

17614

DOCKETED
USNRC

5/9/96

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

MAY -9 P4:24

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 FOR
ISSUANCE OF A PROTECTIVE ORDER

On February 29, 1996, the Atomic Safety and Licensing Board ("Licensing Board") held a transcribed conference call with the parties to this proceeding; a further conference call was held on March 20, 1996. Among the matters discussed were two motions filed by Georgians Against Nuclear Energy ("GANE"), seeking to compel the production of certain documents by the NRC Staff ("Staff").¹ During the conference call of February 29, 1996, the Licensing Board directed the Staff to produce certain documents for inspection by GANE, which the Staff had identified in "Attachment A"

¹ See (1) "Georgians Against Nuclear Energy Motion to Compel Request for a Production of Documents From the NRC Concerning Our Management Contention," dated February 10, 1996; and (2) "Georgians Against Nuclear Energy Motion to Compel the NRC to Release Rebecca Long's Documents Concerning GANE's Contention That Management Problems at the Georgia Tech Research Reactor Are So Bad That License Renewal Must Be Denied to Protect the Health and Safety of the Public," dated March 8, 1996.

DS07

to the Staff's February 27, 1996 response to GANE's first motion to compel.² The Licensing Board further indicated that the Staff may produce these documents subject to the terms of a protective order, in order to avert public disclosure of any "Protected Information" which may be contained in those documents (Tr. 828).³ The Licensing Board then issued a "Memorandum and Order" summarizing its rulings in this regard, which were discussed and clarified in the conference call of March 20, 1996.⁴

In accordance with the Licensing Board's ruling, the Staff has forwarded to Ms. Carroll and Counsel for Georgia Tech, a draft protective order and affidavit of non-disclosure which would govern the Staff's production of these documents. GANE's representative, Ms. Carroll, has agreed to the terms of the proposed protective order and affidavit of non-disclosure, as set forth in the attached form of Protective Order and Affidavit of Non-Disclosure, and she has requested that Staff Counsel submit to the

² See "NRC Staff's Response to 'Motion to Compel Request for a Production of Documents from the NRC Concerning Our Management Contention' Filed By Georgians Against Nuclear Energy" ("Staff's Response"), dated February 27, 1996.

³ The Staff indicated that some, but not all, of the information contained the affected documents is likely to consist of "Protected Information," *i.e.*, information which is protected from public disclosure pursuant to 10 C.F.R. § 2.790 (*see, e.g.*, Tr. 828, 830). In the interest of complying with GANE's request for review of the information without additional delay, the Staff has agreed to produce the documents for inspection subject to the terms of a protective order, upon the agreement by Georgia Tech and GANE to refrain from disclosing any information obtained during their inspection of the documents unless and until agreed to in writing by Staff Counsel or authorized by Order of the Licensing Board, as set forth in the Affidavit of Non-Disclosure.

⁴ See "Memorandum and Order (Telephone Conference Call, 2/29/96; Hearing Schedule," dated March 13, 1996. In the telephone conference held on March 20, 1996, the Licensing Board clarified that the Staff should produce all documents listed on "Attachment A," subject to a protective order, but need not produce the OIA interview of Milton Shymlock or the portions of R. Long's 1993 interviews which are unrelated to Georgia Tech.

Licensing Board, for its approval, the Protective Order and Affidavit of Non-Disclosure in the form attached hereto.

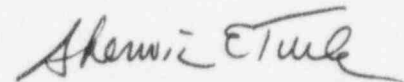
By agreement of Ms. Carroll and Staff Counsel, upon the Licensing Board's approval of the attached protective order, the Staff will make the subject documents available for review and inspection by Ms. Carroll and another member of GANE (Mr. Robert Johnson). In anticipation of the Board's approval, Ms. Carroll and Mr. Johnson have executed, and submitted to Staff Counsel, their affidavits of non-disclosure as proposed by the Staff.

While Counsel for the Licensee has not sought access to the subject documents, the Staff would expect to make the documents available to the Licensee under the same terms as are contained in the attached protective order, upon the execution of a non-disclosure affidavit by the Licensee's representative.

CONCLUSION

For the reasons set forth above, the Staff respectfully requests that the Licensing Board issue a Protective Order directing the non-disclosure of any information contained in these documents, in accordance with the terms and conditions set forth in the form of Protective Order and Affidavit of Non-Disclosure attached hereto.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 9th day of May, 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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))	

PROTECTIVE ORDER
(Governing the Disclosure of Certain NRC Documents)

This Protective Order governs the disclosure and use of certain investigative transcripts, personnel records and other documents relating to allegations made by an NRC employee (A. Rebecca Long), concerning a number of matters including allegations pertaining to the Neely Nuclear Research Center at the Georgia Institute of Technology. These documents were identified by the NRC Staff (Staff) in "Attachment A" to the "NRC Staff's Response to 'Motion to Compel Request for a Production of Documents from the NRC Concerning Our Management Contention' Filed By Georgians Against Nuclear Energy" ("Staff's Response"), dated February 27, 1996.

The Staff has indicated that some of the documents listed in "Attachment A" may contain information which is protected from public disclosure by 10 C.F.R. § 2.790 (hereinafter "Protected Information"). During a transcribed telephone conference call held on February 29, 1996, and a further telephone conference call held on March 20, 1996, the Licensing Board directed the Staff to make these documents available for

review by Georgians Against Nuclear Energy (GANE) and the Georgia Institute of Technology (Georgia Tech), subject to a protective order if requested by the Staff.

The Staff has discussed this matter with GANE's representative and Counsel for Georgia Tech, who have agreed that the Staff may produce these documents at the office of NRC Region II, subject to a protective order, the terms of which have been agreed to by the parties as set forth below. Accordingly, it is, this ___th day of May, 1996

ORDERED:

1. Disclosure by the Staff of the documents identified herein, and the other parties' review and inspection thereof, are to be governed by the terms of this Protective Order.

2. The Staff will produce for inspection by up to two representatives of GANE and two representatives of Georgia Tech those documents listed on "Attachment A" to the Staff's Response of February 27, 1996 (other than the investigative interview of Milton Shymlock and those portions of Ms. Long's 1993 investigative interviews which do not concern Georgia Tech).

3. The Staff's disclosure of the documents subject to this Protective Order shall be made to the aforesaid representatives of GANE and representatives of Georgia Tech after they have executed an "Affidavit of Non-disclosure" in the form attached hereto.

4. Any persons who have executed an Affidavit of Non-Disclosure and are granted access to the subject documents shall use the information therein solely for the

purpose of participation in matters directly pertaining to this proceeding and for no other purpose. Further, they shall not make or cause to be made, copies of any of the documents which are made available to them under this Protective Order, although they will be permitted to take written notes during their review of the documents. These notes, and their content, cannot be revealed, transmitted, or communicated to any person without prior authorization by the Licensing Board. Furthermore, they shall keep any such notes securely in their possession and shall submit any and all such notes to the Licensing Board or to Staff Counsel for destruction upon completion of this proceeding.

5. Any persons who have executed an Affidavit of Non-Disclosure and who are granted access to the subject documents shall not disclose any of the above described "Protected Information" to any other person, unless that information has previously been disclosed in the public record of this proceeding or is otherwise known to that person independent of its disclosure under the Protective Order, without the prior written approval of Staff Counsel or an Order authorizing such disclosure from the Licensing Board in this proceeding.

6. Upon inspection of the documents, if GANE or Georgia Tech believes that any portions of these documents are relevant to the admitted contention in this proceeding and do not contain information which should be protected from disclosure, they may request a release from the prohibition on disclosure imposed by this Order, identifying the particular document and specific portions thereof which are sought to be released. Such request shall be presented, in the first instance, to Staff Counsel for approval. In the event that Staff Counsel determines not to approve a request for disclosure of a

document or portions thereof, the requesting party shall file a motion with the Licensing Board, seeking to allow disclosure of specific documents or portions thereof for use at hearing. The Licensing Board will then consider and rule upon such request prior to any release or disclosure of the documents. The removal of these restrictions for any portion(s) of the documents shall not be considered a waiver or release from the restrictions with regard to other portions of the documents. No disclosure of any information or documents subject to this Protective Order shall be made unless agreed to in writing by the Staff or authorized by the Licensing Board.

7. In the event that GANE or Georgia Tech files a motion requesting release of particular documents or specific portions thereof from the terms of this Order, and the Licensing Board determines that those documents contain any Protected Information and that GANE or Georgia Tech should be permitted to use such documents at hearing, any such protected information shall be kept separate from the public record, according to the usual and accepted methods of protecting confidential information established pursuant to the Commission's Rules of Practice, including the conduct of *in camera* hearings before the Licensing Board to the extent necessary to protect such Protected Information from public disclosure.

8. Nothing in this Protective Order or the supporting Affidavit of Non-disclosure shall be construed as a waiver either of the 10 C.F.R. § 2.790 restrictions concerning Protected Information or the parties' right to pursue any remedies they may deem appropriate to lawfully seek public disclosure of information in the subject documents. Further, to the extent appropriate, the disclosure of any document or portion

thereof shall be made in compliance with the Commission's Statement of Policy on Confidentiality, 50 Fed. Reg. 48506 (Nov. 25, 1985).

9. Any party wishing to limit the disclosure in this proceeding of any material or information described herein may invoke the terms of this Protective Order.

10. Any allegations of abuse or violation of this Protective Order will be considered by the Licensing Board for purposes of determining whether it should enter sanctions, in accordance with NRC regulations or other rules, or for purposes of determining whether or not the matter should be referred for appropriate possible disciplinary proceedings, or both.

IT IS SO ORDERED.

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
May __, 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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))	

AFFIDAVIT OF NON-DISCLOSURE

I, _____, being duly sworn, state:

1. As used in this Affidavit of Non-Disclosure, "Protected Information" is all that information contained in documents listed in "Attachment "A" to the "NRC Staff's Response to 'Motion to Compel Request for a Production of Documents from the NRC Concerning Our Management Contention' Filed By Georgians Against Nuclear Energy", dated February 27, 1996.

2. I shall not disclose any of the above described "Protected Information" which is to be provided to me for my review by the Staff of the Nuclear Regulatory Commission, unless that information has previously been disclosed in the public record of this proceeding or is otherwise known to me independent of my obtaining access to the Protected Information which is disclosed to me under the Protective Order. I understand that if I wish to make use of any of this information at the hearing in this

proceeding, I must seek either the written authorization of Staff Counsel or an Order granting such authorization from the Licensing Board in this proceeding.

3. I shall not disclose any of the above described "Protected Information" to any other person, unless that information has previously been disclosed in the public record of this proceeding or is otherwise known to that person independent of its disclosure under the Protective Order, without the prior written approval of Staff Counsel or an Order authorizing such disclosure from the Licensing Board in this proceeding.

4. I will not reproduce any Protected Information by any means without prior written approval by Staff Counsel or the Licensing Board's express approval or direction. I shall safeguard and hold in confidence any notes I may make which contain any such Protected Information.

5. I shall use Protected Information only for the purpose of participating in this proceeding and for no other purpose.

6. I shall keep a record of all notes I may make concerning any Protected Information in my possession. At the conclusion of this proceeding, I shall account to the Licensing Board or to Counsel for the NRC Staff for any notes containing Protected Information in my possession and shall deliver them to the Licensing Board or to Counsel for the NRC Staff.

7. I make this agreement with the understanding that I will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using Protected Information obtained in this proceeding.

Subscribed and sworn to before me
this ____ day of ____, 1996

Notary Public

My Commission Expires: _____

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'96 MAY -9 P4:26

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 the "NRC STAFF'S MOTION FOR ISSUANCE OF A PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by a single asterisk through deposit in the Nuclear Regulatory Commission's internal mail system on this 9th day of May 1996.

Charles Bechhoefer, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Board
Panel*
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Adjudicatory File* (2)
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Peter S. Lam*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of the Secretary* (2)
Attn: Docketing and Service
Mail Stop: OWFN-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of Commission Appellate
Adjudication*
Mail Stop: OWFN-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

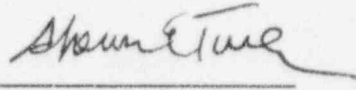
Alvin Lenoir, Esq.
c/o Greenpeace
Twenty 13th Street, N. E.
Atlanta, Georgia 30309

Randy A. Nordin, Esq.
Manager, Legal Division
Office of Legal Affairs
Georgia Institute of Technology
400 10th Street, N. W.
Atlanta, Georgia 30332-0420

Alfred L. Evans, Jr., Esq.
Senior Assistant Attorney General
Georgia Department of Law
40 Capitol Square S.W.
Atlanta, Georgia 30334-1300

Georgians Against Nuclear Energy
P. O. Box 8574
Atlanta, Georgia 30306

Ms. Glenn Carroll
GANE
139 Kings Highway
Decatur, Georgia 30030



Sherwin E. Turk
Counsel for NRC Staff