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LBP-95-23 DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'95 NOV 22 P3:08

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

SERVED NOV 22 1995

In the Matter of  
  
GEORGIA INSTITUTE OF  
TECHNOLOGY,  
Atlanta, Georgia  
  
Georgia Tech Research Reactor  
  
(Order Modifying Facility  
Operating License No. R-97)

Docket No. 50-160-OM  
  
ASIPD No. 95-710-01-OM  
  
November 22, 1995

MEMORANDUM AND ORDER  
(Denial of Petition for Leave To Intervene)

1. Background. This proceeding involves the conversion of fuel used in the Georgia Tech Research Reactor from High Enriched Uranium (HEU) fuel to Low Enriched Uranium (LEU) fuel, in accordance with the requirements of 10 C.F.R. § 50.64 and an Order issued by the NRC Staff on June 16, 1995. As set forth in our Memorandum and Order (Intervention Petition), dated July 31, 1995, LBP-95-14, 42 NRC 5, a timely petition for leave to intervene was filed by Georgians Against Nuclear Energy (GANE). In LBP-95-14, we stated that GANE is permitted by 10 C.F.R. § 2.714(b)(1) to amend its petition to intervene with respect both to its standing and to file a contention. We permitted GANE to

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file its amended petition by August 21, 1995 and set a schedule for responses by Georgia Institute of Technology (Georgia Tech or Licensee) and the NRC Staff.

GANE timely filed its amended petition on August 21, 1995.<sup>1</sup> Georgia Tech and the NRC Staff each filed responses opposing GANE's petition.<sup>2</sup> We held a prehearing conference to consider the petition on November 15, 1995 in Atlanta, Georgia.<sup>3</sup>

As recently reiterated by the Commission, acceptance of a petition for leave to intervene (such as that submitted here by GANE) requires that the petitioner demonstrate that it has an interest in the proceeding--i.e., standing--and that it proffer at least one admissible contention. CLI-95-12, 42 NRC \_\_ (October 12, 1995), at 5, 10 (slip op.) Georgia Tech and the Staff challenge GANE's petition in both respects. We turn here to these questions.

2. Standing. Under § 189a. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a), the Commission must grant a hearing to any person whose interest may be

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<sup>1</sup>Georgians Against Nuclear Energy Amended Petition for Leave to Intervene, dated August 21, 1995.

<sup>2</sup>Georgia Institute of Technology's Response to GANE's Amended Petition for Leave to Intervene, dated August 28, 1995; NRC Staff's Response to Amended Petition for Leave to Intervene on Conversion Order Filed by Georgians Against Nuclear Energy, dated September 11, 1995.

<sup>3</sup>See Notice of Prehearing Conferences, dated October 24, 1995, published at 60 Fed. Reg. 55287 (October 30, 1995).

affected by a proceeding. To establish standing, an organization such as GANE may rely on the interest of a member; GANE has elected to rely on the interest of one of its members, Mr. Robert Johnson.

In LBP-95-14, we discussed a proceeding in which GANE was also a participant where the Licensing Board held that, where there are two ongoing proceedings involving the same reactor, an intervenor in the first proceeding need not reiterate its statement of standing in the second proceeding but may instead rely on its standing in the earlier proceeding. LBP-95-14, 42 NRC at 7 (1995), citing Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-91-33, 34 NRC 138, 141 (1991). We ruled that we would accept GANE's statement of standing in the ongoing license-renewal proceeding as satisfying standing requirements in this proceeding, as long as Mr. Johnson, the member upon whom GANE based its standing in both proceedings, indicated that he also wished to be represented by GANE in this proceeding.<sup>4</sup> (In its amended petition, GANE stated only that it "represents" Mr. Johnson in this proceeding.)

Mr. Johnson appeared at the prehearing conference and affirmed that he wishes GANE to represent his interests in this proceeding as well as the license-renewal proceeding

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<sup>4</sup>The Commission has upheld our ruling on standing in the license-renewal proceeding. CLI-95-12, 42 NRC \_\_\_\_, \_\_\_\_, (October 12, 1995) (slip op at 5-10).

(Tr. 4-5). His workplace, less than a mile from the reactor, permits us to presume that he may be affected by the results of this proceeding. That being so, we hold that GANE has established its standing to participate in this proceeding.

3. Contention. In its amended petition, GANE stated that it agrees that the change from HEU to LEU fuel, as directed by the Staff Order, is beneficial. It commends Georgia Tech for undertaking the conversion. Its sole contention is that the reactor core must be properly reconfigured prior to using the LEU fuel, an operation that (according to GANE) would cost "several million dollars." GANE adds that, "[i]n lieu of a straight-forward, albeit expensive, approach to conversion, Georgia Tech has submitted various theories and paper proofs that the reactor as currently configured will operate, and operate safely, by inserting extra LEU into the reactor."<sup>5</sup>

The Licensee terms this contention "vague and difficult to interpret" and opposes its admission as lacking information called for by 10 C.F.R. §§ 2.714(b) and (d)-- namely, a brief explanation of the contention, a concise statement of the alleged facts or expert opinion supportive of such contention, or sufficient information to show that a

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<sup>5</sup>GANE amended petition, at 2.

genuine dispute exists on a material issue of law or fact."<sup>6</sup> For its part, the Staff claims that GANE has not satisfied the long-standing basis requirement for contentions. According to the Staff, GANE questions whether the Licensee has sufficient information at this time to support continued use of the current reactor configuration with the LEU fuel, but does not provide any reason to believe the reactor configuration authorized by the Conversion Order is unsafe.

The Staff further discusses Section 2.15 of the Safety Evaluation Report (SER), which GANE references for its claim that the "startup testing program" is experimental and information gained from the program will be needed to provide basic information on the acceptability of the existing core configuration. The Staff claims that GANE has misinterpreted the SER by failing to recognize that the startup report is not the source of the Staff's analysis and only will be used to verify calculations predicted by past experience at other converted reactors and by applicable safety design analyses. (The SER, inter alia, referenced analyses of the Oak Ridge Research Reactor.) At the prehearing conference, the Staff indicated that the initial calculations of core configuration (performed in the 1960's or 70's) could not be located so that Georgia Tech and the

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<sup>6</sup>Licensee's Response to GANE's Amended Petition, at 2-3 (pages not in fact numbered).

Staff performed new analyses of core configuration, based both on the parameters of this reactor and comparisons with other reactors (Tr. 19-22).

GANE indicated at the prehearing conference that it earlier believed it had expert support for its claim that the core should be reconfigured. However, it also acknowledged that the expert was not willing to appear for GANE and, in any event, the expertise would not have qualified the individual to testify on this claim. As GANE's representative conceded, "basically I had all of my eggs in one basket and it turned out he wasn't an expert." (Tr. 11).

In these circumstances, having provided GANE an extra opportunity to perfect its contention (and GANE having failed to identify the source of its claim in its amended petition), we indicated at the conference (Tr. 25, 30) that GANE had failed to proffer an admissible contention and, accordingly, its petition for leave to intervene would have to be rejected. The Staff can thus order Georgia Tech to substitute LEU fuel for HEU fuel--subject, of course, to Georgia Tech's agreement in the license-renewal proceeding that it will not bring LEU fuel to the site until after the conclusion of the 1996 Summer Olympic Games.

4. Order. For the reasons stated, and based on the entire record of this proceeding, it is, this 22nd day of November, 1995



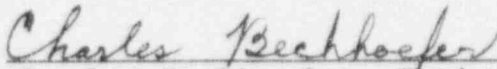
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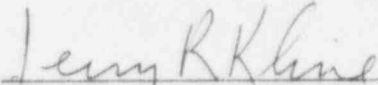
1. The petition for leave to intervene filed by Georgians Against Nuclear Energy, dated July 6, 1995, and supplemented by the amended petition dated August 21, 1995, is hereby denied.

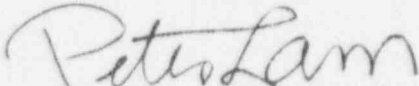
2. This Order is effective immediately and will constitute the final order of the Commission in this proceeding, subject to appeal to the Commission under 10 C.F.R. § 2.714a.

3. This Order denying an intervention petition is appealable to the Commission pursuant to 10 C.F.R. § 2.714a. Such appeal must be filed within 10 days of service of this Order and shall be asserted by filing a notice of appeal and accompanying supporting brief.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

  
Dr. Jerry R. Kline  
ADMINISTRATIVE JUDGE

  
Dr. Peter S. Lam  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 22, 1995

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA INSTITUTE OF TECHNOLOGY  
ATLANTA, GEORGIA  
(Georgia Tech Research Reactor  
Facility Operating License No. R-97)

Docket No.(s) 50-160-0M

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM & ORDER (NSP-95-23) 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.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Jerry R. Kline  
Atomic Safety and Licensing Board  
Mail Stop T-3 F 23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Sherwin E. Turk, Esq.  
Office of the General Counsel  
Mail Stop 0-15 B 18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Randy A. Nordin, Esq.  
Georgia Institute of Technology  
400 10th Street, N.W.  
Atlanta, GA 30332

Administrative Judge  
Charles Bechhoefer, Chairman  
Atomic Safety and Licensing Board  
Mail Stop T-3 F 23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Peter S. Lam  
Atomic Safety and Licensing Board  
Mail Stop T-3 F 23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Glenn Carroll  
139 Kings Highway  
Decatur, GA 30030

Patricia Guilday, Esq.  
Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square SW  
Atlanta, GA 30334




Docket No.(s)50-160-0M  
MEMORANDUM & ORDER (LBP-95-23)

Glenn Carroll  
Georgians Against Nuclear Energy  
P.O. Box 8574  
Atlanta, GA 30306

Pamela Blockey-O'Brien  
D23 Golden Valley  
Douglasville, GA 30134

Dated at Rockville, Md. this  
22 day of November 1995

  
Office of the Secretary of the Commission