DD-97- 06

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Frank J. Miraglia Jr., Acting Director

In the Matter of	)	
	)	
GEORGIA POWER COMPANY, ET AL.	)	Docket Nos. 50-321,
	)	50-366,
(Vogtle Electric Generating Plant,	)	50-424,
Units 1 and 2)	)	and 50-425
	)	
(Hatch Nuclear Plant,	)	(10 CFR 2.206)
Units 1 and 2)	)	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

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DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

This is the final Director's Decision on the petition of Messrs. Marvin B. Hobby and Allen L. Mosbaugh (Petitioners) dated September 11, 1990, as supplemented October 1, 1990, and July 8, 1991, pursuant to 10 CFR 2.206 (Petition). In CLI-93-15, 38 NRC 1 (1993), the Commission vacated and remanded a partial decision on the Petition, DD-93-8, 37 NRC 314 (1993), dated April 23, 1993, and directed that the NRC staff consider the outcome of a pending license transfer proceeding on the Vogtle facility before acting on the Petition, due to the overlap in issues. After closure of the evidentiary record and before issuance of a decision, the Licensing Board terminated the Vogtle license transfer proceeding based upon a settlement agreement between Georgia Power Company (GPC or the licensee) and the sole intervenor, Mr. Mosbaugh. Consistent with the Commission's guidance in CLI-93-15, this Director's Decision addresses the matters considered in the

partial Director's Decision and the balance of the Petition in light of the information disclosed in the license transfer amendments proceeding, in NRC inspections, investigations, and enforcement actions, and decisions by the Department of Labor.

Although Mr. Mosbaugh has withdrawn his interest in the 10 CFR 2.206 Petition,[1] Mr. Hobby's request is still pending before the NRC. Inasmuch as the Petition was jointly filed by Messrs. Mosbaugh and Hobby and it is difficult to segregate their concerns, this Director's Decision addresses all matters raised in the Petition, as supplemented by the hearing record.[2]

II. BACKGROUND

A. NRC Staff and Commission Action on the Petition

On September 11, 1990, Michael D. Kohn, Esquire, on behalf of Messrs. Hobby and Mosbaugh, filed with the U.S. Nuclear Regulatory Commission (NRC) a "Request For Proceedings and Imposition of Civil Penalties for Improperly Transferring Control of Georgia Power Company's Licenses to the SONOPCO Project and For the Unsafe and Improper Operation of Georgia Power Company Licensed Facilities" (Petition). The Petitioners were formerly employed by GPC, which operates and is part owner of the Vogtle Electric Generating Plant and the Hatch Nuclear Plant. The Petition was referred to the Director, Office of Nuclear Reactor Regulation (NRR) for the preparation of a Director's Decision in

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[1] By letter dated August 2, 1996, Mr. Mosbaugh withdrew from the 2.206 petition, including "all requests for further proceedings and imposition of penalties relating to Georgia Power Company and Southern Nuclear Operating Company, as well as their directors, officers, employees, and affiliates." *See* Withdrawal of Allen L. Mosbaugh, dated August 2, 1996.

[2] Since this Director's Decision primarily addresses events that occurred prior to Mr. Mosbaugh's withdrawal, the term "Petitioners" refers to both he and Mr. Hobby. (However, the term "Intervenor" refers only to Mr. Mosbaugh).

accordance with 10 CFR 2.206. The NRC received exhibits to support the Petition on September 21, 1990, and a supplement to the Petition on October 1, 1990.

The Petitioners made a number of allegations concerning the management of the GPC nuclear facilities.[3] Specifically, the Petitioners alleged that (1) GPC illegally transferred its operating licenses to Southern Nuclear Operating Company (SONOPCO);[4] (2) GPC knowingly made misrepresentations in its response to concerns of a Commissioner about the chain of command for the Vogtle facility; (3) GPC made intentional false statements to the NRC about the reliability of a diesel generator (DG) whose failure had resulted in a Site Area Emergency at Vogtle; (4) a GPC executive submitted perjured testimony during a U.S. Department of Labor (DOL) proceeding under Section 210 of the Energy Reorganization Act; (5) GPC repeatedly abused Technical Specification (TS) 3.0.3 at the Vogtle facility; (6) GPC repeatedly and willfully violated TS at the Vogtle facility; (7) GPC repeatedly concealed safeguards problems from the NRC; (8) GPC operated radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements; (9) GPC routinely used nonconservative and questionable management practices at its nuclear facilities, and (10) GPC retaliated against managers who made their regulatory concerns known to GPC or SONOPCO management.[5] The Petitioners requested that the NRC institute proceedings and take swift and immediate action based on these allegations.

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[3] Petitioners' concerns about Southern Nuclear and GPC management practices are primarily based on Vogtle-specific information. The Petitioners offered no allegations based on observations of operations at the Hatch facility.

[4] Before its incorporation on January 1, 1991, Southern Nuclear Operating Company was known as "SONOPCO Project." Afterwards, it was commonly referred to as "Southern Nuclear."

[5] Petitioner Mosbaugh had informed NRC's Office of Investigations (OI) of some of these allegations beginning in January 1990.

On October 23, 1990, Dr. Thomas E. Murley, who was then Director of NRR, acknowledged receipt of the Petition and concluded that no immediate action was necessary regarding these matters. This determination was based on completed and continuing NRC inspections and investigations of the licensee, particularly those related to the operation of the Vogtle facility.

On February 28, 1991, the NRC requested the licensee to respond to the Petition. The licensee responded on April 1, 1991 (Response).

On July 8, 1991, the Petitioners submitted to the NRC "Amendments to Petitioners Marvin Hobby's and Allen Mosbaugh's September 11, 1990, Petition; and Response to Georgia Power Company's April 1, 1991, Submission by its Executive Vice President, Mr. R. P. McDonald" (Supplement). In the Supplement, the Petitioners alleged that GPC's Executive Vice President (1) made material false statements in GPC's April 1, 1991, submittal to the NRC regarding the participants in an April 19, 1990, telephone conference call, and that the submittal attempts to cover-up the improper conduct by shifting blame to Petitioner Mosbaugh and (2) made false statements to the NRC at a transcribed meeting on January 11, 1991, discussing the formation and operation of Southern Nuclear. The Supplement also contained a request for a variety of relief, including that the NRC take immediate steps to determine if GPC's current management has the requisite character and competence to continue operating a nuclear facility. On August 26, 1991, Dr. Murley acknowledged receiving the Supplement and informed the Petitioners that no immediate action was required and that the specific issues raised in the Supplement would be addressed in his Director's Decision. On August 22, 1991, the NRC requested the licensee to respond to the Supplement. The licensee submitted its response on October 3, 1991 (Supplemental Response).

On September 18, 1992, GPC filed an application to amend its licenses to transfer to Southern Nuclear its authority to operate the Vogtle units.[6] In response to notices of the proposed issuance of amendments and opportunity to request a hearing that were published in the Federal Register (57 FR 47127 and 47135, October 14, 1992), Messrs. Mosbaugh and Hobby filed, on October 22, 1992, a petition for hearing and leave to intervene. In a Memorandum and Order issued November 17, 1992, the Atomic Safety and Licensing Board (Board) denied Mr. Hobby intervenor status for lack of standing. On February 18, 1993 (LBP-93-5, 37 NRC 96, 111 (1993)), the Board granted the intervention petition of Mr. Mosbaugh (Intervenor) and consolidated issues raised in the petition into the following single contention:

> The license to operate the Vogtle Electric Generating plant, Units 1 and 2, should not be transferred to Southern Nuclear Operating Company, Inc., because it lacks the requisite character, competence and integrity, as well as the necessary candor, truthfulness and willingness to abide by regulatory requirements.

The admitted bases for the character and integrity contention were Intervenor's allegations that (1) GPC knowingly misled the NRC about who controlled licensed activities at the Vogtle facility by omission or misstatements of information (thus concealing a *de facto* transfer of control of the Vogtle facility to SONOPCO Project) and (2) GPC knowingly provided inaccurate, incomplete or misleading information regarding diesel generator (DG) starts and reliability in 1990 statements, as well as in April 1991 statements regarding the knowledge and involvement of senior GPC officials with respect to the inaccurate 1990

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[6] By separate application dated September 18, 1992, GPC also requested license amendments to transfer operating authority for the Hatch facility to Southern Nuclear.

DG information[7]. LBP-93-5, 37 NRC at 104-111; LBP-94-37, 40 NRC 288 (1994) (partial summary disposition of illegal transfer issue); LBP-93-21, 38 NRC 143, 148 (1993). Some of the issues raised by the Petition, as supplemented, were also considered in this proceeding concerning GPC's application to transfer authority to operate the Vogtle facility to Southern Nuclear (license transfer amendments proceeding).

In a partial decision on the Petition, dated April 23, 1993, DD-93-8, 37 NRC 314 (1993), *vacated and remanded,* CLI-93-15, 38 NRC 1 (1993), the Director, NRR addressed each issue raised in the Petition except for the allegations of discrimination and perjured testimony that were pending before the Department of Labor[8] and the allegedly false GPC statements to the NRC about the DG starts. The NRC staff determined that certain concerns raised by the Petitioners were partially substantiated, and Notices of Violation and a civil penalty were issued in response to these issues. The Director declined to take further action with respect to the matters resolved and concluded that (1) there was no unauthorized transfer of the Vogtle operating licenses, (2) GPC facilities "are now being

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[7] With respect to the DG reporting issue, Intervenor alluded to alleged falsehoods in GPC's April 19, 1990, Licensee Event Report 90-006 (LER) to the NRC (that reported a DG start count after the March 20, 1990, Site Area Emergency (SAE)) and a related OI investigation. *See* Amendments to Petition to Intervene and Request for Hearing, dated December 9, 1992 (Amended Petition) at 15-16, 18-19. Intervenor also asserted that in GPC's April 1, 1991, response to Intervenor's 10 CFR 2.206 petition, Mr. R. Patrick McDonald, Executive Vice President - Nuclear Operations, knowingly submitted false information (1) concerning the participation of Mr. W. George Hairston, III, Senior Vice President - Nuclear Operations, in developing the April 19, 1990, Licensee Event Report 90-006 (LER) and (2) when GPC managers became aware of errors in the LER. Amended Petition at 16-19. In the Amended Petition, Intervenor noted that these and other allegations were submitted to OI beginning in June 1990 and were the subject of a 10 CFR 2.206 petition filed on September 11, 1990, and supplemented September 21 and October 1, 1990, challenging the character, competence and integrity of GPC and the proposed transferee, Southern Nuclear.

[8] *Marvin B. Hobby v. Georgia Power Company,* DOL Case No. 90 ERA-30; *Allen Mosbaugh v. Georgia Power Company,* DOL Case Nos. 91 ERA-001 and 91 ERA-011.

operated in accordance with NRC regulations and do not endanger the health and safety of the public," and (3) the information available as of that date did not "call into question the licensee's character, competence, fundamental trustworthiness, and commitment to safety with respect to operation of its nuclear facilities." 37 NRC at 345.

On July 14, 1993, the Commission vacated and remanded to the NRC staff "those portions of the section 2.206 Petition decided [in DD-93-8] for the NRC staff's further evaluation and final decision in conjunction with the NRC staff's resolution of the other remaining matters in the Petition in light of the outcome of the transfer proceeding." CLI-93-15, 38 NRC 1, 3 (1993). The Commission indicated that its decision was based on the "overlap and similarity of some issues between the section 2.206 Petition and the transfer proceeding" which warranted that "the Staff's final determination of the common issues should take into account the Licensing Board's findings and the outcome of the transfer proceeding." The Commission further indicated that the common concern raised by the allegations that GPC or Southern Nuclear officers (and the corporate organization responsible for operation of the Hatch and Vogtle facilities) lack integrity should not be addressed in a piecemeal fashion, but determined in an integrated manner after consideration of the remaining matters in the Petition and the outcome of the transfer proceeding. The Commission, however, did not express any view on the soundness of the NRC staff's analysis of the issues addressed in DD-93-8 and did not bar the NRC staff from taking prompt enforcement action at any time during the ongoing review of the matters raised in the Petition. *Id.* at 3-4. Inasmuch as the hearing record supplements issues raised in the Petition, and consistent with Commission guidance, these matters are addressed as part of this Director's Decision.

B. DG Enforcement Actions

The NRC Office of Investigations (OI) documented the results of its investigation of the DG issues in a report on OI Case No. 90-020R, dated December 17, 1993 (OI Report). OI found that some GPC officials had either deliberately, or with careless disregard, submitted false or misleading information to the NRC during an April 9, 1990, presentation and in a related April 9, 1990, letter; in an April 19, 1990, LER; in a June 29, 1990, cover letter to the revised LER; and in an August 30, 1990, letter regarding DG start count information.

The NRC staff evaluated Intervenor's allegations and information in the OI Report and, on May 9, 1994, issued a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) and Demands for Information (DFIs) to GPC and six GPC employees. After considering the GPC reply to the NOV, and the GPC and individual responses to the DFIs, the NRC staff issued a Modified Notice of Violation and Proposed Imposition of Civil Penalties (Modified NOV) on February 13, 1995.[9] In the Modified NOV, the NRC staff concluded, among other things, that subject to commitments made by GPC and Mr. George Bockhold (Vogtle General Manager during 1990), the NRC "has no present concerns with the character and integrity of GPC or the individuals identified in Demands for Information."

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[9] The NOV (Staff Exhibit II-46) found GPC's failure (on April 9, April 19, June 29, and August 30, 1990) to provide information to the NRC that was complete and accurate in all material respects as required by 10 CFR 50.9 constituted a Severity Level II problem and proposed a $200,000 civil penalty. In response, GPC generally admitted each violation except the violation regarding air quality statements in the April 9 letter. *See* GPC Reply to NOV and DFIs, dated July 31, 1994 (Intervenor Exhibit II-105). The Modified NOV (Staff Exhibit II-51) withdrew the violation associated with air quality, but maintained that the remaining violations constituted a Severity Level II problem. GPC paid the civil penalty on March 1, 1995. *See* Letter from Mr. J. Milhoan to Mr. C. K. McCoy, dated March 13, 1995 (Intervenor Exhibit II-60) at 1.

C. Licensing Hearing

In January 1995, after completion of the discovery period concerning the illegal transfer issue, evidentiary sessions of the amendment proceeding on the proposed license transfer were held. Intervenor's case consisted of (1) his own prefiled testimony, (2) the testimony of Messrs. Marvin Hobby, William Shipman (who in October 1988 was the Vogtle General Manager for Support and became General Manager in January 1991), Fred D. Williams (GPC Vice President of Bulk Power Markets), (3) excerpts of prior testimony (e.g., DOL proceedings *Hobby v. GPC* and *Yunker and Fuchko v. GPC*), *see* Transcript at 10134-66, 10170-99, 2757-58, and (4) deposition excerpts. Evidence received addressed (1) control of daily nuclear operations, (2) the development and implementation of nuclear policy decisions, (3) the employment, supervision and dismissal of nuclear personnel, and (4) responsibility for nuclear costs. The hearing was to determine whether GPC, either through omissions or misrepresentations, misled the NRC about who was in control of the Vogtle facility. LBP-94-37, 40 NRC 288 (1994).

Hearings on the DG issues were held from April through September 1995, and generated a transcript record of over 12,500 pages, prefiled testimony of over 35 witnesses, and nearly 600 exhibits.[10]

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[10] Included among these exhibits were the transcripts of audio tape recordings (and two audio tapes) secretly made by Mr. Mosbaugh in February through August 1990 at the Vogtle site. Mr. Mosbaugh gave OI 277 audio tape recordings in connection with his allegations. OI retained 76 tapes, citing conversations on 22 tapes in the OI Report. The Mosbaugh tape recordings were akin to a contemporaneous record of some events related to matters in the hearing, but some tape excerpts played in the courtroom contained numerous inaudible portions and the content, context and tone of the remarks recorded were disputed, *e.g.*, Tape 58, dated 4/19/90 (Board Exh. II-12). Unsuccessful or incomplete attempts to arrive at agreements on tape transcripts led to different versions of some tape transcripts being proffered by the parties.

The Board ruled that (1) the allegations in the NOV were important to the admitted contention and were within the scope of the license amendments proceeding, and (2) Intervenor could inquire as to whether GPC withheld pertinent facts from the NRC with respect to the DGs. LBP-94-15, 39 NRC 245, 255-56 (1994). The Board allowed evidence on whether GPC officials were willful or recklessly careless of the facts (as opposed to complete and accurate): (1) in the April 9 letter statement that air quality was satisfactory; (2) in the April 9 letter statement that recently obtained high dew point readings resulted from faulty instrumentation; and (3) in other communications with the NRC regarding high dew points.[11] *See* Memorandum and Order (Summary Disposition: Air Quality), dated April 27, 1995 (unpublished), at 6-9.

Some of the issues raised in the 10 CFR 2.206 Petition were also heard during the hearing to give Intervenor latitude in establishing that certain communications from GPC to the NRC were false and misleading and, circumstantially, to show a pattern of deception and falsehood associated with the original representations to the NRC. Memorandum and Order (Motion to Strike Mosbaugh Testimony), dated May 11, 1995, at 4-6.[12]

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[11] Mr. Mosbaugh's air quality allegation asserted that Mr. George Bockhold, Vogtle General Manager, deliberately misrepresented DG air quality in the April 9 letter by withholding then recent (known) out-of-tolerance DG control air dew point readings, as well as erroneously asserting that high readings were due to faulty instruments and that air quality was satisfactory. OI Report (Intervenor Exhibit II-39) at 95. OI substantiated this and the other allegations concerning DG information and concluded that Messrs. George Bockhold, George Hairston, Kenneth McCoy (Vice President - Vogtle Project) and William Shipman (General Manager - Plant Support) deliberately (or with careless disregard) had submitted false and incomplete information to the NRC. OI did not substantiate, however, that Mr. McDonald deliberately provided false information to the NRC in the GPC response to Intervenor's 10 CFR 2.206 petition. *See* OI Report at 1-2.

[12] These matters included the FAVA (a radwaste microfiltration system) and "Dilution Valve" allegations provided to OI prior to the March 20, 1990, Site Area Emergency and also raised in the 10 CFR 2.206 petition. The technical matters raised by the allegations were not admitted into the license transfer proceeding. May 11 Order at 7-8.

Intervenor's direct case included his written testimony and cross-examination of adverse witnesses (present and former employees of GPC). GPC's case included the testimony of site and corporate management regarding the Vogtle facility, including Messrs. R. Patrick McDonald (GPC Executive Vice President - Nuclear Operations), W. George Hairston, III (GPC Senior Vice President - Nuclear Operations), C. Kenneth McCoy (GPC Vice President - Vogtle Project), Bockhold, John G. Aufdenkampe (GPC Manager of Technical Support), Jimmy Paul Cash (a Unit Superintendent for the Vogtle facility and a degreed Senior Reactor Operator), Georgie R. Frederick (Supervisor - Safety Audit and Engineering Review),[13] and the testimony of two former NRC employees[14]. The NRC staff witnesses were Messrs. David B. Matthews (NRR Project Director for the Hatch and Vogtle facilities from 1988 through 1995), Pierce H. Skinner (Region II Section Chief of Reactor Projects since 1991), Darl S. Hood (NRR Licensing Project Manager for the Vogtle facility from August 1990 through 1995), Edward B. Tomlinson (an NRR Senior Reactor Engineer for DGs and supporting systems since 1981), Luis A. Reyes (Region II Director of Division of Reactor Projects from 1987 to 1992, and Deputy Regional Administrator for Region II through 1997), and Roy P. Zimmerman (NRR Associate Director for Projects since June 1994).

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[13] Among the other witnesses that testified for GPC were Thomas V. Greene, Jr. (Assistant General Manager - Plant Support), Michael W. Horton (Manager - Engineering Support), Harry W. Majors (Licensing Engineer - Vogtle Project), Thomas E. Webb (Licensing Engineer-Vogtle site), Kenny C. Stokes (a Senior System Engineer in the Engineering Support Department with primary responsibility for the DGs), Lewis A. Ward (Manager of Nuclear Maintenance and Support), and W. F. "Skip" Kitchens (Assistant General Manager - Operations and Chairman of the Vogtle Plant Review Board), and Mark Briney (an acting Instrumentation and Control (I&C) superintendent in March-April 1990).

[14] In 1990, Mr. Milton D. Hunt was an NRC Inspector, and Mr. Richard A. Kendall was a member of the NRC Incident Investigation Team (IIT).

After proposed findings of fact and conclusions of law were filed in the proceeding,[15] Mr. Mosbaugh and GPC filed a joint motion requesting that the Board dismiss the proceeding and refrain from issuing an Initial Decision. On August 19, 1996, the Board issued a Memorandum and Order (LBP-96-16, 44 NRC 59) terminating the license amendments proceeding based on Mr. Mosbaugh's withdrawal as the sole intervenor pursuant to a settlement agreement with GPC.[16] In LBP-96-16, the Board recognized that the Commission encourages settlements and stated:

> We are satisfied, based on our analysis of the record, that the Staff has been an active guardian of the public interest at Plant Vogtle and, to the extent that they may have not already done so, that the Staff will take the record we have developed into account in exercising its continuing authority. See Notice of Violation and Proposed Imposition of Civil Penalty (NOV) and Demands for Information (DFI), May 9, 1994; Modified Notice of Violation and Proposed Imposition of Civil Penalties, February 13, 1995; Notice of Violation (Department of Labor

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[15] Georgia Power Company's Proposed Findings of Fact and Conclusions of Law on Diesel Generator Reporting Issues, dated November 6, 1995; Intervenor's Final Statement of Fact and Conclusions of Law, dated November 30, 1995; NRC Staff Proposed Findings of Fact and Conclusions of Law in the Form of an Initial Decision, dated December 12, 1995; Georgia Power Company's Reply to Intervenor's and the NRC Staff's Proposed Findings of Fact and Conclusions of Law, dated December 22, 1995.

[16] Although the settlement agreement was not made available to the Board or NRC, both Mr. Mosbaugh and GPC assured the Board that nothing in the settlement agreement would prohibit, restrict or otherwise discourage Mr. Mosbaugh from raising safety concerns to the NRC in the future. Mr. Mosbaugh also stated that all of his safety or regulatory issues had been presented to the NRC. Joint Motion of Termination, dated August 2, 1996, at 10.

Mr. Mosbaugh also withdrew his complaint before DOL. On August 23, 1996, a DOL Administrative Review Board issued a "Final Order Approving Settlement And Dismissing Complaint" after reviewing the confidential settlement agreement regarding the discrimination suit of Mr. Mosbaugh (DOL Case Nos. 91-ERA-1; 91-ERA-11), finding the agreement to be "a fair, adequate and reasonable settlement of the complaints." On August 29, 1996, the DOL Administrative Law Judge (to whom the suit had been remanded by the Secretary of Labor on November 20, 1995, for a determination regarding Mr. Mosbaugh's damages) took note of the Order by the Administrative Review Board and issued an "Order of Dismissal."

Case Nos. 90-ERA-30, and 91-ERA-011), May 29, 1996.
LBP-96-16 at 11-12.

D. Standards for Character and Integrity

In reaching this decision on the character and integrity contention, I have considered the following Commission guidance and precedent. In *Metropolitan Edison Co.* (Three Mile Island Station, Unit 1), CLI-85-9, 21 NRC 1118, 1136-37 (1985) (footnotes omitted), the Commission stated:

> A generally applicable standard for integrity is whether there is reasonable assurance that the licensee has sufficient character to operate the plant in a manner consistent with the public health and safety and applicable NRC requirements. The Commission in making this determination may consider evidence regarding licensee behavior [including the acts of licensee employees since all organizations carry out their activities through individuals] having a rational connection to the safe operation of a nuclear power plant. This does not mean, however, that every act of a licensee is relevant. Actions must have some reasonable relationship to licensee's character, *i.e.*, its candor, truthfulness, willingness to abide by regulatory requirements, and acceptance of responsibility to protect public health and safety. In addition, acts bearing on character should not be considered in isolation. The pattern of licensee's behavior, including corrective actions, should be considered.

In *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), 12 NRC 281 (1980), the Commission stated that "[e]ither the abdication of knowledge or abdication of responsibility, whether at the construction or operating phase, could form an independent basis for revoking a license or denying a license application on grounds of lack of competence (*i.e.*, technical) or character qualification on the part of a licensee or applicant. 42 U.S.C. 2232a."

Licensee communications to the NRC, whether written or oral, must be complete and accurate as required by 10 CFR 50.9. In promulgating 10 CFR 50.9, the Commission emphasized that forthrightness in communications with the NRC is essential if the NRC is to fulfill its responsibilities to ensure that the use of radioactive material and operation of

nuclear facilities are consistent with public health and safety. Completeness and Accuracy of Information: Final Rule and Statement of Policy, 52 Fed. Reg. 49,362 (December 31, 1987). A determination of whether information is "complete and accurate in all material respects" is to be judged by whether information has a natural tendency or capability to influence an agency decisionmaker and omissions are actionable to the same extent as affirmative material false statements. 52 Fed. Reg. 49,363. Thus, a statement is material if a reasonable staff member should consider the information in question in doing his job, but the NRC need not rely on a false statement for it to be material. *See Randall C. Orem, D.O.* (Byproduct Materials License No. 34-26201-01), CLI-93-14, 37 NRC 423, 427-428 (1993) (whether a statement induced the agency to grant an application has no bearing on materiality) and cases cited therein.

The term "material false statement" (which was often used by Intervenor in the license amendments proceeding) is limited "to situations where there is an element of intent," *i.e.*, egregious situations. 52 Fed. Reg. 49,365. The Commission also explained that intent is also indicated by careless disregard as:

> [T]he "concept of 'careless disregard' goes beyond simple negligence, as the term has been applied to judicial decisions defining willful conduct as it has been applied by this agency. *See, e.g., Trans World Airlines, Inc. v. Thurston,* 83 L.Ed.2d. 523, 537 (1985); *Reich Geo-Physical, Inc.,* ALJ 85-1, 22 NRC 941, 962-63 (1985). 'Careless disregard' connotes reckless regard or callous indifference toward's one's responsibilities or the consequences of one's actions."

52 Fed. Reg. 49,365.

In light of the importance of licensee communications and their role in enabling the NRC to discharge its responsibilities, this Director's Decision examines whether GPC acted with candor and endeavored to ensure that submissions to the NRC were accurate. *See Virginia Electric & Power Co.* (North Anna Power Station, Units 1 and 2), CLI-76-22,

4 NRC 480, 486, 491 (1976) ("nothing less than simple candor is sufficient"), *aff'd,* 571 F.2d 1289 (4th Cir. 1978).

III. DISCUSSION

A. Alleged Unsafe Operating Practices

(Petition Sections III.5-8)

The Petition included several concerns regarding unsafe operating practices at the Vogtle facility. These concerns were initially addressed in the vacated partial Director's Decision (DD-93-8) and are presented below with supplementation based on the license amendments hearing record and minor editing.

1. Alleged Routine Entering Into "Motherhood"

The Petitioners allege (*see* Petition Section III.5) that GPC routinely threatens the safe operation of GPC's nuclear facilities by allowing them to enter TS 3.0.3, referred to in the Petition as "motherhood." Specifically, the Petitioners state that (1) GPC repeatedly allowed the Vogtle facility to enter TS 3.0.3 by rendering both trains of safety-related load sequencers for the DGs inoperable, and (2) GPC did not make the required notifications to the NRC when TS 3.0.3 was entered.

Vogtle TS 3.0.3 requires that, when a limiting condition for operation (LCO) is not met, except as provided in the associated action requirements, action shall be taken within one hour to place the unit in a mode in which the TS do not apply by placing it in hot standby within the next six hours, in hot shutdown within the following six hours, and at least in cold shutdown within the subsequent 24 hours.

The NRC established TS 3.0.3 to ensure that the reactor plant is shut down in a timely and orderly manner when the LCO in the TS for the specific component or system is exceeded or when a condition exists that is not addressed by TS requirements. The

licensee has satisfied the TS if it performs the final action within the time specified in the TS. If the condition requiring entry into TS 3.0.3 is corrected before commencing or completing the shutdown, the licensee need not initiate a shutdown, or if a shutdown is already initiated, may end the shutdown and return the plant to the previous conditions.

In accordance with 10 CFR 50.72, Immediate Notification Requirements for Operating Nuclear Power Reactors, licensees are required to make immediate (*i.e.*, within 1 or 4 hours, depending on the circumstances) reports to the NRC of any declaration of an emergency class specified in the Emergency Plan, and certain non-emergency events. Non-emergency events include such items as the initiation of any nuclear plant shutdown required by the TS, any deviation from the TS authorized by 10 CFR 50.54(x), any condition where the nuclear power plant (including its principle safety barriers) becomes seriously degraded, and any natural phenomenon or other external condition that poses an actual threat to the safety of the nuclear plant or significantly hampers site personnel in the performance of duties necessary for the safe operation of the plant. In 10 CFR 50.73, Licensee Event Report System, events are identified for which written reports will be made to the NRC within 30 days. These events include several of the events requiring immediate reports pursuant to 10 CFR 50.72, plus additional events such as any event or condition that alone could have prevented the fulfillment of the safety function of certain structures or systems. The NRC's notification and reporting regulations do not contain an explicit requirement that an entry into TS 3.0.3, in and of itself, be reported. Licensees are required by 10 CFR 50.72 to notify the NRC within one hour of the initiation of any plant shutdown required by the plant's TS. Thus, the NRC is promptly notified of entries into TS 3.0.3 if the plant initiates a shutdown as a result of the problem that caused entry into the TS. However, there is no requirement to notify the NRC of entries into TS 3.0.3 if

a shutdown is not initiated. The NRC staff has no basis to conclude that the licensee's activities constituted unsafe practices or that these activities indicated that the character of the licensee, including those GPC individuals employed by Southern Nuclear in conjunction with the transfer of operating licenses to Southern Nuclear, is unsuitable for operating a nuclear power plant.

The NRC staff has reviewed GPC's entry into TS 3.0.3 through various inspections conducted by region-based inspectors and through the observations of the permanently assigned resident inspection staff and concludes that GPC does not routinely enter TS 3.0.3.

In Inspection Report 50-424, 425/90-19, January 11, 1991, the NRC staff documented that GPC management indicated that actions for an orderly shutdown would not be initiated until at least 3 hours after entry into TS 3.0.3. GPC management also indicated that it could perform an orderly, controlled shutdown within one hour, if necessary. GPC interpreted the action statement of TS 3.0.3 to allow seven hours to be in hot standby, and to accomplish this, the shift crew could wait for at least three hours after entering the LCO before commencing a shutdown. It was also GPC's position that no notifications to the NRC were required under these circumstances. GPC's actions in this area did not differ significantly from those of other licensees, except that GPC did not immediately notify the load dispatcher[17] and did not provide written guidance to the operations personnel. In Inspection Report 50-424, 425/90-19, the NRC staff identified the lack of immediate notification as a weakness. On February 28, 1991, GPC responded

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[17] The NRC confirmed that, while GPC did not follow the actions recommended in Generic Letter 87-09 (i.e., notification of the load dispatcher within the first hour and performance of a controlled shutdown throughout the next six hours), the NRC could find no instance of GPC ever exceeding the seven-hour time limit to be in hot standby.

to this finding by providing written guidance for the operators to use upon entering TS 3.0.3.[18] The NRC staff reviewed this guidance and, as noted in Inspection Report 50-424, 425/91-14 dated July 19, 1991, found it acceptable.

The specific example identified by the Petitioners regarding this issue concerned GPC's practice in the area of safety-related load sequencers for Vogtle's DGs. The Petitioners claim that the licensee failed to recognize that the loss of a load sequencer resulted in the entry into TS 3.0.3 and thus, required notification of the NRC.

Each unit at Vogtle has two Engineering Safety Feature Actuation Systems (ESFASs) sequencers and both must be operable during Modes 1, 2, 3, and 4. NRC and GPC personnel determined that removing the load sequencers from service could result in entering the LCO for TS 3.0.3 or in entering TS Table 3.3-2, depending on which portion of the sequencer system was removed. Some of the circuits were included in Table 3.3-2, but the TS did not address the remainder of the system. The Operations Department had historically linked load sequencer outages to the emergency DG LCO of TS 3.8.1.1.b (78 hours to hot standby). During the NRC's special team inspection documented in Inspection Report 50-424, 425/90-19, GPC determined that TS Table 3.3-2 and TS 3.0.3

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[18] The Licensee's written guidance for TS 3.0.3 entry was issued as TS Clarifications, which are additional pages that the Licensee maintains with the TS in the main control room. The guidance provided that upon entry in TS 3.0.3, the Unit Shift Supervisor should evaluate plant conditions and formulate a course of action, including actions to prepare for and complete a safe and controlled shutdown. In cases where a high degree of confidence exists that the technical issues can be resolved or repairs made promptly to restore component operability, an immediate power reduction is not advisable. However, actions are to be taken to ensure that an orderly shutdown will be completed within the allowable time while repairs or attempts to resolve operability are underway. Within the first hour, notifications to the load dispatcher and management should be made. If the condition still exists, power reduction should begin no later than four hours into the action (i.e., 3 hours of the allowable time remaining). In those cases where it is apparent that resolution of the condition will not occur within the allowable time, an orderly shutdown will begin immediately.

should have applied to sequencer outages. When this determination was made, GPC informed the NRC staff that it had not reviewed past work orders for load sequencers.

At that time, the NRC staff reviewed both the completed maintenance work orders that were performed on the sequencers on Units 1 and 2 and the related surveillance tests by the Instrumentation and Control Engineering and the Operations Departments. The NRC staff found several instances where the work performed would have required the load sequencers to be de-energized. However, the associated unit was found not to have been in Modes 1, 2, 3, or 4 at the time this work was performed and therefore, no TS LCO applied.

Similar to the maintenance work order review, the NRC staff reviewed related Instrumentation and Control Engineering and the Operations Departments' surveillance tests. This review did not reveal any examples of the load sequencers having been de-energized while in Modes 1 through 4 at the time the work was performed and thus, no TS LCO's applied.

Accordingly, I conclude that GPC does not routinely threaten the safe operation of the Vogtle facility by allowing entry into TS 3.0.3. The Petitioners' claim that NRC notification requirements were violated upon entry into TS 3.0.3 was not substantiated.

2. Alleged Ignoring of Technical Specifications

The Petitioners claim (*see* Petition Section III.6) that GPC routinely endangers the public's safety by ignoring TSs and that this is illustrated by seven cited examples:

Example (1): Opening Dilution Valves When Required to be Locked Closed (Petition Section III.6a)

The Petitioners state that the licensee willfully and knowingly violated Vogtle Unit 1 TSs by opening dilution valves required to be locked closed by TSs. The Petitioners claim

that the valves were opened while the reactor coolant system (RCS) was at mid-loop, and that this placed the plant in an unanalyzed condition and created the risk of an uncontrolled boron dilution accident and an inadvertent reactor criticality. The Petitioners allege that the valves were opened to expedite an outage so that the plant could be placed back on line according to the outage schedule.

OI investigated this event, which occurred in October 1988 during the first refueling outage for Vogtle Unit 1. The results of that investigation are documented in OI Report 2-90-001. The OI investigators concluded that TS 3.4.1.4.2 was knowingly and intentionally violated by Vogtle Operations shift supervisors, with the express knowledge and concurrence of the Operations Manager.[19] In its Report, OI also concluded that a violation of the reporting requirements of 10 CFR 50.73 occurred, but that the evidence was insufficient to conclude that this was a deliberate violation of reporting requirements.

On June 3, 1991, after reviewing the OI findings, the NRC staff issued a Notice of Enforcement Conference and Demands for Information to GPC and the Operations Manager at the time of the incident. The NRC staff also issued Demands for Information to the Operations Superintendent and the Shift Supervisor at the time of the incident.

After reviewing the responses to the four Demands for Information (Demands), the NRC staff held an Enforcement Conference on September 19, 1991, with GPC and the Operations Manager. Subsequently, the NRC staff sent letters to the Operations Manager, the Operations Superintendent, and the Shift Supervisor stating that no additional actions would be taken regarding their individual NRC licenses. The NRC staff also stated that,

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[19] Mr. William F. "Skip" Kitchens, the Operation's Manager and a PRB chairman, and Mr. Jimmy P. Cash, a Senior Reactor Operator serving as the Operation's Superintendent on Shift, are also mentioned in this Director's Decision in the discussions of the DG issue. See also Section III.D herein regarding a January 1990 meeting between Messrs. Bockhold, Kitchens, and Mosbaugh.

although the actions of these individuals did not meet NRC expectations, there was insufficient evidence to support a conclusion that their actions in 1988 constituted a deliberate attempt to disregard and intentionally circumvent the requirements of the TSs.

On December 31, 1991, after consultation with the Commission, the NRC staff issued a Notice of Violation And Proposed Imposition Of Civil Penalty of $100,000 (Notice) to GPC. The Notice set out several violations identified during the NRC investigation conducted between February 1, 1990, and March 19, 1991, including a violation that, contrary to the requirements of TS 3.4.1.4.2, on October 12 and 13, 1988, with Unit 1 in Mode 5, loops not filled, reactor makeup water storage tank valves 1208-U4-176 and 1208-U4-177 were opened in order to add chemicals to the RCS. On January 30, 1992, the licensee responded to the Notice, denied the violations, and protested the proposed imposition of the civil penalty.[20] The NRC staff reviewed GPC's response and, on June 12, 1992, issued an Order Imposing Civil Monetary Penalty of $100,000 (Order). On July 9, 1992, GPC responded to the Order, submitted payment of the penalty, and noted that it did not plan to appeal this action.

The NRC staff has also evaluated the Petitioners' concern that the plant was placed in a condition that could have resulted in an uncontrolled dilution event and inadvertent reactor criticality. The NRC staff reviewed an analysis of this event that Westinghouse subsequently performed and GPC provided on November 21, 1989, to support proposed license amendments to change Vogtle TS 3.4.1.4.2. The change would allow the valves to be opened under administrative control to enable non-borated chemical additions to be

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[20] It was GPC's position that the Action Statement in the TS stating that the valve should be closed immediately if found open meant that the valve could be opened for about five minutes. GPC based this position upon earlier correspondence between NRC and the nuclear industry which had explored potential definitions for "immediate" actions.

made to the RCS during Mode 5b (cold shutdown with coolant inventory reduced to the extent that the reactor coolant loops are not filled) and Mode 6 (refueling), using a flow path via the reactor makeup water storage tank. The results of the Westinghouse analysis indicated that the minimum acceptable operator action times of 15 minutes for Mode 5b and 30 minutes for Mode 6, as specified in the NRC's Standard Review Plan (NUREG-0800), would be met. On the basis of this analysis, the NRC staff concluded that the opening of these valves under administrative controls with the RCS in a loops-not-filled condition, including the mid-loop condition, would not result in an unsafe condition. This conclusion formed the basis for the NRC staff's approval of License Amendment Number 28 for Vogtle Unit 1 and License Amendment Number 9 for Vogtle Unit 2, each dated February 20, 1990. The responses by GPC and specific individuals indicated that precautions were taken when the valves were opened in 1988 to ensure that the valves would remain open for no more than five minutes. While the NRC staff is unable to conclude that these undocumented controls were in place, the NRC staff does find that the actual amount of time the valves were open was of insufficient duration to create a criticality event. Therefore, the NRC staff concludes that, although the TSs in effect at the time were violated, the actual opening of the valves in 1988 did not endanger the health and safety of the public.

Thus, to the extent that Petitioners allege that a violation associated with the operation of these dilution valves occurred, the allegation is substantiated and the NRC has taken appropriate enforcement action. However, the evidence does not substantiate that this action was willful. Rather, as indicated by the responses of the Operations Manager, the Operations Superintendent, the Shift Supervisor, and GPC to the NRC's Demands for

Information and during the Enforcement Conference, the action resulted from an incorrect interpretation of the TS requirement by the Operations Manager in 1988.

Example (2): Failure to Secure Dilution Valves as Required by TSs (Petition Section III.6b)

On February 26, 1990, the NRC staff found that the dilution valves, identified in Example 1 above, were required to be locked closed, but were not locked while at mid-loop, in violation of TSs. The Petitioners assert that this is another example of a willful violation of TSs by Vogtle senior management.

On February 26, 1990, while Unit 1 was in Mode 5 with reactor coolant loops not filled (mid-loop), the NRC staff found that discharge valve 1-1208-U4-176 of the refueling makeup water storage tank was closed but was not secured in position as required by Action Statement c of TS 3.4.1.4.2. Instead of installing a mechanism to mechanically secure this valve, the licensee placed a "hold tag"[21] on the valve, which provided only administrative control to preclude valve operation. When the NRC staff described this condition to the licensee, Vogtle personnel contended that the administrative controls were acceptable to fulfill the requirements of the TS that the valve be secured in position. GPC later agreed that this method was an unacceptable interpretation of the TS and took action to install a mechanical locking device. On April 26, 1990, the NRC staff issued Notice of Violation, 50-424, 425/90-05-01, "Failure to Mechanically Secure Valve 1-1208-U4-176 During Mode 5 As Required By TS 3.4.1.4.2.C."

During a subsequent NRC inspection (Inspection Report 50-424, 425/91-14), the NRC staff reviewed the licensee's associated actions in connection with this issue and

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[21] A "hold tag" is a 3 inch by 5 inch red tag that is attached to a piece of equipment to indicate that it is not to be operated. The intent of the "hold tag" is indicated by Vogtle's Administrative Procedure 304-C, "Equipment Clearance and Tagging Procedure," which states that "A hold tag, when attached to a piece of equipment, prohibits the operation of that equipment in all circumstances."

closed this violation. The inspectors reviewed the locked valve procedure, 10019-C, which had been revised to eliminate using a "hold tag" on valves that are required by TSs to be secured in position. To secure the valve, the licensee routed a steel cable through drilled holes in the valve handle and mechanically secured the cable to prevent personnel from operating the valve. GPC conducted a comprehensive review of all remaining valves required by TSs to be secured to ensure that each had a locking mechanism in place. GPC committed to providing an appropriate locking mechanism for any valve secured by a hold tag and required to be secured by TSs. However, GPC found no other valves in that category.

The NRC staff concludes that, although a violation was issued, it resulted from the licensee's erroneous belief that use of a hold tag was an acceptable means of satisfying the TS requirement that the valve be secured. No evidence was found of a willful violation of TSs by Vogtle senior management or other personnel. Therefore, the allegation was not substantiated.

Example (3): Miscalculation of Shutdown Margin (Petition Section III.6c)

The Petitioners allege that in January 1989, two shifts of licensed operators miscalculated, because of procedural errors, the shutdown margin for Vogtle Unit 1, which was shut down at the time, and consequently that the RCS boron concentration became "dangerously low" and that the licensee did not write a deficiency report, conduct a critique, review its actions for conformance to TSs, or submit a report to the NRC.

Vogtle TS 3.1.1.2 requires that a specified minimum shutdown margin be maintained when the reactor is in Modes 3 (Hot Standby), 4 (Hot Shutdown), or 5 (Cold Shutdown). The required minimum value is specified by graphs of shutdown margin as a function of RCS boron concentration. The minimum shutdown margin specified in TS

3.1.1.2 is sufficient to ensure, as a most restrictive condition, that if a boron dilution accident were to occur during the beginning of core life, the operator would have at least 15 minutes to take corrective action after the initiation of an alarm caused by source range high flux to avoid total loss of shutdown margin. An operator reaction time of at least 15 minutes is consistent with the associated accident analyses of the boron dilution event in the Final Safety Analysis Report (FSAR). The corresponding surveillance requirement in TS 4.1.1.2 requires that the shutdown margin be determined to be greater than or equal to the required value at least once every 24 hours by considering several factors, including RCS boron concentration, RCS average temperature, and xenon concentration.

At 5:35 p.m. on January 19, 1989, control room operators at Vogtle manually tripped the Unit 1 turbine and reactor to enter a planned outage to repair a leaking socket weld for the drain line in the loop seal downstream of the pressurizer safety relief valve. After the unit was shut down, an extra shift supervisor on shift completed Procedure 14005-1, "Shutdown Margin Calculation," which must be completed every 24 hours when the plant is in Modes 3, 4, or 5. He signed the procedure at 7:13 p.m. on January 19, 1989. However, the extra shift supervisor incorrectly completed Data Sheet 2, which applies to conditions where the average RCS temperature is equal to or greater than 557 degrees Fahrenheit. This action was incorrect because he should have completed Data Sheet 4, which applies to conditions related to entering Cold Shutdown (Mode 5). The shutdown margin calculation that was completed by the shift supervisor, was based upon the wrong data sheet, and resulted in a calculated shutdown margin of 6.6 percent reactivity (*i.e.,* delta k/k)[22] and a required shutdown margin of 2.58 percent delta k/k.

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[22] Reactivity is defined as the fractional change in neutron population from one neutron generation to the subsequent generation. Reactivity is expressed mathematically as $(K_{effective} - 1)/K_{effective}$, or as delta k/k, where $K_{effective}$ is the *footnote continued* →

These results indicated to the operators that no boron addition to the RCS was required in order to enter Cold Shutdown.

On January 20, 1989, at approximately 9:00 a.m., a reactor engineer questioned the apparently low RCS boron concentration of 1333 parts per million (ppm). His concern prompted the licensee to stop the unit cooldown until the shutdown margin calculation was verified. At 10:22 a.m., the reactor engineer completed a shutdown margin calculation that assumed an RCS temperature of 68 degrees Fahrenheit and 0 percent reactivity for xenon worth. His calculation, which did not take into account xenon worth, showed that 1800 ppm boron concentration was necessary to obtain a shutdown margin of 4.015 percent delta k/k compared to a required shutdown margin of 3.47 percent delta k/k. This calculation failed to include credit for xenon worth, which would have added approximately 3.8 percent delta k/k to the shutdown margin and provided more than an adequate margin above TS requirements without further boration. Since no TS limit was exceeded, GPC was not required to submit, and did not submit, a written report to the NRC.

On January 20, 1989, at 1:38 p.m., the on-shift operations supervisor recalculated the shutdown margin that had been incorrectly calculated at 7:13 p.m. on January 19, 1989. The new calculation relied upon plant data in effect on January 19 and was based upon Data Sheet 4. The new calculation determined that the shutdown margin was 4.185 percent delta k/k while the required shutdown margin was 1.92 percent delta k/k.

The NRC Resident Inspectors reviewed Procedure 14005-1, Data Sheets 2 and 4, the calculations concerning the data sheets dated January 19 and 20, 1989, and control room

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multiplication factor in a nuclear system expressing the change in the fission neutron population per generation.

logs for that period. The NRC staff discussed the inspection findings in Inspection Report 50-424, 425/91-20, dated September 12, 1991. The NRC staff found that the shutdown margin calculation performed at 7:13 p.m. on January 19, 1989, was incorrect in that the wrong Data Sheet of Procedure 14005-1 was used. However, the inspector found no evidence that the TS limits on shutdown margin were ever exceeded or that an inadvertent criticality could have occurred because the wrong data sheet was used. The confusing instructions on Data Sheet 2 of Procedure 14005-1 contributed to this error. On March 26, 1989, the licensee revised this procedure to simplify, consolidate, and clarify the data sheets. The NRC staff also confirmed that GPC failed to write a Deficiency Card for this event which would have prompted the licensee to perform a followup review of the error. The inspectors reviewed GPC's Deficiency Card program and found it to be adequate. They could find no other instances of a failure to write a Deficiency Card.

Thus, the NRC Resident Inspectors determined that violations occurred. The extra shift supervisor failed to follow procedures in selecting the data sheet. Additionally, a shift supervisor made an error and failed to write a Deficiency Card.

Based on its review of Inspection Report 50-424, 425/91-20, the NRC staff has determined that these violations meet the criteria contained in Sections V.A. and V.G.1 of the then-in-effect General Statement of Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C) for violations for which a Notice of Violation need not be issued. Section V.A. allowed the NRC to exercise discretion in issuing a Notice of Violation for isolated Severity Level V violations, regardless of who identified them, provided the licensee had initiated appropriate corrective actions before the end of the inspection. Under Section V.G.1, the NRC need not issue a Notice of Violation if the violation was identified by the licensee, is normally classified at a Severity Level IV or V,

was reported if required, was or will be corrected (including measures to prevent recurrence) within a reasonable time, was not a willful violation, and was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation. This practice of not requiring the issuance of a Notice of Violation when a violation meets the aforementioned criteria was adopted by the NRC as a means of encouraging licensees to identify and correct violations and to avoid expenditure of limited resources for both the NRC and the licensee--resources that could be better used in improving safety.

In summary, the licensee identified and corrected the shutdown margin calculation error, which did not result in the violation of a TS limit and did not require a written report to the NRC. Moreover, the corrected calculations of the shutdown margin do not support the allegation that the error resulted in "dangerously low" boron concentrations in the RCS or that it endangered the health and safety of the public. The NRC inspectors determined that, even though a Deficiency Card was not written, the licensee's followup review of the error was prompt and had been completed before the end of the inspection.

Example (4): "Taking" LERs (Petition Section III.6d)

The Petitioners claim that GPC employees were told, on March 22, 1990, to keep planned shutdowns on schedule by "taking" LERs.[23] The Petitioners also contend that pressure to remain on schedule would necessarily result in an intentional violation of TS and "taking" LERs in order to remain on schedule.

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[23] "Taking" LERs implies that personnel intentionally do not perform actions required by a TS at the specified time required by the TS action. At a later time, they subsequently acknowledge this action was not performed and then write a report (LER) to the NRC as specified in 10 CFR 50.73. Thus, this "taking" LERs would allegedly be done in order to forgo performing the activity required by a TS at a time that would cause a schedule delay.

This issue was reviewed as part of OI's investigation of an alleged intentional TS violation with regard to a mode change with an inoperable neutron source range monitor (see Example 6 hereinafter). OI's review and findings in this area are documented in OI Report 2-90-012. The OI investigation did not substantiate the alleged "taking" of LERs. The personnel interviewed stated they had never been instructed to do "whatever it takes" to stay on schedule.

On the basis of this investigation, the NRC staff was unable to conclude that Vogtle personnel either had a deliberate practice of, or were instructed to, "take" LERs to stay on schedule. Similarly, statements made by the Petitioners that SONOPCO's philosophy would necessarily result in managers intentionally violating TS and "taking" LERs to remain on schedule were not substantiated by the NRC staff's review. Therefore, the allegation was not substantiated.

Example (5): Surveillance Testing of Containment Isolation Valves (Petition Section III.6.e.i)

The Petitioners claim that the licensee knowingly concealed a violation which, if uncovered, would have resulted in a safety-related shutdown of Vogtle Unit 1. The violation allegedly concerned the failure to properly test approximately 39 containment isolation valves in violation of TS surveillance requirement 4.6.1.1.a.

In February 1990, after operations personnel performed a monthly TS surveillance on containment isolation valves and turned in their paperwork, the Shift Supervisor recognized an error in that only two of 39 valves had been checked. The Shift Supervisor directed that all necessary surveillances be performed immediately. The Shift Supervisor then examined previous records and found that the same error had also been made the previous month, and therefore, that another violation of TS 4.6.1.1.a had occurred. The Shift

Supervisor then informed the Work Planning Group of the error and this group prepared and delivered a Deficiency Card to the control room. Since the missed surveillances had already been completed by this time, no action was initiated under the TS's LCO (shut down within 1 hour). The Petitioners state that the Deficiency Card should have been initiated earlier by the individual discovering the deficiency and that the event was mishandled to conceal the discovery time and to avoid the shutdown requirement of the LCO.

GPC reported this issue in a timely LER 50-425/90-01, dated March 27, 1990. NRC resident inspectors reviewed the LER, as documented in Inspection Report 50-424, 425/90-10, and found that the task sheet contained in the procedure for performing this surveillance was inadequate. The format of the task sheet resulted in cognitive personnel errors because the task sheet was unclear as to the number of valves required to be tested. The NRC staff categorized this event as a non-cited violation because the criteria for exercising discretion specified in Section V.G.1 of the then-in-effect Enforcement Policy (10 CFR Part 2, Appendix C) were met (NCV 50-425/90-10-01).

An OI investigation did not substantiate that this violation was willful. OI concluded in OI Report 2-90-012, that the missed surveillance had been reported in an LER and resulted from an inadequate Surveillance Task Sheet that had listed equipment identification numbers of only two valves for the monthly containment integrity check. OI noted that the NRC resident inspectors had reviewed the LER and documented the event without issuing a Notice of Violation. OI also noted that the circumstances of this event were reviewed during the NRC's special team inspection at Vogtle in August 1990, which found that the Shift Supervisor did not conceal the true discovery time of the missed surveillance in order to avoid a unit shutdown and that the Shift Supervisor's actions to

initiate an investigation into the adequacy of the previous month's surveillance and to concurrently perform the missed surveillances were appropriate. Since the surveillance test is of short duration, it was completed before the determination was made that the previous test had not been completed correctly. Since the surveillance test had already been repeated once the inadequacy of the previous test became known, a shutdown of the unit at that point was not required.

On the basis of the NRC staff's inspections and the OI investigation, the Petitioners' claim that the licensee knowingly concealed a technical violation was not substantiated.

Example (6): Changing Modes With Required Equipment Inoperable (Petition Section III.6.e.ii)

The Petitioners claim that the licensee knowingly concealed another violation on March 1, 1990, when a change from Mode 5 to Mode 6 occurred even though required equipment was not operable. Petitioners assert that the failure to comply with the TS translated into a 12-hour schedule enhancement at a critical juncture and was a willful violation.

The NRC resident inspectors, an NRC special inspection team, and OI investigators reviewed this issue. Results of these efforts are documented in NRC Inspection Report 50-424/90-10 dated June 14, 1990, and OI Report 2-90-012. GPC also documented this event in LER 424/90-004 dated May 11, 1990. This LER described the licensee identified violation of TS 3.0.4 on March 1, 1990, when Unit 1 entered Mode 6 from Mode 5 with an LCO in effect for a neutron source range channel. The LER attributed the root cause to cognitive personnel error by the Shift Superintendent who failed to review the back side of the relevant LCO Status Sheet that noted the mode change was prohibited while the

source range monitor was inoperable. Moreover, the Shift Superintendent had not otherwise recognized the prohibition before authorizing the mode entry.

The NRC staff interviewed various personnel involved in the review of plant conditions and involved with documentation necessary to change modes. The interviews indicated that the Shift Superintendent and the Unit Shift Supervisor were aware of an active LCO at the time of the mode change, but neither had connected the LCO to a mode restriction. Both of these individuals indicated that there had been no unreasonable emphasis on the critical path schedule. Both denied that they had ever been given any indication or instruction to do whatever it takes to stay on schedule. They also indicated that they did not feel undue pressure to stay on schedule or any pressure to compromise plant safety even though the mode change resulted in a reduction of the critical path outage time.

The NRC staff expressed concern that the format of the LCO status sheet contributed to the problem. Because the status sheet is a two-sided form with the remarks section on the back of the form, a cursory review of the sheet could result in any remarks entered on the back of the form being overlooked. On the basis of the NRC resident inspectors' review, the NRC determined that a violation occurred as discussed in Inspection Report 50-424/90-10. This violation was categorized as a non-cited violation because the criteria for exercising discretion specified in Section V.G.1 of the then-effective Enforcement Policy (10 CFR Part 2, Appendix C) were met (NCV 50-424/90-10-03).

On the basis of evidence developed during the NRC inspections and OI investigation, the allegation of an intentional violation was not substantiated.

Example (7): Failure to Declare RHR Pump Inoperable And Enter LCO (Petition Section III.6.e.iii)

The Petitioners allege that GPC knowingly concealed a TS violation when the "B" residual heat removal (RHR) pump was not declared inoperable after cracking of the nuclear service cooling water (NSCW) line. Specifically, the Petitioners allege that, during the second refueling outage at Unit 1, (1R2), with RHR train "A" out of service for maintenance, the RHR train "B" pump experienced excessive vibration and the NSCW motor cooler experienced a leak at its outlet. TS 3.9.8.1, "RHR and Coolant Circulation," was allegedly violated because the Operations Department chose not to declare RHR pump "1B" inoperable in an effort to mitigate the effect on the critical work path.

The NRC staff addressed this item in the Special Team Inspection documented in Supplement 1 to NRC Inspection Report 50-424, 425/90-19, dated November 1, 1991. In Section 2.2 of the Inspection Report, the NRC staff concluded that the Vogtle Operations Department had an adequate engineering basis for accepting operability of the RHR pump even with the pump's high vibration and the NSCW leak.

The inspection team also concluded that declaring the pump inoperable would not have affected the critical work path. The LCO actions would not have been restricted because the containment, except for ventilation, had been isolated as required by TS 3.9.4. The LCO actions would not have prevented the licensee from continuing refueling activities in that the actions to close all containment penetrations providing direct access from the containment atmosphere to the outside atmosphere would have required only closing the containment ventilation purge valve, which has an automatic closure signal. Thus, there is no evidence that schedule considerations motivated the licensee in this matter.

On the basis of evidence developed during NRC inspections, the allegation that GPC knowingly concealed a TS violation when the "B RHR" was not declared inoperable was not substantiated.

3. Alleged Concealment of Safeguards Problems

The Petitioners allege (*See* Petition Sections III.7a and III.7b) that GPC personnel, including a Vice President and General Manager, and a Southern Company Services Manager, knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with mandatory reporting requirements. The Petitioners further allege that the GPC Vice President made false statements to the NRC during an Enforcement Conference about the status of safeguards materials in Birmingham, Alabama, and that the alleged false statements probably influenced a subsequent civil penalty action taken by the NRC. The Petitioners claim that the false and misleading information presented at the Enforcement Conference and other information withheld from the NRC were highly significant. The Petitioners assert that, if the NRC had the benefit of complete, factual information, the NRC would likely have increased the Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000 issued to the licensee on June 27, 1990, into the hundreds of thousands of dollars.

The Petitioners also allege that on July 23, 1990, plant and SONOPCO senior management prevented the Site Security Manager from making a Red Phone[24] notification within 1 hour as required by 10 CFR 73.71. The Petitioners allege that the manager was prevented from making the call in order to delay or defuse the NRC's

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[24] A Red Phone refers to a Licensee's Emergency Notification System and is used for immediate telephone notifications to the NRC's Operation Center in accordance with 10 CFR 50.72 and 10 CFR 73.71.

knowledge of programmatic problems on the part of the licensee regarding the handling of safeguards documents.

OI investigated the allegation that (1) GPC knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with mandatory reporting requirements, and (2) the GPC Vice President made false statements to the NRC in an Enforcement Conference concerning the status of safeguards material in Birmingham, Alabama. The results of these investigations are documented in OI Report 2-91-003. The OI investigations did not substantiate that GPC withheld pertinent information from the NRC at the time of the Enforcement Conference on May 22, 1990, or that GPC management impeded the reporting of safeguards events. On the basis of the OI investigations, the NRC staff concluded that the Notice of Violation and Proposed Imposition of Civil Penalty of $50,000 were appropriate.

OI also investigated the allegation that on July 23, 1990, plant and SONOPCO senior management prevented the Site Security Manager from making a Red Phone notification within 1 hour as required by 10 CFR 73.71. The results of this investigation are also documented in OI Report 2-91-003. Specifically, the concern was that the Site Security Manager was allegedly prevented from making a Red Phone notification for two events. The first event was that a safeguards container had been found open and uncontrolled for half an hour in Birmingham, Alabama, in November 1989. The second event involved 14 safeguards documents had been found uncontrolled in the SONOPCO offices on June 15, 1990.

The first event constituted a violation of the reporting requirements of 10 CFR 73.71, in 1989, when the uncontrolled container was discovered and not reported to the NRC within 1 hour. In 1990, as part of its corrective actions in response to an NRC

enforcement action, GPC identified the fact that a required report for this event might not have been made in 1989.

GPC's corrective actions in response to the NRC enforcement action also identified the second event. GPC's consideration of the reporting requirements for the first event was subsequently combined with a similar consideration of the need to report the second event. The second event also was not reported within 1 hour as required by 10 CFR 73.71.

After reviewing OI's investigation results, the NRC staff concluded that the failure to make a timely report on the second event, and the delay in informing the NRC staff of the discovery of the failure to report the first event, were due to the GPC's cumbersome system for evaluating corporate security findings through the site security organization, rather than any willful attempt to impede the reporting process.

The NRC staff decided to take no additional enforcement action for these two issues. The decision to refrain from issuing a Notice of Violation for the delay in reporting the first event was based upon Section V.G.5 of the then-in-effect Enforcement Policy (10 CFR Part 2, Appendix C). This provision of the policy allowed the NRC staff to forego a Notice of Violation when a violation is discovered as the result of corrective action for a previous enforcement action. The NRC staff considered the violation for the delay in reporting the second event to be an additional example of a violation which the licensee had identified previously and was, at the time, taking corrective actions. Therefore, as provided by the aforementioned Section V.G.5, the NRC staff issued no Notice of Violation.

Based on the OI investigation and NRC staff review, the allegation was not substantiated.

4. Alleged Operation of Radioactive Waste Systems and Intimidation of Plant Review Board Members

The Petitioners assert (*See* Petition Section III.8) that GPC endangered the public's health and safety by operating radioactive waste systems and facilities known to be in gross violation of NRC requirements. The Petitioners also state that Vogtle's General Manager, Mr. George Bockhold, intimidated members of the Plant Review Board (PRB) when they attempted to consider if the use of the waste system should be resumed.

The NRC's Special Inspection Team reviewed this item and discussed its findings in Supplement 1 to Inspection Report 50-424, 425/90-19, dated November 1, 1991. The alleged improper installation and operation of the radioactive waste system is discussed in Section 2.1 of the Inspection Report and the alleged intimidation of PRB members is discussed in Section 2.7 of the Inspection Report.

The Petitioners allege that GPC installed and operated a radioactive waste micro-filtration system without performing an adequate engineering and safety evaluation in accordance with 10 CFR 50.59.[25] This specific system is known as the FAVA system because it is supplied by FAVA Control Systems (FAVA).

The Petitioners further alleged that the material configuration, fabrication, and quality of the system did not meet the guidance of Regulatory Guide (RG) 1.143, "Control of Stainless Steel Weld Cladding of Low-Alloy Steel Components," and the requirements of the American Society of Mechanical Engineers (ASME) Code.

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[25] Title 10 of The Code of Federal Regulations, Section 50.59, allows licensees to make changes in the facility and procedures, or conduct tests or experiments as described in the safety analysis report without prior Commission approval, unless the proposed changes involve a change in the Technical Specifications or an unreviewed safety question.

In late 1987, GPC temporarily installed and operated a system at Vogtle for removing Niobium-95. GPC planned to replace this temporary modification with a permanent, system in the future.

In February 1988, GPC experienced difficulty in removing colloidal Niobium-95 with the temporary system following a reactor shutdown for maintenance work. GPC contracted FAVA to help rectify this problem. The licensee corrected the situation by installing a 0.35-micron filter system downstream of the existing pre-filters. However, a large volume of radioactive waste was generated because the 0.35-micron filters rapidly exhibited high differential pressure and had to be changed frequently. The need to change filters frequently also resulted in Radwaste Department personnel receiving additional radiation exposure.

Upon evaluating the performance of the 0.35-micron filter system, the Radwaste Department determined that the best approach to the problem was to install a back-flush, pre-coat filter system. However, no operational data was available for a system of this type in this specific application. FAVA supplied a proprietary Ultra Filtration System (Model No. 5FD/E) for testing to evaluate whether this was a practical and effective solution to the problem. GPC installed the temporary FAVA system before the Unit 1 refueling outage and operated it under Test Procedure T-OPER-8801. The test system kept liquid effluent releases well below the TS limits. The Radwaste, Chemistry, and Engineering Departments evaluated the test results, and GPC issued a general work order to purchase a permanent system.

In the early part of 1989, the Quality Assurance (QA) Department performed an audit and identified a significant finding involving a programmatic breakdown in the procurement

of the temporary FAVA system and a failure to meet commitments of the FSAR. That finding prompted the licensee to remove the temporary FAVA system from service.

In late 1989, the licensee sought to reinstall the FAVA system under a temporary modification because colloidal Cobalt-59 and Cobalt-60 had to be removed. The PRB reviewed this temporary modification and several members expressed strong objections to it based on the previous QA audit finding.

These objections prompted the licensee to submit a Request for Engineering Assistance (REA) and perform a safety evaluation in accordance with 10 CFR 50.59 in November 1989. The licensee's engineering staff subsequently reviewed the November 1989 safety evaluation and found it to be adequate, except that it did not properly address the guidance of Regulatory Guide (RG) 1.143 regarding the use of polyvinyl chloride (PVC) piping. GPC performed another safety evaluation in February 1990 to address this issue and the vulnerability of the PVC pipes to radiation degradation. In the February 1990 safety evaluation, the licensee specifically stated that the FAVA system did not conform to the criteria of RG 1.143. However, this deviation was found to be technically acceptable for several reasons: (1) The design of the FAVA system had been previously evaluated and found to be adequate in the REA response of November 1989, except for the PVC pipes; (2) The location of the FAVA system was inside a shielded watertight vault, which provided adequate assurance that any system failures would be contained and would not create the potential for offsite releases; and (3) The presence of PVC pipe in the FAVA system, although contrary to by RG 1.143, was acceptable based on subsequent design reviews because the radiation exposure of the plastic was found to be within acceptable limits.

Although the testimony of one of the PRB members indicated that the temperature effects on the use of PVC in the FAVA system were not adequately evaluated before the system was installed, the testimony of the corporate system engineer indicated that GPC had considered this before installing the system, although it was not specifically documented in the safety evaluation.

Vogtle management subsequently consulted the NRC resident inspector to seek an NRC position on placing the FAVA system back in service. The inspector was also provided additional information by other Vogtle management personnel documenting reasons that it should not be placed in service. The licensee forwarded this package to Region II and NRR for review. In March 1990, following Region II and NRR concurrence during a telephone conference, the licensee placed the FAVA system in service with the following NRC stipulations:

(1) That procedures for operating the FAVA system require that an operator be present any time the system is in operation;

(2) That all hoses to and from the FAVA system be verified to conform to RG 1.143;

(3) That the cover over the FAVA system be securely fastened when the system is in operation to ensure that if a spraying leak developed, it would be contained in the concrete vault; and

(4) That the design of the walls of the auxiliary radwaste building be evaluated to determine if a design change was needed to reduce the possibility of wall leakage if a hose develops a leak and sprays its contents on the walls.

The licensee complied with these stipulations upon returning the system to operation.

The review by the NRC indicated that the FAVA system was originally installed and operated by the licensee without an adequate safety evaluation and did not meet the guidance in RG 1.143 in that PVC piping was used in this system. However, this deficiency was of limited duration and the licensee, upon performing subsequent safety evaluations that were forwarded to and accepted by the NRC staff, concluded that the system was acceptable for use. The NRC's extensive review developed no facts to support a conclusion that the licensee willfully violated NRC requirements or willfully operated the facility in a manner to endanger the public health or safety.

The Petitioners also contend that Vogtle's General Manager intimidated and pressured PRB members during a PRB meeting. The meeting occurred in February 1990 and was for the purpose of determining the acceptability of the safety analysis for installing the FAVA micro-filtration system.

As previously discussed, the licensee performed several safety evaluations for the temporary modification to install the FAVA micro-filtration system. The NRC Special Inspection Team found, through its discussions with PRB members that, while reviewing these safety evaluations, various PRB members had expressed reservations on several occasions concerning the acceptability of the FAVA system.

Although various PRB members may have expressed reservations, the inspection team, in reviewing the PRB meeting minutes regarding this temporary modification, identified few instances of the PRB members documenting their dissenting opinions. Specifically, the minutes of PRB meeting 90-15, on February 8, 1990, documented one PRB member's negative vote and dissenting opinions regarding the acceptability of exempting the temporary modification from regulatory requirements and the adequacy of the system's safety evaluation. The only other example of a dissenting opinion was in the

minutes for PRB Meeting 90-32, on March 6, 1990. This dissenting opinion related to the acceptability of voting on the FAVA system installation when the PRB member who raised the initial questions and concerns on the operation of the FAVA system was not present.

During discussions with NRC inspectors, PRB members indicated that, during the various PRB meetings concerning installing the FAVA system, they felt intimidated and pressured by the presence of the General Manager at the PRB meeting. On one occasion, an alternate voting member felt intimidated and feared retribution or retaliation because the General Manager was present at the meeting and the PRB member knew the General Manager wanted to have the temporary modification approved. However, the PRB member stated that he did not alter his vote and felt comfortable with how he had voted. This PRB member also stated that he was not aware of any occasions where he or any other PRB member succumbed to intimidation or any other occasions where he or they feared retribution.

The PRB members informed the General Manager following the meeting (PRB 90-15) that several of them viewed his presence as intimidating. On March 1, 1990, the General Manager addressed this concern by meeting with all PRB members to reiterate each member's duties and responsibilities. He specifically told the members that his presence at PRB meetings must not influence them and that alternates should be selected who would feel comfortable with this responsibility. He also addressed the difference between professional differences of opinion and safety or quality concerns, and methods for resolving each.

Thus, the NRC staff has found that, in one case, a PRB voting member felt intimidated and feared retribution because the General Manager was present at the PRB meeting. However, this member stated that he did not change his vote in response to the General

Manager's presence.[26] He stated that the General Manager was informed of this issue and met with the PRB to allay fears. The information obtained by the NRC staff indicated that retribution did not occur against any PRB member for revealing a concern about intimidation. The inspection found that the instance involving a member fearing retribution was confirmed, and the absence of dissenting opinions in the PRB meeting minutes called into question the openness of discussions at PRB meetings. Further discussions with PRB members, however, indicated that the lack of dissenting opinions was due to items being discussed and reviewed until all members were comfortable with PRB decisions.

NRC resident inspectors at Vogtle frequently attend PRB meetings and have found that the subjects are candidly discussed and the issues resolved without apparent intimidation.

In summary, the allegation that GPC endangered the public health and safety by operating the FAVA system in gross violation of NRC requirements was not substantiated. The allegation that a PRB member felt intimidated by the General Manager during the

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[26] During the license amendments hearing on the DG issue, the Board heard evidence on the FAVA issue in the proceeding to determine whether or not intimidation of PRB members occurred. The PRB member who felt intimidated was not called as a witness and provided no testimony. The interview notes of Mr. Bill Lyon of the Quality Concerns Program for the Vogtle facility on February 23, 1990, confirm that at the time of the PRB's vote on FAVA, the PRB member felt undue pressure to vote early, and probably would have voted "no" had Mr. Bockhold not been present because he thought that FAVA did not meet Regulatory Guide criteria, but that, given his PRB role as a health and safety reviewer, and considering the placement of impingement barriers, there was no health and safety problem. He also stated that he would be willing to meet with the Vogtle General Manager to discuss the matter further. Intervenor Exhibit II-231 at 8-9 (marked but not received in evidence).

The notes of the interview are consistent with the NRC inspection finding regarding intimidation.

meeting on the FAVA system was substantiated, but the reaction did not affect the PRB member's decision regarding safety.[27]

B. Alleged Illegal Transfer of Licenses

(Petition Section III.1 with supplement dated October 1, 1990; July 8, 1991, Supplement, Section IV; License Amendment Proceeding on Illegal Transfer Issue)

The Petitioners allege that GPC improperly transferred control of its licenses to operate the Hatch and Vogtle facilities to SONOPCO. The Petitioners contend that Mr. Joseph M. Farley--who was an officer of GPC's parent company, The Southern Company, and its subsidiary, Southern Company Services--was really the Chief Executive Officer (CEO) of SONOPCO and was, in fact, responsible for operating the GPC nuclear facilities, beginning with the first of three phases in the planned transition to Southern Nuclear. Petitioners contend that Mr. McDonald, GPC Executive Vice President-Nuclear Operations, received management direction from Mr. Farley regarding Vogtle facility matters and that numerous oral and written statements regarding the organization were intentionally false to conceal Mr. Farley's role from the NRC.

The Petitioners contend that during Phase I of the transition to Southern Nuclear, GPC, in effect, transferred control of its NRC licenses to the SONOPCO Project. They base their claim, in part, on Mr. Mosbaugh having witnessed the daily operation of GPC's nuclear facilities at the site and Mr. Hobby at GPC's corporate offices. The Petitioners alleged that (Petition at 6):

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[27] The incident, however, is another example of how the management style of the Vogtle General Manager could result in discouraging individuals from voicing concerns. *See e.g.*, Section III.C of this Director's Decision regarding the role of the Vogtle General Manager in the inaccurate and incomplete reporting of DG information to the NRC.

> The actual chain of command [was Vogtle] General Plant Manager George Bockhold to SONOPCO Vice President McCoy; McCoy to SONOPCO's Senior Vice President, George Hairston; Hairston to SONOPCO's Executive Vice President and Chief Operations Officer, R. Patrick McDonald; McDonald to SONOPCO's Chief Executive Officer, Mr. Farley.

In a supplementary filing of October 1, 1990, the Petitioners further contended that Mr. Farley, "chose the GPC Corporate Officers which would be staffing the SONOPCO Project even though he is not an officer or employee of GPC." In the July 8, 1991, Supplement (page 20), the Petitioners asserted that Mr. McDonald reported to Mr. Farley on administrative matters since the formation of the SONOPCO Project.

The focus of the license amendment proceeding on the illegal transfer issue was whether GPC, either through omissions or misrepresentations, misled the NRC about who was in control of the Vogtle facility, particularly in the context of the extensive communications with the NRC. LBP-94-37, 37 NRC 288, 291 (1994).

A review of the history and background of the formation of Southern Nuclear will assist in understanding this issue.

1. Background: Formation of Southern Nuclear

The Southern Company is the parent firm of five electric utilities: Alabama Power Company (APC), GPC, Gulf Power, Mississippi Power, and Savannah Electric. Two of these utilities are associated with nuclear facilities at three different sites. GPC is the principal owner and the holder of licenses from the NRC to operate the Vogtle nuclear facility near Augusta, Georgia, and the Hatch nuclear facility near Baxley, Georgia. APC owns the Farley nuclear facility near Dothan, Alabama. The Southern Company also includes Southern Company Services, Incorporated, a wholly-owned service organization.

In 1988, The Southern Company established the SONOPCO Project for the long-term purpose of establishing an operating company to eventually operate the nuclear power

generating plants that were then operated by GPC and APC.[28] The establishment of a single operating company was to be accomplished in three phases. During Phase I, SONOPCO--which had not yet received the approval of the Securities and Exchange Commission (SEC)--was formed by The Southern Company as a "project" to provide support services to the operating companies (GPC and APC). In Phase II, which is now in effect for the Vogtle and Hatch facilities, SONOPCO (now called Southern Nuclear) continues to provide support services to the operating companies, but has become a legal entity, having obtained the approval of the SEC, and thereafter being incorporated by The Southern Company. Phase III begins for the Vogtle and Hatch facilities (and is currently in effect for the Farley facility) when Southern Nuclear acquires NRC licenses to operate the nuclear facilities.

Because of delays associated with reaching agreement with one of the co-owners, the transition occurred more slowly than first anticipated, and Phase I of the project lasted for approximately two years (1989 and 1990). During this phase, Mr. Farley was responsible for the administrative aspects of forming the new operating company. On February 24, 1989, Mr. Farley was elected Executive Vice President-Nuclear of The Southern Company

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[28] In March 1988, GPC and APC met with NRC to discuss their plans to form a separate operating company, SONOPCO. On July 25, 1988, NRC met with GPC to discuss the corporate organization of SONOPCO and GPC, including the generic activities and initiatives involving the Vogtle and Hatch facilities. Enclosure 3 to the meeting summary prepared by NRC Region II, August 11, 1988, a Nuclear Operations-Transition Organization chart, shows the Vice President-Nuclear (Hatch), and the Vice President-Nuclear (Vogtle) reporting to Mr. W. G. Hairston, the Senior Vice President-Nuclear Operations and Mr. W. G. Hairston reporting to Mr. R. P. McDonald, the Executive Vice President-Nuclear Operations. On March 1, 1988, Mr. McDonald was elected a senior officer of GPC and named Executive Vice President-Nuclear, effective April 25, 1988. On May 4, 1988, Mr. W. G. Hairston was elected Senior Vice President-Nuclear Operations of GPC and Mr. C. K. McCoy was elected Vice President-Nuclear of GPC (GPC submittal, April 1, 1991, Attachment 1, Exhibit 4).

and Executive Vice President of Southern Company Services, Incorporated. Before these elections, he had been President and Chief Executive Officer (CEO) of APC for almost 20 years.

Until Southern Nuclear acquired the NRC licenses, the GPC nuclear facilities were to remain under the direction of GPC President, Mr. A. William Dahlberg, III, with a reporting chain downwards of Executive Vice President-Nuclear Operations (Mr. R. P. McDonald), Senior Vice President-Nuclear Operations (Mr. W. G. Hairston, III), and the vice presidents for the Vogtle and Hatch facilities (Messrs. C. K. McCoy and T. J. Beckham, respectively). The APC plants were to remain under the direction of the APC President, with a similar chain downward of Mr. McDonald, Mr. Hairston, and the vice president for the Farley facility. Mr. McDonald and Mr. Hairston were officers of both APC and GPC.

During Phase I, which began on or about November 1, 1988, technical support was provided to all three nuclear facilities by a common Technical Services group under a Vice President of Southern Company Services, Incorporated, who reported to the Executive Vice President, Mr. McDonald. Administrative support to all three facilities was provided by a common Administrative Services Group under another Vice President of Southern Company Services, Incorporated, who also reported to Mr. McDonald. Phase I was to be effective until the SEC approved the creation of Southern Nuclear. Mr. Farley was not identified as having any responsibility for operating the GPC nuclear facilities during this phase. He was responsible for providing administrative services through Southern Company Services, Incorporated, and was also responsible for the formation of SONOPCO. Although not in effect during Phase I, Mr. Farley had been designated to become the President and CEO of Southern Nuclear when it was established.

Phase II began on December 14, 1990, with SEC's approval of The Southern Company's request of June 22, 1988, to form Southern Nuclear, and the election of officers on December 18, 1990; the Southern Nuclear organization was effectively implemented January 1, 1991. As part of Phase II, GPC's Executive Vice President (Mr. McDonald) and Senior Vice President, Nuclear Operations (Mr. Hairston) became officers of Southern Nuclear and reported administratively to the President and CEO of Southern Nuclear, Mr. Farley. The Vice Presidents of each nuclear facility also became officers of Southern Nuclear. The Vice President of Technical Services and the Vice President of Administrative Services, respectively, for Southern Company Services, Incorporated, became officers of Southern Nuclear, rather than officers of Southern Company Services, Incorporated. During this phase, GPC and APC retained their NRC licenses and the responsibility for operating their respective nuclear facilities.

In Phase III, Southern Nuclear has operating responsibility for the Hatch and Vogtle facilities in accordance with the provisions of the NRC operating licenses for those facilities.[29]

2. Illegal Transfer Hearing and Petition Issues

"Intervenor's Prehearing Statement of Issues" (Statement of Issues), dated December 12, 1994, raised 28 issues to support Intervenor's illegal transfer issue for the license amendments proceeding.[30] The issues were submitted in support of Intervenor's contention that the Vogtle operating license should not be transferred to Southern Nuclear

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[29] The NRC approved license amendments on November 22, 1991, that authorized the transfer of licenses for the Farley facility from APC to Southern Nuclear.

[30] Although Intervenor identified 28 issues in his Statements of Issues, two issues were both numbered 14A and 14B, and Intervenor presented no evidence or proposed findings on Issue 25.

because it lacks the requisite character and integrity. The 28 issues repeat and further supplement assertions in the Petition regarding an illegal transfer of control of GPC nuclear facilities. These issues are summarized below based upon the more detailed discussion of each issue in the appendix to this Director's Decision.

The gravamen of Intervenor's 28 issues, like the related issues in the Petition, as supplemented, is that the nuclear officers in SONOPCO Project reported to Mr. Farley, rather than to Mr. Dahlberg, GPC's CEO, and that Mr. Farley controlled the Vogtle facility based upon his involvement in (1) controlling daily operations, (2) establishing and implementing nuclear policy decisions, (3) employing, supervising, and dismissing nuclear personnel, and (4) controlling costs. Intervenor also asserts that numerous documents and statements provided to the NRC regarding the organizational structure and responsibilities for managerial control of the Vogtle facility were inaccurate or incomplete because they do not show Mr. McDonald reporting to Mr. Farley or Mr. Farley functioning as the *de facto* Chief Executive Officer of the SONOPCO Project.

Issues 1, 3-5, 7, 10, 11, 15, 16, 18 and 20-24 in Intervenor's Statement of Issues assert Mr. Farley's role with daily operations of the Vogtle facility and allege that GPC concealed this role and a *de facto* organization by providing the NRC inaccurate and incomplete information. As discussed in the Appendix to this Director's Decision, Intervenor's assertion that Mr. Farley functioned as the *de facto* Chief Executive Officer of the SONOPCO Project is not supported by the hearing record. Mr. McDonald did not report to Mr. Farley regarding GPC licensed activities. The items cited do not demonstrate that Mr. Farley exercised control over licensed activities at GPC's nuclear facilities during his involvement in the SONOPCO Project. Rather, the record shows that GPC controlled the daily operations of the Vogtle facility in accordance with a chain of command

extending from the Vogtle General Manager, through the Vice President of the Vogtle facility, through the Senior Vice President - Nuclear Operations, through the Executive Vice President - Nuclear Operations, to the President and CEO of GPC. A Nuclear Operations Overview Committee of the GPC Board of Directors conducted periodic reviews of the regulatory and operational performance of GPC's nuclear plants.

Issues 1, 9, 15, 17, and 20 of Intervenor's Statement of Issues (and page 4 of the October 1, 1990, Supplement to the Petition) include allegations that Mr. Farley controlled the Vogtle facility based upon his involvement with establishing and implementing nuclear policy decisions. As discussed in the Appendix to this Director's Decision, the hearing record shows that nuclear policy decisions for the Vogtle facility were established and implemented by GPC, and there was no evidence that Mr. Farley established the outage philosophy or any other operational policies for the Vogtle facility. Mr. Farley's limited involvement in a 1989 rate case matter before the Georgia Public Service Commission (*i.e.,* his review of draft testimony regarding alternative performance standards) did not indicate any control of GPC's nuclear operations or licensed activities. Intervenor also provided no information that The Southern Company Management Council acted as the SONOPCO Project board of directors until the Project was incorporated.

Issues 1, 6, 8, 14A, 14B, 15, 19, 21, 27, and 28 of Intervenor's Statement of Issues (and pages 1-3 of the October 1, 1990, Supplement to the Petition), include assertions that Mr. Farley exercised control over nuclear personnel matters for the Vogtle facility because he (1) selected and approved GPC's management staff, (2) reviewed nuclear personnel in 1989 as evidenced by GPC Management Council's exclusion of nuclear personnel from its 1989 company-wide review of management, (3) decided that Mr. Michael Barker, a GPC employee, would not be transferred from the SONOPCO Project

to the Nuclear Operations Contract Administration (NOCA) group in Atlanta, (4) prepared Mr. McDonald's annual performance appraisal, and (5) implemented changes in Vogtle personnel evaluations and pay. As discussed in the Appendix to this Director's Decision, the record does not show that Mr. Farley controlled GPC nuclear facilities by employing, supervising, and dismissing nuclear personnel, or that GPC provided inaccurate information to the NRC regarding Mr. Farley's involvement with personnel matters.

Issues 1, 6, 12, 14A, 14B, and 17 of Intervenor's Statement of Issues allege that Mr. Farley's control of GPC nuclear facilities is shown through budget and personnel pay matters in that (1) Southern Nuclear, its predecessor, and The Southern Company controlled GPC's nuclear budget since November 1988, (2) Mr. Farley implemented changes in personnel evaluations and pay for Vogtle nuclear operations personnel, and (3) the GPC Management Council did not review GPC's 1990 nuclear operating budget. Intervenor asserts that inaccurate and incomplete information was provided to the NRC regarding GPC's control of budget and personnel pay matters. As discussed in the Appendix to this Director's Decision, the hearing record does not support a conclusion that GPC misrepresented its budgets affecting the operation of GPC licensed facilities. There is no indication in the hearing record that the particular process GPC used to develop its budget is dispositive to Intervenor's assertion that Mr. Farley, The Southern Company, or SONOPCO Project controlled the operation of the Vogtle facility. Rather, the record shows that GPC was responsible for the costs of the Vogtle facility. After review by GPC's Management Council, the operating and capital budgets were approved by GPC's President and CEO, and the capital budget was also approved by the GPC Board of Directors. The record does not support that Messrs. Farley and Edward L. Addison, the President and CEO of The Southern Company, approved GPC's nuclear budgets. As an Executive Vice

President of The Southern Company, Mr. Farley was involved in reviewing the nuclear budgets as part of the normal process for preparing annual budgets in the Southern system. Given The Southern Company's holding company status, Mr. Addison's involvement in reviewing and providing guidelines and requirements for adequate earnings and reasonable capital needs was appropriate, and did not constitute control of operations at GPC facilities.

Issues 1, 2, 12, 13, 18, 19 and 26-28 in Intervenor's Statement of Issues contain assertions that GPC managers provided inaccurate or incomplete information to the NRC when describing its organization and plans to form Southern Nuclear, and when responding to the Petition. The alleged misrepresentations or omissions regard statements about (1) the Vogtle chain of command, (2) Mr. Dahlberg's relationship with Vogtle site management, (3) Mr. Farley's responsibilities as Executive Vice President-Nuclear of The Southern Company, (4) the 1989 title of Mr. Dahlberg (5) SONOPCO Project's control over the Vogtle facility since November 1988, (6) the composition of the GPC Management Council, and (7) Mr. Farley's title in 1988. As discussed in the Appendix to this Director's Decision, the record shows that GPC provided some inaccurate or incomplete information to the NRC when describing its organization and plans to form Southern Nuclear, and when responding to the Petition. This information involved (1) the omission of Mr. Hairston when Mr. McDonald described the Vogtle chain of command during a March 30, 1989, meeting (which was later corrected by GPC after reviewing the meeting transcript and was already accurately depicted in the FSAR), (2) a 1989 FSAR organizational chart showing the position of Mr. Dahlberg as "Chairman and CEO" rather than "President and CEO", and (3) GPC's April 1991 written response to the Petition indicating that the GPC Management Council included all Senior Vice Presidents (which

was inaccurate because Mr. Hairston was not a member), and indicating Mr. Farley's title in 1988 to be Executive Vice President - Nuclear of The Southern Company (a position he did not assume until March 1, 1989). While the NRC expects licensees to provide complete and accurate information, the inaccurate or incomplete information at issue here was of minor safety significance in terms of the NRC staff's understanding of the proposed license transfers, did not mislead the NRC, and was not sufficient to warrant NRC enforcement action or conclusions that (1) GPC concealed an unauthorized role of Mr. Farley or a *de facto*, unauthorized organization for control of GPC nuclear facilities, or (2) GPC lacks the requisite character and integrity to be a licensee.

3. NRC Staff Testimony During Hearing on Illegal Transfer Issue

NRC Staff testimony (hereafter, "Staff") regarding the alleged illegal transfer of control issue was jointly presented by Messrs. Frederick R. Allenspach, an NRR technical reviewer who reviewed the Administrative Controls section of the Vogtle Technical Specifications in 1987; Darl S. Hood, the Licensing Project Manager for the Vogtle facility; and John F. Rogge, Jr., formerly the Senior Resident Inspector at the Vogtle site during the time SONOPCO and Mr. Farley are alleged to have taken operating control of the Vogtle facility. These individuals provided evidence based upon their own personal knowledge and based upon their institutional knowledge derived from their work and their relation to other members of the NRC staff who perform activities relating to the Vogtle facility encompassing the period 1987 to 1995.

The former Senior Resident Inspector's observation that GPC officials operated the Vogtle facilities was particularly significant in that he and Mr. Allenspach participated in the December 1988 inspection of the SONOPCO Project offices, interviewed GPC management, including Messrs. McDonald, Hairston, and McCoy concerning the

management chain of command through Mr. McDonald, along with the organizational structure and supporting role of the SONOPCO Project. Mr. Rogge concluded that GPC was in control of Vogtle operations and that the changes in management personnel and organization beginning in 1988 did not affect GPC's control over Vogtle. He also concluded that the control and direction of daily operations at the Vogtle facility were performed by the on-site GPC employees under the direction of Mr. McCoy. Staff, *ff.* Transcript at 2620, at 4-6. Mr. Rogge's conclusions were based on the Vogtle FSAR statements, the Vogtle TSs, and his interviews of licensee personnel. Transcript at 2159 and 2716-17 (Rogge).

While the NRC did not inspect, or require to be reported, the number of times that GPC's Executive Vice President-Nuclear communicated with the President of GPC, the NRC staff's focus regarding the conduct of operations is where nuclear safety has its immediate and greatest impact, *i.e.,* on the nuclear power plant itself and its immediate management. Based on frequent visits and dealings with Vogtle staff at the level of Vice President-Vogtle and the Vogtle General Manager, plant operations appeared consistent with the organization described in the FSAR. Transcript at 2656-57, 2664 (Hood).

The NRC staff witnesses' visit at the Vogtle facility and corporate offices in Birmingham, Alabama, in September 1994 confirmed the accuracy of the Updated Final Safety Analysis Report (UFSAR) descriptions and figures, and determined that GPC controlled operation of the Vogtle facility. Their conclusions were based upon discussions with numerous managers of GPC, SNC, and Southern Company Services, regarding their organizational responsibilities and structure, including details of their respective employment and their involvement with respect to the Vogtle facility, and discussions with the NRC's Resident Inspectors stationed at the Vogtle facility regarding their observations

of the day-to-day control of the facility by GPC managers and the support services of SNC and Southern Company Services employees. Staff at 9.

The NRC staff witnesses were present throughout the hearing regarding the illegal transfer issue, heard the evidence presented by all of the witnesses, and Mr. Hood was present during most of the depositions regarding illegal transfer. In their opinion, the hearing record disclosed no evidence to indicate that the operating licenses for the Vogtle facility had been transferred by GPC to SONOPCO Project or Southern Nuclear, or to otherwise alter the conclusion in the partial Director's Decision, DD-93-8, that GPC controls operations at the Vogtle facility. Transcript at 2734 (Allenspach, Hood, Rogge).

In summary, the observations and testimony of key NRC staff personnel involved with regulatory oversight and technical review of Vogtle's conduct of operations at the time of the alleged transfer of control, indicates that GPC has maintained control of Vogtle operations and licensed activities. The testimony shows that the conduct of operations and support at the Vogtle facility has proceeded, and is proceeding, consistent with the phased reorganizations that were described at the outset to the NRC whereby Southern Nuclear will eventually become the sole operator of the GPC nuclear facilities.

4. Conclusion

On the basis of the foregoing, I conclude that GPC has not transferred control of the operating license for the Vogtle facility without the prior consent of the NRC. While Intervenor identified some inaccurate or incomplete information to the NRC by GPC, this inaccurate or incomplete information was either corrected or not significant in the context of the numerous communications regarding the three-phased transfer and the NRC's focus on areas which directly impacted plant operations and licensed activities. The inaccuracies identified do not show a pattern to deceive the NRC regarding the control of the Vogtle

facility. Thus, there is no basis to conclude that GPC either misled the NRC or lacks the requisite character and integrity to be a licensee.

C. Diesel Generator Reporting and Reliability Issues

(Petition Section III.3; License Amendments Proceeding on DG Issue)

Petitioners allege in the 10 CFR 2.206 petition, and Mr. Mosbaugh contended in the license amendments proceeding, that GPC knowingly provided inaccurate, incomplete or misleading information regarding DG testing results and reliability (including the number of starts and the moisture content (*i.e.,* "air quality") of DG starting and control air)[31] in 1990, as well as in April 1991 statements regarding the knowledge and involvement of senior GPC officials with respect to inaccurate 1990 DG information.[32] The alleged inaccurate, incomplete or misleading information was provided in GPC's April 9, 1990, presentation and letter to the NRC (seeking permission to restart); in the April 19, 1990, LER on the Site Area Emergency (SAE); in a June 29, 1990, cover letter forwarding the revised LER and addressing GPC's QA audit and DG recordkeeping practices; in an August 30, 1990, letter; in GPC's Petition response of April 1, 1991, as to Mr. Hairston's involvement in developing false DG start information during the April 19, 1990, telephone

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[31] The air quality issues considered during the licensing hearing concerned GPC's March-April 1990 statements to the NRC, including the NRC's Incident Investigation Team (IIT), was whether GPC officials were willful or recklessly careless of the facts (as opposed to complete and accurate): (a) in the statement in the April 9 letter that air quality was satisfactory; (b) in the statement in the April 9 letter that recently obtained high dew point readings resulted from faulty instrumentation; and (c) in other communications with the NRC regarding high dew points. Memorandum and Order (Summary Disposition: Air Quality), dated April 27, 1995 (unpublished), at 6-9. Intervenor's claim that poor air quality was the root cause of the DG failures that caused the SAE was not within the scope of the hearing contention and is not considered in this Director's Decision. *See id.* at 6.

[32] The Petition stated that SONOPCO provided inaccurate false information, however, only corporate managers at Mr. George Hairston's level (Senior Vice President - Nuclear Operations) and above are officers of both GPC and SONOPCO/Southern Nuclear.

call and as evidenced by the actions of GPC managers when they became aware of inaccurate start counts. Petition at 10-11; Intervenor Findings at 78-235 and 263-311.

Petitioners also claim that the inaccurate, incomplete, or misleading information was conveyed in GPC's "White Paper" response during the August 1990 special team inspection in that it (1) excluded Messrs. Hairston and McCoy from the list of participants on the April 19, 1990, telephone call, (2) stated that all revisions were reviewed by the Plant Review Board (PRB), (3) indicated that Messrs. Jimmy Paul Cash (a Unit Superintendent) and George Bockhold worked together on the DG testing slide prepared for the April 9, 1990, presentation to NRC, and (4) omitted Mr. Kenneth Burr, a Southern Nuclear corporate engineer, from the list of individuals who wrote the April 9, 1990, letter. At hearing, intervenor Mosbaugh also cited GPC's failure to include Safety System Performance Indicator Data in GPC's April 9, 1990, letter as another attempt to mislead the NRC.

OI conducted an investigation and issued a report in December 1993.[33] OI concluded that: (1) the Vogtle General Manager deliberately presented incomplete and inaccurate information to NRC in the April 9, 1990, meeting and letter with respect to DG starts and air quality measurements; (2) a group of GPC senior managers conspired to submit a false statement in the April 19, 1990, LER; (3) the GPC Senior Vice President - Nuclear Operations, with at least a minimum of careless disregard, submitted a false statement in the June 29, 1990, letter transmitting a revision to the LER; (4) the Vice President - Vogtle Project, with at least careless disregard, submitted a false and

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[33] The allegation concerning SSPI data was not submitted to OI until after the report on DG statements was published. OI did not complete activities on this issue due to the staleness of the issue and the airing of the matter at hearing before settlement was reached.

misleading statement in an August 30, 1990 letter explaining why the April 9 letter was inaccurate; and (5) the GPC Executive Vice President - Nuclear Operations deliberately provided inaccurate information in an April 1, 1991, letter discussing participants in a late afternoon conference call on April 19, 1990.

The NRC staff evaluated the results of the OI investigation of the DG issues and concluded that, contrary to 10 CFR 50.9, GPC had provided inaccurate and incomplete information to the NRC on four separate occasions as a result of an inadequate regard, individually and collectively, by a number of senior GPC officials for complete and accurate communications with the NRC. The performance failures involved in the violations constituted a Severity Level II problem as cited in the May 9, 1994 Notice of Violation and the February 13, 1995, Modified Notice of Violation (wherein the NRC imposed a $200,000 civil penalty).[34]

1. March 20, 1990 Site Area Emergency

On March 20, 1990, a worker accidentally backed a truck into a switchyard support column causing a loss of off-site power at Vogtle Unit 1. At that time, Unit 1 was in a refueling outage, and one of the DGs (DG-1B) had been removed from service for a maintenance overhaul. The other DG (DG-1A) was available and was called upon to start twice, but on both occasions failed to maintain running speed. On a third attempt, the diesel started, restoring power thirty-six minutes after the loss of off-site power. This event prompted the declaration of an SAE.

On the same day as the event, GPC conducted several troubleshooting starts on DG-1A to determine, if possible, the cause of the event. The diesel started and ran

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[34] In LBP-94-15, 39 NRC 245, 255-56 (1994), the Board ruled that allegations in the NRC's NOV issued May 9, 1994, were important to the admitted contention and within the scope of the proceeding.

without problems each of these times. The plant staff then shifted its attention to the DG-1B in order to return it to service expeditiously. As part of the effort to return the DG-1B to service, GPC performed a number of post-maintenance starts and tests between March 21 and March 24. During these tests, post-maintenance difficulties were experienced, including two failures of the diesel to start on March 21 because of inadequate fuel in the fuel lines after diesel reassembly. In addition, during a run on March 22, DG-1B tripped on a high lube oil temperature signal; during a run on March 23, the diesel tripped on low jacket water pressure and low turbo lube oil pressure signals; and during a run on March 24, a high jacket water temperature alarm was received but the diesel continued to run.

Immediately after the SAE, the NRC assembled an Augmented Inspection Team (AIT), which arrived at the Vogtle facility on March 22, 1990. On March 23, 1990, the NRC issued a Confirmation of Action letter (GPC Exhibit II-4) to GPC that, among other things, confirmed that GPC had agreed not to return Unit 1 to criticality until the Regional Administrator was satisfied that appropriate corrective actions had been taken, so that the plant could safely return to power operations. The letter also indicated that equipment involved in the incident may be quarantined (minimizing personnel access to areas and equipment consistent with safety) and that GPC could take any action it deemed necessary to (1) achieve or maintain safe plant conditions, (2) prevent further equipment degradation or (3) test or inspect as required by the plant's Technical Specifications (TSs). A quarantine order was subsequently issued by the NRC concerning DG equipment. GPC Exhibit II-65.

On March 24, Mr. William Shipman (General Manager - Plant Support) and Mr. C. Kenneth McCoy (Vice President - Vogtle Project) discussed with site personnel,

including Mr. Bockhold (Vogtle General Manager) and Mr. Mosbaugh (Acting Assistant General Manager - Plant Support), concerns that these test results had raised about the pneumatic controls. The site was instructed to make sure the NRC and the AIT participated in the troubleshooting activities and received any documentation, and to obtain NRC concurrence before anything was changed. Prefiled Testimony of C. Kenneth McCoy on Diesel Generator Reporting Issues, *ff.* Transcript at 2839, "McCoy DG", at 3-4.

On March 25, 1990, the NRC upgraded the AIT to an Incident Investigation Team (IIT),[35] composed of NRC and industry personnel and headed by the NRC.

After recovery from the site area emergency, GPC assembled an Event Review Team to identify the root causes of the event and to determine appropriate corrective actions. The Event Review Team included Messrs. Jimmy Paul Cash (Unit Superintendent), Paul Kochery (Vogtle Engineering Supervisor - Operations Modifications), Georgie R. Frederick (on-site Supervisor of the Safety Audit and Engineering Review (SAER) group), and Tom Webb (Senior Licensing Engineer).

The NRC was informed of problems that occurred during the post-maintenance testing of DG-1B as indicated by a March 24, 1990 memorandum by Mr. Kendall (an AIT and IIT member) that identified the March 23, 1990, trip (low jacket water pressure and low turbo oil pressure, also called start number 134) as being significant.[36] The NRC was briefed on GPC's troubleshooting plan for additional testing of DG-1A and DG-1B. Testing on DG-

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[35] The results of this investigation are documented in NUREG-1410, "Loss of Vital AC Power and the Residual Heat Removal System During Mid-Loop Operations at Vogtle Unit 1 on March 20, 1990," dated June 1990. Staff Exhibit II-46 at 1; *see, e.g.,* NUREG-1410, Appendix J (GPC Exhibit II-167).

[36] An April 6, 1990, GPC list of diesel starts from March 13 through March 23, which showed the problem starts on March 22 and 23, was also provided to the IIT.

1B was conducted on March 27 and March 28, and included sensor calibration and replacement, testing of the pneumatic logic controls, pneumatic leak testing, an under-voltage test, and an operational surveillance. It resulted in DG-1B being declared operable on March 28. The additional testing for DG-1A, which was similar in scope, was performed between March 29 and April 1, at which time DG-1A was declared operable. Additional starts on both diesels occurred after these tests, in order to establish the reliability of the diesels.

At the NRC's request, GPC also examined whether the diesel control air system could be the cause of the March 20 DG-1A failure. GPC tested the diesel air system for moisture and conducted a review of the control air filters. High dew point readings were recorded on DG-1A on March 29 and additional high dew point measurements were recorded on or about April 5-7, 1990. GPC eventually decided that most of the high readings were inaccurate.

On April 9, 1990, GPC gave an oral presentation to the NRC in support of GPC's request to return Vogtle Unit 1 to power operations after the SAE. In response to an NRC request that GPC address DG reliability at the meeting, Mr. Bockhold, the Vogtle General Manager, presented information on DG starts since the SAE using a view-graph slide, which listed the sequence of testing on DG-1A and DG-1B and stated that there were "18 SUCCESSFUL STARTS" for DG-1A and "19 SUCCESSFUL STARTS" for DG-1B. GPC intended to convey to the NRC in the April 9 presentation (and the NRC understood) that there were 18 and 19 "consecutive successful" starts without problems or failures after the March 20 SAE. A written summary of the April 9 presentation was provided to the NRC in an April 9, 1990 letter, "Vogtle Electric Generating Plant Confirmation of Action Letter," signed by Mr. Hairston and reviewed by corporate managers and Mr. Bockhold.

The summary, the licensee's troubleshooting efforts and the NRC's inspection activities were among the bases for the NRC's decision to authorize the restart of the facility on April 12, 1990.[37]

2. Diesel Generator Statements

a. April 9, 1990, Presentation and Letter

Intervenor alleged that GPC, by and through its officers and employees, knowingly, deliberately, and willfully submitted inaccurate information to the NRC in an April 9, 1990, oral presentation and letter regarding the number of starts of the DGs. Intervenor contended that (1) GPC submitted the numbers 18 and 19 successful starts with full knowledge that the numbers were incorrect, and (2) a typed "Cash List" that showed the inaccuracies was a backup slide that was circulated to corporate offices before the presentation. *See* Transcript at 8310, 8313-15 (Mosbaugh); Prefiled Testimony of Allen L. Mosbaugh, *ff.* Transcript at 8263, "Mosbaugh", at 43-44; Intervenor Findings 85-89.

In the Modified NOV issued February 13, 1995, the NRC staff concluded that, contrary to 10 CFR 50.9:

> [I]nformation provided to the NRC Region II Office by Georgia Power Company (GPC) in an April 9, 1990 letter and in an April 9, 1990 oral presentation to the NRC was inaccurate in a material respect. Specifically, the letter states that: "Since March 20, the 1A DG has been started 18 times, and the 1B DG has been started 19 times. No failures or problems have occurred during any of these starts."
>
> These statements are inaccurate in that they represent that 19 consecutive successful starts without problems or failures had occurred on the 1B Diesel Generator (DG) for the Vogtle facility as of April 9, 1990, when, in fact, of the 19 starts referred to in the letter associated with the 1B DG at the Vogtle facility, three of those starts had problems. Specifically, Start 132 tripped on high temperature

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[37] NRC conditions regarding the quarantine of equipment involved in the SAE and other measures to facilitate the IIT's investigation of the event that were stated in the March 23, 1990 Confirmation of Action Letter remained in effect.

> lube oil, Start 134 tripped on low pressure jacket water and Start 136 had a high temperature jacket water trip alarm. As of April 9, 1990, the 1B DG had only 12 consecutive successful starts without problems or failures rather than the 19 represented by GPC. The same inaccuracy was presented to the NRC at its Region II Office during an oral presentation by GPC on April 9, 1990.
>
> The inaccuracy was material. In considering a restart decision, the NRC was especially interested in the reliability of the DGs and specifically asked that GPC address the matter in its presentation on restart. The NRC relied, in part, upon this information presented by GPC on April 9, 1990 in the oral presentation and in the GPC letter in reaching the NRC decision to allow Vogtle Unit 1 to return to power operation.

GPC asserts that the April 9, 1990, presentation and letter contained incorrect DG start count information due to poor GPC internal communications and personnel mistakes, including by Messrs. Cash and Bockhold, and it was not due to indifference as to the need for accuracy. GPC August 30, 1990 Letter (GPC Exhibit II-18); GPC Response to NOV, dated August 2, 1994 (Intervenor Exhibit II-105), at 2; Letter from C.K. McCoy to Mr. James Lieberman, dated February 1, 1995 (GPC Supplemental Reply to NOV).

The NRC staff found that the count errors were caused by performance failures in collecting and reporting the data, and found no evidence that GPC employees deliberately and knowingly submitted, or conspired to submit, incomplete or inaccurate information. *See* Vogtle Coordinating Group Evaluation, Conclusions, and Recommendations, dated November 4, 1994 (Staff Exhibit II-50) at 1-4; Testimony of David B. Matthews, Pierce H. Skinner, and Darl S. Hood on the Diesel Generator Issue (Staff DG Panel), *ff.* Transcript at 14,758, at 11; May 1994 NOV (Staff Exhibit II-46); Modified NOV (Staff Exhibit II-51). The Staff found that the errors were caused by (1) Mr. Bockhold's failure in requesting the count to instruct Mr. Cash as to his criteria for a successful start (without a problem or

failure),[38] the point at which to begin his count, and to assess the count data provided to ensure that it was what he had requested and (2) Mr. Cash's failure in performing and reporting his count to ensure that the data provided was what Mr. Bockhold had requested. NOV (Staff Exhibit II-46) at 2-3; Staff DG Panel at 4-5, 11.

The hearing record does not support Intervenor's position that the submission of 18 and 19 successful DG starts reported to the NRC by GPC in the April 9 presentation, and letter of the same date, were knowingly and willfully false.[39] While recollections were not clear about events occurring five years earlier, Mr. Bockhold testified that he intended to present a number of consecutive successful starts as support for GPC's position that the DGs would perform their intended function, and instructed Mr. Cash to review the operators' logs and determine how many consecutive successful DG starts had been made with no significant problems. Prefiled Testimony of George Bockhold, Jr., on Diesel Generator Reporting Issues, *ff.* Transcript at 3309, "Bockhold DG", at 6; Transcript at 3422, 3424 (Bockhold). Mr. Cash (an experienced Unit Superintendent and member of

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[38] The term "successful start" was ambiguous in that it was subject to various interpretations and is not defined by NRC in guidance documents such as Regulatory Guide 1.108. A count of successful starts without problems or failures was dependent upon having a definition for what constituted a successful start and the point at which to begin the count. Transcript at 6875-76 (Greene); Transcript at 5920-22 (Horton), *see* 5975-99, 5962. GPC witnesses had various interpretations of (1) "successful starts," (2) what constituted a problem start, and (3) when to begin the count. Transcript at 6875 (Greene); Transcript at 3547 (Bockhold); Transcript at 5922 (Horton).

[39] Intervenor asserts that (1) the failure to utilize established review and verification procedures for the April 9 letter and (2) the failure to subject the letter to PRB review is circumstantial evidence that corporate officials (who were both GPC and Southern Nuclear employees) wanted to keep the DG start information or the air quality information free of meaningful verification. Intervenor Findings 130-59. While such actions may have disclosed problems in the count data, GPC's explanation that the April 9 letter was not handled as routine correspondence in order to expedite the drafting and review process is reasonable given that the TS do not require PRB review and its desire to expedite restart. *See* Transcript at 2958 (McCoy). The mistakes exhibited, however, are of regulatory concern as cited in the staff's enforcement action.

GPC's Event Review Team for the SAE) recalled that he was to determine the number of starts after the event that were without significant problems.[40] Prefiled Testimony of Jimmy Paul Cash on DG Reporting Issues, *ff.* Transcript at 4389, "Cash", at 2 and 3.

NRC personnel at the April 9, 1990, meeting were aware of DG testing, but did not know the number of consecutive successful starts of the DGs after March 20, 1990. Transcript at 14,795 (Matthews); Hunt at 3-5. *See* Transcript at 4949.[41]

Although Mr. Bockhold (and other GPC personnel) were aware of problems on the DG-1B during overhaul, he failed to adequately specify the starting point for the count to ensure that the count did not include these problems and failed to ensure that Mr. Cash, an experienced Unit Superintendent, understood his criteria for "successful starts" without problems or failures. Mr. Bockhold did not determine the point at which Mr. Cash began his count (*i.e.*, the specific start number, date or time) or whether his data included any starts with problems or failures. The hearing disclosed no evidence that Mr. Bockhold or other GPC personnel had any knowledge as to the number of starts of the DGs on April 9,

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[40] In his June 14, 1993, OI interview, Mr. Cash stated that he viewed a "significant problem" as something that would have prevented the DG from running in an emergency. OI Exhibit 10 at 11. At hearing, Messrs. Cash and Bockhold considered a start successful without significant problems to be one where the diesel had started properly and reached rated voltage and frequency. Intervenor Exhibit 57 (GPC Interrogatory Response, dated August 9, 1993); Transcript at 3426. (Bockhold). These definitions, however, were not used in any of GPC's April-August 1990 correspondence regarding the DG start count information.

[41] For example, on Tuesday, April 10, 1990, the day after the meeting between the NRC and GPC, Mr. Rick Kendall of the NRC's IIT, informed GPC that he could not duplicate the April 9 start count and asked for the start data. GPC Exhibit II-31 at 5; Prefiled Testimony of John Gilbert Aufdenkampe, Jr. on Diesel Generator Reporting Issues (Aufdenkampe), *ff.* Transcript at 4651, at 4-5.

1990, other than the Cash count that was among the materials assembled quickly over the weekend prior to the April 9 presentation.[42]

There is no evidence that a "Cash List" was a back-up slide for the presentation or that corporate and site personnel otherwise knew that the April 9 DG start count was wrong.[43] Mr. Bockhold assigned Mr. Cash to count diesel starts, Mr. Cash did count diesel starts, and the numbers 18 and 19 presented to the NRC on April 9 were incorrect (*i.e.*, they should have been 29 and 12 on DG-1A and DG-1B, respectively).[44] GPC has admitted that the violation occurred and Mr. Bockhold's role and responsibility in the underlying events. *See* Letter from Hairston to NRC, dated August 30, 1990 (GPC Exhibit

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[42] While it is clear that the April 9 start count was derived from Mr. Cash's efforts, there is conflicting evidence as to exactly what information Mr. Cash provided to Mr. Bockhold. On April 19, 1990, Mr. Cash told Messrs. Mosbaugh and Aufdenkampe (GPC Manager of Technical Support) that he gave Mr. Bockhold "totals" and not information on starts and stops. Tape 58 Transcript (GPC Exhibit II-2) at 36. Mr. Bockhold testified during his OI interview in August 14, 1990, that Cash gave him start totals. OI Exhibit 12 (Intervenor Exhibit II-13) at 8. Mr. Cash stated in his August 1990, OI Interview (Intervenor Exhibit 190), however, that he gave Mr. Bockhold both total start numbers and a list of starts. In his June 1993 OI interview, he said that although he could not recall specific numbers, he gave Mr. Bockhold the numbers greater than 18 and 19. OI Exhibit 10, at 48-50. At the hearing he could not remember exactly what count he gave Mr. Bockhold, but believed he gave him the number 18 and 19 for DG-1A and DG-1B, respectively, or possibly 23 starts for DG-1B and 27 for DG-1A as was apparent from a typed listing of starts located by GPC in 1993 (Intervenor Exhibit 41 and GPC 23). *See* Transcript at 4547-48, 4541, 4463-64 (Cash). Even though Mr. Cash stated that GPC Exhibit II-23 was a typed version of his list for April 9, he was uncertain during cross-examination and he could not recall having his handwritten list typed or including starts prior to March 20, 1990 that were recorded on the listing. In light of these statements, it is difficult to determine what information Mr. Cash provided to Mr. Bockhold.

[43] For example, Mr. Bockhold was not specifically told that the April 9 (and April 19) start counts were wrong until April 30 and May 2, 1990, when Mr. Mosbaugh gave him a listing of DG starts that showed the errors. *See* Bockhold at 14; Mosbaugh April 30, 1990 Memo (Intervenor II-29).

[44] *See* August 30, 1990 Letter (GPC II-18), Tables 1 and 2. The underreporting of the DG-1A start count was not relevant to the enforcement action.

II-18); Modified NOV (Staff Exhibit II-51); GPC Supplemental Reply to the NOV, dated February 1, 1995.

In sum, the assertion that GPC deliberately provided false DG start information in the April 9 letter and presentation was not substantiated.

b. April 19, 1990, Licensee Event Report

Mr. Mosbaugh alleged that a disputed portion of a taped conversation from the afternoon of April 19, 1990 (Tape 58 transcript (GPC Exhibit II-2)) regarding the draft LER, is evidence that a number of GPC vice presidents and plant personnel engaged in a criminal conspiracy to intentionally submit false information to the NRC in that GPC intentionally iterated the same false April 9 count information to the NRC in LER 90-006. Transcript at 8411-12, 9982 (Mosbaugh). His assertion is based on his version of the following excerpt:

> Shipman: Let's see. What other questions do we got? We got the start thing straightened out.
>
> Hairston: [Interrupting]. We got the starts -- So we didn't have no, didn't have no trips?
>
> Shipman: No, not, not . . .
>
> McCoy: Let me explain. I'll testify to that.
>
> Shipman: disavow. What else do we have Jack?

GPC Exhibit II-2 at 11-14.

Mr. Mosbaugh also asserts that GPC tried to exclude him from the telephone conversation taped on April 19, 1990.

In the Modified NOV issued February 13, 1995, the NRC staff concluded that, contrary to 10 CFR 50.9:

> [I]nformation provided to the NRC by GPC in a Licensee Event Report (LER), dated April 19, 1990, was inaccurate in a material respect. Specifically, the LER

states: "Numerous sensor calibrations (including jacket water temperatures), special pneumatic leak testing, and multiple engine starts and runs were performed under various conditions. After the 3-20-90 event, the control systems of both engines have been subjected to a comprehensive test program. Subsequent to this test program, DG1A and DG1B have been started at least 18 times each and no failures or problems have occurred during any of these starts."

These statements are inaccurate in that they represent that at least 18 consecutive successful starts without problems or failures had occurred on the DGs for Vogtle Unit 1 (1A DG and 1B DG) following the completion of the comprehensive test program of the control systems for these DGs, when, in fact, following completion of the comprehensive test program of the control systems, there were no more than 10 and 12 consecutive successful starts without problems or failures for 1A DG and 1B DG respectively.

The inaccuracy was material in that knowledge by the NRC of a lesser number of consecutive successful starts on 1A DG and 1B DG without problems or failures could have a natural tendency or capability to cause the NRC to inquire further as to the reliability of the DGs.

Staff Exhibit II-51 at 1 and 20.

Under 10 CFR 50.73(a)(1), GPC was required to submit an LER, including a description of the event (10 CFR 50.73(b)(1)) and a description of corrective action taken (10 CFR 50.73(b)(3)) by April 19, 1990 (thirty days after the SAE).

The evidence does not support the claim that the above words from Tape 58 demonstrate a criminal conspiracy by high officials in GPC to present false information to the NRC. Tape 58 contains multiple, disjointed, jumbled, and often inaudible conversations which do not demonstrate conspiracy to intentionally provide inaccurate information to the NRC. The NRC staff found that the taped statements were not sufficient to establish an intention to deceive or mislead the NRC.[45] Further, there was

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[45] The NRC staff version of the transcript states:

Hairston: We got the starts -- so we didn't have no, didn't have no trips?
Shipman: No, not, not ...
McCoy: [Inaudible] three. I'll testify to that.
Shipman: [Inaudible] disavow. What else do we have Jack? *footnote continued* →

no evidence to support Mr. Mosbaugh's claim that Mr. Mosbaugh joined the call late because GPC tried to keep him off the call with corporate managers about the accuracy of the LER. *See* Mosbaugh at 35 and 48; Shipman at 5; Transcript at 10932-10933, 10976-10977 (Shipman) and 4794-4801, 5428 (Aufdenkampe).

On April 10, 1990, Mr. Mosbaugh became aware of the April 9 letter and he and other site personnel (particularly Mr. Aufdenkampe) became concerned that the statement that the "starts were without problems or failures" may have been a material false statement to the NRC because of known DG failures after the SAE. Mosbaugh at 32; Transcript at 4752-53 (Aufdenkampe). Mr. Richard Kendall of the IIT also asked GPC for data supporting the April 9, 1990 DG start count because he could not get the same numbers. IIT Teleconference Transcript, dated April 10 (GPC Exhibit II-31).[46]

Mr. Webb, an engineer in the group that reported to Mr. Aufdenkampe (who reported to Mr. Mosbaugh), used the same diesel start language for the draft LER that was in the April 9 letter. McCoy DG at 10-11; Prefiled Rebuttal Testimony of Thomas E. Webb on Diesel Generator Reporting Issues, *ff.* Transcript at 13096, "Webb", at 2-3; GPC Exhibit II-171-B. Concerns about the accuracy of the count led the site to delete the start numbers from the draft LER and state that the diesels had been "started several times and no failures or problems have occurred during any of these starts." Webb at 4. In response to a Plant Review Board (PRB) comment on April 18, 1990, the phrase "several starts" was replaced with "more than twenty times each" by adding April 10-18 starts in the

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GPC also offered a transcript version of this exchange. The tape excerpt was played several times at the hearing in attempts for the Board and the reporter to discern the inaudible portions, which proved unsuccessful.

[46] No listing of start counts through April 9 was ever located among the voluminous records and documents collected by the IIT.

control room logs to the numbers reported April 9. Webb at 5-7.[47] PRB Meeting Minutes 90-59 (GPC Exhibit II-28) at 4; Webb at 5-6; Transcript at 13211 (Webb); Aufdenkampe at 2.

The site received notice on the morning of April 19, 1990, that Mr. Hairston wanted the phrase "greater than 20" to be verified. Prefiled Testimony of W. George Hairston, III on Diesel Generator Reporting Issues, *ff.* Transcript at 3531, "Hairston DG", at 6; GPC Exhibit II-25; Stringfellow at 2; Transcript at 4058 (Stringfellow); Transcript at 4786-87 (Aufdenkampe); Webb at 6. The April 19 PRB, which was chaired by Mr. Kitchens, Assistant General Manager - Operations and held that afternoon, similarly advised that the phrase be verified, reworded or deleted based on verification efforts. Tape 57 Transcript (GPC Exhibit II-1) at 15-16; PRB Meeting 90-60 Minutes (GPC Exhibit II-29).

After the PRB meeting, Messrs. Aufdenkampe and Mosbaugh discussed the draft LER by phone with corporate personnel and informed them that efforts to verify the count were ongoing. Mr. Mosbaugh told Mr. Shipman (General Manager - Plant Support for Vogtle Project) that there were two DG-1B trips (*i.e.,* on March 22 at 12:43 (high lube oil temperature) and on March 23 at 17:31 (low jacket water pressure - turbine lube oil pressure)) which he believed rendered the statement inaccurate. Tape 57 Transcript (GPC Exhibit II-1) at 59-60. Mr. Shipman emphasized the need to provide accurate information to the NRC, regardless of what George [Bockhold] told [Stewart] Ebneter. *Id.* at 62.

During another phone call regarding the LER between site and corporate managers (Messrs. McCoy, Stringfellow, Bockhold, Aufdenkampe, Mosbaugh, and Bockhold),[48]

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[47] Mr. Webb developed the list of starts using control room logs knowing that an up-to-date start log with numbered starts was not available. Webb at 6-7.

[48] This call is often referred to as "Call A" on the April 19 LER.

Mr. McCoy also emphasized the need to be certain about the number after completion of the comprehensive control test program (hereafter "comprehensive test program" or "CTP"). Tape 58 Transcript (GPC Exhibit II-2) at 8. Mr. Bockhold strongly stated that his April 9 start counts were subsequent to completion of a comprehensive test program and were "verified correct" by Mr. Cash. GPC Exhibit II-2 at 8. Mr. Bockhold's statement implied that GPC need not await the completion of site verification efforts that Mr. Aufdenkampe reported were underway to confirm the accuracy of the draft LER.[49]

The term "comprehensive test program," however, was ambiguous in that GPC had not agreed upon definition of what it meant. Neither GPC personnel at the site on April 19, 1990, nor the NRC inspection staff present during troubleshooting, knew the parameters of the comprehensive test program (*i.e.*, when it began or ended).[50] The change of the start count wording from "since March 20" to "subsequent to this test program" [the CTP] defined a different starting point for counting diesel starts and created ambiguity in the LER. The LER words were changed without completely verifying the facts, or defining the time period involved as Mr. Webb (the individual who performed the count for the LER) was never instructed to collect consecutive successful starts without problems or failures after the comprehensive test program.[51] GPC's reliance on verbal

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[49] Mr. Webb's effort to verify the count was accomplished from noon to around 4 p.m. on April 19 and was in progress during the call.

[50] Among those who did not know what the CTP was, what its parameters were, or when it started or stopped were Messrs. Cash (Transcript 4471), McCoy (Transcript at 6995), Webb (Transcript at 5696-97 and 13,128), and Stringfellow (Transcript at 4069-74) of GPC; and Messrs. Hunt (Transcript at 4993), and Kendall (Transcript at 5036), the NRC employees who monitored diesel testing and other activities in 1990.

[51] A copy of Mr. Webb's list (with notations in black and red ink that were written by Mr. Mosbaugh at a later date) was admitted as GPC Exhibit II-71. *See* Webb at 6-7. The list contained some information on stops and starts, and noted that the total starts identified through March 20-April 18 were 32 for DG-1A and 27 for *footnote continued* →

assurances and inadequate verifications is a second instance cited in the violation of inadequate verification of information to be provided to the NRC.[52] While it is unclear whether GPC site personnel realized that the list compiled on April 19, 1990, showed that the April 9 start count of 18 consecutive starts on DG-1B was inaccurate, it is clear that the list neither confirmed nor disputed the accuracy of the April 19 LER in that Mr. Webb was not told to get consecutive successful starts or starts after completion of the CTP. *See* Webb List (GPC II-71); Webb at 6-8.

Even though Mr. Mosbaugh questioned the accuracy of the count after the CTP, and suggested that it might not end until the undervoltage (UV) test just before the DGs were declared operable, site and corporate personnel (Messrs. Mosbaugh, Shipman, and Aufdenkampe), approved the LER with the "comprehensive test program" language included. Tape 58 Transcript (GPC Exhibit II-2) at 8, 22-23.[53] The record shows that GPC's (including Mr. Mosbaugh's) incomplete efforts to verify the LER start count caused erroneous DG start information to be submitted in the April 19 LER. GPC inserted the words "comprehensive test program" with the intent to exclude the problem starts identified and relied on incorrect, verbal assurances that the count statement "at least 18 times each" was correct. *Id.* at 8-34. Although they acknowledged during discussions of

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DG-1B. The totals shown were not an accurate count of *consecutive successful starts without problems or failures*, but merely totalled all starts identified after March 20. For example, the list did not identify the problem on start 136 or two starts on the morning of April 19. *See* GPC Exhibit II-71 ("Webb List"): August 30, 1990 Letter (GPC Exhibit II-18) at Attachment B; June 29, 1990, QA Audit Report (GPC Exhibit II-15).

[52] The audio tape recording of conversations on that date shows that Mr. Mosbaugh and Mr. Aufdenkampe did not examine Mr. Webb's list until after the site had approved the revised language in the LER. *See* Tape 58 Transcript at 8-34. The list did not contain a notation as to when a UV test was run on either diesel.

[53] This conversation (*i.e.*, when the site approved the last revision of the LER is often referred to as "Call B" regarding the LER.

the draft LER that they did not know the starting point for the count (*i.e.*, the first start following completion of the CTP), Messrs. Mosbaugh, Aufdenkampe, and Shipman failed to clarify and verify the starting point for the count of successful consecutive DG starts reported in the LER. There is no evidence, however, that any GPC or SONOPCO employee involved knew the exact number of starts following the CTP on April 19 or had a listing of starts (whether prepared by Mr. Cash or Mr. Webb) before the LER was approved.[54] The inadequate verifications efforts were geared towards defending information already provided to the NRC by changing the description of the period for the count (the CTP actually identified a subset of the consecutive successful starts without problems or failures after the SAE). GPC's lax verification efforts were caused in part by unjustified assurances by Mr. Bockhold that information (which was assembled quickly using ambiguous definitions) had been verified before being presented. As a result, GPC did not identify inaccuracies in the April 9 and April 19 start counts and the mistakes of Messrs. Bockhold and Cash in collecting and reporting the initial count. This failure was among those cited as a basis for the Severity Level II violation against GPC.

Therefore, the allegation that GPC employees, either individually or collectively conspired deliberately to provide inaccurate information was not substantiated.

c. June 29, 1990, Cover Letter and Revised LER

The Petitioners allege, as supplemented by Intervenor in the licensing hearing, that GPC deliberately submitted false information to the NRC in a June 29, 1990, cover letter to a revised LER, concerning the reasons for the error in the LER in that (1) Messrs. Hairston and McCoy knew that the information was false, (2) neither Mr. Bockhold nor

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[54] Accurate information was available in the Unit 1 Control Log which recorded the time and date of DG starts and stops, and noted alarms and other pertinent information. Mr. Cash had used this log and the Shift's Supervisor's Log for the April 9 counts.

Mr. Cash informed Mr. Mosbaugh that there was a listing of the April 9 start data when Mr. Mosbaugh questioned the count, (3) there were different reasons for the error stated in the various drafts of the cover letter, (4) the Quality Assurance (QA) audit (which was the basis for some of the statements in the cover letter to the LER Revision) was narrow in scope and did not review all pertinent information and (5) GPC was on notice that the reason stated in the letter was false. Intervenor Findings 350-51; *see* Petition at 10-11.

In the Modified NOV, the NRC found that, contrary to the requirements of 10 CFR 50.9, the LER cover letter, dated June 29, 1990, was inaccurate and incomplete in material respects as evidenced by the following examples:

> The letter states that: "In accordance with 10 CFR 50.73, Georgia Power Company (GPC) hereby submits the enclosed revised report related to an event which occurred on March 20, 1990. This revision is necessary to clarify the information related to the number of successful diesel generator starts as discussed in the GPC letter dated April 9, 1990...."
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> 1. The LER cover letter is incomplete because the submittal did not provide information regarding clarification of the April 9, 1990 letter.
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> The incompleteness was material in that the NRC subsequently requested GPC to make a submittal clarifying the April 9, 1990 letter.
>
> The letter states that: "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," then there were 10 successful starts of Diesel Generator 1A and 12 successful starts of Diesel Generator 1B between the completion of the test program and the end of April 19, 1990, the date the LER-424/1990-06 was submitted to the NRC. The number of successful starts included in the original LER (at least 18) included some of the starts that were part of the test program. The difference is attributed to diesel start record keeping practices and the definition of the end of the test program."
>
> 2. The last sentence in the above paragraph is inaccurate because diesel record keeping practices were not a cause of the difference in number of diesel starts reported in the April 19, 1990 LER and the June 29, 1990 letter. The difference was caused by personnel errors unrelated to any problems with the diesel generator record keeping practices.
>
> The inaccuracy was material in that it could have led the NRC to erroneously conclude that the correct root causes for the difference in the number of diesel

starts reported in the April 19, 1990 LER and the June 29, 1990 letter had been identified by GPC.

3. The last sentence in the above paragraph is also incomplete because it failed to include the fact that the root causes for the difference in the number of diesel starts reported in the April 19, 1990 LER and the June 29, 1990 letter were personnel errors. First, the Vogtle Plant General Manager who directed the Unit Superintendent to perform the start count (which formed the basis for the April 19, 1990 LER) failed to issue adequate instructions as to how to perform the count and did not adequately assess the data developed by the Unit Superintendent. In addition, the Unit Superintendent made an error in reporting his count. Second, the [Acting Assistant General Manager-Plant Support[55]], the General Manager for Plant Support and the Technical Support Manager failed to clarify and verify the starting point for the count of successful consecutive DG starts reported in the April 19, 1990 LER.

   The incompleteness was material in that, had correct root causes for the difference in the number of diesel starts reported in the April 19, 1990 LER and the June 29, 1990 letter been presented, this information could have led the NRC to seek further information.

Staff Exhibit II-51 at NOV pp. 2-3.

GPC asserts that the incomplete and inaccurate statements regarding the reasons for the errors in the LER (and April 9 letter) were based on reasonable attempts to provide an explanation based on the results of the QA audit report (GPC Findings at 140-163) and admits and accepts responsibility for the incompleteness of the letter (GPC Finding 285, 347). GPC maintains that DG record-keeping practices contributed to the reporting of erroneous counts (noting that the NRC staff acknowledged that those practices may have contributed to violations as events unfolded). GPC Findings 286-291.

The NRC staff viewed the performance failures of GPC site and corporate personnel, particularly by those who were on notice of Mr. Mosbaugh's concerns that the cover letter to the LER Revision was inaccurate and incomplete (*i.e.*, Thomas Greene, the Vogtle Assistant General Manager - Plant Support, Michael Horton, the Vogtle Manager -

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[55] The NRC corrected Mr. Mosbaugh's position designation in a letter from Mr. J. L. Milhoan, NRC, to Mr. C. K. McCoy, GPC, dated March 13, 1995.

Engineering Support, Mr. Frederick, the Supervisor - SAER, and Harry Majors, a Licensing Engineer for the Vogtle Project) as serious, but found that there was insufficient evidence to conclude that GPC intentionally provided inaccurate or misleading information. *See* Staff DG Panel at 6-11; NOV (Staff Exhibit II-46); and Modified NOV (Staff Exhibit II-51).

(1). "Prior" knowledge of Messrs. Hairston and McCoy and narrow scope audit

Petitioners are correct that the QA audit was narrow in scope. There is no evidence, however, that either Mr. Hairston or Mr. McCoy knew that incomplete and inaccurate reasons were stated in the June 29, 1990 LER Revision cover letter as to why the LER contained erroneous start count information[56] or that they intended to deceive the NRC. On the contrary, as described below, the events leading to the development of the letter show that these GPC officials and other GPC employees, endeavored, albeit unsuccessfully, to provide correct information.

On April 20, 1990, Mr. Webb was surprised by the LER phrase "subsequent to the test program" and thought the LER could be inaccurate because, on April 19, he had identified only about 10 or 11 starts after operability of the DGs. Webb at 8-9. Mr. Mosbaugh later generated his own list of DG-1B starts using the Unit 1 Control Log, the Shift Supervisor's Log and the Diesel Start Completion Sheets and, on April 30 and May 2, 1990, he informed Mr. Bockhold and Mr. Aufdenkampe that the April 9 and April 19 counts were wrong and for different reasons.[57] Transcript at 5211-12

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[56] For example, both Mr. Hairston and Mr. McCoy acknowledged during the hearing--as GPC conceded in its response to the enforcement action--that errors in the April 9 letter and presentation and the April 19 LER were also due to inadequate performance by GPC personnel, including Messrs. Cash and Bockhold. *See* McCoy DG at 21; Transcript at 11557-11559 (Hairston); GPC Supplemental NOV Reply at 2-3.

[57] Mr. Mosbaugh gave Mr. Bockhold a handwritten list of DG-1B starts that confirmed that there were only 11 DG-1B starts after the "UV Test" (the end of the CTP in his opinion). Mosbaugh at 36; Intervenor Exhibit II-29; Tape 90 *footnote continued →*

(Mosbaugh); Tape 75 Transcript (GPC Exhibit II-34 and Staff Exhibit II-38) at 31. Mr. Bockhold instructed Mr. Mosbaugh to see that the LER was revised and indicated he might correct the April 9 start count in a planned mid-May 1990 submittal on DG component testing. Mosbaugh at 37; Tape 90 Transcript (Staff Exhibit II-14) at 1-2; Bockhold at 15.

By May 8, 1990, when Mr. Mosbaugh chaired the PRB in his capacity as Acting Assistant General Manager - Plant Support,[58] the PRB approved a draft revised LER which stated that:

> After the 3-20-90 event, the control systems of both engines were subjected to a comprehensive test program which culminated in control logic tests on 3-30 for DG1A and 3-27-90 for DG1B. Subsequent to this test program, DG1A and DG1B had been started 11 times each (through 4-19-90) and no failures or problems have occurred during any of these starts.

PRB Meeting 90-66, GPC Exhibit II-37. Other revisions followed that updated the consecutive successful starts through May 14, 1990[59] and were transmitted to the

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Transcript (Staff Exhibit II-14) at 8. He also told Mr. Bockhold that the April 9 and April 19 counts were wrong for different reasons.

[58] During a May 10, 1990, PRB meeting (PRB Meeting Minutes 90-67 (GPC Exhibit II-39)), Mr. Mosbaugh (acting as Chairman of the PRB) assigned Mr. Bockhold the action of determining how the April 9 letter would be corrected, but on May 24, 1990, Mr. Bockhold closed the action item without correcting the April 9 letter. Aufdenkampe at 17; Mosbaugh at 38; Intervenor Exhibit II-33. Mr. Mosbaugh believes he was removed from the PRB due to his concerns about false statements to the NRC. Mosbaugh at 37-38; The hearing record revealed only that, on May 10, 1990, Mr. Mosbaugh was removed from the PRB and became a Technical Assistant to Mr. Bockhold because Mr. Greene resumed his positions as Assistant General Manager - Plant Support after attending Senior Reactor Operator training. Prefiled Testimony of Thomas V. Greene, Jr. on Diesel Generator Reporting Issues, *ff.* Transcript at 6716 (Greene), at 1.

[59] It was standard practice for an LER to update information previously provided to the NRC. Transcript at 13137 (Webb). GPC ultimately decided to forego the term successful start and report valid tests and failures, as defined in Regulatory Guide 1.108, extending through June 7, 1990. Revised Prefiled Rebuttal Testimony of Thomas E. Webb on Diesel Generator Reporting Issues "Webb Revised", *ff.* Transcript at 13168 (Webb) at 9-13. *See* LER Revision and Cover Letter (GPC II-16); GPC Exhibits II-171L *footnote continued* →

corporate office licensing engineer who was responsible for drafting the revised LER. Webb at 9-10; Transcript at 4047-50 (Stringfellow).

The site's inability to come up with a firm count number frustrated Mr. Hairston, however, in that he had to report to the NRC Regional Administrator, Mr. Stewart Ebneter, on May 14, 1990 and on June 14, 1990, that the start count numbers were revised. Mr. Hairston directed Mr. McCoy to keep the NRC informed of efforts to correct the count.[60] Hairston DG at 9-13; Transcript at 3214 (McCoy).[61] When he saw that the draft LER revision and cover letter contained no explanation as to why the start data was different, Mr. Hairston directed that a QA audit be conducted to determine (1) the correct start count and (2) the reason GPC could not get the number straight. Hairston DG at 11-12; Transcript at 3631 (Hairston). He also informed Mr. Ebneter that he would submit a revised LER after completion of the QA audit. Hairston DG at 12-13.

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through 171T. This approach, while providing unambiguous information regarding DG starts, did little to correct the statement of consecutive starts without problems or failures through April 9 or 19 in that it reported starts using a different criterion and over a different period than stated in the prior documents. The cover letter only corrected the April 19 start count (10 and 12 for DG-1A and DG-1B, respectively) based on the narrow scope audit.

[60] On June 15, 1990, Messrs. Aufdenkampe and Mosbaugh told the NRC resident inspectors about the errors and that the correct numbers depended on when you start counting. Aufdenkampe at 18. After Messrs. Brockman and Ebneter received calls that the DG start information was incorrect, the NRC met to discuss whether the erroneous count was cause to reconsider the April 12 restart decision. Transcript at 15319-20, 15330-31, 15332 (Reyes). Mr. Reyes, the Deputy Regional Administrator for Region II, recalled that eight starts would have been sufficient in his opinion. Transcript at 15336-37 (Reyes). Mr. Reyes believed that GPC's testing, corrective actions and confirmatory testing after the event provided assurance that problems with the DGs during the SAE had been resolved. Transcript at 15322-23 (Reyes).

[61] Intervenor asserted that the phone call was too short to convey DG information and, instead was about an event at Hatch occuring on that date. Intervenor Findings 339-346. Such speculation is not sufficient to rebut GPC's testimony regarding these calls.

There is no basis to conclude that either Mr. Hairston or Mr. McCoy knew that the information provided in the June 29 cover letter was false. Mr. Hairston's actions demonstrated a concern for accuracy and an attempt to discern why erroneous information was given to the NRC. He and Mr. McCoy read the audit report and the table of starts appended to it to ensure the count information was correct. Hairston DG at 14. Mr. Hairston also instructed that the QA Audit results be provided to the Resident Inspector at the Vogtle site and that an explanation of the differences in the count numbers between the LER and the revised LER be explained in the transmittal letter to the revised LER. Hairston DG at 14-15. Mr. Hairston and McCoy adopted the implied finding in the audit report that DG record-keeping practices were the source of the erroneous information provided on April 19. Hairston DG at 16-17; McCoy DG at 19-21.

Unfortunately, (1) the narrow scope of the QA Audit resulted in GPC selecting an incorrect or incomplete reason for the LER error and (2) neither Mr. Hairston, Mr. McCoy nor the other GPC employees involved noticed that the QA audit showed that the April 9 start count was wrong.

The audit's failure to examine the performance of site personnel in collecting and reporting the initial counts rendered GPC unprepared to reach a complete assessment of the causes of the April 9 start count errors. There was no evidence that the narrow scope of the audit was part of an effort to deceive the NRC.

The QA Audit Report specifically stated that the audit was narrow in scope and did not identify a specific cause for the LER count errors, but implied they were caused by the failure to specify a starting point for the count and the lack of up-to-date DG record-

keeping practices.[62] The QA Audit Report, however, alluded to this faulty conclusion without confirming that accurate start data was not otherwise available in April 1990 (*i.e.*, from the Unit 1 Control Log that Mr. Cash had also used, which, unlike the Shift Supervisor's Log, contained sufficient information to derive accurate count data).[63] The audit was also inadequate in scope because it did not examine the performance of Mr. Bockhold and Mr. Cash in collecting and reporting the initial April 9 data (the failure to define the criteria for "successful start" and the period for the count), the assurances of Mr. Bockhold that deterred site verification efforts, or the failure of site and corporate personnel to define the CTP.[64] Thus, the audit failed to identify their inadequate performance as causes for the erroneous information reported on April 9 and in the April 19 LER.

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[62] The DG Start Log, compiled from completion sheets filled out by operations personnel and reviewed by the DG Engineer, Mr. Stokes, was not up-to-date on April 19 as there were delays in the routing of the Completion Sheets from the operators to the Engineering Support Department (headed by Mr. Michael W. Horton) and operators had not filled out a sheet every time the DG was started. Prefiled Testimony of Georgie R. Frederick on Diesel Generator Reporting Issues, *ff.* Transcript at 4125 "Frederick", at 7.

[63] Pursuant to GPC procedures, the Unit 1 Control Log was to contain the start time, stop time and any significant status changes for each DG start. Procedure 10001-C, Logkeeping (Staff Exhibit II-31) at 2; Transcript at 4232 (Frederick). The starts with problems and/or failures (Starts 132, 134 and 136) were all recorded in the Unit 1 Control Log (Staff Exhibits II-23 and II-24); Transcript at 4232 (Frederick). The counts reported in the April 19 LER (and the April 9 letter start count) included starts before the operability test was conducted.

[64] Mr. Frederick was aware that Mr. Cash had prepared the information for Mr. Bockhold's presentation, and had assumed that a separate count had not been made for the LER. Mr. Frederick had not contacted Mr. Cash during the audit to avoid biasing the results of the audit. Frederick at 9-12. This approach, while reasonable from an auditor's perspective, was not prudent given the performance problems associated with collecting the DG start counts and Mr. Mosbaugh's statements to Mr. Frederick early in the audit period that he should examine the role of personnel errors in the erroneous counts. Transcript of Tape 160 (Staff Exhibit II-16) at 24.

While better DG record-keeping practices (*i.e.,* no delays in routing or completing start completion sheets, and an up-to-date DG Start Log with starts numbered) would have made count information easier to retrieve, it is clear that previous erroneous start counts were caused by (1) the performance failures of Messrs. Bockhold and Cash in initially collecting and reporting the data (particularly with respect to the ambiguous term "successful start" and the undefined period for the count)[65] and (2) GPC's decision to reiterate the count (as modified by the term CTP) without completing adequate verification efforts. There is no evidence that Messrs. Hairston and McCoy were specifically aware of this cause of the errors, as there was no evidence that Mr. Mosbaugh's reasons for believing the letter was inaccurate were ever communicated to them. Thus, there is no basis to support Mr. Mosbaugh's assertion that GPC intended to mislead the NRC.[66]

Even though senior managers may not be intimately familiar with site activities, the NRC expects that they will ensure that adequate care and attention is given to written and verbal communications with NRC. When they do become personally involved and have information made available to them (*i.e.,* the audit table showing the April 9 start count was wrong), they should take necessary steps to ensure that inaccurate information is promptly corrected.

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[65] GPC did not define what constituted a "successful start without problems or failures" in the audit report and did not agree on a definition until the August 30, 1990, letter that submitted accurate DG-1A and DG-1B start counts for April 9.

[66] Messrs. Bockhold, McCoy and Hairston also failed in their review of the document to ensure that information provided to the NRC in the June 29 cover letter was complete due to their failure to "clarify" the April 9 letter and to provide a relevant discussion of the start count.

(2). GPC notified that the LER cover letter was false and incomplete

Petitioners are correct that GPC was on notice that the draft LER was inaccurate and incomplete. Statements made by Mr. Mosbaugh in conversations with a number of GPC employees substantiate this claim. This fact, however, does not dictate a conclusion that GPC intended to submit false information to the NRC. Rather, it is another example of inadequate performance whereby GPC failed to correct erroneous and incomplete information.

On June 29, 1990, during a phones calls with corporate personnel, and polling PRB members, on the LER Revision and transmittal letter Messrs. Frederick, Greene, Horton and Harry W. Majors (a corporate licensing engineer for the Vogtle Project)[67] did not fully consider and resolve the concerns raised by Mr. Mosbaugh during the polling of the PRB members that (1) the letter failed to clarify the DG starts reported on April 9, (2) DG record-keeping practices were not a cause of the difference in the DG starts reported in the April 19 LER because adequate information was available when the counting errors were made, and (3) the erroneous counts resulted from personnel errors in developing the count. Tape 187 Transcript (Staff Exhibit II-18) at 2-28. Their actions played a part in GPC submitting incomplete and inaccurate information in the revised LER.

Site personnel were aware, as of June 15, 1990, that (1) Mr. Hairston was concerned about the erroneous start counts because he had attested to the information later found to be inaccurate, (2) site verification efforts had been inadequate and relied primarily on hearsay, and (3) Mr. Hairston planned to explain in the cover letter to the revised LER or

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[67] Mr. Majors was to complete the LER revision package and assure that the DG start counts were consistent with the QA Audit results. Prefiled Testimony of Harry W. Majors on Diesel Generator Reporting Issues, *ff.* Transcript at 6212 "Majors", at 1.

elsewhere why the LER was wrong[68] and what corrective action was taken to prevent recurrence in the future. Tape 157 Transcript (Staff Exhibits II-35 and II-35A) at 10-13.

Mr. Frederick, the on-site Supervisor of the SAER group, who reported to a corporate manager in Birmingham, supervised the audit conducted June 11-29, 1990, which he understood was to determine accurate numbers for the LER start counts.[69] His staff reviewed DG test data sheets generated during troubleshooting, maintenance and surveillance testing, as well as the Unit 1 Shift Supervisor's Log kept in the control room and the Diesel Start Log (with numbered starts) maintained by the DG system engineer. Frederick at 4-5; QA Audit Report, dated June 29, 1990 (GPC Exhibit II-15).[70] Unable to identify a GPC definition of "CTP," the report concluded that the CTP ended upon completion of the operability run pursuant to Vogtle surveillance procedure No. 14980. In reaching this definition, Mr. Frederick reasoned that the test program ended once the machine was declared operable. Thus, the report concluded that there were 10 and 12

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[68] One of the last drafts of the cover letter to the revised LER stated that the revised LER was being submitted "to correct information related to the number of successful Diesel Generator starts subsequent to the comprehensive test program as discussed in the LER and the April 9 letter." GPC Exhibit II-171T. The statement was not in the final cover letter.

[69] This was the stated purpose of the audit and did not implement Mr. Hairston's instruction that the reasons for the error also be determined.

[70] The Petitioners assert that delays in completing the revised LER are evidence that GPC tried to mislead the NRC. There was no record evidence to support this proposition. Rather, the record revealed inept and protracted GPC efforts to arrive at updated counts and Mr. Hairston's decision to have the revision await the results of the QA Audit. Completion of the audit was delayed due to difficulty in locating the pertinent records (the set in the vault were not complete and up-to-date) and some records (*e.g.*, the DG Completion Sheets, which are routed through the plant mail system) were not all located until the end of the audit. Frederick at 5-6; QA Audit Report, GPC Exhibit II-15 (McCoy M). Both documents were issued on June 29, 1990.

consecutive successful starts on DG-1A and DG-1B, respectively, as of April 19. Frederick at 6-7; GPC II-15.

Messrs. Horton, Frederick, Greene, and Majors were specifically notified about Mr. Mosbaugh's concerns regarding the accuracy and completeness of the letter, but failed to resolve them. Mr. Frederick knew the audit was narrow in scope, that the audit had not identified the specific cause of the error in the LER and had been notified that he should examine the personnel errors of Messrs. Cash and Bockhold, but unreasonably relied on his narrow scope audit and dismissed the concerns raised by Mr. Mosbaugh.[71] Mr. Horton, a voting PRB member, thought the June 29 cover letter statement about DG record-keeping practices was inaccurate because the DG Start Log was not used, but abandoned this argument when informed that Mr. Hairston drafted the language.[72] Messrs. Majors and Greene too quickly dismissed the concern that the letter was incomplete in that it did not "clarify" the April 9 count. Further, Mr. Greene, faced with a unit down, adopted the corporate view rather than resolving the concerns of an individual who had been personally involved in the development of the LER. *See* Tape 187 Transcript (Staff Exhibit II-18) at 1-28.

The hearing record and DFI responses indicate that Messrs. Horton, Frederick, Greene and Majors failed to resolve the concerns of accuracy and completeness that were raised

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[71] Mr. Frederick later stated that (1) record keeping and the personnel errors of Mr. Cash in making his count and Mr. Bockhold in instructing him also contributed to the error and (2) as he was unaware of Mr. Hairston's instruction for the audit to determine why mistakes were made, he had limited the root cause determinations (*e.g.*, inadequate training, inadequate procedures). Transcript at 4270-71, 4274 (Frederick).

[72] In his DFI response and during the hearing, Mr. Horton accepted responsibility as a PRB member for the inaccuracy in the June 29 cover letter (*e.g.*, Transcript at 5897) and admitted that he had not adequately addressed Mr. Mosbaugh's concerns (Transcript at 5942).

by Mr. Mosbaugh due to a combination of factors, including the fact that (1) Mr. Mosbaugh challenged language that was personally drafted by Messrs. Hairston and McCoy, (2) Mr. Frederick held strongly to his belief based upon a narrow scope audit that DG record-keeping caused the errors, (3) the DG record-keeping practices explanation appeared reasonable,[73] and (4) they believed Mr. Mosbaugh's opinions were entitled to little weight. *See* Staff Exhibit II-18; Frederick at 11-12; Horton at 5-6; Majors at 4-8; Greene at 4-8; Transcript at 6913 (Greene); DFI Responses: Frederick at 8-10; Horton at 2-5; Majors at 4-11; Greene at 5-13.

The actions of the individuals involved did not meet NRC expectations for ensuring that information communicated to the NRC is complete and accurate in all material respects. Their actions show a reluctance to question information developed at the corporate office (unless they had direct information to the contrary). They do not show, however, a concerted effort to mislead the NRC.[74]

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[73] A single source document like a DG Start Log with completion sheets and numbered starts would have made the task of assembling and examining the start data easier. Aufdenkampe at 19-20; McCoy at 19-21. The hearing revealed that the updated DG Start Log (through May 2, 1990) (Staff Exhibit II-22) did not record the problem during DG-1B start 136 and recorded it and starts 132 and 134 as successful starts. Transcript at 4230 (Frederick) and 6879-80 (Greene).

[74] In hearing testimony and in DFI responses, GPC employees often asserted that GPC failed to meet its obligations under 10 CFR 50.9 due to Mr. Mosbaugh's actions. *E.g.*, DFI responses (Frederick at 9-10, Greene at 8 and 10-13, Majors at 7-10, Bockhold at 8-9, GPC at 4-6, 12). While the enforcement action identified Mr. Mosbaugh as being among the employees who contributed to the Severity Level II problem, blaming Mr. Mosbaugh detracts from meaningful examinations of the source of GPC's errors and discouraged accountability and responsibility. Also, if GPC had adequately resolved Mr. Mosbaugh's claims, in June 1990, that an examination of actions by GPC personnel was an necessary to understand and correct errors, it might not have taken until August 30, 1990, to get an accurate count for April 9.

(3). Multiple explanations for DG start count errors

Petitioners claim that the various explanations regarding the DG start count information that appeared in drafts of the cover letter to LER revision indicate that GPC endeavored to mislead the NRC. Petition at 11-12. The record shows that the drafts were part of GPC attempts to defend or explain previous DG start count information without fully understanding what caused the errors. The allegation of intentional deception was not substantiated.

GPC's failure to resolve concerns raised about the accuracy of DG start count information both prior to and on June 29, 1990, resulted in site and corporate personnel believing that the April 19 LER was sufficient to clarify the April 9 count as they did not realize that the numbers for, and interval of, the counts were different. GPC had not yet defined what constituted "a successful start without a problem or failure" and did not recognize that the LER Revision count of valid starts through June 7 did not clarify the start data presented in the April 9 letter and April 19 LER. The reliance on different types of starts for a different interval and the various explanations set forth in the drafts epitomize GPC's failure to adequately investigate the basis for the information originally conveyed on April 9 and to determine why errors were made. The use of the term "clarify" in the cover letter to the LER revision and ignorance regarding the cause of misinformation made it difficult for various GPC managers and their subordinates to provide a consistent explanation for the mistakes. The DG record-keeping explanation adopted was based on the QA Audit that was not adequate to explain the causes of the count errors. The record contains no evidence of intentional efforts to deceive the NRC, but ample evidence of evolving explanations showing GPC's reluctance to admit its

mistake, promptly correct the misinformation, and identify the multiple performance problems of senior GPC personnel before April 9 and April 19.

(4). Summary

The record shows that (1) GPC was clearly aware, as early as May 2, that the April 9 letter and April 19 LER were incorrect and (2) GPC failed to take sufficient actions to correct the April 9 letter and determine the reasons for the errors in the two submittals. While GPC undertook efforts to correct the LER, it narrowly focused on that submittal and did not examine the actions of the individuals involved or determine whether accurate information was available from plant records.

The failure of GPC to correct the DG start counts in the April 9 letter and to provide complete reasons for the inaccurate DG start counts in the LER, was in part due to the erroneous belief that the two submittals addressed the same count information given that the April 19 start count was derived from the April 9 presentation. There is no evidence that any GPC employee knew the record-keeping statement was false or incomplete and no evidence of any deliberate efforts to conceal information from the NRC.

d. August 30, 1990, Letter

Intervenor contends that GPC deliberately (or with careless disregard) provided inaccurate or incomplete information in an August 30, 1990, letter to the NRC in an effort to "cover up" problems in developing the April 9 letter, in particular the (1) "top down" drafting of the letter (2) contradictory public statements by Mr. McCoy, and (3) the steering of the August 30, 1990, PRB meeting that approved the letter. Mosbaugh at 59-60, Transcript at 10394-95 (Mosbaugh); Intervenor Findings at 213-220.

In the Modified NOV, the NRC cited GPC for two instances in which inaccurate and incomplete information was provided in the August 30, 1990, letter:

The letter states that: "The confusion in the April 9th letter and the original LER appear to be the result of two factors. First, there was confusion in the distinction between a successful start and a valid test... Second, an error was made by the individual who performed the count of DG starts for the NRC April 9th letter."

1. These statements are inaccurate in that confusion between a successful start and a valid test was not a cause of the error regarding DG start counts which GPC made in its April 9, 1990 letter to the NRC.

   The inaccuracy was material in that it could have led the NRC to erroneously conclude that the correct root causes for the error in the April 9, 1990 letter had been identified by GPC.

2. The statements are also incomplete. While an error was made by the Unit Superintendent who performed the count of diesel starts for the April 9, 1990 letter, the root causes of the error in that letter were not completely identified by GPC. Specifically, the Vogtle Plant General Manager who directed the Unit Superintendent to perform the start count failed to issue adequate instructions as to how to perform the count and did not adequately assess the data developed by the Unit Superintendent. In addition, the Unit Superintendent did not adequately report his count to the Vogtle Plant General Manager.

   The incompleteness was material in that, had the correct root causes for the error in the April 9, 1990 letter regarding DG start counts been reported, this information could have led the NRC to seek further information.

GPC contends that the inaccuracies in the letter did not result from wrongdoing on the part of any GPC employee, but acknowledges that Mr. Bockhold should have taken greater care with respect to the letter and allowed greater involvement by his staff. GPC contends that any misstatements or omissions were unintentional. *See* GPC Findings 398-400.

The NRC staff found no evidence that showed GPC deliberately provided inaccurate and incomplete information in the letter, but found that Mr. Bockhold's actions and inactions as a senior manager contributed to the perpetuation and escalation of errors and omissions, and that Mr. Bockhold's management style rendered the performance of others ineffective. *See* Staff Exhibit II-51 (cover letter) at 2-3; Staff Exhibit II-49 (DFI regarding Bockhold) at 9-10.

(1). "Top down" drafting of August 30 letter

During an Operational Safety Team Inspection conducted from August 6 to 17, 1990, to examine the technical validity and safety significance of the allegations submitted to the NRC, *see* Intervenor Exhibit II-83, the NRC informed GPC that the June 29, 1990, submittal failed to address the April 9, 1990, data and requested that GPC clarify DG starts reported on April 9, 1990.

Mr. McCoy, aware of NRC concerns that erroneous start count information was intentionally provided in the April 9 letter, committed, during an August 17 meeting with the NRC special inspection team, to correct the DG start data and explain the errors in the April 9 letter. Tape 258 Transcript (Staff Exhibit II-19) at 1. Despite this knowledge, no root cause evaluation or other investigation of the DG start count errors was initiated. Instead, GPC's August 30 letter (which was drafted at corporate headquarters under the direction of Mr. McCoy and provided correct data for April 9) was dispatched without an assessment of the actions of Mr. Bockhold and Mr. Cash who developed the erroneous information contained in the April 9 letter. As a result, Mr. McCoy failed to exercise sufficient oversight and GPC again failed to identify its mistakes and take steps to ensure that the deficient conduct was not repeated.

There is no evidence to substantiate the claim that the initiation of a draft at the corporate offices was an effort to conceal information from the NRC. Site approval was sought as evidenced by Intervenor's tapes. *See e.g.,* Tape 258 Transcript (Staff Exhibit II-19). Those who were most knowledgeable (albeit somewhat uninformed) about DG start data and the causes of the error were involved in reviewing and approving the correspondence.

(2). Steering of PRB meeting

The August 30 letter was the first time that GPC defined the term "successful start" and attempted to explain why the April 9 start counts were erroneous. The actions of Mr. Bockhold, the Vogtle General Manager, significantly hampered efforts to provide accurate information about why errors were made.

The PRB functions as an advisory group to the General Manager. During the August 30, 1990, PRB meeting that was reviewing a draft of the August 30 letter to the NRC, Mr. Bockhold changed the word "error" to "confusion" in the phrase explaining the reason for errors in the April 9 letter and the April 19 LER. As revised, the erroneous information was due to "the *confusion* between the distinction between a successful start and a valid test." Tape 184 Transcript (Staff Exhibit II-19) at 1-3 (emphasis added). When questioned whether Mr. Cash (who had collected the April 9 DG start data) was confused about the distinction between a successful start and a valid test, Mr. Bockhold admitted that Mr. Cash was not confused when he collected the data, but claimed that the sentence was accurate because other people were confused afterwards. *Id.* at 6-8.[75] Mr. Bockhold also made several comments indicating that he wanted unanimous approval and discouraged some PRB members from suggested revised wording for the letter. Staff Exhibit II-19 at 3, 9-11. His forceful, overbearing, and, at times, precipitous demeanor, (*see* Transcript at 5769-76 (Aufdenkampe)) and failure to examine his own role and

[75] Given that the QA audit report showed that there were only two valid tests (as defined by Regulatory Guide 1.108) on the diesel during this period, GPC Exhibit II-15 at Attachment B; Transcript at 9279-80 (McCoy), this was not the likely source of count errors.

responsibility, contributed significantly to misinformation being provided to the NRC throughout April-August 1990.[76]

Confusion after April 9 (whether by GPC or NRC personnel) could not have caused the erroneous count information provided on April 9. This example of Mr. Bockhold's forceful management style shows an environment where the PRB reviewing the draft letter could not adequately resolve a concern about the accuracy of the "confusion" statement or inquiry as to the role played by a superior in the development and reporting of misinformation on April 9. Mr. Bockhold's failure to encourage his staff to have a questioning attitude thwarted efforts to ensure the accuracy and completeness of communications with NRC. There is insufficient evidence to conclude that this defensive posture was part of efforts by Mr. Bockhold to deceive the NRC.

(3). Inaccurate public statements by Mr. McCoy

Intervenor asserted that because the reasons for LER errors stated in a 1990 press release by Mr. McCoy (Intervenor Exhibit II-67A) (*i.e.,* employees did not use all of the available data and used operator logs only) were different than those stated in the August 30 letter (which stated that "confusion" between a successful start and a valid test and a personnel error by the individual who performed the count caused the error)

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[76] This incident and the PRB meeting on the FAVA system, *see* section III.A.4, *supra*, are both examples of Mr. Bockhold's forceful management style. On April 30, 1990, senior officials of the NRC met with Messrs. McDonald, Hairston, McCoy and others to express NRC concerns about the "cowboy" or "cavalier" attitude that Mr. Bockhold (and GPC) exhibited in dealings with the NRC. Transcript at 14850-14865; 14955-14956 (Matthews). GPC and Mr. Bockhold have since acknowledged the role Mr. Bockhold's management style played in GPC communicating inaccurate and incomplete information and Mr. Bockhold has accepted responsibility for his mistakes. Letter from G. Bockhold to J. Lieberman, NRC, dated February 1, 1995. The NRC staff also noted that GPC communications substantially improved after Mr. Shipman assumed Mr. Bockhold's position in the Fall of 1990. Transcript at 15194 (Matthews).

shows that GPC lacks the willingness to seek the truth. Mosbaugh at 60; Intervenor Findings at 399-400.

The mere fact that a GPC officer stated more than one reason why GPC had submitted erroneous information is not a basis for concluding that GPC was unwilling to seek the truth given what the record shows about GPC's inadequate attempts to determine why erroneous information was submitted. Inasmuch as the press release contains scattered quotes from Mr. McCoy, it is difficult to determine whether any statements are in quoted context. Consequently, it is difficult to draw negative conclusions about GPC's character based on the statements.

e. OSI White Papers, Response to 10 CFR 2.206 Petition, and SSPI Data

(1). White Papers to NRC inspection team

Intervenor asserted that, during the NRC's special team inspection on operating practices and allegations (the "OSI" Inspection) conducted at the Vogtle facility in August 1990 (*see* Intervenor Exhibit II-83), GPC intentionally provided false information (1) by indicating that Messrs. Cash and Bockhold sat together in Mr. Bockhold's office to work on the DG testing slide, (2) by omitting Mr. Burr from the list of individuals who wrote the April 9 letter, (3) by excluding Messrs. Hairston and McCoy from the listed participants in the April 19 phone call that added the words "subsequent to the test program," and (4) by stating that all revisions of the LER were reviewed by the PRB. Intervenor Findings 357-76.

GPC contends that no negative inference should be drawn from any inaccuracies in the White Papers as they resulted from honest attempts to respond to questions posed by the NRC. GPC Findings 403-415.

During the August 1990 special team inspection addressing NRC concerns about GPC's operating philosophy and allegations about inaccurate information being supplied to the NRC, GPC responded to questions posed by the NRC in various "White Papers." McCoy DG at 22-23; *See* GPC Exhibit II-126; Intervenor Exhibits II-131 and II-95.

There is no evidence to support the claim that the inaccuracies in the documents resulted from deliberate efforts to mislead the NRC and conceal the participation of senior GPC officials. As is evident from the discussion on the Tape 253 Transcript (GPC Exhibit II-122; Intervenor Exhibit II-148), the recollections of various GPC employees were cloudy as to who participated in decision-making and who prepared documents. GPC employees freely stated their opinions as to who participated in various decisions and there was nothing to put GPC on notice that the information to be submitted was inaccurate. In addition, the White Paper expressly conveyed "GPC's belief" at the time when (based upon information developed during the licensing hearing and enforcement proceeding) GPC's investigation of issues was incomplete. Thus, there is no indication that the mistakes were intentional.

(2). Statements in response to 10 CFR 2.206 Petition

Intervenor also contends that GPC intentionally tried to conceal Mr. Hairston's participation in the April 19 call regarding the LER when Mr. McDonald signed GPC's response to the 10 CFR 2.206 petition and later clarifications.

There is insufficient evidence to show that GPC intentionally provided inaccurate information. There is no evidence that Mr. McDonald was specifically aware of Mr. Hairston's participation on the April 19 call and Tape 58 (GPC Exhibit II-2) shows that Mr. Hairston joined the call after the wording regarding the Comprehensive Test Program was added and did not participate in "Call B" when Messrs. Shipman, Aufdenkampe and

Mosbaugh finalized the LER language. *See* Tape 58 Transcript (GPC Exhibit (II-2); Staff Exhibit II-45 (Vogtle Coordinating Group Report). The failure to identify various participants on the calls indicates faulty recollection of GPC employees (shown to be inaccurate by the Intervenor's recordings) and is among the numerous mistakes GPC made in providing information on the DG issue. Performance failures, not deception, appears to be the likely cause.

(3). SSPI data

Intervenor asserts that GPC's failure to include "bad" 1990 Safety System Performance Indicator (SSPI) data in the April 9, 1990, letter to the NRC and to give such data to the IIT is evidence of a pattern of willfulness by GPC and argues that the data should have been included in the April 9, 1990, letter. Intervenor Findings 44-73; Mosbaugh at 99-104; Transcript at 10369 (Mosbaugh). GPC contends that exclusion of the 1990 data, which was based upon only a few months rather than a full year, did not represent a relevant and material omission concerning the Vogtle DGs. GPC Findings at 191-198.

The fact that the data was not included in the final version of the April 9 letter is not significant. The record shows that the NRC asked GPC to address the reliability of the DGs as part of the April 9 presentation. The SSPI data given to the IIT addressed the years 1987, 1988, and 1989 and was incomplete for 1990. Intervenor Exhibits II-89 and II-91.

In a conversation taped by Mr. Mosbaugh on or about April 2, 1990, Mr. Bockhold discussed with Mr. Mosbaugh a document containing SSPI data for Vogtle DGs and indicated the data was to be given to the IIT and Mr. Brockman of the NRC. Mosbaugh at 101; Intervenor Exhibit II-89. Contrary to Intervenor's assertion that it was hidden from

the IIT, a document containing the SSPI data was among the documents collected by the IIT after the SAE. *See* IIT Document No. 143 (Intervenor Exhibit II-89).

Intervenor's allegation that a draft of GPC's April 9, 1990, letter that contained the SSPI data was telecopied to the GPC corporate office and the NRC was not proven. NRC staff records show that draft information transmitted to Messrs. Brockman (Region II) and Matthews (NRC Headquarters) on April 5 and 6, 1990, did not contain the data. *See* Intervenor Exhibit II-65 and II-65A; *see* Transcript at 3287-90.

The NRC's interest relative to restart was to understand the basis for GPC's position that the DGs were operable and that GPC's corrective actions had been effective. The NRC was not seeking a numerical value like SSPI (which represents the time that a given unit, on average, annually is unavailable), either historically or currently, as part of its restart decision and does not normally rely on such data.[77] *See* NRC Staff's Reply to Intervenor's First Set of Interrogatories, dated September 15, 1993, at Interrogatory 11.

There is no basis to conclude that the data should have been included in the April 9 letter in order to address the NRC's inquiry about DG reliability and operability. Mr. Bockhold's decision not to include the data for the first few months of 1990 was not unreasonable. Intervenor has not shown that the information was necessary for a decision on whether the short-term corrective actions were sufficient to provide reasonable

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[77] The Vogtle Technical Specifications address DG reliability by requiring increased frequency of DG testing if a specified number of failures occurred during the last 20 or 100 valid tests. The Technical Specifications also require special reporting of DG test results. These requirements of the Technical Specifications are totally unrelated to SSPI data. SSPI data for individual DGs are calculated by dividing the unavailable hours (planned, unplanned and estimated) by the total number of hours the DG is required to be operational during the SSPI assessment period. GPC Exhibit II-140. Such data have little or no value with respect to DG operability and the effectiveness of corrective actions to allow restart.

assurance to permit restart, and it is clear that the information was made available to the NRC.

(4). Conclusions regarding White Papers, 10 CFR 2.206 response and SSPI data

There is no evidence to support Intervenor's assertion that GPC knowingly submitted false information regarding Mr. Hairston's participation on the April 19 call about the LER. The misstatements are readily explained by faulty recollection, and do not indicate that GPC intentionally misrepresented Mr. Hairston's participation. The audio recording made on that date shows that he was not a significant participant in discussions about the accuracy of the LER.

Similarly, there is no basis to conclude that Mr. Bockhold was deceitful in failing to include Safety System Performance Indicator Data in the April 9 letter in that the information, although incomplete, was provided to the IIT. There is no evidence that the information omitted was requested by the NRC or reasonably should have been included in the letter.

f. Statements Concerning Air Quality in the April 9 Letter and to the IIT

(1). Introduction

A sufficient air supply is needed both to start the diesel engine and to operate the engine controls. This air is supplied to each diesel engine by an independent, redundant starting air system that includes an air compressor, an after-cooler, a refrigerant air dryer,[78] an air receiver, intake air filters, starting valves, air distributors, instrumentation,

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[78] The air dryer at Vogtle is located upstream of the air receiver, the dryer removes water vapor from the compressed air before the air reaches the receiver and is designed to run continuously. FSAR section 9.5.6 at 9.5.6-4 (Board Exhibit II-3); Board Exhibit II-4 at 9-68. Compressed ambient air, saturated with water vapor, enters the dryer and is pre-cooled by the outgoing refrigerated air by an air-to-air heat exchanger. The pre-cooled air then enters the air-to-refrigerant heat exchanger (*i.e.*, the refrigeration evaporator) where it is cooled by the dryer's refrigeration system. As the air *footnote continued* →

controls, alarms, and the associated piping to connect the equipment. Alarms annunciate on the local control panel in the diesel building and in the Unit's main control room to enable operators to monitor the DG starting air system. Vogtle SER section 9.5.6 (Board Exhibit II-4) at 9-68.

The control air is supplied by the starting air system from a point downstream from the air receivers. Control air is used by the pneumatic logic components and sensors to control and protect the diesel engine. The control air passes through a five micron filter and then through a pressure regulator that maintains control air pressure at 60 psig. *See* NUREG-1410 at 3-47 (Intervenor Exhibit II-10).

One of the ways of monitoring the quality of DG starting air is through dew point measurements taken by attaching the dew point testing equipment at a pressure gauge fitting on the air receiver. The temperature range of acceptable dew points at the Vogtle facility is 32-50°F. Dew point measurements obtained at the Vogtle facility on the DG air system are documented in Maintenance Work Orders (MWOs), which are used to perform the Preventive Maintenance (PM) checks of the DG air dew points. *See* Intervenor Exhibit II-78 at 5-10; *See* Mosbaugh at 69-70; Intervenor Exhibit II-169.

The April 9, 1990, letter submitted to the NRC to support GPC's request for restart stated the following with respect to air quality:

> GPC has reviewed air quality of the D/G air system including dew point control and has concluded that air quality is satisfactory. Initial reports of higher than expected dew points were later attributed to faulty instrumentation. This was confirmed by internal inspection of one air receiver on April 6, 1990, the periodic replacement of the control air filters last done in March 1990 which showed no

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cools, water vapor condenses into liquid droplets which are separated out of the air stream by a moisture separator, and automatically discharged by a draintrap. Board Exhibit II-3 at 9.5.6-4.

indication of corrosion and daily air receiver blowdowns with no significant water discharge.

GPC Exhibit II-13 at 3. On May 9, 1994, the NRC issued the NOV to GPC, which included a Violation B on air quality based on (1) GPC's failure to provide complete information regarding control of DG air quality (*i.e.*, dew points) in the April 9, 1990, letter by only stating that initial reports of high dew points were attributed to faulty instrumentation and (2) GPC's failure to state that high dew points for Vogtle Unit 1 were also attributable to system air dryers occasionally being out of service for extended periods and to system repressurization following maintenance. Staff DG Panel at 7; Staff Exhibit II-46 at 3-4.

After reviewing GPC's response to the NOV, the NRC staff concluded that as of April 9, 1990, GPC had an adequate technical basis to support a finding that air quality was acceptable, and that dew point information of a historical nature, *i.e.*, from before the SAE, was not necessary for the April 12, 1990, restart decision. Staff Exhibit II-50, at 5-6; *see also* Staff DG Panel at 9. In the Modified NOV, dated February 13, 1995, the NRC withdrew Violation B. Staff Exhibit II-51, Appendix at 2-3.

Intervenor asserted that the air quality statement in the April 9 letter is materially false and deliberately misleading in that (1) high dew points were not due to "faulty instrumentation" (Intervenor Findings at 285) and (2) the results of the April 6, 1990, inspection of the air receiver, the inspection of air filters, and the daily air receiver blowdowns did not support a conclusion that air quality was satisfactory (Intervenor Findings at 306-09).[79] *See also* Petition at 9. Intervenor also alleged that GPC was

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[79] Intervenor also alleged that water was collected from the diesel air system prior to April 9, 1990, in that (1) he saw a jar of 8 ounces of yellowish fluid in Mr. Kochery's office on March 30, 1990, and (2) a taped (and partially inaudible) conversation indicates that the water came from diesel pneumatic tubing (air system "trip lines") that were disassembled on March 29. Mosbaugh at 93-94.

recklessly careless in communications regarding high dew points and concealed high dew point readings from the IIT. *See* Mosbaugh at 66-92.

GPC maintains that the letter conveyed its judgment that, as of April 9, 1990, the diesel control air quality relative to moisture or humidity was satisfactory based upon the April 6 air receiver inspection and the daily air receiver blowdowns, which did not indicate a high humidity environment in the starting air system. *See* GPC Exhibit II-55A (Tape 41 Transcript), at 2; Supplemental Testimony of George Bockhold On Air Quality Statements, *ff.* Transcript at 6397, "Bockhold AQ", at 5-6. The statement that "initial reports of higher than expected dew points" was not intended to describe all past maintenance issues or to refer to any dew point readings taken after March 29, 1990. *Id.*; Transcript at 6582 (Bockhold).

The NRC staff concluded, based on the hearing record, that (1) the air quality portion of GPC's April 9 letter was incomplete in that it did not reference the fact that the Instrumentation and Control (I&C) technicians were unfamiliar with the use of the VP-1114

DG vendor representatives who were present during the March-April 1990 disassembly of most of the diesel sensing lines and performed the diesel logic functional testing, including the disconnection of all protective trip lines within the engine control panel, did not recall observing or hearing about any water or moisture problems in the diesel starting or control air in March-April 1990. Rebuttal Testimony of Sheldon OwYoung and Robert Johnston On Air Quality Statements, ff. Transcript at 12,428 "OwYoung-Johnston" at 4-5; Transcript at 12,741 and 12,758-59 (OwYoung, Johnston). Others present in Mr. Kochery's office had no recollection of the incident and even disputed Mr. Mosbaugh's transcribed version of the March 30, 1990, tape segment. Transcript at 7552-7553, 7568-7570 (Stokes); Chenault rebuttal at 3-4 (*ff.* Transcript at 14020); *See also* transcript at 14071-14073, 14076 (Chenault).

In addition, in May 1994, the NRC staff inspectors examined whether water had been in the diesel control air system in 1990. The staff identified numerous examples of out-of-specification dew points, but found no evidence of actual water formation in the diesel control air system lines or corrosion. Staff Exhibit II-5 at 1, 6-8; *see also* Testimony of Edward B. Tomlinson and Pierce H. Skinner On Air Quality, ff. Transcript at 14497 "Staff AQ" at 10-11. Thus, there is no evidence to substantiate the claim that water was in the trip line.

instrument, and initially misused it, in taking dew point measurements in early April 1990, and (2) the reference in the April 9 letter to "initial reports" should reasonably include high dew point measurements taken prior to April 9. Transcript at 14,756-57 and 15,111 (Matthews). The NRC staff found that out-of-specification dew point readings identified by Intervenor during the hearing (Intervenor Exhibit II-169) did not show that air quality was unsatisfactory since inspection of the receivers and controls showed no evidence of corrosion or a long term water problem. Tomlinson and Skinner at 12-13.

(2). Accuracy of statement that air quality was satisfactory

Mr. Mosbaugh alleges that corrosion seen during the April 1990 inspection of an air receiver is evidence that air quality was not satisfactory, as stated in the April 9 letter. *See* Mosbaugh at 82-83.

One DG-1A air receiver tank (K02) was inspected by GPC and NRC staff representatives on April 6, 1990. *See* Affidavit of Milton D. Hunt, dated March 1, 1995, *ff.* Transcript at 4882, "Hunt Affidavit", at 5; Prefiled Testimony of Kenneth Stokes on Diesel Generator Air Quality Statements, *ff.* Transcript at 6962, "Stokes", at 2-3; Rebuttal Testimony of Harvey Handfinger, *ff.* Transcript at 11,346, "Handfinger", at 2; Transcript at 11,450-56 (Handfinger).[80] The metal was clearly visible inside the receiver and there were no loose rust particles in the tank,[81] water droplets on the tank walls, or other signs of moisture during the inspection. Transcript at 11,374, 11450-56, 11,483. The fact

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[80] Mr. Harvey Handfinger was GPC's Manager of Maintenance, reporting to Mr. Kitchens (Assistant General Manager - Operations). Mr. Mark Briney, as the acting Instrumentation and Control Superintendent, reported to Mr. Handfinger.

[81] Mr. Shipman's April 11, 1990, notes (GPC Exhibit II-147) showed that there was minor "flash" corrosion or rust observed on the weld seams of the air receiver tank, as expected, given that welded joints on the carbon steel tank form a thin "rust" or corrosion film immediately after welding. Rebuttal Testimony of William B. Shipman, (*ff.* Transcript at 10,890) "Shipman Rebuttal", at 14.

that there were normal rust spots on the welds inside the tank and that the control system air filters appeared "new" also indicated that air quality was not a problem. Hunt Affidavit at 5-6; Transcript at 4930 (Hunt).

Mr. Mosbaugh did not dispute the statement from the April 9 letter that air quality was satisfactory when that statement was read to the IIT on April 11, 1990, and Messrs. Kochery and Stokes indicated that the statement was correct, even though the 50 degree dew point requirement had not always been met. Tape 41 Transcript (Staff Exhibit II-15) at 1-2, 5-7.

Based on the evidence set forth above, particularly the absence of significant rust, corrosion, or moisture,[82] the statement in the April 9, 1990, letter that air quality was satisfactory was not inaccurate.

(3). Incomplete reasons for high dew point readings

The record shows that GPC's statement that "initial reports of higher than expected dew points were later attributed to faulty instrumentation" is incomplete in that it failed to indicate that high readings were also obtained after the SAE due to technicians being unfamiliar with backup equipment, but there is no basis to conclude that GPC intended to mislead the NRC.

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[82] If any water had ever formed in the pneumatic control air system, water would likely accumulate in the bowl of the control air filter in the diesel engine control panel, but there was no evidence of water in that filter before or during the March 1990 outage. OwYoung-Johnston at 5-6; *see also* Transcript at 12,495-502 (OwYoung, Johnston). Moisture corrosion problems in the diesel air start system in 1990 would have also caused degradation due to corrosion or corrosion products which would have been obvious during the inspection and testing of the diesels, but there was no evidence of corrosion during the inspection and testing of the diesels following the SAE. Testimony of Kenneth Stokes On Air Quality Statements, *ff.* Transcript at 6962 "Stokes", at 4. For example, the logic board, which was removed and replaced subsequent to the DG-1B start on March 24, 1990 (Start 136), showed no signs of a water or moisture problem and inspections during each 18-month replacement of the control air filters revealed no moisture problem. Transcript at 7704 and 7685-86 (Stokes).

On March 9, 1990, there were out-of-specification dew point readings of 61 °F and 66 °F taken on DG-1A air receivers K01 and K02, respectively. GPC believed the high readings were valid since humidity would have risen while DG-1A was out of service and disassembled from March 1 to March 13, 1990, for overhaul maintenance and testing in that the receivers had been depressurized and opened to the room atmosphere. Prefiled Testimony of Lewis A. Ward On Air Quality Statements, *ff.* Transcript at 7740, "Ward AQ", at 3-4;Transcript at 7878-80 (Ward).[83] After overhaul maintenance, air receivers are recharged using multiple "bleed-and-feed" cycles, as necessary, until the dew point is within the acceptable range. The dew point readings were within specification on March 12, 1990 and the DG was declared operable on March 13, 1990. Ward AQ at 4; GPC Exhibit II-62.

On March 28, 1990, air quality, including the possibility of small debris or moisture in the diesel air system, was discussed at a meeting with the IIT where GPC stated it would determine the last recorded dew points for DG-1A and take another dew point reading in an effort to identify the cause of the March 20, 1990 spurious trips on DG-1A. *See* GPC Exhibit II-49 (IIT Transcript), at 95-96; *see also* Bockhold AQ, at 1. GPC Instrumentation and Control (I&C) technicians performed the monthly preventative maintenance dew point check on DG-1A on March 29, 1990, recorded out-of-specification high readings of 80 °F and 60 °F, and documented them on an MWO for evaluation and trending purposes.[84]

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[83] Mr. Ward attributed the high readings to an actual high humidity condition as a result of DG-1A, including its air start system, being out of service and disassembled from March 1 to March 13, 1990 for overhaul maintenance and testing. *Id.* at 4.

[84] Intervenor's allegation that the March 29 rejection of a Deficiency Card shows that GPC intended to conceal the high dew points readings from NRC (Intervenor Findings 605-06), was not substantiated. The problem was adequately documented by means of a Maintenance Work Order, an act inconsistent with an intent to keep information from the NRC.

See GPC Exhibit II-155, at 1; MWO 1-90-01513 (GPC Exhibit II-155); Rebuttal Testimony of Mark Briney On Diesel Generator Reporting Statements, *ff.* Transcript at 12,075, "Briney", at 5; MWO 1-90-01651, dated March 30, 1990 (Intervenor Exhibit II-143).

During an April 3, 1990, telephone conference with IIT and Region II personnel, GPC (Mr. Bockhold) stated that the air quality was satisfactory, but did not mention dew point readings. *See* GPC Exhibit II-50 (IIT transcript), at 59-60; *see also* Bockhold AQ, at 2. Mr. Bockhold testified that he was not aware of the March 29 high reading on that date and probably focused on the clean condition of the air filters.[85]

On April 5, 1990, GPC initiated a blowdown on the DG-1A air receivers to check for the presence of moisture, a feed-and-bleed of the DG-1A air receivers to lower the dew point, and a check of all the diesel control system air filters for the presence of moisture. *See* Briney at 5-6; GPC Exhibit II-156. Dew point readings of 84 and 82 degrees were obtained on DG-1B. *See* GPC Exhibit II-156, at 1; Intervenor Exhibit II-169, at 3.

On April 5 through April 6, a series of high dew point readings on DG-1A was obtained using the Alnor VP-2466 dew point instrument. *See* Intervenor Exhibit II-143 at

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[85] Mr. Bockhold admitted that some of his responses to the IIT that day may, in retrospect, have been misleading. Transcript at 6460-63, 6507-08 (Bockhold).

Intervenor's allegation that Mr. Bockhold was made aware of the March 29, 1990, high readings on or about March 29, and that he deliberately withheld this information from the IIT during an April 3, 1990, teleconference (*see* Intervenor Findings 533, 536), however, was not supported by the evidence. Mr. Bockhold could not recall being aware of the high readings prior to April 5. *See* IIT Transcript (GPC Exhibit II-51 at 1, 4-5; Transcript at 6566 (Bockhold). Messrs. Hunt and Bockhold understood that dew points above 32-50°F were not of immediate concern for operability of the diesels but could cause parts in the diesel air system to corrode if they occurred over the long term. Transcript at 4898-99 (Hunt); GPC Exhibit II-51 at 6-8; Transcript at 6466-67, 6558-59, 6608-09 (Bockhold). There is no evidence that any GPC employee, including Mr. Mosbaugh, believed the diesels were inoperable due to poor air quality or shared such a view with Mr. Bockhold. *See* Transcript at 6697 (Bockhold). Therefore, there is insufficient evidence to conclude that, by April 3, 1990, Mr. Bockhold knew about the March 29 dew point readings or withheld that information from the NRC's IIT.

continuation sheets 1-3; Intervenor Exhibit II-169 at 2. On April 6, Mr. Bockhold informed the IIT that he was aware (on April 5) that there were high dew point readings for the DG-1A on March 29,[86] and that GPC thought the dew point sensor instrument was bad and was trying to obtain a back-up instrument.[87] *See* GPC Exhibit II-51 (IIT transcript) at 1, 4-5. On the afternoon of April 6, following the series of high readings on DG-1A, GPC tried to determine whether there was an actual high dew point condition or faulty instrumentation and used a back-up EG&G dew point instrument (VP-1114) to verify the accuracy of the Alnor VP-2466 readings on DG-1A. Transcript at 12,081-82 (Briney). *See* Intervenor Exhibit II-143 at continuation sheet 3; Intervenor Exhibit II-169 at 2. The vendor's instruction manual for the VP-1114, however, could not be located and the I&C technicians taking the measurements lacked training on the VP-1114.[88] *Id.* at 12,082-83; *see also* Transcript at 12,784 (Hammond).

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[86] An NRC Region II inspector, Milton Hunt, reviewed MWOs on the diesels and discovered the March 29, 1990, high dew point readings on DG-1A air receivers in early April 1990 and informed GPC. *See* Hunt Affidavit at 5; Transcript at 6566 (Bockhold).

Intervenor alleged during the hearing that GPC, in its 1994 NOV response and in the 1995 pre-filed air quality testimony of Mr. Bockhold, intentionally falsely asserted that GPC self-reported the March 29 high dew point readings to the NRC (Intervenor Findings 537-38, and 540-41). While Mr. Hunt's subsequent testimony shows GPC's statement to be in error since Mr. Hunt testified he discovered the March 29 high dew point readings, no evidence was presented to substantiate the claim that the error was intentional.

[87] Although Intervenor is correct that Mr. Bockhold's April 6, 1990 statements to the IIT that there was not a back-up dew point analyzer at the plant was inaccurate (Intervenor Findings 543-44), there is no basis to conclude that the statement was intentionally false, particularly since the backup instrument (VP-1114) was used subsequent to the telephone conference with the IIT.

[88] Intervenor established at the hearing that the EG&G Model 911 instrument had been used by I&C technicians on one occasion in March 1989. *See* Transcript at 12216-17 (MWO 18900822 reflects dew point readings taken by I&C technician using an EG&G instrument).

On April 7, 1990, an I&C technician took dew point measurements on the Unit 1 and Unit 2 air receivers using three different instruments -- the Alnor VP-2466, the EG&G VP-1114, and the recently acquired General Electric (G.E.) rental Alnor Model 7000. The VP-2466 and VP-1114 readings were out-of-specification high while the G.E. rental instrument readings were out-of-specification low. *See* Intervenor Exhibit II-217, at 3; *see also* Intervenor Exhibit II-169.

GPC's acting I&C Superintendent could not draw any definitive conclusions from the out-of-specification dew point results obtained on April 6-7, but was convinced that eight independent air systems would not simultaneously fail to provide satisfactory air to the receivers. Briney at 7-8; *see also* Transcript at 6554-55 (Bockhold).[89]

The then NRC inspector believed he saw a listing of dew point readings taken April 6-7 before he left the site on April 7, 1990[90] and was aware of GPC's opinion that the high readings were due either to faulty dew point equipment or operator error. Affidavit of Milton D. Hunt, *ff.* Transcript at 4882, "Hunt Affidavit", at 5; Transcript at 4924-25, 4930-31, 4933-36 (Hunt). *See* GPC Exhibit II-52.

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[89] Intervenor's allegation that GPC engaged in intentional willful conduct in claiming that the VP-2466 dew point instrument was defective (Intervenor Findings 547-50, 578-79, 583, and 604) was not substantiated. By April 6, 1990, GPC had a reasonable basis to suspect the Alnor VP-2466 instrument was faulty in that (1) the extended calibration due date for the instrument was about to expire; (2) the last in-specification reading was on March 29, 1990, for DG-1B; and (3) all of the April 5 dew point readings on the DG-1A and DG-1B using the VP-2466 instrument were out-of-specification high. *See* GPC Exhibit II-159; *see also* Briney at 13; *see also* Exhibit II-169, at 2-3.

[90] Mr. Bockhold had provided a list of high dew point measurements to Mr. Hunt, and Mr. Hunt suggested that GPC borrow dew point test equipment from the V.C. Summer Nuclear Plant in order to accurately measure dew point readings and verify the condition of the air. Transcript at 6537, 6563 (Bockhold); Hunt Affidavit at 5; Transcript at 4924-25, 4935 (Hunt).

GPC later determined (based on an EG&G instrument borrowed a V.C. Summer around April 8 with its instruction manual) that the initial readings taken with the VP-1114 instrument had been used improperly (without the required flow meter) on April 6-7, 1990.[91] Briney at 8-9; Transcript at 12,088, 12,340 (Briney); Transcript at 6513 (Bockhold); Intervenor Exhibit II-169. By April 8, 1990, readings on both units that were taken using the flow meter (VP-1114 and FS-3529) were in specification (and in close agreement) except readings on the DG-2A K02 receiver (where the dryer was found to be turned off).[92] GPC concluded that the prior Alnor readings from the VP-2466 instrument were not valid. Transcript at 12,166 (Briney), 12,857-59 (Hammond). *See* Briney at 9; Transcript at 12,203, 12,206 (Briney); Intervenor Exhibit II-169.

During a morning conference call on April 9, 1990, Mr. Lewis A. Ward, Manager of Nuclear Maintenance and Support located in the corporate office, told the IIT that with the borrowed instrument, all of the April 8 dew point readings were within specification. *See* GPC Exhibit II-61, at 4. Mr. Skip Kitchens, Assistant Plant General Manager-Operations, then stated that a high DG-2A dew point reading believed to be caused by an air dryer being inadvertently turned off (probably on April 6) was being addressed by blowing down

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[91] During the hearing, an NRC staff witness, Mr. Pierce Skinner, contacted an EG&G representative who told him that it would have been extremely difficult for an I&C technician to throttle flow to the correct level without a flow meter. Transcript at 14644-45 (Skinner). Incorrect flow causes errors in dew point readings. *Id.*

[92] Intervenor's claim that all eight air receivers had experienced high, out-of-specification dew points due to personnel inadvertently or intentionally turning off the air dryers (Intervenor Finding 581) was not substantiated. Intervenor provided no evidence to support his claim and Mr. Hunt recalled that the dryers were out of service or off only a few times. Transcript at 5008-5010 (Hunt).

the air receiver. There was no mention of I&C technician errors.[93] *See* IIT Transcript (GPC Exhibit II-61) at 4-8. In response to an IIT request, GPC committed to provide a history of dew point data for the past year. *Id.* at 7-9.

During the April 9 meeting with the NRC in Atlanta, the NRC was told that air quality was good, that high readings were attributed to a faulty dew point instrument, and that an April 6 inspection of an air receiver, as well as inspections of the control air filters and daily air receiver blowdowns, confirmed that air quality was acceptable. Intervenor Exhibit II-71 at Project No. 006214.

During the April 11 teleconference with the IIT, Mr. Bockhold (referencing the table of dew point measurements dating back to March 1989 that had been prepared to address the NRC's request for data) stated that air quality had been and remained satisfactory for a number of reasons, including the April 6 air receiver inspection, which showed only light corrosion around the welds and a minor amount of oil on the bottom. *See* GPC Exhibit II-56, at 6-7; Rebuttal Testimony of W. F. Kitchens, *ff.* Transcript at 13,590, "Kitchens", at 9; *see also* GPC Exhibit II-56, at 2. The data provided to the IIT (GPC Exhibit II-57) did not include the high dew point readings from April 5-7, 1990, because GPC did not believe the readings were accurate or reliable. Kitchens at 9.[94]

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[93] The notes of Mr. Bailey, taken during GPC's April 9, 1990, meeting with NRC in Atlanta, also reflect that this high dew point reading was reported to the NRC. *See* Intervenor Exhibit II-70, at 5.

[94] Intervenor's allegation that GPC intentionally concealed the VP-1114 "confirmatory readings" (Intervenor Findings 555-65, 575, and 590-96) was not substantiated. VP-1114 readings were among those give to the NRC, but questions about the accuracy of those readings were resolved by FS-3529 readings taken on April 8. Given that the NRC was interested in dew point readings (and not necessarily the particular equipment used to obtain them) and that VP-1114 readings were included on the listing provided to the IIT, there is insufficient evidence to support Intervenor's claim. *See* GPC Exhibit II-51, at 7-8; GPC Exhibit II-57; Intervenor Exhibit II-169, at 2.

(4). Conclusions

The April 9 letter was incomplete, as it did not indicate that high readings were also caused by technicians being unfamiliar with a dew point instrument. By April 9, 1990, senior GPC management at the Vogtle facility (Messrs. Bockhold and Kitchens) and in Birmingham, Alabama (Mr. Ward) knew about the problems the I&C technicians had in using the VP-1114 instrument correctly. While the letter's reference to "initial reports" is ambiguous, all high dew point measurements taken near the time of the SAE and prior to April 9 could have influenced an NRC decision on restart.

The evidence does not establish that GPC acted with reckless disregard for the truth, intentionally misrepresented information or conspired to mislead the NRC in communications regarding DG air quality. GPC took reasonable steps to determine air quality (including the receiver inspection), performed blowdowns on the air receivers to remove any moisture that could affect DG performance, and generally kept the NRC informed about their activities. While GPC provided incomplete information about the causes of high dew point readings based on the belief that recent out-of-specification readings were not valid, and there may have been some delays in sharing information about dew points with the NRC, the evidence considered as a whole falls short of demonstrating that GPC engaged in making willful or recklessly careless misrepresentations, and does not otherwise show that GPC lacks the requisite character and integrity to operate a nuclear plant.

g. Conclusions Regarding Diesel Generator Statements

Petitioners allege that GPC, deliberately or with careless disregard, submitted false and misleading information regarding DG starts (1) in an April 9, 1990, presentation and letter to the NRC (seeking permission to restart after the SAE), (2) in an April 19, 1990,

Licensee Event Report (LER) 90-006 on the SAE by means of a conspiracy among GPC managers, (3) in a June 29, 1990, cover letter forwarding the revised LER, and (4) in an August 30, 1990, letter. Petitioner also alleges that GPC knowingly submitted false or misleading statements (1) concerning DG air quality in the April 9, 1990, letter (and in contemporaneous discussions with the NRC's Incident Investigation Team) and (2) in GPC's April 1, 1991 response to Intervenor's 10 CFR 2.206 Petition with respect to Mr. Hairston's involvement in developing the false start information (*i.e.*, during an April 19 call) and when GPC managers became aware of inaccurate start counts. These claims were not proven.

Although Petitioners are correct that misinformation was provided to the NRC in various communications related to DGs, the weight of evidence fails to show that GPC knew the information was false or incomplete. The repeated failure of GPC to provide accurate and complete information relating to the count of DG starts in April 1990 stemmed from GPC performance failures that do not amount to deliberate efforts to deceive or mislead the NRC or to avoid regulatory requirements. The erroneous counts of 18 and 19 consecutive successful starts without problems or failures for DG-1A and DG-1B, respectively, as of April 9 (instead of 29 and 12) were caused by GPC's use of ambiguous terminology to show diesel reliability during a poorly defined period. When questions arose about the accuracy of the data, GPC managers relied primarily on verbal assurances that defended the information and revised the count description without (1) examining the causes of the initial misstatements, (2) determining accountability and (3) promptly correcting erroneous information that was presented to the NRC. The reliance on verbal assurances and incomplete site verification efforts on April 19 did little to address or identify mistakes by the General Manager in requesting and presenting the

start count, and the Unit Superintendent in reporting the start data he collected. Consequently, the count reported included problems or failures and was not a count after the CTP (which GPC later determined commenced with the surveillance test where a DG is declared operable).

There was no evidence that any of the current GPC or Southern Nuclear personnel who were involved (Messrs. Bockhold, Cash, Shipman, Aufdenkampe, McCoy, Hairston, Frederick, Greene, Horton, Majors, Kitchens, and Ward) conspired, or acted individually, to submit information they knew to be false from March 20 through August 30, 1990 regarding DG testing or air quality. Clearly, these statements reflect only a portion of the many exchanges between the NRC and GPC concerning efforts to determine the causes of the SAE. The failure of GPC personnel, individually and collectively, to take steps to ensure that the NRC was provided with complete and accurate information during this period, nonetheless, is a very significant regulatory concern that constituted a Severity Level II problem at the facility -- conduct far below NRC expectations.

Based on observations of NRC headquarters and Regional inspection staff throughout April through August 1990, GPC took sufficient actions to ensure that the DGs were reliable and operable. GPC's performance fell short, however, with respect to the level of importance and diligence afforded some communications to the NRC *and* prompt resolution of concerns about the accuracy and completeness of information provided to the NRC. This sometimes "cavalier" GPC attitude led GPC to fix the words (rather than to verify and reverify facts) in communications to the NRC. Mr. Bockhold's management style contributed to an atmosphere whereby site employees were reluctant to question the accuracy or completeness of communications to the NRC, unless they specifically knew that the information was wrong.

It is unreasonable that it would take over four months (until August 1990) to get an accurate start count for April 9 and take four years (until GPC's 1994 NOV Response) to understand why errors were made. Nevertheless, GPC now recognizes its role in providing incomplete and inaccurate information to the NRC and its failure to take steps to ensure communications that satisfy the requirements of 10 CFR 50.9.[95] GPC site and corporate managers and GPC employees (including members of the PRB) have accepted responsibility for the mistakes made in 1990 as indicated in responses to the NOV and Demands for Information, and in testimony during the hearing. GPC no longer asserts that Mr. Mosbaugh and Mr. Cash, alone, are responsible for incorrect DG start counts.

In the end, whether the start counts were 29 and 12 (instead of the 18 and 19 reported on April 9), or whether all causes of high dew point readings were reported, did not affect the soundness of the decision that the DGs were ready to perform their function. The incomplete and inaccurate information was material in that it had the ability

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[95] Corrective action taken by GPC management in response to the NOV included: (1) making the NOV available to all employees and committing to post an NRC Order if one were to be issued; (2) emphasizing the importance of thorough record keeping during off-normal hours in a letter from GPC's Senior Vice President - Nuclear Operations to the Vice Presidents for the Hatch and Vogtle facilities; (3) stressing the importance of effective communications and the effective resolution of concerns in letters from the Executive Vice President - Nuclear Operations to nuclear operations employees; (4) posting copies of 10 CFR 50.9 for all employees to read; (5) discussing GPC's policy of open, complete and accurate communications with the NRC in meetings between the Senior Vice President - Nuclear Operations and employees at the Hatch and Vogtle sites, and distributing letters to all employees on the same subject; (6) observing communications with the NRC to ensure that the enforcement action does not adversely affect the completeness of statements; (7) making GPC's reply to the NOV available for all GPC employees to read; (8) counseling the Unit Superintendent and Vogtle General Manager by GPC's Senior Vice President - Nuclear Operations; (9) issuing an "Oral Reminder" to the Unit Superintendent pursuant to the Positive Discipline System; and (10) prohibiting the 1990 Vogtle General Manager from resuming a line management position with GPC or Southern Nuclear nuclear facilities through February 1, 1998, pending completion of personal training and 60 days prior notice to the NRC. *See* GPC Reply to NOV and DFIs, dated July 31, 1994, as supplemented February 1, 1995.

to influence the NRC in its dealings with GPC. Correct and complete information may have led the NRC to inquire further before authorizing restart in April 1990 and about GPC operations, in general, at Vogtle. These events illustrate the need for improvement in communications, both within GPC and with the NRC, and the need for licensee personnel to maintain a questioning attitude about explanations and data provided to the NRC.

The repeated involvement of Mr. Bockhold in GPC's submission of incomplete and inaccurate information to the NRC is significant. Mr. Bockhold ably handled technical issues, but his sometimes overbearing and forceful management style, his reliance on rewrites rather than reverifications, and his failure to examine his own inadequate performance contributed in no small measure to the Severity Level II problem. GPC, Southern Nuclear and Mr. Bockhold himself acknowledged his deficient conduct and, by letters dated August 5, 1994, as supplemented February 1, 1995, made commitments that he would not resume line management responsibilities at GPC or Southern Nuclear plants unless he had satisfactorily completed training in management communications and responsibilities, and the NRC received 60 days prior notice of the assignment.[96] This commitment was reiterated in correspondence regarding the applications to transfer the authority to operate the Vogtle and Hatch facilities to Southern Nuclear and was included in the orders authorizing those transfers.

D. Management Attitudes and GPC Credibility

(Intervenor's Proposed Findings for Hearing on DG Issue, pages 68-78, 225-260)

Intervenor argues (Intervenor's Proposed Findings at 68-78, 225-260) that evidence of the bad character of the proposed transferee, includes: (1) GPC's operating philosophy

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[96] Mr. Bockhold further committed that he would not assume a line management position at any nuclear power plant prior to February 1988 without satisfying the conditions stated.

of power generation above safety,[97] (2) intimidation of Mr. Mosbaugh in the January 1990 meeting where Mr. Bockhold had written the word "backstabbing" on the board after Mr. Mosbaugh's allegations that Mr. Kitchens had violated TS requirements by opening dilution valves,[98] (3) Mr. Bockhold's emphasis on a "yes sir" attitude,[99] (4) the GPC employee survey results,[100] (5) Mr. Bockhold's apparent disdain for regulatory

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[97] Intervenor asserts that Mr. Hairston's statement that he has two goals in operating a nuclear plant, *i.e.,* "staying on the line and short refueling outages," Transcript at 9387-88 (Hairston), indicates that Mr. Hairston places continued operation and short outages over safety. Intervenor Proposed Findings at 69. Mr. Hairston testified that safety is not a goal, but a foundation for generating power. These opinions are not evidence of a poor attitude toward safety.

[98] While Mr. Mosbaugh's perception of the "backstabbing" incident may have led him to believe that GPC suspected him of prompting inquiries by the NRC, Messrs. Bockhold and Kitchens both testified that they were not aware at that time that Mr. Mosbaugh had given any allegation to the NRC, and Mr. Bockhold believed that the word referred to an undesirable working relationship between Mr. Mosbaugh's organization and Mr. Kitchen's organization that needed to be resolved. Bockhold Rebuttal at 2-4; Kitchens Rebuttal at 2-4; Transcript at 13597-601 (Kitchens); Transcript at 13347-48. Thus, it appears that the incident is an example of Mr. Bockhold's forceful and sometimes overbearing management style.

[99] Mr. Mosbaugh asserts that, during a February 7, 1990, meeting on reorganization and personnel downsizing, Mr. Bockhold mentioned his training in saying "yes sir" and told Mr. Mosbaugh if you "can't conform and accept, then you need to get out." Mr. Mosbaugh interpreted the remarks to mean that he should conform to management's view of the "dilution valve" matter during his upcoming OI interview. Intervenor's Proposed Findings at 39-43. Mr. Bockhold could not recall the remarks, but believed the meeting was about accepting upper management's directions regarding reorganization philosophy or the elimination of particular positions in the organization. Bockhold Rebuttal at 5-6. Whether or not Mr. Mosbaugh is correct about the reason for the statement, the statement, if made, would exemplify Mr. Bockhold's overbearing management style.

[100] In his proposed findings (page 235), Intervenor states that the results of a su[illegible], of nuclear personnel taken in the spring of 1990 showed that 73% of Vogtle employees agreed with the statement "Employees are afraid to voice an opinion that management does not want to hear" and 52% of Vogtle employees agreed with the statement "I am afraid to voice an opinion that my management does not want to hear." GPC's response to these survey results and the problems revealed by the issues in DG information disclosed by the NOV was to remind employees that conditions adverse to nuclear safety should be brought to management's attention and are to be addressed and resolved. Hairston Rebuttal (*ff.* Transcript at 13439) at 2-6; GPC NOV Reply at 6.

involvement and attitude about conveying information to the NRC,[101] (6) Mr. Bockhold's handling of the FAVA microfiltration system concern, and (7) the selective memory and opinions of Mr. Hairston.[102] Intervenor's Findings at 69-78, 225-60.

I am not persuaded that any of these events are evidence of a lack of character. The intensity with which Mr. Mosbaugh pursued his concerns for over five years is an indication of the isolation he felt in an organization which did not adequately resolve his concerns. Mr. Mosbaugh's deeply held belief that GPC suspected either he or his department was relaying concerns to the NRC led him to tape surreptitiously conversations at the Vogtle facility.

The NRC staff also held serious concerns about corporate and site management which, in addition to the allegations received by that time, led the NRC to convene a

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[101] Intervenor asserts that GPC's (1) untimely recognition of the NRC's 1990 on-site problems with Mr. Bockhold's attitude and communications, (2) failure to acknowledge personnel errors as a root cause in the NOV Response, and (3) Mr. Hairston's testimony regarding Mr. Bockhold's performance is evidence that GPC management still shows a lack of concern for completeness and accuracy of information submitted to the NRC. Intervenor's Proposed Findings at 244-247. Mr. Hairston's 1990 actions (including telephone calls to Mr. Ebneter) and his testimony that Mr. Bockhold's management style sometimes caused him (Mr. Bockhold) to miss opportunities, does not indicate a lack of concern for accurate and complete communications with NRC. NRC staff has observed improved communications and performance once Mr. Bockhold was no longer in a Vogtle line management position. Transcript at 15194 (Matthews). These improvements, the corrective actions taken, and GPC's Response to the Modified NOV (including the commitments regarding Mr. Bockhold), provide reasonable assurance that the problems of the past have been addressed.

[102] Intervenor asserts it is incredible that Mr. Hairston (1) did not recall the discussion about DG starts during the April 19, 1990, telephone call ("Call A") between GPC corporate and site personnel, but did remember his prior call that same day with reactor operators, and (2) had a limited understanding of dew points. Intervenor Proposed Findings at 253-254. Tape 58 shows that Mr. Hairston had limited involvement in "Call A" and merely asked if the absence of trips in the count had been verified. GPC Exhibit II-2 at 11-14. By contrast, he spoke at length with an operator about whether he had correctly described his observations and actions in the DG room during the SAE. Thus, it is not unreasonable that Mr. Hairston might have a more vivid recollection of one incident occuring on that date.

meeting with senior GPC officials on April 30, 1990, to candidly discuss these concerns, particularly with respect to the performance and attitude of the Vogtle General Manager, George Bockhold. During the succeeding months, Mr. Bockhold played a major role in the failure of GPC to submit complete and accurate information to the NRC. GPC's communication record improved once Mr. Shipman replaced Mr. Bockhold in October 1990.[103]

The NRC staff concluded that problems experienced by GPC have been addressed and that GPC has accepted responsibility for its performance failures in its response to the NOV and in testimony during the license amendments proceeding. Corrective actions have included corporate statements to employees emphasizing the need for open and frank communications at the facility, and the Southern Nuclear and GPC commitments with respect to management training for Mr. Bockhold. These corrective actions and improvements in performance indicate that GPC or Southern Nuclear do not lack the requisite character and attitude to be an NRC licensee. Consequently, I do not conclude that these events are evidence of bad character.

E. Discriminating Against Employees For Engaging in Protected Activities

(Petition Sections II.a and III.4; July 8, 1991, Supplement at Section II)

Petitioners assert that Mr. Hobby, who was GPC's General Manager of Nuclear Operations Contract Administration (NOCA) from December 1988 to April 1990,[104] was discharged from GPC after attempting to bring to GPC management's attention his

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[103] Mr. Hairston testified that Mr. Bockhold's management style sometimes led Mr. Bockhold to miss opportunities and that, although qualified, it was unlikely that Mr. Bockhold would return to line management at a nuclear power facility. Transcript at 11,551-11,554 (Hairston).

[104] Mr. Hobby was also Assistant to GPC Senior Vice President, Mr. George Head, until Mr. Head retired in May 1989. Mr. Head's position was then filled by Mr. Kerry Adams.

concern that it had improperly transferred control of its nuclear licenses to SONOPCO. Petitioners state that Mr. Hobby had earlier been instructed by GPC Vice President of Bulk Power, Fred R. Williams, to destroy all copies of the confidential memorandum dated April 27, 1989, that had been written by Mr. Hobby and co-signed by GPC Senior Vice President - Fossil and Hydropower, George F. Head, expressing concern for the perception that GPC may have improperly transferred control of its nuclear facilities. Petitioners also assert (Petition Section III.9.d) that GPC and SONOPCO management retaliated against managers who make their regulatory concerns known to them.[105]

On February 6 and 28, 1990, Mr. Hobby filed complaints with the Department of Labor (DOL) contending that he had been discharged for engaging in protected activity in violation of Section 210 (now 211) of the Energy Reorganization Act (42 U.S.C Section 5851) of 1974, and the regulations promulgated by DOL at 29 C.F.R. Part 24. Each of the above issues that Mr. Hobby identified in the Petition to the NRC with respect to his discharge, was included in the complaints. *See* DOL Case 90-ERA-30.

On August 4, 1995, the Secretary of Labor (Secretary) issued a Decision and Remand Order, finding that in 1990, senior managers of GPC discriminated against Mr. Hobby when his position was eliminated and he was forced to resign from GPC.[106] The Secretary determined that GPC terminated Mr. Hobby for engaging in protected activities, which included raising safety concerns related to the operation of the Vogtle facility in the April 27, 1989, memorandum. This Decision and Remand Order rejected the DOL

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[105] Although not expressly stated in the Petition, the complaints of both Messrs. Hobby and Mosbaugh in their respective DOL discrimination suits are pertinent to this concern.

[106] The Secretary also found that other acts of discrimination occurred such as relocation of Mr. Hobby's office, restrictions of his access to the building, and revocation of his executive parking privileges.

Administrative Law Judge's Recommended Decision and Order that had been issued on November 8, 1991, which found that actions taken against Mr. Hobby were not motivated by his engaging in protected activities. The Secretary remanded the complaint to the Administrative Law Judge to determine a complete remedy.[107]

On October 4, 1995, the NRC conducted a predecisional enforcement conference regarding the Secretary's Decision and Remand Order to discuss the apparent violation, the root cause, and GPC's corrective actions to preclude recurrence (see Conference Summary dated October 11, 1995). The Conference was open to the public in accordance with Section V of the NRC Enforcement Policy, NUREG-1600, and written comments were subsequently submitted by Mr. Hobby for NRC consideration in reaching its enforcement decision.

The Commission's regulations in 10 CFR 50.7, "Employee Protection," prohibit discrimination by a Commission licensee against an employee for engaging in protected activities. On May 29, 1996, the NRC issued a Notice of Violation to GPC for two separate violations of 10 CFR 50.7 -- one in accordance with the Secretary's finding regarding Mr. Hobby, and the other in accordance with the Secretary's finding that

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[107] This DOL case (90-ERA-30) also considered Petitioners' assertion (*see* 10 CFR 2.206 Petition Section III.4; July 8, 1991, Supplement at Section II) that Mr. McDonald knowingly submitted false testimony in another DOL proceeding ("*Yunker/Fuchko*") in an attempt to demonstrate that Messrs. Gary Yunker and John Fuchko were not improperly kept out of a GPC position that would participate in the SONOPCO Project. Petitioners claim that Mr. Hobby advised GPC's counsel before the DOL hearing that Mr. McDonald's proposed testimony was false and that GPC's counsel responded by advising Mr. Hobby that his testimony would have to be changed. In his Decision and Remand Order of August 4, 1995, the Secretary stated, in relevant part: "Because I found other evidence sufficient to establish that Complainant [Mr. Hobby] engaged in protected activity on January 2, [1989 (the pre-hearing meeting),] it was unnecessary to consider at that juncture whether counsel attempted to suborn Complainant to perjury. Even if counsel did, that evidence would not alter this decision." Decision and Remand Order at 13. *See also id.* at 5, 9-13.

Mr. Mosbaugh had been discriminated against by being discharged for making audio tape recordings that constituted evidence gathered in support of a nuclear complaint, and for engaging in other protected activities. The Notice of Violation regarding Mr. Mosbaugh was in accordance with the Secretary of Labor's Decision and Remand Order in DOL cases 91-ERA-001 and 91-ERA-011 on November 20, 1995, finding that Mr. Mosbaugh's suspension and discharge were acts of retaliation for engaging in protected activity. The NRC stated that these violations were of very significant regulatory concern because they involved acts of discrimination by senior corporate management, and the NRC categorized each of the two violations as Severity Level I. Because the five year period provided in the Statue of Limitations for imposing a civil penalty had expired, no civil penalty was proposed for the violations. The NRC took this enforcement action to emphasize the importance of ensuring that employees who raise real or perceived safety concerns shall not be subject to discrimination for raising those concerns and that every effort will be made to provide an environment in which all employees may freely identify safety issues without fear of retaliation, harassment, intimidation, or discrimination.

The NRC also issued separate letters to each of the senior corporate managers the Secretary identified to be involved with the discriminatory actions.[108] In these letters, the NRC recognized that the discrimination found by the Secretary occurred over five years ago, prior to implementation of 10 CFR 50.5, "Deliberate Misconduct," and that the NRC, therefore, was taking no enforcement action against these senior managers. The NRC expressed concern that the discriminatory actions found by the Secretary could have had a chilling effect on other GPC employees; emphasized that harassment, intimidation and

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[108] In the *Hobby* case, the Secretary identified Messrs. Fred Williams, Dwight Evans, H. G. (Grady) Baker, Jr., and Thomas Boren. In the *Mosbaugh* case, the Secretary identified Messrs. A. W. Dahlberg and Ken McCoy.

discrimination against a licensee's employees for their engaging in protected activities is unacceptable; and provided official notice as to the enforcement actions against individuals that the NRC is authorized to take under 10 CFR 50.5.

During the enforcement conference and in a written reply dated June 27, 1996, GPC denied the violations, objected to the NRC's reliance on the Secretary's decisions that were not yet final agency action, and acknowledged its right to appeal the Secretary's decisions once they become final.

Mr. Hobby's allegation that he was unlawfully dismissed because of a concern about the improper transfer of control of licensed activities is substantiated by the Secretary's decision of August 4, 1995. Mr. Hobby's regulatory concern regarding transfer of control constituted a protected activity.[109] Therefore, Mr. Hobby's dismissal because he expressed this regulatory concern is a violation of 10 CFR 50.7. I am satisfied that the NRC has taken appropriate enforcement action to prevent the recurrence of violations of 10 CFR 50.7 in the future, and to ensure a proper environment in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination. To the extent that Petitioners' request for NRC involvement relates to matters properly within the jurisdiction of the NRC, the request has been granted by means of these enforcement actions.

I find no reason to withhold my decision on this 2.206 Petition because of to GPC's right to appeal the Secretary's decision when it becomes final. Further NRC action in the event of a successful appeal is not precluded by my decision at this time.

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[109] As I discuss in Section IIIB of this Directors Decision, I am satisfied that the alleged transfer of control of licensed activities for GPC nuclear facilities did not, in fact, occur. This fact does not, however, alter the finding that Mr. Hobby engaged in a protected activity.

F. Conclusions Regarding GPC's Character

The NRC reviews, inspections and investigations related to the issues in the Petition, as supplemented by the license transfer amendment proceeding, revealed a number of instances where the NRC was given incomplete and inaccurate information associated with the proposed license transfer to Southern Nuclear and DG reporting. The allegations that there was an illegal transfer of authority to control operations at the Vogtle and Hatch facilities and that GPC and Southern Nuclear otherwise lacked the character and competence to operate a nuclear power plant were not substantiated.

With respect to Petitioners' claim that GPC and Southern Nuclear routinely engaged in unsafe operating practices, the NRC found instances where GPC had violated NRC requirements, but the matters identified do not support Petitioners' allegation that GPC or Southern Nuclear (1) praised managers for taking risks, (2) did not take any adverse action against managers or employees who engage in non-conservative and questionable compliance practices, and (3) refused to critically investigate events or practices resulting in LERs.

With respect to GPC communications related to the proposed license transfer to Southern Nuclear, the NRC staff found that there were instances where the NRC was provided inaccurate or incomplete information about the existing and proposed organizational structure in the formation of Southern Nuclear during an oral presentation to the Commission in March 1989 while discussing the chain of command for the Vogtle facility, in GPC's written response to the Petition and in licensing correspondence supporting the applications for transfer. These inaccuracies, when considered in the context of the extensive interactions between GPC and the NRC, were not significant and

are not evidence of an intent to misrepresent or deceive the NRC. Thus, the misstatements do not warrant NRC enforcement action.

The NRC staff did confirm that significant violations of Commission regulations have occurred at the Vogtle facility since 1987 and these violations have resulted in escalated enforcement actions by the NRC. The violations involved (1) opening "dilution valves" required to be locked closed; (2) providing inaccurate or incomplete information to the NRC regarding DG testing after the March 20, 1990, SAE; and (3) discriminating against Messrs. Mosbaugh and Hobby for engaging in protected activities.

The Staff's review of the boron dilution violation revealed that the GPC employee did not meet TS requirements or NRC expectations, but there was not a sufficient basis to conclude that the individual had intentionally violated a TS requirement. GPC and the individual admitted the mistaken TS interpretation.

Based on the findings of the DOL, the Staff concluded that GPC had discriminated against the Petitioners because they engaged in protected activities, which was a Severity Level I problem. This NRC enforcement action was taken to emphasize GPC's obligation to ensure that employees who raise real or perceived safety concerns are not subjected to discrimination and that assiduous efforts are required in order for employees to have an environment where they may freely identify safety issues without fear of retaliation, harassment, intimidation or discrimination. GPC has taken corrective action consistent with these goals.

The failure of GPC to provide the NRC with complete and accurate information relative to DGs throughout 1990 that were cited in the Modified NOV were serious. The significance of the performance failures of GPC stems not from the effect such inaccuracies had on the safety of plant operation, but because the circumstances

surrounding the communications demonstrate an inadequate regard by a number of senior licensee officials, and by GPC management as a whole, for providing complete and accurate information to the NRC. Information about the DGs and GPC's determinations about the causes of errors were important for the NRC to determine whether GPC was fulfilling its responsibilities as a licensee.

GPC was clearly aware of the NRC's interest in the DGs because the NRC specifically asked GPC to address DG reliability as part of its restart presentation of April 9, 1990. GPC should have taken steps to ensure the completeness and accuracy of its submittals, but instead, at times, engaged in poorly defined efforts to obtain information to satisfy the NRC on an issue having a direct bearing on the NRC's decision to allow restart. This performance is not acceptable.

It is also significant that GPC missed repeated opportunities to ensure completeness and accuracy of information and to promptly correct information when its own staff questioned the accuracy of the April 9 information and subsequent explanations about inaccurate information. Even though senior GPC management became involved, GPC did not recognize the need to correct the April 9 start data until the NRC's request during the August 1990 inspection. Further, GPC continued to submit information that was inaccurate and incomplete and did not recognize the implications of its performance failures until they were identified by the NRC in the enforcement action almost four years later.

The NRC staff has concluded, however, that the performance problems exhibited throughout these events are not sufficient to establish that Southern Nuclear, and the GPC employees who would work for that company as a result of a transfer of the Hatch and Vogtle operating licenses to Southern Nuclear, lack the requisite character to be a licensee.

GPC's overall performance in keeping the NRC informed of post-repair and trouble-shooting activities, GPC's technical competence in addressing those matters, Mr. Hairston's efforts to keep the NRC informed about errors identified as GPC became aware of them, and the corrective actions taken by GPC management in response to the NOV (which include measures to ensure effective communications and resolution of employee concerns, and measures emphasizing open, complete, and accurate communications with the NRC), are among the indications of GPC's diligence, competence and character. Testimony of Messrs. Roy P. Zimmerman and Luis A. Reyes on the Character and Integrity Contention, *ff.* Transcript at 15256, "Zimmerman-Reyes", at 5-7. The NRC staff's evaluation of GPC's response to the May 9, 1994, NOV on the DG issue and GPC and individual responses to the DFIs issued to Messrs. Bockhold, McCoy, Greene, Horton, Frederick, and Majors revealed that GPC officials have accepted responsibility for, and regret, their part in GPC's deficient performance. The NRC staff remained concerned, however, about whether GPC, Southern Nuclear, and Mr. Bockhold fully understood the ramifications of the DG enforcement action and the future performance of Mr. Bockhold in line management positions at nuclear power facilities. Staff Exhibit II-51 (cover letter).

I find that GPC's tendency to defend information provided during the restart presentation, rather than to verify the accuracy of the data, was inconsistent with the simple candor upon which the NRC relies to discharge its responsibility for ensuring public health and safety. *See North Anna,* CLI-76-22, 4 NRC at 491. There is not a sufficient basis, however, to conclude that GPC endeavored to intentionally mislead the NRC or otherwise engaged in a pattern of deception and falsehood in its licensing communications. The failures can be traced to (1) the collective performance of senior GPC managers, including the management style of the General Manager who repeatedly failed to ensure

that complete and accurate information was provided to the NRC, (2) the reluctance of site and corporate personnel to question the views of superiors, and (3) the inadequate efforts to verify information submitted to the NRC.

Based on a review of the facts set forth above, including the evidentiary record of the adjudicatory proceeding, the enforcement actions taken against GPC (*i.e.*, regarding opening "Dilution Valves," DG reporting, and 10 CFR 50.7 violations), and the favorable performance of GPC (and corrective action taken) since 1990, there is no basis to conclude that Southern Nuclear lacks the requisite character, integrity and competence necessary to operate the Vogtle and Hatch facilities in accordance with the Commission's rules and regulations. The individuals employed by GPC and Southern Nuclear have not been shown to have intentionally submitted to the NRC information that was inaccurate, incomplete or misleading in a material respect. Rather, the performance problems exhibited in GPC communications to the NRC were due to the failures of certain individuals to take steps necessary to ensure the accuracy and completeness of information and to promptly correct such misinformation. In recognition of the role, management style, and repeated performance failures of the former General Manager, the license transfers for the Vogtle and Hatch facilities have been conditioned to limit his involvement in line management activities consistent with commitments of GPC and Southern Nuclear.

IV. CONCLUSION

As discussed above, NRC has conducted several inspections, investigations, and technical reviews regarding the concerns in the Petition, and proceedings before NRC and DOL have been conducted regarding most of the concerns. Some of the concerns raised by the Petitioners were substantiated. Violations of regulatory requirements have occurred in the operations of the Vogtle facility. Notices of Violation and civil penalties have been

issued to the licensee, letters have been issued to several individuals, and certain conditions regarding one individual are being imposed by the NRC in conjunction with the license transfers. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 had been granted.

On the basis of the NRC staff's review and the license amendments hearing record, I conclude that no unauthorized transfer of the Vogtle operating licenses occurred, and that the GPC nuclear facilities are being operated in accordance with NRC regulations and do not endanger the health and safety of the public. On balance, the evidence does not support the conclusion that GPC, the SONOPCO Project, or Southern Nuclear deliberately provided false or misleading information to the NRC or that Southern Nuclear or GPC (including the GPC employees that would be employed by Southern Nuclear as a result of the license transfer) lack the requisite character and integrity to be an NRC licensee as required by section 182 of the Atomic Energy Act, 42 USC 2232, and 10 CFR 50.80. Thus, there is no basis upon which to grant Petitioners' request that the operation of the facility be suspended.

With respect to Petitioners' request that the NRC institute proceedings and impose civil penalties based on the matters addressed in the Petition, the issues in the Petition that give rise to substantial health and safety issues have, in fact, been the subject of a lengthy proceeding and escalated enforcement actions by the NRC. Also, based upon the findings of the DOL, the NRC has addressed both Petitioners' specific concerns that they were discriminated against for engaging in protected activities (and the associated issue that GPC retaliates against managers who make their regulatory concerns known) by taking escalated enforcement actions against GPC. Based on actions already taken by the NRC staff, there is reasonable assurance that the GPC facilities operate with adequate

protection of the public health and safety. Therefore, I decline to take any further action with respect to matters raised in the Petition. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 18th day of March 1997.

FOR THE NUCLEAR REGULATORY COMMISSION

Frank J. Miraglia Jr.

Frank J. Miraglia Jr., Acting Director
Office of Nuclear Reactor Regulation

APPENDIX

ALLEGED ILLEGAL LICENSE TRANSFER ISSUES

"Intervenor's Prehearing Statement of Issues" (Statement of Issues), dated December 12, 1994, raised 28 issues to support Intervenor's illegal transfer issue for the license amendments proceeding.[110] The issues were submitted in support of Intervenor's contention that the Vogtle operating license should not be transferred to Southern Nuclear because it lacks the requisite character and integrity. The 28 issues repeat and further supplement assertions in the Petition regarding an illegal transfer of control of GPC nuclear facilities.

1. Alleged Inaccuracies About Mr. Farley's Role in the Control of the Vogtle Facility

The gravamen of Intervenor's 28 issues and related issues in the Petition, as supplemented, is that the nuclear officers in SONOPCO Project reported to Mr. Farley, rather than to Mr. Dahlberg, GPC's CEO, and to demonstrate that Mr. Farley controlled the Vogtle facility based upon his alleged involvement in (1) controlling daily operations, (2) establishing and implementing nuclear policy decisions, (3) employing, supervising, and dismissing nuclear personnel, and (4) controlling costs. Intervenor also asserts that numerous documents and statements provided to the NRC regarding the organizational structure and responsibilities for managerial control of the Vogtle facility were inaccurate or incomplete because they do not show Mr. McDonald reporting to Mr. Farley or Mr. Farley functioning as the *de facto* Chief Executive Officer of the SONOPCO Project.

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[110] Although Intervenor identified 28 issues in his Statements of Issues, two issues were both numbered 14A and 14B, and Intervenor presented no evidence or proposed findings on Issue 25.

a. Controlling Daily Operations

Intervenor asserts in Issue 1 that GPC misled the NRC about the corporate management structure over the Vogtle facility during a March 30, 1989, meeting in that Mr. McDonald's description of the chain of command ignored Mr. Farley's role as the chief executive over the Southern Company's nuclear division, which commenced exercising operating responsibility over GPC's nuclear plants in November of 1988. Intervenor asserts that Mr. McDonald inaccurately stated that he solely reported to GPC's CEO, Mr. Dahlberg. Intervenor claims that Mr. McDonald reported to Mr. Farley who reported to Mr. Edward L. Addison, the President and CEO of The Southern Company. Similarly, in Issue 10, Intervenor alleges that GPC's April 1, 1991, Petition response falsely stated that certain organizational charts filed with the SEC and included with a May 15, 1989, memorandum from Mr. Fred Williams to Mr. Hobby, accurately depicted GPC's organizational structure before the incorporation of Southern Nuclear in that they do not show that Mr. McDonald reported to Mr. Farley or that Mr. Farley functioned as the *de facto* Chief Executive Officer of the SONOPCO Project.

The hearing record does not support Intervenor's claim that Mr. Farley exercised control over GPC's nuclear facilities beginning in November 1988. Mr. Farley testified that he had neither the authority, nor attempted to control management decisions about licensed activities or personnel matters concerning the Vogtle facility. Prefiled Testimony of Joseph M. Farley, *ff.* Transcript at 1749, "Farley", at 17-18, 22; Transcript at 1801-02 (Farley). Mr. Shipman (who in October 1988 was the Vogtle General Manager for Support and in January 1991 became the Vogtle General Manager), Mr. McCoy (GPC Vice President-Plant Vogtle), and Mr. Hairston testified that Mr. Farley did not issue orders or instructions regarding the operation of the Vogtle facility or any aspects of the facility or

otherwise become involved in the management of personnel or activities at the Vogtle facility. Transcript at 1976 (Shipman); Prefiled Testimony of C. Kenneth McCoy, *ff.* Transcript at 1560, "McCoy", at 19; Prefiled Testimony of W. George Hairston, III, *ff.* Transcript at 1688, "Hairston", at 47-48; Transcript at 1726-28, 1740 (Hairston). In addition, Mr. McDonald testified that Mr. Farley never influenced him regarding operation of the Vogtle facility. Prefiled Testimony of R. Patrick McDonald, *ff.* Transcript at 1249, "McDonald", at 25; Transcript at 1550-51 (McDonald).

The record of the *Hobby* DOL proceeding indicates that GPC President, Mr. Dahlberg, testified that the operation of GPC's nuclear facilities is his direct responsibility; that Mr. McDonald takes his management direction from Mr. Dahlberg regarding the operation of GPC's nuclear plants; and that Mr. McDonald reports to Mr. Dalhberg for management operations dealing with GPC plants, (*Hobby* DOL Transcript at pages 305, 307, and 309). Mr. Farley stated that he did not have any responsibility for operating GPC's nuclear facilities and that Mr. McDonald did not report to him with respect to the operation of Hatch and Vogtle. (*Hobby* DOL Transcript at pages 567 and 568). Mr. McDonald stated that he reported to Mr. Dahlberg regarding the operation of GPC's nuclear facilities (*Hobby* DOL Transcript at pages 613 and 614).

In a deposition of May 5, 1990, taken in the same *Hobby* DOL proceeding, at pages 13 and 14, Mr. McDonald stated that he had no reporting responsibilities to Mr. Farley. A May 15, 1989, memorandum from Mr. Fred D. Williams, the GPC Vice President for Bulk Power Markets, to Mr. Hobby, forwarded a copy of the most recent published organization chart which showed that Mr. McDonald reported to Mr. Dahlberg for operation and support activities of the Vogtle and Hatch facilities, and that Mr. Hairston reported to Mr. McDonald.

While the record shows that Mr. Farley received verbal reports from Messrs. McDonald, Hairston, McCoy, Louis B. Long (SCS Vice President - Technical Services) and Charles McCrary (SCS Vice President - Administrative Services) concerning the performance of GPC's nuclear units, and attended staff meetings (Issue 15), this does not support a determination that Mr. Farley was part of the management structure over the Vogtle facility. As the future CEO of Southern Nuclear and as manager over certain support services provided to the Vogtle facility, Mr. Farley periodically briefed The Southern Company Board of Directors, received information, and attended meetings. Such activities do not amount to control of operations or other licensed activities at the Vogtle facility.

Intervenor asserts that, during a deposition, Mr. Shipman stated that Mr. McDonald and Mr. Hairston reported to Mr. Farley. Mr. Shipman testified during the license amendments hearing that he understood Mr. McDonald reported to Mr. Farley for certain things and there were certain things that Mr. McDonald did not report to Mr. Farley on. Transcript at 1966 (Shipman). This is consistent with Mr. Farley's testimony that Mr. McDonald would informally report to him with regard to governmental affairs, such as Congressional proceedings, and administrative matters unrelated to the operation of the plants. Such activities do not indicate that Mr. Farley had line management responsibilities or that Mr. McDonald reported to Mr. Farley with respect to any licensed activities involving the Vogtle facility.

The Petitioners claim that control of operating the nuclear facilities is based upon Mr. Hobby having witnessed the day-to-day operation at GPC's corporate offices (Petition at 5-6). During the hearing, however, no direct evidence was offered to support the claim that Mr. McDonald reported to Mr. Farley regarding the operation of the Hatch or Vogtle

facilities. Messrs. Hobby and Mosbaugh both acknowledged that they had no personal knowledge that Mr. McDonald received direction from Mr. Farley regarding the operation of the Vogtle or Hatch facilities. Transcript at 2157-58 (Mosbaugh) and 2377 (Hobby); *Hobby* DOL Transcript at 239). Mr. Mosbaugh admitted that he had no first hand knowledge of the day-to-day interaction among Messrs. McCoy, Hairston, McDonald, and GPC officers, and had never been in the Birmingham, Alabama, offices of SONOPCO. Transcript at 2128 (Mosbaugh).

Intervenor also asserts (Issue 1) that Mr. Dan Howard Smith, a Department Manager with Oglethorpe Power Corporation (a co-owner of the Vogtle facility), had observed that Mr. Farley was the chief executive of the SONOPCO Project, that Mr. McDonald reported to Mr. Farley who reported to Mr. Addison (the President and CEO of The Southern Company), and that Mr. Farley's control over nuclear operations might violate the terms of the operating licenses for GPC's nuclear facilities.[111] However, Mr. Smith testified at his deposition that after reading the transcript of the March 30, 1989, meeting on the Vogtle Unit 2 full power license, during an April 1989 co-owner's committee meeting, GPC provided a chart, at his request, that clarified the reporting chain. Smith Deposition at 22-23, 36-37.

Intervenor's reference to Mr. Hobby's memorandum of April 27, 1989, which alluded to concerns about Mr. McDonald's reporting relationship (Issue 1), does not establish that there was an improper exercise of control by Mr. Farley and The Southern Company. Mr. Rogge, the NRC Senior Resident Inspector, testified that "No one to my knowledge ever expressed a concern that GPC was not in control of operations at Vogtle."

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[111] Mr. Hobby's Memorandum of April 27, 1989 (Exhibit A of the September 21, 1990, Supplement to the Petition) refers to Mr. Smith's concern about control of GPC facilities.

Testimony of Frederick R. Allenspach, Darl S. Hood and John F. Rogge on the "Illegal Transfer" Issue, *ff.* Transcript at 2620, "Allenspach, Hood, and Rogge", at 6.

In Issue 3, Intervenor asserts that 1988 amendments to FSAR Chapter 1 inaccurately depicted the Corporate organization for the operation of the Vogtle facility because FSAR Section 1.4.1.2, "Description of Corporate Organization," did not state that "The Southern Company had newly established a nuclear division with responsibility for operating GPC's nuclear plants."

The NRC was given timely notification of the plans to form a separate operating company by virtue of the meetings held on February 16 and May 3, 1988, with the Commissioners and others to brief the NRC about The Southern Company's tentative plans to form a separate nuclear operating company and to review the several phases that would have to be involved, pending SEC approval, and ultimate license amendments, as well as by meetings held March 2 and 18, 1988, and July 25, 1988, with NRC personnel. Farley at 11-12. Therefore, its omission from FSAR Section 1.4.1.2 by the 1988 amendments was not significant in terms of NRC awareness.

In Issue 4, Intervenor claims that the 1988 amendment to FSAR Chapter 13 (*i.e.,* Vogtle FSAR Amendment 39, dated November 23, 1988) was inaccurate because it described the Executive Vice President-Nuclear Operations (Mr. McDonald) as an officer of both GPC and APC who is "responsible to the chairman and CEO of each company for all aspects of operation of the nuclear generating plants in the Georgia Power and Alabama Power systems, as well as technical and administrative support activities provided by SCS," but did not indicate that Mr. Farley was the functioning chief executive of SONOPCO Project. Intervenor claims that the amendment was also misleading because

technical and administrative services reported to an executive officer of the SONOPCO Project, with Mr. Farley serving as chief executive officer.

As President and CEO of APC in November 1988, Mr. Farley was not part of Vogtle line management, and he exercised no line management responsibility over licensed activities at the Vogtle facility. A September 21, 1988, memorandum by Mr. Addison noted that Mr. Addison had asked Mr. Farley to guide the formation of the new company (Southern Nuclear) and that Mr. McDonald was serving as Executive Vice President of GPC and APC and was responsible for the operation of the Hatch, Vogtle, and Farley nuclear facilities. Thus, the absence of Mr. Farley from the Chapter 13 organizational charts and descriptions submitted by Vogtle FSAR Amendment 39 is not an inaccuracy.

Services by SCS to GPC were provided in accordance with a January 1, 1984, services agreement between them. Messrs. Louis Long, SCS Vice President of Technical Services, and Charles McCrary, SCS Vice President of Administrative Services, reported to Mr. McDonald with respect to the Vogtle facility, not to Mr. Farley. On April 24, 1989, the arrangement was made formal by a letter of agreement between Messrs. McDonald and H. Allen Franklin, the President of SCS at the time. McCoy at 8; Hairston at 21 and Transcript at 1712; Deposition of Meier at 40-41. Therefore, Intervenor's claim of inaccuracy is not supported by the record.

In Issue 5, Intervenor states that the organizational chart, Figure 13.1.1-1, was inaccurate in the Vogtle FSAR amendment, dated March 28, 1990, because it failed to depict Mr. McDonald's reporting relationship to Mr. Farley and it showed the Administrative and Technical Services Vice Presidents reporting to Mr. McDonald and then to Mr. Dahlberg. The hearing record does not support Intervenor's assertions.

Figure 13.1.1-1, as revised March 28, 1990, accurately shows that the Executive Vice President-Nuclear Operations, an officer of both APC and GPC, reported to the President and CEO of GPC on Vogtle matters since Mr. Farley was not involved in the operation of the Vogtle facility or activities authorized by the Vogtle licenses. Figure 13.1.1-1 also accurately depicted the Vice President for Administrative Services and the Vice President for Technical Services reporting to Mr. McDonald and then to Mr. Dahlberg. Under a services agreement between SCS and GPC, Mr. Dahlberg had the authority to direct activities of these SCS officers for the functions they were performing in support of plant operation (Hairston at 35). The fact that Mr. McCrary reports to Mr. Farley concerning certain administrative matters unrelated to plant operations, including the formation of Southern Nuclear and general industry activities (*see* Farley, *ff.* Transcript at 1749, at 16; Hairston at 33; McCoy at 11), is not relevant to Vogtle licensed activities and does not indicate that Mr. Farley controlled operations at the Vogtle facility.

In Issue 18, Intervenor alleges that, during a January 11, 1991, meeting with the NRC, Mr. McDonald falsely stated that Mr. Farley had no responsibilities for administrative matters related to the SONOPCO Project. *See also* July 8, 1991, Supplement to 10 CFR 2.206 Petition, Section IV. Based on the meeting transcript and Mr. McDonald's testimony, the January 11, 1991, statement was not inaccurate.

Mr. McDonald testified during the hearing that his statement on page 42 of the meeting transcript[112] was that prior to Phase II (the incorporation of Southern Nuclear),

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[112] The meeting transcript at page 42, shows that Mr. McDonald (referring to an organizational chart) states:

> Yes. A month ago there was no line here. Mr. Farley was performing his job as a Vice President of the Southern Company. He had no responsibilities for this administrative support. That administrative support that we had basically *footnote continued* →

Mr. Farley had been performing a job as a Vice President of The Southern Company, had been providing certain services to Mr. McDonald under a contract with SCS, and had no responsibility for certain administrative support that was depicted on organization charts discussed during the meeting. Administrative support was being performed by Mr. McCrary for Mr. McDonald pursuant to a April 24, 1989, agreement. While Mr. McCrary provided administrative services to support Mr. Farley's responsibility to guide the formation of Southern Nuclear and Mr. Farley's general industry activities, Mr. McCrary did not report to Mr. Farley with respect to the administrative support function for the Vogtle facility. McDonald at 9.

In Issue 7, Intervenor states that the March 1991 FSAR amendment revising Figure 13.1.1-1 is false because it shows the Executive Vice President-Nuclear Operations, Mr. McDonald, reported to the President and CEO of Southern Nuclear, Mr. Farley, for Southern Nuclear matters only, and because it shows that Mr. McDonald reported to the President and CEO of GPC for GPC matters. Intervenor claims that (1) Mr. McDonald reported to Mr. Farley on matters pertaining to Vogtle, (2) both Messrs. McDonald and Farley reported to Southern Nuclear Board of Directors on matters pertaining to GPC's nuclear operations, and (3) Mr. Farley reported to The Southern Company CEO, Mr. Addison, and to The Southern Company Management Council. Intervenor similarly alleges in Issue 22 that GPC's April 1, 1991, response to the Petition falsely asserts that during Phase II (after incorporation of Southern Nuclear), all Southern Nuclear management in the reporting chain above the Vogtle Plant General Manager were officers of GPC because Mr. Farley stated during his deposition that he was never an officer of GPC.

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was being done, and he was a part of a contract--it was a contract to me from Southern Services for providing essentially much the same support we have here now.

Once Southern Nuclear was incorporated, Mr. Farley became its President and CEO and Mr. McDonald, who retained his positions as Executive Vice President of GPC and APC, became the Southern Nuclear Executive Vice President. Hairston at 37-38. Thus, Mr. McDonald reported to Mr. Farley, and they both reported to the Southern Nuclear Board of Directors, regarding Southern Nuclear matters. However, for licensed activities at the Vogtle facility, Mr. McDonald continued to report directly to GPC President and CEO, Mr. Dahlberg. Farley at 17-19; McDonald at 4; McCoy at 13. Since Mr. Farley was CEO of Southern Nuclear during Phase II, and was not part of the management chain for the Vogtle facility,[113] Intervenor's assertions that Figure 13.1.1-1 and GPC's Petition response were inaccurate were not substantiated.

In Issue 11, Intervenor alleges that in the April 1, 1991, response to the Petition, GPC falsely represents that Mr. Farley did not have management control over GPC licensed activities or GPC personnel matters.

The record shows that Mr. Farley did not have control over GPC's licensed activities. Mr. McDonald, who signed the April 1, 1991, response, testified that Mr. Farley did not exercise any management control over GPC's licensed activities, and that he (McDonald) was not aware of a single instance where Mr. Farley controlled, or made, a GPC staffing or operating decision. McDonald at 10. Neither the hearing record nor results of NRC's

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[113] The agreement executed by GPC and Southern Nuclear (GPC Hearing Exhibits 20 and 21) expressly stated that Southern Nuclear would not perform any activities in connection with the nuclear plants that were required by the operating licenses to be performed by the licensee, GPC. Hairston at 36-38. As part of his responsibilities as Executive Vice President-Nuclear of The Southern Company, Mr. Farley briefed the Southern Company Board and Mr. Addison on nuclear developments. Farley at 21. This responsibility to provide information does not constitute control of licensed activities at the Vogtle facility.

regulatory oversight support Intervenor's assertion that Mr. Farley had management control over GPC licensed activities or GPC personnel matters.

In Issue 20, Intervenor claims that statements by Mr. Stephen H. Chesnut (a GPC manager-in-training in August 1990), recorded on Mr. Mosbaugh's Tape No. 260, and statements during Mr. Shipman's August 1994 deposition, show that SONOPCO Project managers observed that Mr. Farley, rather than Mr. Dahlberg, controlled GPC's nuclear operations.[114] *See also* October 1, 1990, Supplement to Petition at 4-5.

Given that (1) Intervenor's testimony concerning Mr. Chesnut's statements on Tape No. 260 was stricken from the record, (2) Intervenor subsequently withdrew the tape transcript, (3) Intervenor did not call Mr. Chesnut as a witness (*see* Transcript at 1909-11, 2047), and (4) Mr. Shipman, a SONOPCO Project manager, testified that he never had any doubt that the responsibility for the licensing and operation of the GPC nuclear facilities rested with Mr. Dahlberg (Transcript at 1982-83),[115] there is no basis to conclude that

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[114] Similarly, in Issue 21, Intervenor alleges that in its April 1, 1991, response to the Petition, GPC falsely asserts that (1) Vogtle project management does not assume that Mr. Farley, rather than Mr. McDonald, controls Vogtle's operations and (2) Mr. McDonald reports to Dahlberg on all matters concerning the operation of GPC's nuclear facilities.

Mr. McDonald testified that he was confident that Vogtle managers understood that he, and all other GPC officers, managers, and employees, reported to Mr. Dahlberg on all matters pertaining to the operation of GPC's nuclear facilities as specified in the FSAR, and Intervenor's assumption that Mr. Farley was in control were based on statements by Mr. McCoy that had been taken out of context. McDonald at 17, 20-21.

[115] Mr. Shipman said he had corrected his deposition statement (Intervenor Exhibit 10) that, in April 1990, Mr. Hairston reported to Mr. Farley through Mr. McDonald to correctly indicate that Mr. Hairston reported to Mr. Dahlberg through Mr. McDonald. Transcript at 1992-95; Licensee Exhibit 25. Mr. Shipman explained that his initial deposition statement was in the context of information customarily provided to Mr. Farley by the SONOPCO Project executives and he thought at the time of his 1994 deposition that Messrs. Hairston and McDonald were officers of SCS as well as GPC and APC and, as such, reported to Mr. Farley with respect to SCS matters. Transcript 1965-67, 1983-85, 1993-95 (Shipman).

these SONOPCO Project managers believed that Mr. Farley controlled GPC's nuclear operations or other licensed activities.

In Issue 23, Intervenor alleges that GPC's April 1, 1991, response to the Petition falsely asserts that Mr. Dahlberg is contacted on a daily basis by GPC nuclear operating officers concerning the status of GPC nuclear plants in that "phone records" showed differently. Intervenor did not submit any "phone records" or other evidence to support his assertion.

The testimony of Mr. Dahlberg and Mr. McDonald established that Mr. Dahlberg or his staff received daily reports from a GPC nuclear officer concerning the status of GPC's nuclear plants and was contacted if some unusual or unexpected operational event occurred. Dahlberg at 16-17. McDonald at 3, 22. *See also* Transcript at 1135, 1154 (Dahlberg).

Accordingly, the hearing record does not support Intervenor's allegation in Issue 23 that GPC's April 1, 1991, statement is inaccurate.

In Issue 15, Intervenor contends that GPC failed to tell the NRC, during a December 1988 inspection of the corporate offices in Birmingham, Alabama, that Mr. Farley was involved with the SONOPCO Project as CEO of the SONOPCO Project, and failed to inform the NRC about Mr. McDonald's "reporting relationship" to Mr. Farley.[116] Intervenor

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[116] From December 19 through 21, 1988, the NRC conducted an inspection of the corporate organization, responsibilities, and functions of SONOPCO at Birmingham, Alabama during Phase I of the Southern Nuclear transition (Inspection Report Nos. 50-321/88-41, 50-366/88-41, 50-424/88-60, 50-425/88-77, 50-348/88-33, and 50-364/88-33) and observed, in part 3 of the report that:

> In preparation for combining the management of Vogtle, Hatch, and Farley into one organization, GPC has reorganized and moved the corporate nuclear operations to Birmingham.... Currently, the Executive Vice President and Senior Vice President for Nuclear operations are officers of both GPC and APC....*footnote continued* →

claims that: (1) Mr. Farley reported to Mr. Addison and The Southern Company Management Council which served as a board of directors for the SONOPCO Project; (2) Mr. Farley was involved with the operation and management of The Southern Company's nuclear plants, presiding over weekly staff meetings; and (3) GPC's letter of December 29, 1988, to NRC continued to mislead the NRC about Mr. Farley's role by stating that, "as shown on FSAR Figures 13.1.1-2 and 13.1.1-3, the Executive Vice President, the Senior Vice President-Nuclear Operations and the Vice President-Nuclear do provide line management direction for the operation of the Plant."

The record shows that Mr. Farley was President of APC during the December 1988 inspection, and he did not become Executive Vice President of The Southern Company and SCS until March 1, 1989. Farley at 1. The announcement that he would be the CEO of Southern Nuclear upon its incorporation was not made until March 1989. Farley at 11; Transcript at 1723 (Hairston).

Intervenor's assertion that Mr. Farley presided over weekly staff meetings designated as "Farley staff meetings" is not supported by the hearing record. Although SONOPCO Project staff meetings were held beginning in November 1988, Mr. Farley did not attend these meetings until he relocated to the SONOPCO Project offices, after his election to Executive Vice President of The Southern Company and SCE, effective March 1, 1989, and he provided no management oversight or direction at those meetings. Farley at 21; McDonald at 21; Hairston at 24. Consistent with providing support services to the SONOPCO Project and his future position as CEO of Southern Nuclear, Mr. Farley's

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The Vice Presidents for each of the three projects (Vogtle, Hatch, and Farley) report to the Senior Vice President of Nuclear Operations.

attendance was to keep abreast of system plant developments and, as Executive Vice President-Nuclear of The Southern Company, the meetings enabled him to provide periodic reports to The Southern Company Board of Directors. McCoy at 17-18; Farley at 11, 21; McDonald at 21; Transcript at 1341-42 (McDonald), 1848-51 (Farley), 1989-90 (Shipman); McCrary Deposition at 38. The fact that Mr. Farley was kept informed and periodically briefed The Southern Company Board of Directors does not warrant the conclusion that he was part of the management structure for the Vogtle facility or exercised control over its operation or its other licensed activities.

The hearing record does not support Intervenor's assertion that Mr. Hairston's letter of December 29, 1988, that referenced organizational charts shown in FSAR Chapter 13, misled the NRC about Mr. Farley's role in the operation of the Vogtle facility (*see also* Issues 4, 5, and 7 herein). Mr. Farley had no such role.

Accordingly, there is no basis to conclude that the NRC was misled during its December 1988 inspection or by subsequent submittals regarding the organization in control of GPC's licensed activities.

In Issue 16, Intervenor contends that during a July 25, 1989, meeting with the NRC, GPC failed to accurately portray the actual configuration of the SONOPCO organization by not revealing that Mr. Farley had management responsibility over the Vogtle facility. Since the record does not support that Mr. Farley had management responsibility over the Vogtle facility, this contention is not substantiated.

In Issue 24, Intervenor alleges that GPC omitted from the Vogtle Emergency Plan any discussion of Farley's management functions and responsibilities as they related to the Corporate Emergency Plan described in Appendix 7 of the Vogtle Emergency Plan (Revision 12, effective April 1990). Intervenor's bases for this allegation are that (1) the

Vogtle emergency procedures demonstrate that Mr. Farley had an emergency plan responsibility because he was listed in the On-Call Project Manager's telephone list as "Georgia Power Corporate Management," and (2) Messrs. McDonald, Hairston, and McCoy as well as the rest of the corporate emergency organization were controlled from a practical standpoint by Mr. Farley.

Mr. McCoy testified that Revision 12 (dated April 1990) of the Corporate Emergency Plan accurately indicated that Mr. Farley had no role in the Corporate Emergency Organization, and that Mr. Farley was not part of the "Senior Corporate Management" identified in the Corporate Emergency Notification Tree (Figure C-1 of the Corporate Emergency Plan for the Vogtle Electric Generating Plant, Revision 12). McCoy at 18-19; *see also* Transcript at 1597 (McCoy); Supplemental Prefiled Testimony of C. Kenneth McCoy, *ff.* Transcript at 1560, "McCoy Supplemental", at 1. Even though Mr. Farley was accurately identified as Executive Vice President-Nuclear of The Southern Company, his name was listed under the heading "Georgia Power Corporate Management" in the On-Call Project Manager's telephone list. The heading was incorrect and, beginning in 1991, the section was renamed "Corporate Management" and included the designated title for each individual. McCoy Supplemental at 1; See also Transcript at 1574-76, 1588-89 (McCoy).

The On-Call Project Manager's telephone list does not identify who is to be called in the case of a significant event at the Vogtle facility, is not part of a procedure, and is not intended to be used by the On-Call Project Manager (corporate) to identify who is to be notified in the event of an emergency. Administrative procedure VNS-EP-04, entitled "Duties of the On-Call Project Manager," (GPC Exhibit 9) identifies who is to be notified by

the On-Call Project Manager, in what order,[117] and Mr. Farley was not required to be notified by the On-Call Project Manager as a part of the emergency call-out procedures.[118] McCoy Supplemental at 2-3; Transcript at 1580-92 (McCoy).

The record does not support Intervenor's assertion that Messrs. McDonald, Hairston, McCoy, and the rest of the corporate emergency organization in Birmingham, Alabama, were controlled by Mr. Farley. Messrs. McDonald and McCoy both testified that there was no attempt by Mr. Farley to control the operation of the Vogtle facility and that line management authority over licensed activities at the Southern Nuclear offices was very clear--through Mr. McCoy to Mr. Hairston, Mr. McDonald and Mr. Dahlberg. McCoy at 19; McDonald at 25. GPC's response to the March 20, 1990, Vogtle SAE also demonstrates that Mr. Farley did not participate in the emergency response, but only listened to discussions regarding the event consistent with his need to know information. Transcript at 1825-29 (Farley).

Accordingly, the allegation in Issue 24 is not supported. The hearing record does not support that Mr. Farley had emergency plan responsibilities indicative of a control over GPC's nuclear facilities or that he exercised control over GPC managers and personnel involved with GPC's emergency response. Therefore, the claim that Mr. Farley was omitted from the Vogtle emergency plan in order to mislead the NRC is unwarranted.

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[117] If a significant event occurred at the Vogtle facility, Administrative Procedure VNS-EP-04, as it existed in 1990, required that the appropriate GPC corporate management be notified and briefed on the emergency. If any one of those to be notified were not available, the On-Call Project Manager would go to the next person up the line. On occasions, Mr. McCoy was unable to reach Mr. McDonald or Mr. Hairston, and he called Mr. Dahlberg. McCoy Supplemental at 3-4.

[118] The administrative procedure did not <u>require</u> that Mr. Farley be contacted for significant events at the Vogtle facility, but in practice, both Mr. Farley and Mr. Dahlberg would be called. McCoy Supplemental at 3-4.

In summary, Intervenor's assertion that Mr. Farley functioned as the *de facto* Chief Executive Officer of the SONOPCO Project is not supported by the record. Mr. McDonald did not report to Mr. Farley regarding GPC licensed activities. The items cited do not demonstrate that Mr. Farley exercised control over licensed activities at GPC's nuclear facilities during his involvement in the SONOPCO Project. Rather, the record shows that GPC controlled the daily operations of the Vogtle facility in accordance with a chain of command extending from the Vogtle General Manager, through the Vice President of the Vogtle facility, through the Senior Vice President - Nuclear Operations, through the Executive Vice President - Nuclear Operations, to the President and CEO of GPC. A Nuclear Operations Overview Committee of the GPC Board of Directors conducted periodic reviews of the regulatory and operational performance of GPC's nuclear plants.

b. Establishing and Implementing Nuclear Policy Decisions

Intervenor's Statement of Issues and the Petition, as supplemented, include allegations that Mr. Farley controlled the Vogtle facility based upon his involvement with establishing and implementing nuclear policy decisions. (Issues 1, 9, 15, 17, and 20; October 1, 1990, Supplement at 4).

In Issue 15, Intervenor claims that, in 1987, Messrs. Addison and Farley met privately and agreed Mr. Farley would serve as "chief executive of Southern Company's nuclear division" and decided to locate Southern Nuclear in Birmingham without the knowledge of senior GPC officials.

Intervenor's assertion that Messrs. Addison (CEO of The Southern Company) and Farley agreed in 1987 that Mr. Farley would become the chief executive of a Southern Company nuclear operating subsidiary is not supported by the hearing record. Although he did not recall the exact date, Mr. Addison believed that his discussions with Mr. Farley

about Mr. Farley heading the Southern Nuclear Operating Company occurred "when the decision was made to go forward." Addison Deposition at 36-37. The hearing record shows that Mr. Addison did not make the decision unilaterally, that Mr. Farley was elected to the position of President and CEO of Southern Nuclear by the Board of Directors, which included GPC's CEO (Mr. Dahlberg) and GPC's Executive Vice President-Nuclear Operations (Mr. McDonald) after Southern Nuclear was incorporated on December 17, 1990. Hairston at 37. The fact that Mr. Addison, the CEO of the holding company, discussed with a senior officer the possibility of that officer heading a new subsidiary, does not violate any Commission regulation and does not support a conclusion that Mr. Farley directed GPC licensed activities.

There is no basis in the record to conclude that Messrs. Addison and Farley decided where SONOPCO would be located, or that this information was withheld from GPC management. While Mr. Farley told Mr. Addison that he would consider heading up Southern Nuclear if the corporate offices were in Birmingham, Mr. Addison discussed the merits of the location with GPC, the issue was examined by task forces, and Southern Nuclear was located in Birmingham, Alabama, due to its proximity to the engineering support staff and the economics of that location. Addison Deposition at 80-81, 83; Transcript at 1821, 1823 (Farley). Mr. Thomas McHenry, the GPC Manager-Nuclear Support, represented GPC on the implementation task force, and Mr. H. G. "Grady" Baker, GPC Senior Executive Vice President, was on the steering committee. Transcript at 1331 (McDonald). Mr. Farley believed that the decision as to location was made by the Board of Directors in May 1988. Transcript at 1822-23 (Farley).

In Issues 15 and 17, Intervenor alleges that by 1989 the Southern Company Management Council began functioning as the SONOPCO Project Board of Directors.

Intervenor states in Issue 17 that (1) GPC's April 1, 1991, response to the Petition falsely stated that The Southern Company Management Council was not involved in operating issues pertaining to GPC's nuclear plants,[119] and (2) the functioning of the Management Council was omitted from the April 1 response and the FSAR.

The record shows that there was no Board of Directors for the SONOPCO Project and no Board of Directors for Southern Nuclear until it was incorporated at the end of 1990. Transcript at 1773-75 (Farley); Farley (*ff.* Transcript at 1061) at 13-14; Dahlberg at 8. Individuals who later became members of the Board of Directors of Southern Nuclear informally discussed the status of efforts to form Southern Nuclear, and other issues of common interest, as representatives of The Southern Company Management Council. Farley at 13-14.

Mr. McCoy testified that The Southern Company Management Council is not described in the Vogtle FSAR because the Council is not the licensee of the Vogtle facility or an organization with responsibilities regarding the operation of the Vogtle facility. The Southern Company Management Council only reviewed GPC's budget in connection with The Southern Company's obligations to its stockholders. McCoy at 16. Neither 10 CFR 50.33 nor 10 CFR 50.34 require that such budget review activities be included in an

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[119] Intervenor mischaracterizes GPC's April 1 response. The response stated, at page 4:

> The Southern System Management Council provides a forum for the exchange of information among subsidiary companies that will aid the Companies' daily operations, it reviews system performance and it provides strategic and policy guidance to the system. However, day-to-day management of policy and operating issues pertaining solely to an individual subsidiary company is the exclusive responsibility of the subsidiary company's CEO.

Intervenor offered no evidence that showed the statement to be inaccurate.

FSAR. Thus, there was no misrepresentation to the NRC and Intervenor's allegations in Issues 15 and 17 are without merit.

In Issue 1, Intervenor asserts that key negotiations between GPC and Oglethorpe Power Corporation were conducted by Mr. Farley.

Mr. Farley testified that he conducted certain negotiations with Mr. Stacey of Oglethorpe Power Corporation at the request of Mr. Dahlberg, but the major part of the negotiations were through Mr. Grady Baker and Mr. Fred Williams. Farley at 33; *see also* Dahlberg at 11-12. Mr. Williams confirmed that he was in charge of negotiating the agreement, and that in his view, Mr. Farley merely provided Oglethorpe Power Corporation information and comfort about setting up nuclear operating companies. Transcript at 2482-83 (Williams). Thus, Mr. Farley's participation does not indicate control of GPC licensed activities.

Intervenor claims in Issue 1 that Mr. Farley reviewed data requests and testimony before the Georgia Public Service Commission in support of GPC's 1989 rate case. Mr. Farley testified that he had no responsibility for GPC's rate case and did not direct Mr. McDonald's activities related to the 1989 rate case. Transcript at 1803 (Farley); Farley at 34-35. Mr. Farley's monitoring of data requests to make sure that the SONOPCO Project was providing expeditious support (Transcript at 1803-11 (Farley)) does not reflect control over licensed activities.

In Issue 9, Intervenor alleges that GPC's April 1, 1991, response to the Petition falsely stated that the resolution of a dispute between Messrs. Dwight Evans (GPC Executive Vice President - External Affairs) and McDonald by Mr. Dahlberg's direction to McDonald regarding the presentation of performance indicators to the Georgia Public Service Commission was evidence of the reporting relationship and indicative of who was

in control of nuclear operations at the Vogtle and Hatch facilities. Intervenor claims that this statement is false because Mr. McDonald, after an August 10, 1989, meeting, did not follow Mr. Dahlberg's instructions, and Messrs. McDonald and Farley reviewed and approved testimony that did not include alternative performance indicators.

The hearing record does not support Intervenor's assertion that Mr. McDonald did not follow Mr. Dahlberg's instructions. Messrs. McDonald and Dahlberg both testified that a decision was made at the August 10, 1989, meeting to be prepared to propose alternative performance standards, if necessary, and that this strategy was carried out in the handling of the 1989 rate case. Prefiled Testimony of A. William Dahlberg, III, *ff.* Transcript at 1061, "Dahlberg", at 17; McDonald at 15-17; Transcript at 1102-22, 1137-41 (Dahlberg), 1504 (McDonald). Mr. Farley received copies of the draft testimony to be submitted to the Georgia Public Service Commission, but he neither approved nor disapproved it. Farley at 34. He was in agreement with Mr. Dahlberg's decision that GPC should be prepared to propose alternative performance standards, if necessary. Transcript at 1108-09 (Dahlberg). Such actions do not indicate control of nuclear operations or budget policy.

In Issue 20, Intervenor claims that in its April 1, 1991, response to the Petition (page 12, Attachment I), GPC inaccurately states that Mr. Farley did not create the outage philosophy[120] for the Vogtle facility. Intervenor asserts that the response is inaccurate because (1) Mr. Farley was involved in the establishment of the outage philosophy at the Vogtle facility, (2) Mr. McCoy referred to Mr. Farley's role as indicated by an audio tape

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[120] As used here, "outage philosophy" refers to outage scheduling. Specifically, the "philosophy" was to use an "optimum" schedule--a schedule without the inclusion of time for contingencies. McCoy at 14-15.

(Tape No. 236) recorded in August 1990,[121] and Mr. Farley testified during a deposition that "Farley staff meetings" were held every week.

The record shows that GPC's April 1, 1991, response to the Petition was accurate because Mr. McDonald established and implemented the outage philosophy and Mr. Farley was not involved in overseeing the establishment of the outage philosophy. McDonald at 13; Transcript at 1518-20 (McDonald); McCoy at 14; Fa y at 30. Mr. McCoy's statements on Tape No. 236 referred only to "discussions" about the outage philosophy that included Mr. Farley, and do not show that Mr. Farley set, established, directed or created the outage philosophy at the Vogtle facility. McCoy at 14. Mr. Farley testified that he (1) did not direct the operating philosophy and other executive matters concerning operation of the Vogtle facility in the weekly staff meetings, (2) did not have any authority to control, and (3) did not attempt to exercise any control, over management decisions affecting licensed activities or personnel matters concerning the Vogtle facility. Farley at 22. Moreover, Mr. Mosbaugh admitted that he had no personal knowledge to support his claim that the outage philosophy came from Mr. Farley. Transcript at 2129-35.

Accordingly, the hearing record does not support Intervenor's allegation in Issue 20 that GPC's April 1, 1991, statement is inaccurate or that Mr. Farley controlled operation of the Vogtle facility by establishing or implementing the Vogtle outage or other operational philosophy.

In summary, the hearing record shows that nuclear policy decisions for the Vogtle facility were established and implemented by GPC, and there was no evidence that

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[121] This issue is also raised in the October 1, 1990, Supplement to the Petition, page 4. Petitioners claim that Mr. McCoy's taped statement, that the outage philosophy was created by Mr. Farley and others, supports their assertion that Vogtle project management assumed that Mr. Farley, not Mr. Dahlberg, controlled Vogtle's operations.

Mr. Farley established the outage philosophy or any other operational policies for the Vogtle facility. Mr. Farley's limited involvement in a 1989 rate case matter before the Georgia Public Service Commission (*i.e.,* his review of draft testimony regarding alternative performance standards) does not indicate any control of GPC's nuclear operations or licensed activities. Intervenor also provided no information that The Southern Company Management Council acted as the SONOPCO Project board of directors until the Project was incorporated.

c. Employing, Supervising, and Dismissing Nuclear Personnel

In his Statement of Issues and the Petition, as supplemented, Intervenor asserts that Mr. Farley exercised control over the Vogtle facility because he (1) selected and approved GPC's management staff, (2) reviewed nuclear personnel in 1989 as evidenced by GPC Management Council's exclusion of nuclear personnel from its 1989 company-wide review of management, (3) decided that Mr. Michael Barker, a GPC employee, would not be transferred from the SONOPCO Project to the Nuclear Operations Contract Administration (NOCA) group in Atlanta, (4) prepared Mr. McDonald's annual performance appraisal, and (5) implemented changes in Vogtle personnel evaluations and pay. (Issues 1, 6, 8, 14A, 14B, 15, 19, 21, 27, and 28; October 1, 1990, Supplement to Petition at 1-3)

The hearing record fails to support Intervenor's allegation (Issues 6 and 15; October 1, 1990, Supplement to Petition at 1-2) that Mr. Farley selected and approved GPC management staff. The decision to select the individual officers responsible for GPC's nuclear operations was made by GPC management with the approval of the GPC Board of Directors. GPC's Vice President, Grady Baker, and not Mr. Farley, recommended that Messrs. McDonald and Hairston become officers of GPC. Mr. Farley's involvement in the selection of Messrs. McDonald and Hairston was limited to concurring as President of

APC that they could take on the additional responsibilities associated with managing GPC's nuclear facilities. Farley at 25-26.

Mr. Farley's involvement in the hiring of Mr. McCoy consisted of discussing Mr. McDonald's proposal to hire him. McDonald at 10-11; Farley at 25-26; McCoy at 5-6; Transcript at 1349-50 (McDonald) and 1727 (Hairston). GPC's CEO, Mr. Robert W. Scherer, interviewed Mr. McCoy before he was appointed, and the GPC Board of Directors subsequently appointed Mr. McCoy to his current position. McCoy at 1, 5, and 6.

Mr. Farley was involved in the selection of Messrs. McCrary and Long as Vice Presidents in SCS. As President of APC, Mr. Farley was consulted on the appointments of Messrs McCrary and Long because the Farley nuclear facility was being supported by the SONOPCO Project and SCS officers. Hairston at 24. Mr. Farley was a member of a selection committee, including GPC and APC representatives, to make recommendations for the Vice President of Administrative Services position.[122] Mr. McDonald and Mr. Jack Causey of GPC were also members. Transcript at 1276 (McDonald).

Thus, the hearing record supports the conclusion that Mr. Farley did not make decisions regarding the hiring of any of the officers reporting to Messrs. McDonald and Hairston. Mr. Farley's limited involvement with SCS officers within the SONOPCO Project (such as Messrs. McCrary and Long) does not appear inappropriate since the SONOPCO Project and its SCS officers were also providing support to the APC nuclear plant.

Intervenor's assertion (Issues 1 and 14A) that the GPC Management Council's exclusion of nuclear personnel from its 1989 company-wide review of management was evidence that nuclear operations were reviewed by Mr. Farley was not supported by the

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[122] Typical of the selection process for SCS senior personnel, no selection committee was convened for Mr. Long because his functions and position in the SONOPCO Project were similar to his position in SCS. Farley at 22-24.

hearing record. Mr. Dahlberg testified that the nuclear management was not included because the nuclear officers had just been reviewed as part of the recent formation of the SONOPCO Project. Transcript at 1185-88 (Dahlberg).

Intervenor asserts (Issue 8) that GPC's August 24, 1994, response to a Licensing Board question[123] was inaccurate because it failed to identify the NOCA group as an organization that had oversight responsibilities within GPC, failed to state that SONOPCO Project personnel refused to cooperate with NOCA, and that SONOPCO personnel, including Mr. Farley, interfered with the operation, staffing and existence of NOCA.[124]

The hearing record indicates that NOCA never performed the type of oversight functions identified by the Board's question. NOCA did not perform any oversight function regarding licensed activities and the people assigned to NOCA were not qualified to perform oversight of licensed activities. Transcript at 2565-76, 2579, 2588-89, 2596 (McCoy); Transcript at 1238 (Dahlberg); McCoy Rebuttal at 3. While NOCA was, in part, formed by Mr. Dahlberg to monitor the performance of GPC's nuclear plants, it was later determined that its data-gathering function duplicated activities of SONOPCO Project personnel reporting directly to Mr. Dahlberg. Dahlberg at 13; Transcript at 1193 (Dahlberg).

Mr. Hobby, who was General Manager of NOCA, testified that employees in the SONOPCO Project refused to cooperate in supplying him information regarding the plants,

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[123] Question 2 in the Board's Memorandum and Order, dated May 25, 1994, asked what organizational units or executive personnel of GPC had any form of oversight activity over the SONOPCO Project, such as "managerial control, audits, investigation, personnel, quality assurance or control, or root cause assessments."

[124] Petitioners assert that Mr. William Evans, a GPC Corporate Concerns investigator, told Mr. Hobby that Mr. Farley would be "making the call" as to whether Mr. Hobby could interview a SONOPCO candidate for the NOCA performance engineer position. October 1, 1990, Supplement to Petition at 3-4.

and prevented him from hiring the employees needed to perform NOCA's intended function. Mr. McDonald viewed NOCA as an impedance in the GPC chain of command and admitted that he did not cooperate with NOCA because he felt Mr. Hobby was attempting to act as an intermediary between Mr. McDonald and Mr. Dahlberg. Transcript at 1483 (Dahlberg); see also 1485 (McDonald). Mr. McDonald's concern as a GPC official regarding the GPC chain of command does not constitute transfer of control of licensed activities at GPC nuclear facilities. Furthermore, Mr. Hobby lacked any personal knowledge that Mr. Farley directed or otherwise influenced Mr. McDonald's actions regarding NOCA. Transcript at 2352-57 (Hobby).

Intervenor's claim that Mr. Farley interfered with the staffing of NOCA by deciding that Mr. Michael Barker, a GPC employee, could not be transferred from the SONOPCO Project to the NOCA group in Atlanta (Issue 8; October 1, 1990, Supplement to Petition at 3-4), was not substantiated. Mr. Hobby admitted that only GPC employees attempted to prevent him from interviewing Mr. Michael Barker for the NOCA performance engineer position. Transcript at 2360-61 (Hobby). The hearing record shows that Messrs. Hairston and McDonald, both GPC officers, opposed this transfer because they believed that the NOCA position had been assigned an inflated rating. Transcript at 1737-38 (Hairston); 1490-94 (McDonald). Mr. Barker discussed his transfer directly with Mr. Dahlberg. Transcript at 1222-23 (Dahlberg). Neither Mr. Farley nor Mr. Grady Baker could recall any discussion of Mr. Barker on May 5, 1989, with Mr. Dahlberg regarding Mr. Hobby's proposed additions to the NOCA staff. Transcript at 1759-60, 1820-21 (Farley); Baker DOL Deposition at 41. Mr. Hobby's belief about Mr. Farley's interference was based on information from individuals who did not attend the May 5, 1989, meeting. Hobby at 41;

Evans Deposition at 17-18. Accordingly, the assertion that Mr. Farley "made the call" is not supported by the record.

Mr. Farley did tell Mr. Dahlberg on or about May 5, 1989, that some organizations in The Southern Company system, such as NOCA, were duplicative, Farley at 32-33; Transcript at 1756 (Farley), but Mr. Dahlberg came to the same conclusion without Mr. Farley's input. Dahlberg at 13; Transcript at 1228 (Dahlberg), 2461, 2497-2504 (Williams). Thus, Mr. Farley's action did not convey a command, or constitute control, over GPC personnel matters.

Intervenor's claim (Issue 1) that Mr. Farley prepared Mr. McDonald's annual performance appraisal was not substantiated. The record shows that Mr. McDonald's annual performance appraisal was prepared by Messrs. Harris and Dahlberg, the respective CEOs of APC and GPC. Although Messrs. Harris and Dahlberg gave Mr. Farley a chance to comment on the review, Mr. Farley did not know what was finally done. Transcript at 1861-62 (Farley).

The record does not substantiate Intervenor's claims (Issues 1 and 6) that Mr. Farley implemented changes in personnel evaluations and pay with respect to Vogtle nuclear operations. The record shows that Mr. Farley did not implement changes to personnel evaluations or pay policy for Vogtle nuclear operations personnel. Mr. Farley explained the new Southern Company system-wide policies and answered questions on them. Farley at 31. This involvement was appropriate for his position as a Southern Company officer and did not constitute control over licensed activities of GPC's nuclear facilities.

As an Executive Vice President of The Southern Company, Mr. Farley addressed nuclear plant employees to brief them on the system-wide changes being made to the incentive pay programs of all of the operating companies. At that time, he also polled

employees about any concerns they had with their employment situation. Such system-wide activities are typically performed by a representative of The Southern Company. McDonald at 17-18. These activities do not constitute improper control of GPC personnel or NRC licensed activities.

In summary, the record does not show that Mr. Farley controlled GPC nuclear facilities by employing, supervising, and dismissing nuclear personnel, or that GPC provided inaccurate information to the NRC regarding Mr. Farley's involvement with personnel matters.

d. Controlling Costs

In his Statement of Issues, Intervenor alleged that Mr. Farley's control of GPC nuclear facilities is shown through budget and personnel pay matters in that (1) Southern Nuclear, its predecessor, and The Southern Company controlled GPC's nuclear budget since November 1988, (2) Mr. Farley implemented changes in personnel evaluations and pay for Vogtle nuclear operations personnel, and (3) the GPC Management Council did not review GPC's 1990 nuclear operating budget. Intervenor asserts that inaccurate and incomplete information was provided to the NRC regarding GPC's control of budget and personnel pay matters. (Issues 1, 6, 12, 14A, 14B, and 17).

Intervenor alleged in Issue 6 (*see also* Issues 1 and 12) that GPC's budget had been under the control of Southern Nuclear since November 1988, and thus the March 28, 1991, Vogtle FSAR amendment revising Chapter 13 inaccurately states that (1) the GPC Executive Vice President-Nuclear Operations reports to GPC's President and CEO with respect to all matters concerning budgets, and (2) Southern Nuclear matters are currently limited to operational support activities.

Intervenor's allegation regarding budget control is based upon his opinion that GPC's 1990 budget was approved by Mr. Farley and later by Mr. Addison over Mr. Dahlberg's objection. Testimony of a number of witnesses about GPC's 1990 budgeting process, and subsequent nuclear budgets, shows that GPC retained control of its nuclear budgets. GPC's 1990 (and later) nuclear budgets were reviewed by the Presidents of APC (Mr. Harris), GPC (Mr. Dahlberg), SCS (Mr. Franklin), The Southern Company (Mr. Addison), The Southern Company Executive Vice President-Nuclear (Mr. Farley), the Executive Vice President-Nuclear Operations of GPC and APC (Mr. McDonald), probably the Senior Vice President-Nuclear Operations of GPC and APC (Mr. Hairston), probably the nuclear plant project Vice Presidents (Messrs. McCoy, Beckham, and Woodard), and probably the SONOPCO Project Assistant Comptroller (Mr. Gilbert). Dahlberg at 9. The SONOPCO group presented the 1990 budgets recommended by Messrs. Hairston and McDonald for all three GPC nuclear facilities to Mr. Addison and his staff during a December 1989 meeting in Birmingham, Alabama. Mr. Addison then visited each of the operating groups and received a report on their budgets from Mr. McDonald, Mr. Hairston, and the project vice presidents. Farley at 28-29; Transcript at 1392-94 and 1405-06 (McDonald). The proposed budgets for the three nuclear facilities were then submitted to the operating companies, APC and GPC. Mr. Dahlberg received, from the GPC Management Council, the portion reflecting GPC's nuclear plants for incorporation into the overall GPC budget and for approval. Budget approval was then given by GPC's CEO for the GPC capital and operating budgets, and by the GPC Board of Directors for the capital budget. After approval by GPC, the total GPC budget was submitted to The Southern Company. Dahlberg at 9; Transcript at 1240-41 (Dahlberg); McDonald at 14-15. GPC Management Council reviewed the 1990 GPC nuclear budgets, as part of the total GPC

budget, before they were approved by Mr. Dahlberg. The capital budget was also approved by the GPC Board of Directors. Dahlberg at 10.

Mr. Farley's involvement was limited to reviewing the budgets as an Executive Vice President of The Southern Company and advising Mr. Addison, who was responsible for the review of all operating company budgets. Dahlberg at 10; Transcript at 1779-83, 1795 (Farley). Mr. Dahlberg determined whether the 1990 budget was acceptable. Farley at 27. Mr. Addison had never, however, approved or disapproved GPC's budget over Mr. Dahlberg's objection. Dahlberg at 11.

The review of budgets of subsidiaries by holding companies (e.g., The Southern Company) to ensure that the budgets of the operating companies were reasonable and appropriate is not unusual or indicative of a transfer of control.[125]

Accordingly, the hearing record does not support Intervenor's assertion that Southern Nuclear controlled GPC's budget. Therefore, there is no support for Intervenor's claim that GPC inaccurately stated that (1) the GPC Executive Vice President-Nuclear Operations reports to GPC's President and CEO with respect to all matters concerning budgets, and (2) Southern Nuclear matters are currently limited to operational support activities. The record supports a conclusion that Southern Nuclear matters are limited to operational support activities.

Intervenor asserts in Issue 14A that GPC's April 1, 1991, response to the Petition is false in stating that the GPC Management Council functioned as a policy-setting body and

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[125] The review of GPC's budget by the Southern Company Management Council in connection with The Southern Company's obligations to its stockholders is not an activity that need be described in the Vogtle FSAR, and its omission does not warrant the conclusion that GPC's April 1, 1991, response to the Petition was inaccurate as Intervenor asserts in Issue 17.

made corporate resource allocation decisions because, in late 1989, the GPC Management Council did not participate in the review of GPC's 1990 nuclear operating budget. The hearing record, however, showed that Intervenor's assertion was incorrect in that the GPC Management Council did review the 1990 nuclear budget as part of the total GPC budget review before approval by Mr. Dahlberg. *See* Transcript at 1396-98, 1403; Dahlberg at 10.

Intervenor claims in Issue 14B that in the April 1, 1991, response to the Petition, GPC misrepresents that Mr. McDonald reported periodically to the GPC Management Council regarding matters such as budgets and organizational goals.

Mr. McDonald testified that he reported to the GPC Management Council on nuclear operating matters, including budget matters, with the qualification that "reported" meant "provided budgets for their review."[126] Organizationally, he reported only to the GPC CEO. McDonald at 14. In view of Mr. McDonald's testimony, the hearing record does not support a conclusion that GPC's April 1, 1991, response was inaccurate.

In summary, the hearing record does not support a conclusion that GPC misrepresented its budgets affecting the operation of GPC licensed facilities. There is no indication in the hearing record that the particular process GPC used to develop its budget is dispositive to Intervenor's assertion that Mr. Farley, The Southern Company, or

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[126] Meeting minutes show that Mr. McDonald participated in Management Council meetings about the 1989 and 1990 budgets on September 23 and October 14, 1988, and presented organizational goals for the Vogtle and Hatch facilities during a December 7, 1988, meeting. Intervenor's Exhibit 135 (meeting minutes) at 27, 29-30, 42-43. Mr. McDonald attended a July 25, 1989, meeting during which the five-year capital budget targets were approved, and the schedule for budget reviews, including Management Council review and Mr. Addison's review, was agreed upon. Intervenor's Exhibit 135 at 71-73. The Management Council also considered nuclear budgets during meetings on November 6 and 14, and December 4, 1989. Intervenor's Exhibit 135 at 90, 93-96, 97 (capital budget), 98, 104-116 (nuclear update).

SONOPCO Project controlled the operation of the Vogtle facility. Rather, the record shows that GPC was responsible for the costs of the Vogtle facility. After review by GPC's Management Council, the operating and capital budgets were approved by GPC's President and CEO, and the capital budget was also approved by the GPC Board of Directors. The record does not support the conclusion that Messrs. Farley and Addison approved GPC's nuclear budgets. As an Executive Vice President of The Southern Company, Mr. Farley was involved in reviewing the nuclear budgets a part of the normal process for preparing annual budgets in the Southern system. Given The Southern Company's holding company status, Mr. Addison's involvement in reviewing and providing guidelines and requirements for adequate earnings and reasonable capital needs was appropriate.

2. Other Alleged Inaccuracies Communicated to NRC

Intervenor's Statement of Issues and the Petition contain assertions that GPC managers provided inaccurate or incomplete information to the NRC when describing its organization and plans to form Southern Nuclear, and when responding to the Petition. The alleged misrepresentations or omissions regard statements about (1) the Vogtle chain of command, (2) Mr. Dahlberg's relationship with Vogtle site management, (3) Mr. Farley's responsibilities as Executive Vice President-Nuclear of The Southern Company, (4) the 1989 title of Mr. Dahlberg (5) SONOPCO Project's control over the Vogtle facility since November 1983, (6) the composition of the GPC Management Council, and (7) the title held by Mr. Farley in 1988. (Issues 1, 2, 12, 13, 18, 19 and 26-28).

The hearing record regarding the alleged illegal license transfer issue does not support that GPC concealed an unauthorized role of Mr. Farley or a *de facto*, unauthorized organization for control of GPC nuclear facilities.

In Issue 1 (*see also* 10 CFR 2.206 Petition at Section III.2; and July 8, 1991, Supplement at Section III), Petitioners stated that GPC misled the Commission about the chain of command from the Vogtle Project's Plant Manager (*i.e.*, the General Manager) to its CEO before the NRC issued the operating license for the facility.

On March 30, 1989, the Commissioners met to discuss and possibly vote on the full power operating license for Vogtle Unit 2. Commissioner Carr expressed concern about the hierarchy between the Vogtle Plant Manager and the Chief Executive Officer (CEO), noting that it "looked to me like he was a long way from the CEO." Mr. R. P. McDonald, GPC Executive Vice President-Nuclear Operations, responded that (1) he (Mr. McDonald) reported to Mr. A. William Dahlberg, the GPC CEO, (2) that Mr. Ken McCoy, Vice President of Vogtle, reported to Mr. McDonald, and (3) that Mr. George Bockhold, then Vogtle General Manager, reported directly to Mr. McCoy. At the conclusion of the meeting, the Commissioners voted unanimously in favor of the license, and the license was issued the following day.

On May 1, 1989, Mr. W. G. Hairston, III, Senior Vice President for Nuclear Operation, sent the NRC a letter of correction of the transcript, noting that Mr. McDonald had "inadvertently left out the Senior Vice President of Nuclear Operations. The organization is as described on figures 13.1.1-1 and 13.1.1-2 of the Vogtle Final Safety Analysis Report."

The Petitioners claim that Mr. McDonald knowingly made false statements to the NRC Commissioners in the presence of Messrs. Dahlberg, McCoy, and Bockhold during his response to then Commissioner Carr in that he "eliminated one entire level of management between the plant manager and the CEO." Moreover, the Petitioners asserted (Petition at 8) that:

> Messrs. Dahlberg, McCoy and Bockhold should have known that Mr. McDonald's statements were false and should have brought this

to the immediate attention of the Commission and otherwise corrected the record before the Commission acted on the Vogtle full power license request.

In its Response to the Petition of April 1, 1991, GPC noted that the Commission had been apprised of the Company's organization before the meeting on March 30, 1989, including the Senior Vice President position, by an amendment to the Vogtle FSAR that was submitted November 23, 1988. The amendment described the reporting chain as being from Mr. McCoy to Mr. Hairston to Mr. McDonald. GPC's Response also indicated that the NRC had reviewed the organizational structure in December 1988 and issued an inspection report.[127] In the inspection report, the NRC stated that the vice presidents of the Farley, Hatch, and Vogtle facilities reported to the Senior Vice President, who reported to the Executive Vice President, and that the organization for Vogtle was consistent with the Vogtle FSAR amendment submitted in November 1988.

In its April 1, 1991, Response, GPC also noted that, during the March 30 meeting, Commissioner Rogers stated that he had reviewed the Company's organizational chart during his visit to the plant site. In addition, GPC noted that it had submitted the letter of correction to the transcript approximately two weeks after receiving the NRC transcript.

The NRC staff has reviewed this issue and concludes that Mr. McDonald's reply to then Commissioner Carr was inaccurate in that the transcribed record clearly contradicted other documents of record, including the FSAR and NRC inspection reports. The inaccuracy was material in that the reply (1) was in direct response to the Commissioner's stated concern regarding an organizational structure in which the plant manager appeared

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[127] NRC Inspection Report Nos. 50-321/88-41, 50-366/88-41, 50-424/88-60, 50-425/88-77, 50-348/88-33, and 50-364/88-33, dated February 7, 1989.

to be "a long way from the CEO," (2) could have influenced the Commission's decision, and (3) could have been considered by the Commission in reaching its decision.

There was no apparent motive for licensee and its employees to attempt to deliberately mislead the Commissioners since the licensee had previously provided correct information, and NRC staff members were present who knew the correct information.[128] The NRC staff does not view Mr. McDonald's inaccurate statement or omission as intentional or significant in that it is unlikely the statement would have caused the Commission to reach a different decision. No enforcement action was taken regarding the omission of Mr. Hairston in the organizational structure.

In summary, while inaccurate information was initially given to the Commissioners, it appears to have been inadvertent, it was corrected by the licensee upon discovery and the NRC staff was already aware of the correct information. Under the NRC's Enforcement Policy (NUREG-1600), unsworn oral statements that are unintentionally inaccurate are not normally acted upon unless they involve significant information by a licensee official. While the licensee should have corrected the material omission either during or immediately following the meeting, further action regarding this omission is not warranted due to its minor significance and because no information other than the Petitioners' opinion exists to support the position that the omission was intentional.

Intervenor also alleges (*see* Issue 1) that GPC falsely stated during the March 30, 1989, meeting with NRC that Mr. Dahlberg had a "personal hands on" relationship with the management at the plant site. The meeting transcript (Intervenor Hearing Exhibit 17),

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[128] Mr. John Rogge, the NRC's Senior Resident Inspector for the Vogtle facility at the time, attended the meeting with the Commissioners in Washington, D.C. and testified during the Phase 1 hearing that at that meeting he was aware that Mr. Hairston was in the Vogtle chain of command. Transcript at 2731 (Rogge).

at page 5, indicates Mr. Dahlberg described GPC's upper management being accessible. The record shows that Mr. Dalhberg visited plants periodically and the Vogtle facility at least twice in 1989, and was involved in nuclear operations. His "hands-on" management style referred to his oversight, his daily communications with the nuclear management, his plant visits, and his willingness to take calls periodically from the site. Intervenor Hearing Exhibit 32 at 4, 15; McCoy at 6-7; Transcript at 1153-59 (Dahlberg). Therefore, the record does not support the allegation that the statement was inaccurate.

In Issue 2, Intervenor states that Mr. Hairston's letter of May 1, 1989, to the NRC correcting the Unit 2 full power license hearing transcript was inaccurate in asserting that an attached FSAR Figure 13.1.1-1 as amended November 23, 1988, accurately depicted the corporate management structure for the Vogtle facility since the figure did not portray Mr. Farley's role, and indicated that Mr. McDonald (the "Executive Vice President-Nuclear Operations" position) reported to Mr. Scherer ("Chairman and CEO"), rather than to Mr. Dahlberg ("President").

In December 1988, Mr. Scherer relinquished his position as CEO and Mr. Dahlberg became CEO, but not Chairman. Thus, Intervenor is correct inasmuch as FSAR Figure 13.1.1-1 had not been updated to reflect this change of title. Moreover, the figures attached to the May 1, 1989, letter should have shown the Executive Vice President-Nuclear reporting to the "President and CEO," which was Mr. Dahlberg's correct title.

Mr. Hairston testified during the transfer hearing that the only purpose of the May 1, 1989, letter was to correct Mr. McDonald's omission of Mr. Hairston's role during the Unit 2 full power hearing. Mr. Hairston and others did not notice the outdated title in the CEO box. Hairston at 29.

Messrs. Allenspach and Rogge, who participated in NRC staff's review of the organizational structure for the full power licensing of Vogtle Unit 2 and the related inspection of the organizational structure in December 1988, testified that the focus of the NRC staff's review of the organization in control of the Vogtle facility was at Mr. Hairston's level and lower and they attached no particular significance to the organizational structure represented at levels above Mr. Hairston. Transcript at 2678-80, 2698.

There is no evidence that Mr. Hairston's explanation regarding the outdated title in the CEO box was inaccurate or that the NRC was misled in any significant manner by this oversight. In addition, as discussed in Section III.B.1.a of this Director's Decision, Mr. Farley was not in the Vogtle chain of command.

In summary, while Intervenor is correct that FSAR Figure 13.1.1-1 did not accurately reflect Mr. Dahlberg's title of "President and CEO," the error was not a significant factor in the NRC staff evaluation of the information, and there is no evidence that it misled the NRC. The record does not support Intervenor's assertion that the figure is also inaccurate because it failed to reflect Mr. Farley's role in the control of the Vogtle facility.

In Issue 12, Intervenor claims that in the April 1, 1991, response to the Petition, GPC misstated Mr. Farley's responsibilities as Executive Vice President-Nuclear as including:

> (1) overseeing the formation of Southern Nuclear, (2) acting as spokesman for Southern Nuclear among chief executive officers of the other Southern Company affiliates[129], and (3) representing the Southern Company on the national scene concerning generic nuclear power issues.

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[129] The response to the Petition stated that this function refers to Mr. Farley's membership on the Southern System Management Council.

Mr. McDonald testified that this description is an accurate reflection of Mr. Farley's duties as described in Mr. McDonald's letter agreement dated April 24, 1989. with Mr. Franklin of SCS. The description is consistent with the NRC staff's historical knowledge of Mr. Farley's activities and duties. The hearing record provides no substantive evidence to the contrary.

In Issue 13, Intervenor asserts that, because Mr. Hairston was a GPC Senior Vice President in April 1991 and had never been a member of the GPC Management Council, GPC's April 1, 1991, response to the Petition falsely states that the "GPC Management Council is made up of all the Executive and Senior Vice Presidents of GPC."

Intervenor is correct with respect to Mr. Hairston and the error was admitted in the hearing testimony. McDonald at 13-14; Transcript at 1075-77 (Dahlberg), 1442-43 (McDonald). There is no evidence that the error was anything other than a simple oversight. The primary focus of the statement, that Mr. McDonald was on the Management Council and Mr. Farley was not, is correct. The NRC was not significantly misled by the error with respect to Mr. Hairston.

In Issue 28, Intervenor alleges that the April 1, 1991, GPC response to the Petition falsely states that Mr. Farley's role in the selection of personnel for the SONOPCO Project was proper in that "Mr. Addison requested such assistance from Mr. Farley and such assistance fell within his duties as Executive Vice President - Nuclear of The Southern Company." Intervenor claims that this statement is false because the staffing selections were made in 1988 and Mr. Farley did not become Executive Vice President - Nuclear of The Southern Company until March 1, 1989.

Intervenor is correct. Mr. McDonald admitted that, technically, the April 1, 1991, response to the Petition was inaccurate in stating that staffing selections made in 1988

were within Mr. Farley's duties as Executive Vice President - Nuclear of The Southern Company since Mr. Farley had not yet assumed that position in 1988. McDonald at 12.

The error was not significant or intentional because the same page of the April 1, 1991, response (Intervenor Exhibit 48 at 9) indicated Mr. Farley's correct title in 1988, *i.e.*, President of APC.

In Issue 26, Intervenor alleges that in a September 4, 1992, license amendment application, GPC omitted facts pertaining to the actual configuration and operation of the Vogtle facility in stating that in January 1991, Southern Nuclear began providing nuclear support services, technical services, and administrative services but omitting reference to the SONOPCO Project's "control over the nuclear operations of plants Vogtle, Hatch and Farley [which] began in November 1988..." prior to Southern Nuclear's incorporation. Mr. Hairston testified that the September 4, 1992, statement regarding Southern Nuclear was accurate and that Southern Nuclear was incorporated on December 17, 1990, and became effective January 1, 1991. Hairston at 46.

The license amendments application is consistent with information received by the NRC during the late 1990-early 1991 time frame and the NRC was well informed of the phased approach employed by GPC to establish a nuclear operating company through various meetings, inspections, and discussions. Intervenor provided no evidence that the services provided by SONOPCO Project from November 1988 until Southern Nuclear's incorporation constituted control over operations or licensed activities for GPC or APC nuclear facilities. Accordingly, there is no evidence that the license amendments application of September 4, 1992, was inaccurate or misled the NRC.

In Issue 19, Intervenor states that in its October 3, 1991, response to

the 10 CFR 2.206 Petition as revised July 8, 1991, GPC falsely states that (1) the selection process used in 1988 for the staffing of SONOPCO was not completed during the two-day meeting of SONOPCO Project executives, and (2) Mr. McDonald "never purported to give an unqualified or rigid top down characterization of how the organization was staffed."

Messrs. McCoy and McDonald testified that while a number of individuals were identified as the most likely candidates for positions within the SONOPCO Project during that two- or three-day meeting, the selection process continued beyond the meeting. McCoy at 16; McDonald at 11; Transcript at 1301 (McDonald).

Mr. McDonald testified that the selection process involved Mr. McCoy and Mr. J. T. Beckham (Vice President of the Hatch facility) starting at the top of the organization and, using a blank organization chart, identifying prospective candidates who were most qualified for positions in the organization. Selected managers then participated in selecting those individuals who would be working for them. He only recalled that they settled on the top tier during the meeting, although they may have pencilled in other names, and the other candidates were shuffled around for a couple of weeks. Transcript at 1301, 1304-08 (McDonald).

Given Mr. McDonald's description of the selection process, the hearing record does not support the conclusion that the statement regarding GPC's October 3, 1991, statement is inaccurate or misleading.

In Issue 27, Intervenor alleges that GPC's October 3, 1991, response to the Petition inaccurately states that Mr. McDonald's testimony concerning the selection of Messrs. McCrary and Long given in the *Yunker and Fuchko* DOL proceeding was not inconsistent with his testimony in the *Hobby* DOL proceeding.

During the licensing transfer hearing, Mr. McDonald testified that his answers were different, and were not contradictory, because the questions were different. In the *Yunker and Fuchko* proceeding, when he was asked who selected Messrs. McCrary and Long for their positions in the SONOPCO Project, he understood the question to be who was ultimately responsible for referring them to the Board of Directors, and he replied he was not sure but assumed it was the President of Southern Company Services. In the *Hobby* case, he was asked if he was "involved" in selecting them and, since he had been involved with recommending them, gave an affirmative reply. McDonald at 11-12.

In light of the differences in the questions posed, the evidence does not support the conclusion that GPC's response of October 3, 1991, is inaccurate.

3. Conclusion

The record shows that GPC provided some inaccurate or incomplete information to the NRC when describing its organization and plans to form Southern Nuclear, and when responding to the Petition. This information involved (1) the omission of Mr. Hairston when Mr. McDonald described the Vogtle chain of command during a March 30, 1989, meeting, (2) a 1989 FSAR organizational chart showing the position of Mr. Dahlberg as "Chairman and CEO" rather than "President and CEO", and (3) GPC's April 1991 written response to the Petition indicating that the GPC Management Council included all Senior Vice Presidents (which was inaccurate because Mr. Hairston was not a member), and indicating Mr. Farley's title in 1988 to be Executive Vice President - Nuclear of The Southern Company (a position he did not assume until March 1, 1989). This inaccurate or incomplete information was not significant in terms of NRC focus on nuclear operations and licensed activities or in the context of the overall correct information provided to the NRC, and did not mislead the NRC. Thus the inaccuracies and omissions are not sufficient

to warrant NRC enforcement action or conclusions that (1) GPC concealed an unauthorized role of Mr. Farley or a *de facto*, unauthorized organization for control of GPC nuclear facilities, or (2) GPC lacks the requisite character and integrity to be a licensee.