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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

'95 NOV 29 P2:47

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

1 SERVED NOV 29 1995

In the Matter of

GEORGIA INSTITUTE OF
TECHNOLOGY,
Atlanta, Georgia

Georgia Tech Research Reactor

(Renewal of Facility License
No. R-97)

Docket No. 50-160-Ren

ASLBP No. 95-704-01-Ren

November 29, 1995

SECOND PREHEARING CONFERENCE ORDER
(Further Schedules for Proceeding)

On November 15, 1995, the Atomic Safety and Licensing Board conducted a prehearing conference in Atlanta, Georgia.¹ The conference was called to determine future discovery schedules for the proceeding following the Commission's recent decision in CLI-95-12, 42 NRC ___ (October 12, 1995). (The Commission therein had affirmed our decision in LBP-95-6, 41 NRC 281 (1995), granting a hearing to Georgians Against Nuclear Energy (GANE).) At the conference, we also preliminarily dealt with a late-filed contention of GANE. Participating were the Georgia

¹The conference was announced by Notice of Prehearing Conferences, dated October 24, 1995, published at 60 Fed. Reg. 55287 (October 30, 1995).

DOA

Institute of Technology (Georgia Tech or Applicant), GANE and the NRC Staff.

1. Discovery. Discovery in this proceeding commenced with our Memorandum and Order (Schedules for Proceeding), dated May 10, 1995, where we authorized discovery to begin on the two admitted contentions, notwithstanding the request of Georgia Tech and the NRC Staff to defer discovery pending their appeals to the Commission of LBP-95-6. By Order dated June 9, 1995, the Commission granted a housekeeping stay of discovery covering one of the two contentions (Contention 5, concerning security during the 1996 Olympic Games) but not the other (Contention 9, concerning management).

On June 5, 1995, GANE and the Staff each filed discovery requests, with GANE seeking discovery against both the Staff and the Applicant and the Staff seeking discovery against GANE. Georgia Tech filed no discovery requests. On July 7, 1995, GANE and the Staff each timely responded to the outstanding discovery requests. Georgia Tech merely filed a response, on July 12, 1995, stating that it interpreted the housekeeping stay as relieving it of any responsibility to respond to GANE's discovery until a further order was issued by the Commission.

Subsequently, the Commission remanded the security contention to us to determine whether it was moot. CLI-95-10, 42 NRC 1 (July 26, 1995). In LBP-95-19, 42 NRC ____ (October 31, 1995), we determined that the security

contention was indeed moot, insofar as we had authority to consider it.

GANE filed no motion to compel discovery on the management contention against Georgia Tech until November 10, 1995 (after we had scheduled the November 15, 1995 prehearing conference). In that motion, GANE sought discovery by December 1, 1995.

At the prehearing conference, we considered discovery for the remainder of the proceeding on the management contention. Because Georgia Tech had not previously sought any discovery, or responded to GANE's discovery request, we questioned whether Georgia Tech had not waived its right to discovery on this contention and hence should be granted no further discovery (Tr. 488-89). We also raised the question whether Georgia Tech was in default on its discovery responses or whether GANE should be granted further discovery against Georgia Tech in view of its failure (until very recently, well beyond the time established by 10 C.F.R. § 2.740(f)) to file a motion to compel against Georgia Tech (Tr. 488).

Georgia Tech explained its failure to respond to GANE's discovery on Contention 9 on the ground that there was no way to ascertain whether GANE's inquiries were directed at the management or security contentions (Tr. 489). Georgia Tech also advised that, when it received the Commission decision in CLI-95-12, it immediately began to prepare

responses to GANE's discovery requests and that it could easily comply by December 1, 1995, the date included in GANE's motion to compel (Tr. 489-90). (Georgia Tech noted that it would object to the scope of some of GANE's discovery requests.)

Finally, GANE stated that it had been granted access to a large number of Georgia Tech documents, although it pointed to the high cost of obtaining copies (\$.25/page) (Tr. 484). Georgia Tech advised in this regard that no charge would be imposed for GANE's looking at the documents, only for reproduction (Tr. 525).²

The Board determined that both GANE and Georgia Tech may have made a few technical mistakes with respect to discovery, but that it was in the public interest to allow full discovery by the parties so that a better and more-complete decisional record can be provided. We therefore ruled that the parties could have additional discovery as outlined below. Based on Georgia Tech's representation (Tr. 489-90), we assume that Georgia Tech will respond (or object) to GANE's discovery by December 1, 1995 (the date set forth in GANE's motion to compel) and accordingly will not rule formally on GANE's motion to compel (Tr. 493).

²We observed that, after identifying documents, GANE could request copies of those in NRC's possession for \$.09/page (see 10 C.F.R. § 9.35(a)(1)) plus mailing charges. The Staff confirmed that copies could be obtained in this manner from the Washington, D.C. Public Document Room and sent to GANE (Tr. 510-11).

The Staff pointed out that many of GANE's responses to Staff interrogatories required supplementation--i.e., identification of witnesses and/or documents to be relied upon. GANE acknowledged that it would supplement as required. In this regard, it stated that it would subpoena at least one witness: Mr. Robert Boyd, former Radiation Safety Officer at Georgia Tech (Tr. 496). GANE also indicated that it may have other witnesses (Tr. 497). The Board set Friday, December 15, 1995, for GANE's filing of its first supplement to its responses to Staff interrogatories (Tr. 514-15, 522).

As for Georgia Tech's discovery, the Applicant indicated that it was seeking the same types of information as the Staff--the identification of witnesses and documents; and that, based on copies it received of GANE's supplementary responses to the Staff, it could file a motion to compel if it needed further responses (Tr. 513, 515). As we observed, however, such motion would have to be limited to the subject matter of the Staff's inquiries (Tr. 517).

After discussion with all parties, the Board set February 1, 1996, as the date for ending all discovery, including depositions (Tr. 529). Any changes to any of the foregoing dates will require Licensing Board approval.

2. Summary Disposition. Based on GANE's identification of at least one witness, whom it deemed an expert witness (Tr. 500), together with other potential fact

or expert witnesses, the Board inquired whether the parties wished to waive their rights to file motions for summary disposition. The parties were undecided at this time (Tr. 538-39) but agreed to advise the Board by Friday, January 12, 1996 (following their receipt of supplementary responses from GANE), whether they planned to file motions for summary disposition (Tr. 542).

3. Prefiled Testimony. The Board advised the parties that, in general, for licensing cases such as this one, direct testimony is required to be filed in written form, at least 15 days in advance of the session of the hearing at which the testimony is to be presented. 10 C.F.R. § 2.743(b)(1). (Tr. 530.) At the hearing, such testimony is then bound into the record as if read, subject to correction of last-minute changes or typographical errors. Witnesses may also be asked orally to summarize their prefiled testimony. Parties may bring extra copies of testimony to pass out to members of the public who are attending the hearing.

Witnesses would then be subject to oral cross-examination on their prefiled testimony (Tr. 565). Parties may be required to furnish cross-examination plans, to the Board only, not to other parties or the public (Tr. 568).

The Board has authority to modify the prefiled testimony requirement, upon request of a party, and likely would do so for persons such as hostile or uncooperative

witnesses who are being subpoenaed. Tr. 536, 569-70. The Board indicated that at a later date, after determining whether summary disposition motions were to be entertained, it would set a date for filing prefiled testimony (Tr. 559, 561).

4. Limited Appearance Session. The Board noted that, if there were a hearing, it would hold another oral limited-appearance session (Tr. 506, 533-34).

5. Late-filed Contention. On November 10, 1995, GANE filed what it characterized as an "additional contention" concerning security of the reactor.³ The contention appeared to reiterate some of the security concerns that had initially been included in proposed Contention 5 but which had been rejected as lacking basis.⁴ In addition, it referenced a recent security incident. GANE stated in its filing that the security incident was to become the subject of a television program and that GANE would submit a videotape of the program at a later date. At the conference, GANE also described the recent incident as having management implications and thus potentially could be

³The Licensing Board received a telefax of this contention prior to its departure to Atlanta for this prehearing conference, but it had not received the hard-copy version (which included an attachment not attached to the telefax version) prior to the conference.

⁴As noted earlier, the portion of Contention 5 that we earlier had admitted has become moot. LBP-95-19, supra.

of some relevance to the existing management contention (Tr. 520).

As filed, the contention did not discuss the five factors that we must address in considering a late-filed contention. See 10 C.F.R. § 2.714(a)(1)(i-v). That being so, we advised GANE that it was unlikely that we could accept the contention in its present form (Tr. 554-55). We advised the Staff and the Applicant that they would not need to answer the contention in its present form, and we dismissed it without prejudice to its being refiled with a discussion of the five late-filed factors (Tr. 555-56, 557-58).

6. Removal of Fuel. The Staff and the Applicant noted that Georgia Tech planned to shut down the reactor by November 17, 1995, to allow the fuel to cool prior to its being removed in approximately February 1996. In response to an inquiry from GANE, the Applicant advised that it would inform the Staff but not the public of the progress of fuel removal (Tr. 578). The Staff opined that the schedule for cask removal was not appropriately a matter of public record (Tr. 578). The Board requested that the parties and the Board be notified when the fuel removal was complete (Tr. 579-80).

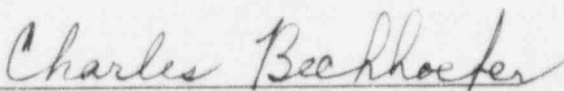
7. Commission Action on Cobalt-60. The Staff noted that GANE had filed an "appeal" to the Commission with respect to the on-site Cobalt-60, as to which we previously

held (in LBP-95-19) that we lack jurisdiction. The Staff, after discussion with GANE, clarified that GANE was not appealing our jurisdictional order but rather was seeking Commission action with respect to that material. Tr. 576-77. The Staff indicated that it would not respond to GANE's request as an appellate matter but rather, if requested by the Commission, would advise whether it is appropriate for the Commission to assert jurisdiction over the Cobalt-60.

* * *

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Md.
November 29, 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 SECOND PREHEARING CONF ORDER 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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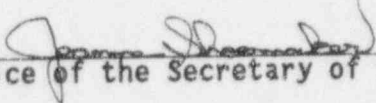
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Docket No.(s)50-160-REN
SECOND PREHEARING CONF ORDER

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


Office of the Secretary of the Commission