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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION TO COMPEL THE FILING
OF COMPLETE AND PROPER RESPONSES BY
GEORGIANS AGAINST NUCLEAR ENERGY
TO THE STAFF'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR THE PRODUCTION OF DOCUMENTS

Pursuant to 10 C.F.R. § 2.740(f), the NRC Staff (Staff) hereby requests that the Atomic Safety and Licensing Board (Licensing Board) compel the filing of complete and proper responses by Georgians Against Nuclear Energy (GANE) to the Staff's discovery requests filed on June 5, 1995.¹ As more fully set forth below, the Staff submits that many of GANE's responses to the Staff's discovery requests are incomplete and evasive, as set forth in 10 C.F.R. § 2.740(f), and that more complete and proper responses are required in order for discovery to close and for this proceeding to move forward. In support of this request, the Staff states as follows.

¹ "NRC Staff's First Set of Interrogatories and Request for the Production of Documents to Georgians Against Nuclear Energy" ("Discovery Request"), dated June 5, 1995.

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INTRODUCTION

On June 5, 1995, the Staff filed a single set of interrogatories and document requests, seeking to discover the bases for GANE's contentions in this proceeding, and to discover the facts, documents and persons which GANE expected to rely upon in evidentiary hearings in this matter. Those requests included twenty (20) requests for information concerning GANE's management contention (Contention 5), as well as other requests concerning GANE's security contention (Contention 9, subsequently dismissed).

GANE filed its initial responses to the Staff's discovery requests on July 7, 1995, in which it indicated that many of its answers were as yet incomplete.² At a prehearing conference held on November 15, 1995, the Licensing Board directed, in part, that supplemental responses to the Staff's discovery requests be filed by GANE on or before December 15, 1995;³ this deadline was subsequently extended until January 5, 1996.⁴ On January 11, 1996 (one week after it was required to do so), GANE filed its supplemental responses to the Staff's discovery requests.⁵ However, notwithstanding

² "Georgians Against Nuclear Energy Response to NRC Interrogatories and Request for Production of Documents," dated July 7, 1995 ("Initial Response").

³ See "Second Prehearing Conference Order (Further Schedules for Proceeding)," dated November 29, 1995, at 5, *citing* Tr. 514-15, 522.

⁴ On December 22, 1996, GANE filed an unopposed motion for an extension of time in which to file its supplemental discovery responses, which the Licensing Board granted on January 2, 1996 -- providing an extension of time until January 5, 1996, for the filing of GANE's supplemental discovery responses.

⁵ "Georgians Against Nuclear Energy Updated Responses to NRC Interrogatories and Request for Production of Documents and Responses to Georgia Tech's Discovery Requests," dated January 11, 1996 ("Supplemental Response"). GANE included in this filing its responses to the discovery requests which had been filed by the Licensee, Georgia Institute of Technology (*Id.* at 29-34).

GANE's supplementation of its responses, those responses continue to be deficient in certain respects, for the following reasons.

DISCUSSION

A. Failure to Respond Under Oath or Affirmation by Person With Knowledge.

Pursuant to 10 C.F.R. § 2.740b(b), each of the Staff's interrogatories was to be answered "separately and fully in writing *under oath or affirmation*, unless it is objected to." Further, the rule requires that the answers "shall be signed by the person making them." These requirements were reiterated in the Staff's discovery requests (Request, at 1). While Glenn Carroll signed GANE's initial and supplemental discovery responses, she did so as the "Representative for GANE" -- and she failed to sign the responses under oath or affirmation as is required by the Commission's regulations. Thus, it is not clear that Glenn Carroll, herself, has provided the information set out in response to the discovery requests or whether other persons formulated those answers and provided the information to Ms. Carroll for filing, which she then submitted without personal knowledge of the information or expertise to provide the opinions stated.

Until it is clear that the interrogatory answers have been signed by the person who prepared those answers, discovery cannot proceed. Further, until GANE's discovery responses are signed under oath or affirmation, those responses cannot properly be used in an evidentiary hearing. GANE's failure to comply with these requirements is especially important in connection with the numerous statements of opinions set forth in its discovery responses, as to which it is impossible to determine whether those statements are made by experts or were intended to be proffered as expert opinion.

B. Failure to Provide Documents for Inspection or Copying.

Many of the Staff's discovery requests sought to identify the documents upon which GANE intends to rely in this proceeding, and requested that GANE "produce for inspection and copying" the requested documents (Request, at 1). Indeed, the Staff's discovery requests specifically provided that GANE may provide the original documents in GANE's possession, which the Staff would then copy and return to GANE (*Id.* at 2). These requests are in accordance with the procedures for document discovery set forth in 10 C.F.R. § 2.741(a); that regulation specifically provides that a party may request another party to produce documents in its possession, custody or control, and to allow the requesting party to inspect and copy those documents.

Notwithstanding these requirements, GANE's response to each of the Staff's requests for the production of documents was to state repeatedly that GANE could not afford the cost of copying documents for other parties.⁶ While GANE identified numerous documents (or broad categories of documents) upon which it intends to rely, it failed to produce documents or to indicate which documents it has in its possession that might be copied by the Staff.

To be sure, the Staff has in its possession or can readily obtain all of the NRC inspection reports and correspondence between the NRC and the Licensee that were identified by GANE; however, the Staff does not have possession of the numerous other, non-NRC documents or the broadly-described categories of documents (such as Licensee personnel records or unspecified records related to named individuals) which GANE

⁶ See, e.g., Supplemental Response at 23 (Interrogatory 27), 25 (Interrogatories 31 and 32), and 27 (Interrogatory 36).

identified, nor can the Staff readily identify the documents which GANE referred to only generically or by broad category.⁷ Further, where GANE has identified only broad categories of documents, it is impossible for the Staff to determine the identity of the documents referred to by GANE.

Accordingly, as to each of the documents referred to by GANE in its responses, which GANE has in its possession, custody or control, GANE should be required to produce those documents to the Staff for its inspection and copying. Further, where GANE has identified only broad categories of documents (*e.g.*, personnel records and records relating to named individuals, as set forth in n.6, *supra*), GANE should be required to specifically identify and produce those documents. Finally, where GANE is

⁷ Documents identified by GANE which are not in the Staff's possession include a Technique magazine article (Supplemental Response at 7); an unidentified letter from R.M. Boyd (*Id.* at 8); numerous sets of minutes and correspondence of the Licensee's Nuclear Safeguards Committee (NSC) (*Id.* at 8-19, 22, and 29); the resumes and "authorizations" of NSC members and a list of former NSC members (*Id.* at 22); personnel files of various categories of licensee employees (*Id.*); correspondence and memoranda involving licensee personnel, including Dr. Karam, E.F. Cobb, and the NSC (*Id.* at 10, 22, 23 and 29); unidentified "documents relating to criteria for [NSC]" and "list of all persons who formerly served on the [NSC]" (*Id.* at 22); unidentified "correspondence concerning JC O'Hara resignation" (*Id.* at 23); and unidentified "documents related to Rebecca Long" (*Id.*).

Documents which were identified only by broad category include some of the above documents (*e.g.*, Licensee personnel files, "correspondence concerning JC O'Hara" and "documents related to Rebecca Long"), as well as other documents identified in GANE's Initial Response only by category, which GANE was then waiting to receive from the Licensee. These include such materials as "documents relating to Cobalt-60 water accident" (Initial Response at 3); "audit reports relating to safety matters and management matters" (*Id.*); "records relating to AGN-201 reactor and fuel elements" (*Id.*); "documents relating to firing of Steve Millspaugh and Paul Sharpe" (*Id.*); "communication with fire authorities" (*Id.*); and "reactor logs, cobalt-60 logs, cesium logs" (*Id.*).

unable to produce various documents for inspection and copying because the documents are not in GANE's possession, custody or control, GANE should be required to identify where they are located and the identity of the person having custody of those documents, in accordance with 10 C.F.R. § 2.740(b)(1).⁸

C. Failure to Provide Complete and Proper Responses to Specific Interrogatories

GANE's supplemental responses to the Staff's discovery requests fail to provide proper and complete responses to a number of the Staff's interrogatories, which sought to discover information "with respect to GANE Contention 9 and each of the [recited] contentions or assertions" made in Contention 9 (Staff Request at 12).⁹ Accordingly,

⁸ See Definitions E, F and G ("Identify") in the Staff's Discovery Requests, at 5-6.

⁹ The Staff's Discovery Request set forth each of the allegations in Contention 9 as Items (a) - (h), as follows (Staff Request at 13-14):

GANE's Assertions (Contention 9):

- (a) "Management problems at the GTRR are so great that safety for the public cannot be assured."
- (b) "Safety concerns at the Georgia Tech reactor are the sole responsibility of Dr. R. A. Karam."
- (c) "Dr. Karam is the director who withheld information about a serious accident from the NRC (1987 cadmium-115 accident)."
- (d) "The NRC was advised of the 1987 cadmium-115 accident by the safety officer at that time, who was later demoted, and left the GTRR operation claiming harassment."
- (e) "Since the incident, management has been restructured giving the director (Dr. Karam) increased authority, including increased authority over the Manager of the Office of Radiation Safety."

(continued...)

the Staff requests that GANE be compelled to provide complete and proper responses to these interrogatories, for the reasons set forth below.

Interrogatory 22.

Identify all persons with knowledge of the facts underlying GANE's contention or assertion.

In response to this interrogatory, GANE provided what it described as "a partial list" of the persons whom it asserts have knowledge of the facts (Supplemental Response at 20). While GANE further stated that the Licensee has failed to provide its personnel files to GANE, it is unclear whether GANE has provided the names of all persons who are presently known to GANE to have knowledge of the facts, or whether it is aware of other persons as well, at this time -- regardless of whether other names may become known to GANE upon its review of the Licensee's personnel files. Further, GANE has failed to properly identify the 23 persons named in its discovery response, in that it has not provided their last known addresses, business addresses, employers, positions, areas of responsibility, and relationship to GANE.¹⁰ Thus, even as to the persons named by

⁹(...continued)

- (f) "Although the safety officer has a line to higher-ups than the director, since he/she works for the director on a day-to-day basis, the threat of reprisal would be a huge disincentive to defying the director."
- (g) "The Nuclear Safeguards Committee which has theoretical oversight of the GTRR operations has a distinct flaw in having no concern with health issues."
- (h) "The Office of Radiation Safety Manager is sought for its knowledge of law more than its knowledge of health physics."

¹⁰ See Definition E, "Identify," in the Staff's Discovery Request, at 5.

GANE, insufficient information has been provided to permit the Staff to discover, by subpoena or otherwise, the specific information allegedly known by these persons.

Interrogatory 23.

Identify any person GANE presently intends to call as a witness in this proceeding to testify regarding the contention or assertion. If GANE expects to call any such person as an expert witness, state the subject matter on which the person is expected to testify, state the substance of the facts and opinions as to which the person is expected to testify, and provide a summary of the grounds for each opinion.

In response to this interrogatory, GANE stated that it intends to call as a witness each of the 23 persons named in its answer to Interrogatory 22 -- but it failed to provide the further information which was requested in this interrogatory, as to whether (or which) of the named persons are to be called as experts and, for each such alleged expert, "the subject matter on which the person is expected to testify, state the substance of the facts and opinions as to which the person is expected to testify, and . . . a summary of the grounds for each opinion." Further, while GANE provided a brief paragraph summarizing the general nature of what it expects these persons to say in their testimony, in most cases it failed to indicate sufficient information to support its answer; for instance, GANE states that most of the named persons are former employees of the Licensee who "are expected to testify that they worked in an unhealthy work environment where raising health and safety issues was actively discouraged," but GANE failed to provide any basis to support this highly general statement, particularly inasmuch as it

applies to approximately 20 persons. These omissions frustrate the Staff's ability to prepare for hearing in this proceeding.¹¹

Interrogatory 24.

With respect to any person listed in response to the interrogatory, state the details of that person's education, employment history and asserted area of expertise.

In response to this interrogatory, GANE provided information concerning the educational background of Dr. Karam and Glenn Carroll, but failed to provide any information whatsoever concerning the education and experience of the other persons named in response to the interrogatories. These omissions prevent the Staff from determining whether the persons identified by GANE are qualified to appear as experts in this proceeding.

Interrogatory 26.

Identify all documents GANE intends to rely upon in support of its contention or assertion, or which are otherwise relevant to the contention or assertion.

Interrogatory 27.

Provide copies of the documents you have identified in response to the interrogatory.

GANE has failed to produce any of the requested documents for inspection or copying by the Staff. See discussion *supra* at 4-6.

¹¹ It is possible that GANE does not know the subject matter or opinions of each of these persons. In that event, it was incumbent upon GANE to so state, and to timely supplement its answers at such time as it receives the required further information. See 10 C.F.R. § 2.740(e).

Interrogatory 36.

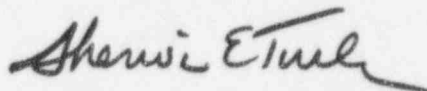
State whether GANE contends that the Nuclear Safeguards Committee (NSC), the Office of Radiation Safety (ORS), or the Manager of ORS have failed to properly perform their respective roles, at any time from 1988 to the present. Explain your answer in detail, and provide any and all bases for this contention. Provide all information, identify all persons, and provide copies of all documents which relate to this contention, as requested in Interrogatories 21-30 above.

In response to this interrogatory, GANE described the grounds for its assertion that the Nuclear Safeguards Committee has performed inadequately, but failed to provide any answer concerning the performance of the Office of Radiation Safety (ORS) or the Manager of ORS, as requested in this interrogatory. GANE's response is, therefore, substantially incomplete.

CONCLUSION

For the foregoing reasons, the Staff submits that the Licensing Board should enter an Order compelling GANE to provide complete and proper responses to the Staff's discovery requests, to the extent and in the manner set forth above.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 24th day of January 1996

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
GEORGIA INSTITUTE OF TECHNOLOGY) Docket No. 50-160-Ren
)
(Georgia Tech Research Reactor))
)
(Renewal of License No. R-97))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION TO COMPEL THE FILING OF COMPLETE AND PROPER RESPONSES BY GEORGIANS AGAINST NUCLEAR ENERGY TO THE STAFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR THE PRODUCTION OF DOCUMENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system on this 24th day of January 1996.

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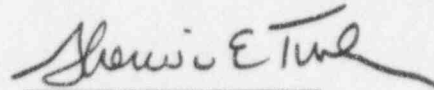
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