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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

95 AUG 30 P3:09

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF SECRETARY  
DOCKETING & SERVICE

Charles Bechhoefer, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

_____	)	
In the Matter of	)	
	)	
GEORGIA INSTITUTE	)	
OF TECHNOLOGY	)	Docket No. 50-160-Ren
	)	ASLBP NO. 95-704-01-Ren
Atlanta, Georgia	)	
	)	
Georgia Tech Research	)	
Reactor	)	
	)	
Renewal of License No. R-97	)	

GEORGIA INSTITUTE OF TECHNOLOGY'S STATEMENT  
AS TO ISSUE OF MOOTNESS OF CONTENTION 5

Licensee Georgia Institute of Technology ("Georgia Tech") files this Statement as to the Issue of the Mootness of Consideration 5, as to whether that Contention was rendered moot by the Memorandum and Order of the Commission dated July 26, 1995, CLI-95-10, 42 NRC \_\_\_\_.

In compliance with the Board's Memorandum and Order dated August 1, 1995, counsel for Georgia Tech and counsel for GANE met to discuss the effect of the Commission's July 26, 1995 Order on GANE's Contention 5. Counsel agreed that as to the question of the nuclear reactor and the uranium fuel, Georgia Tech's decision to remove the fuel prior to the Olympics and to have no fuel on site during the Olympics resolved GANE's

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concerns. GANE is apparently satisfied with Georgia Tech's decision in this regard.

Counsel for GANE, however, believes that the scope of Contention 5 can be broadened so as to the Board authority to determine issues regarding the storage of cobalt on the Georgia Tech campus. GANE voiced its intent to rely on 42 U.S.C. § 2021 which concerns cooperation agreements between States and the Commission "with respect to the regulation of byproducts, source, and special nuclear materials." GANE ignores, however, that Contention 5, as phrased by GANE itself in its Petition to Intervene, is expressly restricted to the Research Reactor. As GANE well knows, it must be so restricted because this matter is before this Board on Georgia Tech's application for renewal of its reactor license. This Board is without authority to expand its administrative oversight to issues which do not in any way relate to the renewal of Georgia Tech's reactor license.

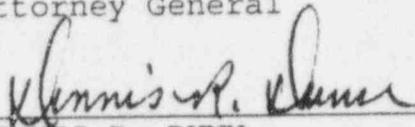
The Staff, in its Response to the Request for Hearing on the Conversion Order filed by GANE (Response filed in Docket No. 50-160-OM on July 26, 1995), has thoroughly briefed the "the long-standing principle[] that (a) the issues in an enforcement proceeding may properly be limited to those set forth in the order . . . ." (Staff's Response, at 9.) The Staff cites Bellotti v. NCR, 725 F.2d 1380, 1381 (D.C. Cir. 1982) for the proposition that the governing statute cannot be read so broadly as implicate all issues that may be raised concerning the facility in question. (Id. at 10.) The issues which GANE is attempting to inject into this proceeding do not

even relate to the "facility in question." This Board should reject this attempt to inject totally collateral issues into this proceeding and should find that GANE's Contention 5 has been rendered moot.

For the above reasons, Georgia Tech respectfully requests this Board to reverse its Order with respect to the admissibility of Contention 5.

Respectfully submitted,

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GEORGIA INSTITUTE OF TECHNOLOGY'S  
CERTIFICATE OF SERVICE

I do hereby certify that copies of the foregoing Georgia Tech's Statement as to Issue of Mootness of Contention 5 have been served upon the following persons by U.S. Mail, except as otherwise noted and in accordance with the requirement of 10 C.F.R. Sec. 2.712:

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This 28<sup>th</sup> day of August, 1995.

*Patricia Guilday*  
\_\_\_\_\_  
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