission and the Licensing Boards of new, relevant, and material information, this memorandum calls attention to the document discussed below.

The Board has pending before it a contention challenging the application of Georgia Power Company (GPC) to authorize Southern Nuclear Operating Company, Inc. (Southern Nuclear), a subsidiary of The Southern Company, to operate Vogtle Electric Generating Plant, Units 1 and 2. One of the issues involves an allegation that GPC made false statements to the NRC about diesel generator testing conducted after the March 20, 1990, Site Area Emergency. On March 18, 1994, the NRC staff received the enclosed document from intervenor Allen L. Mosbaugh that contains allegations related to an allegation previously submitted to the NRC (See Exhibit 4 of Intervenor's Response to GPC's August 23, 1993, Filing for Reconsideration and Certification dated September 3, 1993). The allegation concerns the participants in a telephone call on April 19, 1990, discussing the Licensee Event Report on diesel generator testing, and subsequent remarks and actions by Southern Nuclear, GPC and its attorneys.

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


Steven A. Varga, Director
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Enclosure:
Allegation

9403250149

cc w/enclosure:
See next page

Contact: Darl S. Hood, NRR
504-3049

B/89

9403250149 4/94

Board Notification 94-07

Dated: March 24, 1994

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BOARD NOTIFICATION NO. 94-07

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

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