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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Shirley Ann Jackson<sup>1</sup>

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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In the Matter of )  
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GEORGIA INSTITUTE )  
OF TECHNOLOGY )  
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(Georgia Tech Research Reactor) )  
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(Renewal of License No. R.97) )  
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1 SERVED OCT 12 1995

Docket No. 50-160-Ren

MEMORANDUM AND ORDER

CLI-95-12

I. Introduction

This proceeding concerns an application by the Georgia Institute of Technology (Georgia Tech) to renew the license for the Georgia Tech Research Reactor (GTRR). In LBP-95-6, 41 NRC 281 (1995), the Atomic Safety and Licensing Board granted a request by the Georgians Against Nuclear Energy (GANE) for intervention and admitted 2 contentions. Pursuant to 10 C.F.R. § 2.714a, Georgia Tech and the NRC staff appealed the Board's decision. On appeal, Georgia Tech argues that GANE lacks standing, and both Georgia Tech and the NRC staff contest the 2 admitted contentions. In a previous order, the Commission remanded one of the contentions to the Board. CLI-95-10, 42 NRC

<sup>1</sup> This decision was made by Chairman Jackson under delegated authority, as authorized by NRC Reorganization Plan No. 1 of 1980, after consultation with Commissioner Rogers. Commissioner Rogers has stated his agreement with this decision.

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1 (1995). The Commission now affirms LBP-95-6 in all other respects.

## II. Background

On September 26, 1994, the NRC staff published in the Federal Register a notice of opportunity for hearing on a license renewal application filed by Georgia Tech.<sup>2</sup> The renewal would extend by 20 years Georgia Tech's license to operate the GTRR, located on Georgia Tech's campus in Atlanta. GANE filed its initial petition for leave to intervene on October 26, 1994.<sup>3</sup> In a Memorandum and Order dated November 23, 1994, the Licensing Board found that GANE had not demonstrated standing, but pursuant to 10 C.F.R. § 2.714(a)(3), provided GANE an opportunity to amend its petition, and scheduled a prehearing conference. GANE timely filed an amended petition on December 30, 1994.<sup>4</sup> Attached were the affidavits of 44 individuals, claiming health and safety concerns about the GTRR, and stating their interest in having GANE represent them. The affidavits contained the individuals' home and work addresses, and the distances from the addresses to

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<sup>2</sup> "Georgia Institute of Technology; Consideration of Application for Renewal of Facility License," 59 Fed. Reg. 49,088 (Sept. 26, 1994).

<sup>3</sup> See Georgians Against Nuclear Energy Petition for Leave to Intervene in Consideration of Application for Renewal of Facility License ("Petition") (Oct. 26, 1994).

<sup>4</sup> Amended Petition for Leave to Intervene in Consideration of Application for Renewal of Facility License ("Amended Petition") (Dec. 30, 1994).

the reactor site. The Amended Petition also set forth GANE's 10 contentions.

Because none of the affiants claimed membership in GANE, the Licensing Board conducted a telephone conference call to inquire whether any of the 44 individuals were GANE members. In the conference call, GANE representative Ms. Glenn Carroll informed the Board that several of the individuals indeed were members. The Board then authorized GANE to supplement its Amended Petition to identify the organization members. GANE in response filed a supplemental affidavit of Mr. Robert Johnson, who affirmed his membership in GANE, and attached a copy of his application for membership.<sup>5</sup> Both Georgia Tech and the NRC staff opposed GANE's intervention on the grounds that GANE lacked standing to intervene and failed to submit an admissible contention.

In LBP-95-6, the Licensing Board agreed with GANE that its standing could rest on the interests of member Mr. Robert Johnson, who works approximately 1/2 mile from the reactor, and believes his "life and health are jeopardized" by the reactor's continued operation.<sup>6</sup> The Board reasoned that Mr. Johnson works within sufficient proximity of the reactor that he can be presumed to be affected by operation of the facility. 41 NRC at 287. In addition, the Board found sufficient for standing the statement of GANE's representative, Ms. Glenn Carroll, that she

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<sup>5</sup> Georgians Against Nuclear Energy Supplemental Affidavit of Robert Johnson Affirming Membership in GANE (Jan. 13, 1995).

<sup>6</sup> Affidavit, Robert Johnson, at 1, attached to GANE's Amended Petition.

drives by the reactor "a couple of times a day." 41 NRC at 289 n.5.

The Board also admitted 2 of GANE's 10 submitted contentions. One admitted contention challenges the GTRR's security (Contention 5), and the other alleges that management problems at the GTRR render the facility unsafe (Contention 9). The Board found the security contention admissible, on the ground that even if the existing GTRR security plan complies with Commission regulations, regulatory authority exists to temporarily modify the security plan to account for special circumstances -- in this case, security enhancements alleged necessary for the 1996 summer Olympic Games in Atlanta. 41 NRC at 291-96. The Board also found GANE's management contention admissible, because it raised pertinent material questions about the GTRR's director and current management organization. 41 NRC at 295-99. The Board found GANE's other eight contentions inadmissible. 41 NRC at 299-308.

Georgia Tech and the NRC staff appealed the Licensing Board's decision. Georgia Tech also requested the Commission to stay discovery pending the appeal. The NRC staff joined in the request for a stay. On June 9, 1995, the Commission issued a temporary stay of discovery on GANE's security contention.<sup>7</sup> A month later, in July, the Commission vacated the Licensing Board's original ruling on the admissibility of the security contention (Contention 5), and remanded that contention to the

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<sup>7</sup> Order Issuing Housekeeping Stay (June 9, 1995).

Board for reconsideration in the light of the new facts. CLI-95-10, 42 NRC 1 (1995). The Commission also lifted as unnecessary the earlier-imposed temporary stay of discovery on the security contention. The Commission now addresses the other issues, GANE's standing and its management contention, which remain pending on appeal from LBP-95-6.

### III. Analysis

#### A. GANE's Standing

Under section 189a of the Atomic Energy Act (AEA), the Commission must grant a hearing upon the request of any person "whose interest may be affected by the proceeding." 42 U.S.C. § 2239(a). To determine whether a petitioner has alleged a sufficient interest to intervene, the Commission has long applied judicial concepts of standing. Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant), CLI-93-21, 38 NRC 87, 92 (1993) (Perry). For standing, the petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision. See generally Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2136 (1992); Perry, 38 NRC at 92. Injury may be actual or threatened. Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir. 1995); Wilderness Soc'y v. Griles, 824 F.2d 4, 11 (D.C. Cir. 1987). To evaluate a petitioner's standing, we construe the petition in favor of the petitioner. See Kelley v. Selin, 42 F.3d at 1508.

An organization may base its standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members. Warth v. Seldin, 422 U.S. 490, 511 (1975); Houston Lighting & Power Co. (South Texas, Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979). To derive standing from a member, the organization must demonstrate that the individual member has standing to participate, and has authorized the organization to represent his or her interests. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1979).

At the heart of the arguments on standing in this case are the parties' estimations of the geographic area that could be affected by an accidental release of radiation from the Georgia Tech reactor. Georgia Tech submits that even a worst case accident at the reactor, as depicted in the GTRR's Safety Analysis Report (SAR), cannot affect public health and safety beyond a 100 meter radius.<sup>8</sup> Georgia Tech therefore argues that Mr. Johnson and Ms. Carroll are beyond the "zone of danger" for the GTRR.<sup>9</sup> GANE, on the other hand, believes that a serious accident at the GTRR could result in radiation escaping the containment building and dispersing at least 1/2 mile, to "where

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<sup>8</sup> Georgia Tech's Notice of Appeal from the ASLB's Memorandum and Order dated April 26, 1995 (Georgia Tech Appeal Brief) at 8 (May 11, 1995).

<sup>9</sup> See id. at 8-11.

[GANE member] Rob Johnson works ....[i]f the wind's blowing in that direction."<sup>10</sup>

The Licensing Board concluded that Mr. Robert Johnson, whose office is approximately 1/2 mile from the reactor site, "works close enough to the GTRR to be presumed to be affected by operation of the facility." 41 NRC at 287. The Board also found that GANE's standing alternatively could be derived from GANE representative Ms. Glenn Carroll, who drives by the reactor "a couple of times a day." Id. at 289 n.5.

Unless there has been a clear misapplication of the facts or law, the Licensing Board's judgment that a party has established standing is entitled to substantial deference. Gulf States Utils. Co. (River Bend Station, Unit 1), 40 NRC 43, 47-48 (1994). "[W]e are not inclined to disturb a Licensing Board's conclusion that the requisite affected interest ... has been established unless it appears that conclusion is irrational." Portland General Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-273, 1 NRC 492, 494 (1975).<sup>11</sup>

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<sup>10</sup> Georgia Tech Research Reactor Prehearing Conference Transcript at 89 (January 31-February 2, 1995) ("Transcript"); see also Transcript at 81, 82, 105, 108. Only Georgia Tech raises standing on appeal. The NRC staff does not.

<sup>11</sup> Quoting Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973), aff'd on other grounds, CLI-73-12, 6 AEC 241 (1973), aff'd sub nom. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974). See also Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); cf. Virginia Elec. and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 n.5 (1979).

The Licensing Board's judgment that GANE has shown sufficient interest for standing is reasonable. A presumption of standing based on geographic proximity may be applied in cases involving non-power reactors where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for off-site consequences. See Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994) (SFC); Armed Forces Radiobiology Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153-54 (1982) (AFRI); Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43 n.1, 45 (1990). Cf. Lujan v. Defenders of Wildlife, 112 S.Ct. at 2142-43 n.7. Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source. See SFC, 40 NRC at 75 n.22; AFRI, 16 NRC at 153-54.

Here, for threshold standing purposes, the Board found it neither "extravagant" nor "a stretch of the imagination" to presume that some injury, "which wouldn't have to be very great," could occur within 1/2 mile of the research reactor.<sup>12</sup> The Board noted that Georgia Tech's own Safety Analysis Report (SAR) describes accident scenarios in which noble gases could be dispersed beyond the reactor site. 41 NRC at 287. Under questioning by the Board, the GTRR's director conceded that noble

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<sup>12</sup> Transcript at 10.



gases would escape the steel containment building if the reactor core melted.<sup>13</sup> Georgia Tech stresses that such hypothetical scenarios described in the SAR are simply "incredible" because they would first require 3 independent redundant safety systems to fail.<sup>14</sup> The Board, however, was not convinced that a combined failure of 3 systems altogether strains credibility. The Board's view is not "irrational". See Gulf States Utils. Co., 40 NRC at 47-48. At the threshold standing stage, the Commission will not disturb the Board's presumption that some injury could occur within a 1/2 mile radius of the reactor.<sup>15</sup> \_

Alternatively, the Licensing Board reasonably held that GANE's standing can be based on Ms. Glenn Carroll, a GANE member who daily "drives by" the reactor.<sup>16</sup> See Virginia Elec. and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 (1979) (recreational canoeing in vicinity of plant sufficient for standing); Northern States Power Co. (Pathfinder

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<sup>13</sup> Transcript at 22-23.

<sup>14</sup> Transcript at 23-24; Georgia Tech Appeal Brief at 8-9.

<sup>15</sup> Georgia Tech argues that Mr. Johnson joined GANE too late -- i.e., after GANE's request for a hearing -- to serve as the source of GANE's standing. But, as the Board found, there is ample evidence that GANE considered Mr. Johnson a member, and that Mr. Johnson actively participated in GANE affairs, prior to GANE's request for a hearing. See 41 NRC at 288-89. By contrast, there is no evidence that GANE contrived Mr. Johnson's membership merely to sustain standing. The Commission declines to rest its standing determination on the technicality of when he signed his membership card. Cf. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 649 (1979).

<sup>16</sup> Transcript at 35.

Atomic Plant), LBP-90-3, 31 NRC 40, 45 (1990) (regular commute once or twice a week past plant site to be decommissioned found sufficient to establish requisite interest that petitioner might be affected by decommissioning). Ms. Carroll's commute presumably brings her even closer to the reactor site than 1/2 mile. Like Mr. Johnson, Ms. Carroll can be presumed to frequent regularly a geographic area potentially at some risk of radiation releases, and therefore to have a personal stake in the license renewal proceeding.

#### **B. GANE's Management Contention**

A petitioner for intervention must proffer at least one admissible contention. See 10 C.F.R. §§ 2.714(b)(2) and (d)(2). A contention must include a specific statement of the issue of law or fact to be raised or controverted, a brief explanation of the bases of the contention, and a concise statement of the alleged facts or expert opinion that support the contention, together with references to those specific sources and documents on which the petitioner intends to rely to prove the contention. Additionally, the petitioner must present sufficient information to show a genuine dispute with the applicant on a material issue of law or fact. Proffered contentions must fall within the scope of the issues set forth in the notice of the proposed licensing action. See Public Serv. Co. of New Hampshire (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

An intervenor need not, however, prove its case at the contention stage. The factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form, nor be of the quality necessary to withstand a summary disposition motion.<sup>17</sup> What is required is a "minimal showing" that material facts are in dispute, indicating that a further inquiry is appropriate.<sup>18</sup>

The Licensing Board admitted only 2 of the 10 contentions proffered by GANE. One admitted contention (Contention 5) alleges deficient physical security at the GTRR. New facts received after the Board's decision may have rendered this contention moot. The Commission therefore has remanded the security contention to the Board for reconsideration. See CLI-95-10, 42 NRC 1 (1995).

The only contention remaining before us, Contention 9, alleges that management problems at the GTRR are so great that public safety cannot be assured. Specifically, GANE alleges that:

- 1) The Commission in the late 1980s shut down the reactor for safety reasons following a cadmium-115 contamination incident that arose from poor management. The same management is still in place.
- 2) The current director of the GTRR is the same director who in 1987 withheld information from the NRC about the cadmium-115 contamination incident.

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<sup>17</sup> Gulf States Utilities (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994); Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 1989).

<sup>18</sup> Id.

3) A safety officer who advised the NRC of the cadmium incident was later demoted and left the GTRR claiming harassment.

4) Since the cadmium incident, the GTRR has been restructured. The restructuring has increased the authority of the director over the Office of Radiation Safety.

5) Although the GTRR safety officer can report directly to individuals with higher authority than the director, he may be reluctant to do so because he works for the director and "the threat of reprisal would be a huge disincentive to defying the director."

Amended Petition at 10; see also Petition at 5.

GANE's central concern appears to be that there is a need to restructure the GTRR's management to make radiation safety personnel "independent" of the director, and to ensure independent oversight over the director's office.<sup>19</sup> GANE believes that the GTRR director withheld safety-related information from the NRC, and was responsible for alleged retaliation against radiation safety personnel who reported the cadmium-115 contamination incident to the NRC in the late 1980s. GANE alleges that management changes after the 1987 incident further "consolidat[ed] the power under the harasser,"<sup>20</sup> making it less likely that radiation safety personnel would feel free to report safety concerns. GANE also questions the effectiveness of the Nuclear Safeguards Committee, a committee of 12 safety experts tasked with monitoring the GTRR's operations.<sup>21</sup> Because the GTRR's management is now "being put forth again to be re-

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<sup>19</sup> Transcript at 365.

<sup>20</sup> Id. at 399.

<sup>21</sup> See id. at 349-350, 396-97.

okayed," GANE requests that the current structure not be reapproved.<sup>22</sup>

In accepting the contention, the Board noted that GANE had presented evidence of a serious incident in 1987, allegedly involving the GTRR's current director, and that simply because the NRC staff had been satisfied with the resolution of the incident, a party is not precluded from now raising the adequacy of the reactor's management, particularly when this is the first time a member of the public could seek to adjudicate the management issue. See 41 NRC at 297.

Both Georgia Tech and the NRC staff stress on appeal that GANE has failed to demonstrate any problem with the GTRR's current management, and at best points only to a 1987 incident that was long ago investigated and resolved to the NRC staff's satisfaction.<sup>23</sup> The staff rejects any link between the cited 1987 cadmium-115 incident and a license renewal to authorize future operations.<sup>24</sup> Staff explains that the cadmium incident resulted in an exhaustive review by the NRC Office of Investigations (OI), and that by November of 1988, the NRC staff had determined that the licensee had corrected any major

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<sup>22</sup> See id. at 398.

<sup>23</sup> See Georgia Tech Appeal Brief at 16-18; NRC Staff's Petition for Commission Review and Appeal of the Atomic Safety and Licensing Board's Prehearing Conference Order of April 26, 1995 (Staff Appeal Brief) at 26-28 (May 11, 1995).

<sup>24</sup> Staff Appeal Brief at 29.

deficiencies and should be permitted to restart.<sup>25</sup> Staff thus concludes that GANE "must show ... something in recent history which would give you a reason to think that the plant is not being operated safely or may not be expected to operate safely in the future."<sup>26</sup> Georgia Tech argues that because "[t]he Commission has approved the current management, and as long as the GTRR continues to operate within the regulations, the Board has no basis upon which to act."<sup>27</sup> Both parties also claim that, having admitted the contention despite a lack of factual basis, the Board now improperly has allowed GANE discovery to attempt to uncover a basis for the contention.<sup>28</sup>

At the outset, the Commission rejects Georgia Tech's broad claim that a license renewal proceeding is per se an inappropriate forum in which to raise management allegations. As part of its licensing and oversight responsibilities, the Commission may consider the adequacy of a licensee's corporate organization and the integrity of its management.<sup>29</sup> When relevant, the Commission has evaluated whether a licensee's management displays the "climate," "attitude," and "leadership"

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<sup>25</sup> Transcript at 373.

<sup>26</sup> Id. 377.

<sup>27</sup> Georgia Tech Appeal Brief at 2.

<sup>28</sup> See Staff Appeal Brief at 29-32; Georgia Tech Appeal Brief at 17-18.

<sup>29</sup> See Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 30 (1993) (Vogtle).

expected.<sup>30</sup> In determining whether to grant a license (or, by logical extension, to renew a license), the Commission makes what is in effect predictive findings about the qualifications of an applicant.<sup>31</sup> The past performance of management may help indicate whether a licensee will comply with agency standards.<sup>32</sup> When a licensee files a license renewal application, it represents "an appropriate occasion for apprais[ing]...the entire past performance of [the] licensee."<sup>33</sup> Of course, the past performance must bear on the licensing action currently under review.

Moreover, the NRC staff conclusion in 1988 that Georgia Tech had corrected all deficiencies and could be permitted to restart operations is not itself enough to preclude GANE from raising questions about the GTRR's management, particularly in the absence of any clear prior opportunity for GANE to pursue claims at a hearing. A staff conclusion alone does not defeat the right to litigate a contention. Gulf States Utilities Co. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 52 (1994).

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<sup>30</sup> Vogle, CLI-93-16, 38 NRC at 31; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1137, (TMI), aff'd sub nom. In re Three Mile Island Alert, Inc., 771 F.2d 720 (3d Cir. 1985), cert. denied, 475 U.S. 1082 (1986).

<sup>31</sup> See Vogle, CLI-93-16; 38 NRC at 31.

<sup>32</sup> See id. at 31; Hamlin Testing Laboratories, Inc., 2 AEC 428, 428 (1964) (Hamlin), aff'd sub nom. Hamlin Testing Laboratories v. AEC, 357 F.2d 632 (6th Cir. 1966).

<sup>33</sup> Hamlin, 2 AEC at 428.

Allegations of management improprieties or poor "integrity," of course, must be of more than historical interest: they must relate directly to the proposed licensing action.<sup>34</sup> Accordingly, this proceeding cannot be a forum to litigate whether Georgia Tech made mistakes in the past, but must focus on whether the GTRR as presently organized and staffed can provide reasonable assurance of candor and willingness to follow NRC regulations.

Here, while the question is a close one, the Commission declines to disturb the Board's finding that GANE's management allegations are relevant to the proposed license renewal. This is a proceeding to extend a license for twenty years. GANE seeks assurance that the facility's current management encourages a safety-conscious attitude, and provides an environment in which employees feel they can freely voice safety concerns. GANE's allegations bear directly on the Commission's ability to find reasonable assurance that the GTRR facility can be safely operated. If GANE can prove that the GTRR's current management either is unfit or structured unacceptably, it would be cause to deny the license renewal or condition renewal upon modifications.

Contrary to suggestions by Georgia Tech and the NRC staff, this is not a case where the Licensing Board simply relied on a

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<sup>34</sup> See, e.g., Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978) (whether Detroit Edison violated Commission regulations in the past not within scope of proceeding on adding new owners); TMI, CLI-85-9, 21 NRC at 1128 (1985) (personnel changes mooted the significance in restart proceedings of leak rate falsifications from 6 years before).



years-ago incident to allow GANE an opportunity to uncover additional information through discovery. Although the Board expressed some concern about GANE's ability to have obtained documents that may have "buttress[ed]" the contention, the Board clearly found the information GANE actually submitted, as clarified and further detailed in the prehearing conference, a sufficient basis for the contention.<sup>35</sup> The Board's view of the contention is reasonable.

GANE's allegations may well turn out to lack any factual substance, and if so, they will not survive summary disposition. But as required by the Commission's contention rule, GANE at this stage has presented "alleged facts or expert opinion"<sup>36</sup> and made a "minimal showing" that material facts about the GTRR's management organization are in dispute and that further inquiry may be appropriate. GANE refers not just to the 1987 cadmium incident, but also to the NRC inspection and investigation reports on the incident, the GTRR's own Safety Analysis Report in support of its license renewal request, newspaper articles, and, significantly, to at least one expert witness in support of the contention.

Although the cadmium-115 incident that GANE highlights is far from recent, it was a significant Severity Level III violation that resulted in 2 immediately effective suspension orders, an NRC investigation, an enforcement conference, and a

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<sup>35</sup> See LBP-95-6, 41 NRC at 297-98.

<sup>36</sup> See 10 C.F.R. §2.714(b)(2).

civil penalty,<sup>37</sup> and ultimately was attributed to management failures that "could have resulted in very serious safety consequences."<sup>38</sup> The incident involved allegations of harassment and reprisals by Georgia Tech management against employees who reported safety concerns to the NRC. These allegations led to an extensive NRC Office of Investigations (OI) review that proved inconclusive.<sup>39</sup> GANE takes the view that the management problems leading to the 1987 incident remain and indeed have been exacerbated by more recent changes in the GTRR management structure.

The 1987 incident is not one in which all of the principal individuals alleged to have played a role have since left the facility or moved to positions unassociated with day-to-day operations. Compare TMI, CLI-85-9, 21 NRC at 1128 (personnel changes diminished significance of violations alleged to have

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<sup>37</sup> See Georgia Institute of Technology, Order Modifying License, Effective Immediately, 53 Fed. Reg. 2663 (Jan. 29, 1988); Georgia Institute of Technology, Confirmatory Order Modifying License, Effective Immediately, 53 Fed. Reg. 9718 (Mar. 24, 1988); NRC Office of Investigation Report No. 2-88-003; Enforcement Action 88-32.

<sup>38</sup> See Letter to Dr. J.P. Crecine, President, Georgia Tech, from Malcolm Ernst, Acting Regional Administrator, NRC, at 3 (Nov. 15, 1988).

<sup>39</sup> OI did, however, conclude that one of the reasons two health physics technicians were fired was "specifically related to [their] discussing or reporting potential health and safety concerns with [the] NRC." NRC Office of Investigations Report No. 2-88-003 at 6. The report also characterized the general GTRR environment as conducive to potential reprisals, and in a severe state of disharmony due to poor management at all levels. See Letter to J.P. Crecine, President, Georgia Tech, from Malcolm Ernst, Acting Regional Administrator, NRC, at 2-3 (November 15, 1988).

occurred 6 years before). The GTRR director at the time of the 1987-88 events continues as the facility's director, responsible for ensuring the safe day-to-day operation of the reactor.<sup>40</sup> GANE alleges that the reactor operator responsible for the cadmium incident also remains at the facility.<sup>41</sup>

In light of what GANE calls the "public history" of alleged reprisals against employees who report safety issues,<sup>42</sup> GANE's contention particularly raises questions about the appropriateness of having the manager of the Office of Radiation Safety work under and directly report to the GTRR director, an arrangement depicted in the management hierarchy chart found in the GTRR's SAR. GANE points to this chart on the facility's management organization as indicative of the need for "checks and balances" to ensure that radiation safety personnel will not hesitate to report safety concerns.

GANE also concludes, based on the GTRR SAR, that the director's office lacks sufficient independent oversight, and indeed now receives less independent review than at the time prior to the cadmium incident. Although select officers other

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<sup>40</sup> See Safety Analysis Report for the 5 MW Georgia Tech Research Reactor (SAR) at 156 (April, 1994).

<sup>41</sup> See Transcript at 339 (citing January 1994 "Alternatives" magazine article).

<sup>42</sup> Transcript at 343-44, 346-47. GANE believes that the current director was personally responsible for reprisals against the individual who allegedly reported the 1987 contamination incident. GANE bases its belief upon a November 1987 newspaper article in the Atlanta Journal-Constitution, entitled "Radiation expert resigns to protest changes at the Neely Nuclear Research Center." Transcript at 342.

than the director -- Georgia Tech's President, and the Vice President for Interdisciplinary Affairs, for example -- have authority to shut down the reactor, GANE claims these individuals may either lack (1) the nuclear physics expertise or (2) sufficient day to day knowledge of ongoing reactor affairs to recognize a need to shut down operations or take other corrective action.<sup>43</sup>

To support its position that the GTRR's current management setup is inappropriate, GANE seeks to call as a witness an individual with the Environmental Protection Division of Georgia (EPD), who informed GANE that the EPD had strongly objected to the GTRR's management changes.<sup>44</sup> GANE asserts that the EPD "may have expressed problems with [the changes] and may have been overruled by the NRC, who I think ultimately did sanction these changes."<sup>45</sup> In addition, GANE informed the Board that it gleaned information about problems associated with the management changes from an anonymous "expert" witness who once worked for the GTRR director, but resigned after being demoted, allegedly in

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<sup>43</sup> Id. at 395-96; 398. The NRC staff in a recent Board Notification (95-15) advises that effective October 1, 1995, the position of the Vice President for Interdisciplinary Affairs was replaced with the position of the Dean of the College of Engineering. The Licensing Board has requested the parties to comment on whether this organizational change has any significant effect upon Contention 9. See Memorandum and Order (Effect of Organizational Changes on Contention 9) (Sept. 26, 1995). We leave to the Licensing Board the task of assessing the significance of this change.

<sup>44</sup> Transcript at 342-43; 367.

<sup>45</sup> Id. at 343.

retaliation for protesting his position being made "unindependent."<sup>46</sup> GANE also relies upon magazine articles on the GTRR, including one article that refers to the current manager of the GTRR Office of Radiation Safety as "confirm[ing] that the setup which has his department under the control of the director is unusual."<sup>47</sup>

In response, Georgia Tech stresses the oversight role of the Nuclear Safeguards Committee, comprised of 12 independent safety experts charged with reviewing and approving all safety matters.<sup>48</sup> The Licensing Board, however, surmised that the descriptions in the SAR (cited by GANE) depict the Nuclear Safeguards Committee and the various officers tasked with overseeing the director as "appear[ing] to exercise ... audit-type functions, as claimed by GANE (Tr. 349), rather than day-to-day operational functions." LBP-95-6, 41 NRC at 296. GANE notes from the SAR that one of the Nuclear Safeguards Committee's chief functions is to review "reportable occurrences."<sup>49</sup> GANE,

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<sup>46</sup> Transcript at 353-54. GANE does not wish to unveil this person but hopes that he will of his own accord overcome his "fear to come out and discuss these issues about the reactor." After being informed by the Board that this individual could be subpoenaed, GANE told the Board to disregard this potential witness as a basis for the contention because he had not consented to making his knowledge public. Transcript at 365.

<sup>47</sup> "Checking Out the Hottest Spot on Campus," Creative Loafing at 28 (Dec. 17, 1994). As evidence of recent problems at the GTRR, GANE refers to one inspection report provided by the NRC staff on a 1994 violation. See Transcript at 329, 336, 338 (referring to Inspection Report 50-160/94-01).

<sup>48</sup> Georgia Tech Appeal Brief at 16.

<sup>49</sup> See SAR at 158.

though, fears the Nuclear Safeguards Committee will not be able to provide adequate independent oversight if "reportable occurrences" are not reported to it.<sup>50</sup>

In sum, the Commission declines to second-guess the Licensing Board's decision that GANE satisfied the minimum threshold for showing that material facts about the current GTRR management are in dispute. GANE has raised questions about the appropriateness and effect of an alleged "consolidation" of authority by the GTRR director over the office of radiation safety, and the adequacy of independent oversight over the director's office. Whether the present GTRR management's structure and staffing satisfy all Commission requirements and provide reasonable assurance that any past failings are unlikely to be repeated are matters left for the Licensing Board's consideration when the merits of the dispute are reached, either on summary disposition or after a hearing.

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<sup>50</sup> Transcript at 349-350.

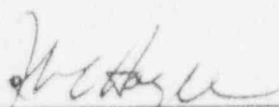
#### IV. Conclusion

For the reasons stated in this decision, the appeals by Georgia Tech and the NRC staff are denied, and the Licensing Board's order in LBP-95-6 is affirmed.

It is so ORDERED.



For the Commission

  
\_\_\_\_\_  
John C. Hoyle  
Secretary of the Commission

Dated at Rockville, Maryland  
this 12 day of October, 1995.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA INSTITUTE OF TECHNOLOGY  
ATLANTA, GEORGIA

Docket No.(s) 50-160-REN

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION M&O (CLI-95-12) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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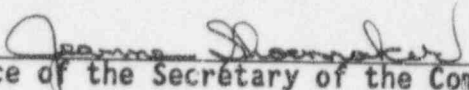
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Docket No.(s)50-160-REN  
COMMISSION M&O (CLI-95-12)

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Dated at Rockville, Md. this  
12 day of October 1995

  
Office of the Secretary of the Commission