licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit a written rebuttal to the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

* * * * *

Dated at Rockville, Maryland, this 17th day of March, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–7315 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al. Vogtle Electric Generating Plant, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated September 11, 1990, by Michael D. Kohn, Esquire, on behalf of Messrs. Marvin Hobby and Allen Mosbaugh (Petitioners), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition was supplemented by submittals made on September 21 and October 1, 1990, and July 8, 1991. The Petition pertains the Vogtle Electric Generating Plant, Units 1 and 2.

The Petition contained allegations regarding: the management of the Georgia Power Company (GPC) nuclear facilities; illegal transfer of GPC operating licenses to Southern Nuclear Operating Company (SONOPCO); intentional false statements to the NRC regarding GPC's organizational chain of command and the reliability of a diesel generator; perjured testimony submitted by a GPC executive during a DOL proceeding under Section 210 of the Energy Reorganization Act; repeated abuse at the Vogtle facility of Technical Specification 3.0.3; repeated willful technical specification violations at the Vogtle facility; repeated concealment of safeguards problems from the NRC; operation of radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements; routine nonconservative and questionable management practices; and retaliation by GPC against managers who make their regulatory concerns known to GPC or SONOPCO management. The supplements to the Petition of September 21 and October 1, 1990, forwarded exhibits and provided additional information regarding the alleged illegal transfer of operating licenses. Based on these allegations, Petitioners requested that the NRC institute proceedings and take swift and immediate action.

The July 8, 1991, supplement to the Petition repeated several of the earlier allegations, and also alleged that GPC's Executive Vice President made material false statements in GPC's April 1, 1991, submittal to the NRC that responded to allegations in the original Petition. The supplement also alleged that false statements had been made to the NRC by the same individual during a transcribed meeting on January 11, 1991, to discuss the formation and operation of SONOPCO. Based on these allegations, Petitioners requested the NRC to take immediate steps to determine if GPC's current management has the requisite character, competence, fundamental trustworthiness, and commitment to safety to continue operating a nuclear facility.

Several issues in the Petition were further defined and reviewed in connection with the licensing proceeding before the Atomic Safety and Licensing Board (Docket Nos. 50–424–OLA–3; 50–425–OLA–3) regarding GPC's application for license amendments to transfer operating authority of the Vogtle facility to Southern Nuclear Operating Company (SONOPCO), and proceedings before the U.S. Department of Labor (DOL) as a result of separate discrimination suites filed by Messrs. Hobby (DOL Case No. 90–ERA–30) and Mosbaugh (DOL Case Nos. 91–ERA–001 and 91–ER–A–011). Although the licensing proceeding concluded without a final Board decision when the parties settled and Mr. Mosbaugh withdrew as sole intervenor, the NRC staff has considered the evidence for the common issues in reaching decisions on the 10 CFR 2.206 Petition. The NRC staff recognizes that Mr. Mosbaugh has withdrawn his interest in the Petition. Nevertheless, the interest of Mr. Hobby in the joint Petition remains and is the purpose for the Acting Director's action to address the Petition. The decisions of the Secretary of Labor regarding the discrimination suites of Messrs. Hobby and Mosbaugh have been addressed by the NRC by means of enforcement action.

As discussed in the Director's Decision, certain concerns raised by the Petitioners are partially substantiated. Violations of regulatory requirements have occurred in the operation of the Vogtle facility. A number of violations were identified and three civil penalties have been issued to GPC for certain of these violations. The three civil penalties resulted from (1) opening a valve when it was required to be closed by the Vogtle Technical Specifications to protect against a potential ''boron dilution'' event (2) providing inaccurate and incomplete information to the NRC regarding diesel generator testing, and (3) violating 10 CFR 50.7, ''Employee Protection,'' by discriminating against Messrs. Hobby and Mosbaugh for engaging in protected activities. The NRC has issued letters to GPC and to several GPC and SONOPCO individuals reminding them of their obligations to provide information to the NRC that is complete and accurate in all material respects, and of the need to ensure a proper environment in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination. The licensee has committed to provide special training and notify the NRC before the individual who in 1990 was the Vogtle General Manager will be permitted to participate in licensed activities. As previously mentioned, Petitioner's request for proceedings has been

accomplished in large measure through the licensing transfer proceeding and through separate actions before DOL, the results of which are recognized by the NRC. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is granted.

However, it has been determined that no unauthorized transfer of the Vogtle operating licenses has 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. Additionally, based on the staff's review of extensive information available to date, including the results of relevant enforcement actions, it is concluded that none of the issues call into question the licensee's character, competence, fundamental trustworthiness, or commitment to safety in the operation of its nuclear facilities. Therefore, the Acting Director for the Office of Nuclear Reactor Regulation declines to take any further action with respect to the issues raised in the Petition. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied.

The reasons for this denial are explained in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–06), a summary of which follows this notice. The complete text of DD–97–06 is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

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

For The Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

Summary of Director's Decision Under 10 CFR 2.206

I. Introduction

This is a summary of 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 licensing 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 licensing transfer proceeding based upon a settlement agreement between Georgia Power Company (GPC or the licensee) and the sole intervenor, Mr. Mosbaugh. The final 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 licensing transfer amendment 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, 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, the final Director's Decision addresses all matters raised in the Petition, as supplemented by the hearing record.

II. Discussion

The Petitioners made a number of allegations about the management of the GPC nuclear facilities (Hatch and Vogtle). Specifically, they alleged that:

1. GPC illegally transferred its operating licenses to Southern Nuclear;
2. GPC knowingly included 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 (SAE) at Vogtle;
4. A GPC executive submitted perjured testimony during a 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 Technical Specifications (TSs) 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 Southern Nuclear management.

Mr. Mosbaugh had previously informed NRC's Office of Investigations (OI) of some of these allegations. The Petitioners requested the NRC to institute proceedings and take swift and immediate action based on these allegations. On October 23, 1990, Dr. Thomas E. Murley, who was then the Director, NRR, acknowledged receiving the Petition and concluded that no immediate action was necessary regarding these matters. He made this determination based on completed and continuing NRC inspections and investigations of the licensee and particularly of the operation of the Vogtle facility.

On July 8, 1991, the Petitioners submitted ''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:

1. GPC's Executive Vice President 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,
2. This same Executive Vice President made false statements to the NRC at a transcribed meeting on January 11, 1991, which discussed the formation and operation of Southern Nuclear.

The Petitioners requested that the NRC take immediate steps to determine if GPC's current management has the requisite character and competence to operate 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 a Director's Decision (DD).

On October 22, 1992, in response to a **Federal Register** notice of the proposed issuance of these license amendments (57 FR 47135, October 14, 1992), Messrs. Mosbaugh and Hobby filed a petition for leave to intervene and request for hearing. Mr. Hobby was denied intervenor status for lack of standing. In LBP–93–5, 37 NRC 96 (February 18, 1993), Mr. Mosbaugh was admitted as an intervenor along with a 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 bases for the admitted contention alleged that (1) the license transfers had already taken place because Southern Nuclear had assumed control of the

operation of the Vogtle facility without prior approval from the NRC, and (2) officials of the SONOPCO Project (the predecessor organization to Southern Nuclear) conspired to submit false information to the NRC concerning safety-related information regarding DG testing following the March 1990 SAE.

On April 23, 1993, the Director, NRR, issued DD–93–8, NRC 314, in which he resolved several matters. In summary, the Director determined that:

1. No unauthorized transfer of the Vogtle licenses had occurred;

2. There is no information beyond the Petitioners' opinions to support the position that GPC's omission from a description of their chain of command at a Commission meeting on March 30, 1989, was intentional;

3. GPC does not routinely threaten the safe operation of the Vogtle facility by allowing entry into TS 3.0.3;

4. Although TS violations had occurred, Petitioners' claim that they were willful was not substantiated;

5. Failures to make timely reports to the NRC of safeguards problems were due to GPC's cumbersome system for evaluating security findings, rather than being due to any willful attempt to impede the reporting process;

6. The relevant facts do not support a conclusion that GPC wilfully violated NRC requirements or wilfully operated the radioactive waste system in a manner to endanger public health and safety; and,

7. The GPC nuclear facilities were being operated in accordance with NRC regulations and do not endanger public health and safety.

Decisions on the Petitioners' issues of intentional false statements to the NRC regarding DG reliability, perjured testimony by a GPC executive in a DOL proceeding, and discrimination against managers who raised regulatory concerns were deferred pending the completion of OI investigations and the issuance of a DOL decision.

In CLI–93–15, 38 NRC 1 (July 14, 1993), the Commission vacated and remanded DD–93–8, and directed that the staff consider the outcome of the Vogtle license amendment proceeding before acting on the Petition due to the overlap in issues.

Several extensive reviews of the above concerns have been conducted by the NRC. The NRC performed special inspections, OI performed investigations, an Atomic Safety and Licensing Board (ASLB) held hearings on the contention challenging Southern Nuclear's character, and the Department of Labor (DOL) held hearings concerning alleged discrimination against Messrs. Hobby and Mosbaugh by licensee management.

Litigation concerning the contention in the license amendment proceeding was extensive and included over 35 prehearing depositions, over 12,500 pages of hearing transcripts, and nearly 600 documentary exhibits. After the hearings were completed and prior to issuance of an ASLB decision on the contention, Mr. Mosbaugh and licensee arrived at a settlement agreement that resulted in, among other things, Mr. Mosbaugh withdrawing his contention and filing a joint motion (with the licensee) requesting that the Board terminate the proceeding without issuance of a Board order setting forth its findings and conclusions. The Board granted the request and dismissed the contention (LBP–96–16, 44 NRC 59 (August 19, 1996)).

The dismissal of the contention did not address the potential safety implications of the 2.206 Petition as supplemented by the hearing record. The staff has considered the testimony of staff witnesses, including staff engineers, supervisors, and senior managers, the technical issues raised, and the staff's observations and assessments of licensee performance to resolve the issues raised by the Petition. The following is a summary of the conclusions in the Director's Decision.

A. Illegal License Transfers, and Misrepresentations of Management Control

1. Illegal License Transfers

The Petition alleged that GPC improperly transferred control of its nuclear licenses to Southern Nuclear in that Mr. Joseph M. Farley (who was an officer of GPC's parent company, Southern Company, and its subsidiary, Southern Company Services) acted as Chief Executive Officer (CEO) of SONOPCO and was responsible for operating the GPC nuclear facilities and made or influenced budget and hiring decisions, beginning with the first of three phases in the planned transition to Southern Nuclear. The Petitioners state 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.

The staff's review concluded that 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. 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.

Regarding the assertions that Mr. Farley controlled the Vogtle facility through personnel decisions, 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.

The hearing record does not support a conclusion that GPC misrepresented its budgets affecting the operation of GPC licensed facilities. There is no basis to conclude that the particular process GPC used to develop its budget showed 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.

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 of minor safety significance in terms of NRC understanding of the proposed transfers, did not mislead the NRC, and was not sufficient to warrant NRC enforcement action nor 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.

The staff has reviewed the Vogtle Final Safety Analysis Report (FSAR), the Vogtle licenses, records of an NRC Special Inspection conducted to review the SONOPCO management organization, and testimony of key officials taken under oath in the license amendment proceeding, as well as the evidence proffered by the Intervenor in the license amendment proceeding. This information established that the responsibility for decisions affecting the operation of the GPC plants rested with GPC's Senior Vice President—Nuclear Operations, who at the time was Mr. Hairston. The Petitioners' concerns do not warrant the conclusion that SONOPCO was in control. Rather, the staff finds that during the period of time in question, the chain of command was from the respective vice presidents for the Vogtle and Hatch facilities to Mr. Hairston. Mr. Hairston reported to Mr. McDonald, who reported to Mr. Dahlberg, President of GPC. Each of these individuals was an elected officer of GPC, and the reporting chain at that time progressed up to the President of GPC.

Therefore, the staff concludes that GPC did not transfer control of the operating licenses for the Vogtle facility without the prior consent of the NRC and that GPC did not mislead the NRC in any material respect regarding control of the operation of the Vogtle facility.

2. Chain of Command Misrepresentations at a Commission Meeting

The Petitioners stated that during a Commission meeting to vote on the full power operating license for Vogtle Unit 2 on March 30, 1989, GPC misled the Commission about the chain of command from the Vogtle Plant Manager to the CEO during their response to a question from one of the Commissioners.

Shortly after reading the transcript of the meeting, Mr. W.G. Hairston, on May 1, 1989, sent the NRC a letter that corrected the meeting transcript, and noted that GPC had inadvertently omitted him in the management chain in their reply to the Commissioner. The letter further stated that the organization was as described on figures 13.1.1–1 and 13.1.1–2 of the FSAR. The NRC previously had been apprised of the GPC organization, including Mr. Hairston's position, by an FSAR amendment dated November 23, 1988, and NRC staff members present at the Commission meeting were aware of the correct information. The staff has no basis to conclude that GPC's omission of the Senior VP position in their oral remarks was intentional. The staff concluded, after consultation with the Commission, that GPC's omission was not significant because the information would not likely have caused the Commission to reach a different decision regarding the Unit 2 license application. In addition, the staff had previously been provided and was aware of the correct information. Thus, enforcement action was not appropriate.

3. Misrepresentations Concerning the SONOPCO Project

The Petition asserted that GPC (Mr. McDonald) falsely stated during a transcribed meeting with the staff on January 11, 1991, that Mr. Farley had no responsibilities for administrative matters related to the SONOPCO Project. Mr. Farley claims he had been involved in SONOPCO administrative matters since the SONOPCO Project was formed in November 1988.

Based on the meeting transcript and his testimony during the ASLB hearing, Mr. McDonald's January 11, 1991, statement was not inaccurate in terms of the functions depicted on the charts discussed during the meeting. Mr. McDonald testified during the hearing that his statement was that prior to the incorporation of Southern Nuclear, Mr. Farley had been performing as a Vice President of The Southern Company, had been providing certain services to him under a contract with SCS, and had no responsibility for certain other administrative support that was depicted on organization charts discussed during the meeting. Administrative support was being performed by the Southern Company Services Vice President for Administrative Services (Mr. McCrary) for Mr. McDonald pursuant to the April 24, 1989, agreement. While Mr. McCrary provided administrative services to support Mr. Farley's role in guiding 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.

B. Reporting of DG Reliability

The Petitioners alleged that GPC made intentional false statements to the NRC about the reliability of a DG whose failure had resulted in an SAE at Vogtle. OI conducted an investigation and issued a report on December 17, 1993. Based on its evaluation of the evidence gathered by OI, and other information, the NRC staff determined that, contrary to the requirements of 10 CFR 50.9, the licensee had failed on four occasions to provide information concerning DG start counts (and the reasons for errors in those counts) to the NRC that was complete and accurate in all material respects. An examination of how the performance failures of licensee staff, supervisors and managers contributed to these errors resulted in the violations being judged by the NRC to collectively represent a very significant regulatory concern. Enforcement action was taken by the issuance of a Modified Notice of Violation and Imposition of Civil

Penalties (Notice) (EA 93–304, February 13, 1995) which characterized the violations as a Severity Level II problem. The licensee paid a $200,000 civil penalty on March 1, 1995. Corrective actions taken by licensee management have included:

1. Making the initial notice of violation available to all employees and committing to posting an NRC Order if one is issued;
2. A letter from the Senior Vice President to the Vice Presidents for Hatch and Vogtle regarding the importance of thorough record keeping during off-normal hours;
3. Counseling of specific individuals by the Senior Vice President, and the issuance of an ''Oral Reminder'' pursuant to the licensee's Positive Discipline System;
4. A letter from the Executive Vice President—Nuclear Operations to nuclear operations employees that stressed the importance of effective communications and the effective resolution of concerns;
5. Posting copies of 10 CFR 50.9 and encouraging employees to read it;
6. Meetings held by the Senior Vice President—Nuclear Operations with employees at the Hatch and Vogtle sites to discuss GPC's policy of open, complete and accurate communications with the NRC, and a letter to all employees on the same subject;
7. Management observation of communications with the NRC to ensure that the enforcement action does not adversely affect the completeness of statements; and,
8. Posting a notice to all employees of the availability of GPC's reply to the initial notice of violation.

The staff reviewed the licensee's corrective actions and concluded that the actions were sufficient.

The staff's evaluation also resulted in Demands for Information (DFIs) being issued to the licensee and six individuals who acknowledged their roles and responsibilities in the activities that were the bases for the enforcement action. The performance of the Vogtle General Manager (GM) through August 1990 contributed directly to each of the failures to meet 10 CFR 50.9. GPC and that individual acknowledged his role and responsibility in the events underlying the enforcement action and informed the staff in separate letters dated February 1, 1995, that the individual had requested, and his current employer (Southern Nuclear) had agreed to implement a personal training program to strengthen his ability to perform any future line management role in support of licensed activities. Southern Nuclear and GPC committed that the former GM would not assume a line management position for a GPC or Southern Nuclear plant unless he had satisfactorily completed training in management communications and responsibilities, and the NRC received 60 days prior written notice of the assignment. As documented in the February 13, 1995, Modified Notice of Violation and Imposition of Civil Penalties, the staff concluded that, in light of these commitments, the staff had no present concerns with the character and integrity of the individuals or the licensee arising out of these events, and no further enforcement action was necessary.

C. DOL Testimony

The Petitioners asserted that (1) GPC's Executive Vice President knowingly submitted false testimony in a DOL proceeding involving the discrimination complaints of two GPC employees and (2) that Mr. Hobby advised GPC's counsel before the DOL hearing that the proposed testimony was false and that GPC's counsel responded by advising him that the testimony would have to be changed.

The DOL case resulted in a Decision and Remand Order (Decision) by the Secretary of Labor (Secretary) on August 4, 1995. The Secretary found that GPC had discriminated against Mr. Hobby for engaging in protected activities, and 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.''

As discussed more fully below, based on the Secretary's Decision, and a similar Decision in a proceeding regarding an alleged unlawful termination of Mr. Mosbaugh's employment, the staff issued two Severity Level I Notices of Violation to GPC. The staff also issued individual letters to certain senior corporate managers admonishing them to ensure that a proper environment is maintained in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination.

D. Use of TS 3.0.3

The Petitioners asserted that GPC engaged in unsafe practices in 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, (2) GPC did not make the required notifications to the NRC when TS 3.0.3 was entered, and (3) GPC failed to recognize that the loss of a load sequencer resulted in entry into TS 3.0.3.

The staff reviewed entries into TS 3.0.3 through inspections conducted by region-based inspectors and the observations of the resident inspectors. The staff also reviewed the completed maintenance work orders performed on the load sequencers and the related surveillance tests. The staff found several instances in which 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 thus, no TS LCO applied. The surveillance test review did not reveal any examples of the load sequencers having been de-energized while in Modes 1 through 4 at the time the test was performed and thus, no TS LCOs applied. Based on its review, the staff concluded that GPC did not routinely allow the Vogtle facility to enter TS 3.0.3 by rendering both trains of safety-related load sequencers for the DGs inoperable.

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 Commission's 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 1 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. There is no requirement to notify the NRC of entries into TS 3.0.3 if a shutdown is not initiated. The 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 who will be employed by Southern Nuclear after the licenses are transferred, was unsuitable for operating a nuclear power plant.

E. Willful TS Violations

The Petitioners stated that GPC willfully and knowingly violated Vogtle Unit 1 TSs during the October 1988 refueling outage by opening boron dilution valves required to be locked closed by TSs. The Petitioners claimed that (1) the valves were opened while the coolant level in the reactor vessel was lowered to the mid-loop level, and that this placed the plant in an unanalyzed condition creating the risk of an uncontrolled boron dilution accident and an inadvertent criticality, (2) the valves were opened to expedite the outage so the plant could be placed back on line according to the schedule, and (3) the violation of TSs to stay on schedule was due, in part, to a senior management philosophy that outages must be scheduled assuming that everything goes right and that contingency or extra time is not to be included in the schedule.

After reviewing OI Report 2–90–001 and responses to four DFIs, and after an enforcement conference, the staff sent letters to the Operations Manager, the Operations Superintendent, and the Shift Supervisor stating that no actions would be taken regarding their individual NRC licenses. The staff also stated that, although their actions did not meet NRC expectations, the evidence was insufficient to support a conclusion that their actions constituted an attempt to intentionally circumvent the TSs. On December 31, 1991, after consultation with the Commission, the staff issued a Severity Level III Notice of Violation and Proposed Imposition of Civil Penalty (EA 91–141). GPC paid a $100,000 civil penalty on July 9, 1992.

With respect to the placement of the plant in a condition that could have resulted in an uncontrolled dilution event and inadvertent reactor criticality, the staff reviewed an analysis of this event that Westinghouse later performed for GPC. The staff concluded that, although the TSs in effect at the time were violated, the actual opening of the valves was of insufficient duration to create a criticality event and did not endanger public health and safety.

With respect to the Petitioners' claim that the valves were opened to expedite the outage, the staff, based on its review, did not find sufficient basis to conclude that this evolution had been performed to meet the outage schedule. The NRC did not require chemical cleaning before the utility restarted the reactor, and cleaning expended time during the outage.

On February 26, 1990, the staff found that the dilution valves identified above were required to be locked closed, but were not locked while at mid-loop as required by the TSs. The Petitioners assert that this is another example of a willful violation of TSs by Vogtle senior management. Instead of installing a mechanism to mechanically secure this valve, the licensee had placed a hold tag on the valve, which provided only administrative control to preclude valve operation. GPC subsequently agreed that this method was unacceptable and took action to install a mechanical locking device. On April 26, 1990, the 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'' (Severity Level IV). The staff concluded that, although a violation occurred, the error in TS interpretation was not an example of a willful violation of TSs by Vogtle senior management. Thus, there is no basis to conclude that GPC willfully and knowingly violated the TSs.

F. Safeguards Problems

The Petitioners alleged that (1) 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 reporting requirements, (2) the GPC Vice President made false statements to the NRC during an Enforcement Conference about the status of safeguards materials, and that the false statements probably influenced a subsequent civil penalty action taken by the NRC, (3) on July 23, 1990, plant and SONOPCO senior management prevented the Site Security Manager from making a notification within 1 hour as required by 10 CFR 73.71, and (4) the manager was prevented from making the call in order to delay or defuse the NRC's knowledge of programmatic problems on the part of the licensee regarding the handling of safeguards documents.

OI investigated the allegation that GPC knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with mandatory reporting requirements. OI also investigated the allegation that the GPC Vice President made false statements to the NRC in an Enforcement Conference concerning the status of safeguards material. The investigations did not substantiate that GPC withheld pertinent information from the NRC at the time of the Enforcement Conference or that GPC management impeded the reporting of safeguards events. On the basis of the OI investigations, the staff concluded that the Severity Level II violation and $50,000 civil penalty issued by the staff on June 27, 1990, for failing to properly secure safeguards information was appropriate for the volume and content of the safeguards information involved. GPC paid the civil penalty on July 27, 1990.

OI also investigated the allegation that plant and SONOPCO senior management prevented the Site Security Manager from making notifications within 1 hour as required by 10 CFR 73.71 in two instances. After reviewing OI's investigation results, the staff concluded that both of the failures to make timely reports were due to the GPC's cumbersome system for evaluating corporate security findings through the site security organization, rather than due to any willful attempt to impede the reporting process.

G. Operation of Radioactive Waste Systems

The Petitioners asserted that GPC endangered public health and safety by operating a temporary radioactive waste system known to be in gross violation of NRC requirements. The Petitioners also state that Vogtle's General Manager (GM) had intimidated the members of the Plant Review Board (PRB) when they attempted to consider if the use of the waste system should be resumed.

An NRC Special Inspection Team reviewed these items and discussed its findings in Supplement 1 to Inspection Report 50–424,425/90–19, dated November 1, 1991. The licensee's operation of the radwaste systems was found to be acceptable. The inspection team concluded that although the system was originally installed without an adequate safety evaluation and did not meet regulatory guidance, the subsequent safety evaluations were acceptable for the system's use. One issue was identified in the inspection report as warranting further review by the licensee under the provisions of 10 CFR 50.59.

Regarding the assertion that the GM had intimidated PRB members, the inspection team found one case where a voting PRB member felt intimidated and feared retribution because the GM was present at the meeting. The staff concluded that the allegation was substantiated. However, the PRB member stated that he did not change his vote in response to GM pressure, and the GM subsequently met with the PRB members to allay their fears. Since the level of intimidation perceived by the PRB member was insufficient to have any affect on the PRB member's safety decision, and the GM subsequently addressed the intimidation concern with the PRB, further regulatory action based on this event was not warranted.

H. GPC Statement On Management Participation in a Telephone Call

The Intervenor contended that GPC, in their April 1, 1991, response to the Petition, intentionally tried to conceal the participation of the Senior VP—Nuclear Operations in an April 19, 1990, conference call regarding a Licensee Event Report (LER).

The Senior VP participated in one of at least two conference calls known to have taken place on April 19, 1990, before the LER was issued that same day. However, there is no evidence that the GPC corporate official who signed the April 1, 1991, Petition response (the GPC Executive Vice President) was aware of the fact that the Senior VP had participated in one of the April 19 conference calls. The staff review of a transcript of Mr. Mosbaugh's surreptitiously recorded audio tape of the calls, that was admitted as evidence in the licensing proceeding, shows that the Senior VP joined one call after decisions were made on how to convey the DG start count information in the LER, and the Senior VP did not participate in a second conference call that finalized the LER language. The staff has determined that there is insufficient basis to conclude that GPC, in their April 1, 1991, response to the Petition, intentionally tried to conceal the participation of the Senior VP—Nuclear Operations in an April 19, 1990, conference call regarding the preparation of the LER.

I. Management Retaliation

The Petition alleged that GPC retaliated against managers who made their regulatory concerns known to GPC or SONOPCO management.

As noted previously, in 1990, Messrs. Hobby and Mosbaugh each filed a complaint with DOL alleging, in part, that their employment terminations constituted unlawful discrimination against them for engaging in protected activities (i.e., expressing safety concerns). The Secretary found that the terminations of employment resulted from unlawful discrimination by senior licensee management personnel. The NRC reviewed the Secretary's decisions and determined that violations of 10 CFR 50.7, (Employee Protection) had occurred. Two Severity Level I Notices of Violation were issued to the licensee as provided for by the NRC's Enforcement Policy. Although the NRC took no enforcement actions directly against the individuals involved, the NRC did issue letters to several senior management personnel to emphasize that harassment, intimidation and discrimination against licensee employees for engaging in protected activities is unacceptable.

GPC corrective actions included emphasizing to employees that they are encouraged to raise safety concerns and that harassment, intimidation and discrimination against employees for raising those concerns is contrary to a strongly supported management policy prohibiting such retaliatory measures. Licensee corporate management communicated this message in writing, and at special meetings with site employees to focus on this concern.

The staff concludes that the significant enforcement action by the NRC, in addition to ASLB hearing activities and the DOL Orders, is likely to sensitize licensee management to the seriousness of problems of this nature and ensure a proper environment in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination.

J. Management Practices

The Petitioners stated that GPC routinely used nonconservative and questionable management practices at its nuclear facilities. Examples provided by the Petitioner include the improper use of TS 3.0.3 (see D. above), willful TS violations (see E. above), safeguards problems (see F. above), and operation of a radioactive waste system known to be in violation of NRC requirements (see G. above). To address the Petitioners' general characterization of licensee management practices as being nonconservative and questionable, NRC witnesses, including staff engineers, supervisors, and senior managers provided testimony during the ASLB proceeding on several technical issues in addition to observations and assessments of GPC's performance from several perspectives.

The staff concluded that GPC's performance problems were not sufficient to establish that Southern Nuclear (and the GPC employees who will work for that company if the transfers were granted) lack the requisite character to be a licensee. The staff cited GPC's overall performance in keeping the NRC informed of DG post-repair and trouble shooting activities, GPC's technical competence in addressing those matters and the efforts of the GPC Senior Vice President—Nuclear Operations to keep the NRC informed of errors as GPC became aware of them.

In a letter, dated December 23, 1996, Southern Nuclear and GPC iterated their 1995 commitment that the former GM would not assume a line management position for a GPC or Southern Nuclear plant unless he had satisfactorily completed training in management communications and responsibilities, and the NRC received 60 days prior written notice of the assignment. The staff has relied on this commitment in evaluating the proposed transfers. A condition has been included in the Order authorizing these license transfers that the staff will receive 60 days prior written notice of the licensee's intent to assign the individual to a line management position at Vogtle.

The staff has concluded that, although significant violations were identified against GPC in the past, corrective actions have been implemented. There has been no showing that Southern Nuclear or GPC (including the GPC employees who will work for Southern Nuclear if the transfers were granted) lacks the requisite character to be a licensee. In light of the various regulatory actions that have already been taken by the NRC on issues raised in the Petition, including the Order provision regarding the former Vogtle General Manager, and corrective actions taken by the licensee, no further action is necessary.

III. Conclusion

As summarized 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. 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 NRC in conjunction with the license transfers. To this extent, the Petitioners' request

for action pursuant to 10 CFR 2.206 has been granted.

On the basis of the NRC staff's review and the record of the Vogtle license transfer amendment proceeding, I conclude that no unauthorized transfer of the Vogtle or Hatch 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, 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 if the proposed license transfer is authorized) lack the requisite character and integrity to be an NRC licensee as required by section 182 of the Atomic Energy Act, 42 U.S.C 2232, and 10 CFR 50.80. Thus, there is no basis upon which to grant Petitioners' request that the operation of the facility be modified, suspended or revoked.

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 allegation 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 and the licensee, 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 complete 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.

[FR Doc. 97–7317 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22569; 812–10524]

Nations Fund Trust et al.; Notice of Application

March 17, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Nations Funds Trust (''NFT''), Nations Fund, Inc. (''NFI''), NationsBanc Advisors, Inc. (''NBAI''), The Pilot Funds (''Pilot''), and Boatmen's Trust Company (''Boatmen's'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order under section 17(b) for an exemption from section 17(a) to permit certain series of NFT and NFI to acquire all of the assets and assume all of the stated liabilities of certain series of Pilot. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on February 13, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: NFT, NFI, NBAI, and Boatmen's One NationsBank Plaza, Charlotte, North Carolina 28255; Pilot, 3435 Stelzer Road, Columbus, Ohio, 43219.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Staff Attorney, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. NFT, a Massachusetts business trust, is registered under the Act as an open-end management investment company. NFT currently consists of thirty-two series, seven of which are the subject of this application: Nations Strategic Fixed Income Fund, Nations Disciplined Equity Fund, Nations Value Fund, Nations Intermediate Municipal Bond Fund, Nation Short-Intermediate Government Fund, Nations Tax Exempt Fund, and Nations Municipal Income Fund. NFI, A Maryland corporation, is registered under the Act as an open-end management investment company. Three of NFI's existing five series and three shell funds are the subject of this application: Nations Equity Income Fund, Nations Prime Fund, Nations Treasury Fund, Nations Small Company Growth Fund (shell), Nations U.S. Government Bond Fund (shell), and Nations International Growth Fund (shell) (collectively, these thirteen funds are referred to as the ''Acquiring Funds'').

2. Pilot, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Pilot currently offers fourteen series: Pilot Diversified Bond Income Fund, Pilot Equity Income Fund, Pilot Growth Fund, Pilot Growth and Income Fund, Pilot Intermediate Municipal Bond Fund, Pilot Intermediate U.S. Government Securities Fund, Pilot International Equity Fund, Pilot Missouri Short-Term Tax-Exempt Fund, Pilot Municipal Bond Fund, Pilot Municipal Bond Fund, Pilot Short-Term U.S. Treasury Fund, Pilot Small Capitalization Equity Fund, Pilot U.S. Government Securities Fund, Pilot Short-Term Diversified Assets Fund, and Pilot Short-Term Tax-Exempt Diversified Fund (collectively, the ''Acquired Funds'').

3. The investment objectives of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund.

4. NBAI is the investment adviser to the operating Acquiring Funds. NBAI is