UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	Docket No. 50-160-Ren
GEORGIA INSTITUTE OF TECHNOLOGY, Atlanta, Georgia	)	ASLBP No. 95-704-01-Ren
Georgia Tech Research Reactor	)	
(Renewal of Facility License No. R-97)	)	May 11, 1995

GEORGIA INSTITUTE OF TECHNOLOGY'S MEMORANDUM IN SUPPORT OF ITS APPEAL FROM THE BOARD'S MEMORANDUM AND ORDER DATED APRIL 26, 1995

Summary

In this licensing renewal proceeding for the Georgia Tech Research Reactor (GTRR), the Atomic Safety and Licensing Board (ASLB or Board) determined that Georgians Against Nuclear Energy (GANE) has standing to intervene and admitted two of GANE's contentions. That decision should be reversed.

GANE attempts to derive its standing from one individual, Robert Johnson. Mr. Johnson was not a member of GANE at the time GANE's original petition was filed. GANE officials testified at the hearing that he did not become a member until the time of the filing of the amended petition, and only then for the purpose of correcting GANE's deficient standing. GANE cannot derive standing from an individual whose membership was so contrived. In addition, Mr. Johnson has not demonstrated any plausible scenario in which he would be injured

and that would entitle him to intervene in this proceeding. Mr. Johnson works one half-mile from the GTRR. It is totally impossible, even in the worst case scenario, that he would be injured. The GTRR is a nonpower research reactor that operates at very low pressures and temperatures. The SAR shows that even in the worst possible scenario, the GTRR does not have the ability to affect public health and safety beyond 100 meters -- a substantial distance from Mr. Johnson's place of work.

Even assuming that GANE has standing, neither Contention 5 nor 9 (the two contentions admitted by the Board) are properly brought in this forum. GANE's Contention 5 -- that the GTRR lacks an adequate security plan for the 1996 Olympic Games -- may not be considered in a licensing proceeding because, as the Commission has stated, security measures are to be left to the appropriate law enforcement authorities. GANE's Contention 9 -- that the GTRR management poses safety concerns -- likewise is not properly brought before this licensing board. The 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.

GANE's assertions regarding security and management are both general and unsubstantiated. They fail to satisfy the standard of specificity required for an intervention in a licensing proceeding, see 10 C.F.R. § 2.714(b)(2), and must be rejected as a matter of law.

Procedural History

GANE filed its initial Petition to Intervene on October 26, 1994. On November 23, 1994, the Board entered a Memorandum & Order finding that GANE had failed to show that it had standing to intervene. The Board allowed GANE to file an Amended Petition on December 30,

1994. Following a telephone conference on January 10, 1995, the Board entered a Memorandum & Order on January 11, 1995, permitting GANE once again to attempt to show that it has standing to intervene. In response, GANE filed a supplemental affidavit of Robert Johnson. Georgia Tech filed its objection to GANE's Petition on January 25, 1995. The Board held a hearing on January 31-February 2, 1995.

Following the hearing, the Board issued a Memorandum & Order, requesting that the parties address the relevance, if any, of 10 C.F.R. § 73.60(f) to GANE's Contention 5, which relates to the possibility of a terrorist attack on the GTRR during the 1996 Atlanta Olympic Games. Georgia Tech filed a Response to that Memorandum & Order on March 20, 1995.

On April 26, 1995, the Board ruled on the standing issues and the contentions in a Prehearing Conference Order. The Board granted GANE's Petition for leave to intervene and request for a hearing, admitted GANE Contentions 5 and 9, and denied the remaining GANE contentions. Judge Jerry R. Kline dissented with respect to Contention 5 on the grounds that GANE's "general concern that the reactor might be specially targeted for attack by terrorists during the Olympics lacks both factual and regulatory bases." ASLB Memorandum and Order, April 26, 1995 at 52.

Argument

I. GANE Has No Standing To Intervene.

The Board erred in determining that GANE has standing to intervene in this licensing renewal proceeding because GANE has not satisfied the requirements for establishing that it has

an interest that may be affected by this proceeding. Accordingly, the Board's finding of standing should be reversed.

No party may be permitted to intervene in a Commission proceeding unless it demonstrates that it has standing. Section 189a(1) of the Atomic Energy Act, 42 U.S.C. § 2239(a), provides that:

> In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license ..., the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Id. (emphasis added).

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in [10 C.F.R. § 2.714(d)(1)]." Pursuant to 10 C.F.R. § 2.714(d)(1), in a ruling on a petition for leave to intervene or a request for a hearing, the presiding officer or Licensing Board is to consider:

> (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
>
> (ii) The nature and extent of the petitioner's property, financial or other interest in the proceeding.
>
> (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

See also, 59 Fed. Reg. 49089 (Sept. 26, 1994) (Notice of Application for Renewal of License for the GTRR, quoting 10 C.F.R. § 2.714).

To establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interest" protected by the statutes governing the proceeding. See, Georgia Power Co. (Vogtle Electric Generating Plan, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993); Public Service Company of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991) (citing Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983)). Further, it is well settled that in order to establish standing, the petitioner must establish (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988); Vogtle, 38 NRC at 32; Babcock and Wilcox (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993).

An organization may meet the injury-in-fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. Houston Lighting and Power Co. (South Texas Project Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979), aff'g LBP-79-10, 9 NRC 439, 447-48 (1979). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. Id; Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979); Babcock and Wilcox Co. (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 50

(1994). The alleged injury-in-fact to the member must fall within the purposes of the organization. Curators of the University of Missouri (TRUMP-S Project), LBP-90-18, 31 NRC 559, 565 (1990).

GANE asserts its standing solely through Robert P. Johnson, one of its alleged members. The affidavits and testimony of Mr. Johnson, however, fail to show that he has standing in this proceeding for two reasons: first, GANE has not established that he was a member at the time the original petition was filed; second, GANE has not established that Mr. Johnson has a personal stake in the outcome of the licensing renewal proceeding sufficient to satisfy the injury-in-fact requirement.

Mr. Johnson's Membership Was Untimely. A group seeking to intervene on a representative basis must demonstrate that, at the time its petition is filed, it is authorized to act for a person or persons who demonstrate the requisite standing. Washington Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330 (March 6, 1979). If the organization only afterwards acquires those members, its petition must be treated as though filed when those members joined. Id. This is because the organization lacks standing until that later time. Id.

In this case, it is undisputed that GANE's original petition, filed in October 1994, failed to satisfy the standing requirement. GANE amended its petition on December 30, 1994 and with it submitted the affidavit of Mr. Johnson, stating that he authorized GANE to represent his interests. On January 17, 1995, Mr. Johnson submitted a supplemental affidavit stating that he is a member in good standing of GANE and attached his membership card dated December 21, 1994. GANE has offered no evidence that Mr. Johnson was a member before that date. In fact,

during the first day of the prehearing conference, Glenn Carroll (representing GANE) explained that Mr. Johnson did not become a member until the time GANE was preparing the amended petition. She stated that Mr. Johnson did not sign the membership form until "we were getting an affidavit signed and doing all that for our amended petition." Tr. at 28. She then stated: "In fact, I'll interject that Rob [Johnson] really pushed it. We said, 'Nah, we don't think you have to really be a member.'" Id. (emphasis added).[1] The direct implication of this remark is that Mr. Johnson was not a member before that time, and it puts to rest the argument raised by GANE that Mr. Johnson's alleged involvement with GANE "long before he signed the membership form" classifies him as a full-fledged member. Tr. p. 6.

The Board disregarded Mr. Johnson's untimely membership and the fundamental standing requirement stated in WPPSS. In doing so, the Board relied on Houston Lighting and Power Co., (South Texas Project, Units 1 and 2 ALAB-549, 9 NRC 644, 649 (1979). That reliance is misplaced because the ALAB in South Texas Project did not disagree with WPPSS. Rather, it "assum[ed] the correctness of the rule in WPPSS" in order to reach the real issue in that case -- whether the Board below had abused its discretion in allowing intervention despite the untimeliness of the petition. The rule in WPPSS is fully applicable in this case and bars GANE's petition to intervene.

The Board's decision to permit GANE to derive standing based on Mr. Johnson's dubious and after-the-fact membership elevates form over substance. The real purpose of the standing

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[1] The transcript attributes these statements to Carol Stangler. That error in the record was corrected later in the hearing.

requirement -- to permit a potentially injured party a voice in a particular proceeding -- is not served when these tactics are tolerated.

Mr. Johnson Has Not Demonstrated Health or Safety Interests Relevant to this Licensing Proceeding. The only interest Johnson asserts in this proceeding is his health and safety. His regular place of work is 800 meters from the GTRR; his home is much longer distance; and he makes no allegation that the regularly comes closer to the GTRR. See Johnson Affidavit, December 30, 1994.

The SAR includes a detailed analysis of the worst plausible scenario involving the GTRR. Taking into account that the GTRR is moderated by heavy water, operates at low temperature and pressure, and contains a very small nuclear inventory, the SAR concludes that in the worst case all health and safety effects would be confined to a 100 meter radius from the GTRR. Neither of GANE's admitted contentions challenge in any way the analysis in the SAR. Thus, Johnson has no interest in this proceeding that would give him standing.

The Board found that Mr. Johnson had standing because "it appears that Argon-41 would be released through the reactor stack during routine operations ... and, even though permitted under applicable regulations, could extend to at least one-half mile from the site." ASLB Memorandum and Order, April 26, 1995, at 6-7. "In addition," the Board noted, "other noble gases could be dispersed under accident scenarios." Id at 7. Dr. Karam verified, at page 260, that a "small amount of Argon-41 is produced and indeed put out through the stack to the environment." He also verified that there are "no other radioactive substances coming out." Id. (emphasis added). Earlier in the hearing, Dr. Karam had hypothesized that under an incredible accident scenario, some noble gases may be released. Tr. at 22-23. He clarified that such an

accident is "not credible scenario" because the "three independent redundant systems for safety" would each have to fail in order for this to occur. Id. at 23-24; see id. at 24 (explaining that two independent safety systems are enough).

A release of Argon-41 during normal operations, however, is well within the Commission's regulations. Indeed, the Board acknowledged that these allegations are insufficient to form a valid contention. Nevertheless, the Board concluded that these allegations are enough for standing purposes. See ASLB Memorandum and Order, April 26, 1995, at 7 ("Those effects [of the release of Argon-41 and other noble gases] are enough for standing, even though they might be insufficient to found a valid contention."). This reasoning is both illogical and unsupported by the case law cited by the Board.

It is illogical because it would allow any person to intervene based solely on contentions regarding permissible production of gases. This is clearly not the intention of the regulations. See 10 C.F.R. § 2.714(b)(1) (providing that a petitioner who fails to advance at least one admissible contention will not be permitted to participate as a party). Even if GANE and its members were permitted to intervene, nothing in this licensing application procedure would allow them to address their alleged harm, for the minuscule release that occurs is permitted by the regulations.

The Board cites Kelly v. Selin, 42 F.3d 1501 (6th Cir. 1995), and Consumer Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979), as support for the proposition that a petitioner can satisfy the standing requirements based on allegations that are insufficient to form a basis for a valid contention. Neither case stands for such a rule. In fact, both cases indicate that standing can only be found upon allegations that are sufficient to form the basis for a valid contention.

In Kelly, the plaintiffs had petitioned the NRC based on the Commission's alleged failure to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. and 10 C.F.R. § 72.214, when it enacted new rules allowing a reactor on Lake Michigan to store its spent fuel in a nearby cask. The court found that the plaintiffs had standing because each asserted harm to their aesthetic interests, physical health, and the value of their property on Lake Michigan, based upon the alleged violation of federal law. Kelly, 42 F. 3d at 1509 (Each petitioner "asserts that the value of his or her property will be diminished by the storage of nuclear waste in the VSC - 24 casks at Palisades").

In Palisades, the Commission recognized that although there is a presumption of standing where an organization raises safety issues on behalf of its members who are in close proximity to a facility, a petitioner must also "set forth concerns with respect to health-and-safety and environmental aspects of the proposal under review." Id. In other words, the presumption is applied as long as it is based upon the circumstances of the case as they relate to the specific interests that will allegedly be affected. Nothing in Kelly or Palisades can be read to permit standing based solely on an alleged injury that does not even form the basis of a valid contention. In fact, the NRC has stated that in order to establish standing, "there must be some causal relationship between the proposed [licensing activity] and the injury alleged." Northern States Power Co. (Pathfinder Atomic Plant) LBP-90-3, 31 NRC 40, 43 (1990). In this case, GANE has demonstrated no causal relationship between the alleged injury to Mr. Johnson and the renewal of the GTRR license.

The only other possible basis for GANE's standing recognized by the Board was the interest of GANE's director, Glenn Carroll. As an officer, Ms. Carroll must show that she has a

personal stake in the outcome of the licensing proceeding. See Duke Power Co. (Ocaree-McGuire), ALAB - 528, 9 NRC 146, 151 (1979). Ms. Carroll states that she "drive[s] by the reactor a couple of times a day." Tr. at 35. Ms. Carroll has not demonstrated that she is within the "zone of danger" for the GTRR, and just as Mr. Johnson's allegations fail to demonstrate that he has standing, so do those of Ms. Carroll.

II. GANE Is Barred From Raising a Contention Regarding the Security of the GTRR during the 1996 Olympics.

A. Security During the Olympics Is Not Regulated by the NRC.

In Contention 5, GANE asserts that because of special circumstances -- the 1996 Summer Olympics -- the security plan for the GTRR should be enhanced for a designated period of time. As the Board correctly recognized, GANE is not asserting that the security plan currently does not comply with the regulations. This is not surprising because the NRC staff has approved the security plan for the GTRR. Accordingly, the only regulation under which GANE could bring this contention is 10 C.F.R. § 73.60(f), which provides that the Commission may require "alternate or additional measures deemed necessary to protect against radiological sabotage" at certain nonpower reactors. The regulation was adopted only two years ago; it has produced no case law, and it garnered no comment when it was proposed. Clarification of Physical Protection Requirements at Fixed Sites, 58 Fed. Reg. 13,699 (1993).

Nevertheless, the Commission has squarely held that it is not the proper authority to regulate security of the GTRR during the Olympics. In rejecting a comment specifically directed at this issue and recommending that the GTRR be shut down "in light of the upcoming 1996 Olympics," the Commission stated:

> The NRC's threat assessment activities are performed on a continuing basis, in close liaison with the intelligence community. Should the level of domestic threat change at any time, appropriate action will be taken by the NRC. Specifically, the Atlanta Field Office of the FBI has established liaison with all Federal agencies in Georgia, including the NRC, relative to the Olympics. The FBI is the lead law enforcement agency in charge of the Olympics, and, to date, has not indicated that there is any threat to NRC-licensed facilities or materials relative to the Olympics.

Protection Against Malevolent Use of Vehicles at Nuclear Power Plants, 59 Fed. Reg. 38,889, 38,896 (Aug. 1, 1994).

In its April 26 Memorandum, the Board quoted this passage and stated simply that the Commission disagreed with one of the comments submitted in response to a proposed amendment to 10 C.F.R. § 73. The Commission's position, however, demonstrates more than simple disagreement. It underscores the Commission's decision that the security of the GTRR during the 1996 Summer Olympics is not its responsibility. Rather, it is to be left to the appropriate law enforcement officials. Those officials have organized an Olympic Security Support Group (OSSG) consisting of 34 federal, state and local enforcement agencies for the purpose of assessing all Olympic-related threats. Congress recently allotted over $14 million for the Armed Forces to help provide additional security for the Olympics. H.R. Conf. Rep. No. 747, 103d Cong., 2d Sess. 5 (1994). Terrorist threat assessment and response on the Georgia Tech campus clearly fall within the jurisdiction of the OSSG and the Armed Forces.

B. Terrorism Is Not an Admissible Contention in Any Licensing Proceeding.

10 C.F.R. § 50.13 clarifies that terrorism is not an admissible contention in a licensing proceeding, no matter how unique or special the circumstance. The Commission has stated, both

through rulemaking and adjudication, that a licensing board may not require that an applicant consider the possibility of terrorism in its security plan. 10 C.F.R. § 50.13 provides in part that an applicant:

> "is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person. . . ."

GANE's contention that the GTRR could be a terrorist target is not an admissible contention in this case. Georgia Tech, under the plain terms of § 50.13, is not obligated to prevent terrorism in Atlanta. That is the responsibility of the federal, state, and local law enforcement authorities -- each of which is already planning the security of the Olympic Games in general and especially the GTRR.

As a Board e , in Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 & 2), LBP-85-27, 22 NRC 126, 133 (1985):

> Section 50.13 was adopted by the . . . AEC in 1967 because there was an obvious, practical need to exempt applicants from being forced to protect against certain types of military or paramilitary attacks which the Commission recognized were beyond the sphere of an applicant's responsibility. . . When the Commission developed the policy of excluding hostile attacks from litigation, it did so based on its determination that the country's national security is intended to be left entirely to the nation's defense establishment and security agencies.[2]

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[2] Section 50.13 specifically applies to license applicants for "production or utilization" facilities, but its logic and its policy rational suggest that it applies a fortiori to applicants for small research reactors. It would be strange indeed if the Commission intended to exempt large reactor operators from planning for terrorist attacks while intending to require research reactor operators to provide

In Siegel v. AEC, 400 F.2d 778 (D.C. Cir. 1968), the Court of Appeals affirmed a Commission decision based on this reasoning. See Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 & 4), 4 AEC 9 (1967). At the time the Commission issued its Florida Power decision, § 50.13 was only a proposed rule. See 32 Fed. Reg. 2821 (Feb. 11, 1967). The Siegel Court summarized the bases on which the Commission made its decision as:

> (1) the impracticability, particularly in the case of civilian industry, of anticipating accurately the nature of enemy attack and of designing defenses against it, (2) the settled tradition of looking to the military to deal with this problem and the consequent sharing of its burdens by all citizens, and (3) the unavailability, through security classification and otherwise, of relevant information and the undesirability of ventilating what is available in public proceedings.

400 F.2d at 782. The Court went on to uphold the essence of § 50.13: "[Congress] did not expect [an applicant] to demonstrate how his plant would be invulnerable to whatever destructive forces a foreign enemy might be able to direct against it in 1984." Id. at 784. See also Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 & 2), LBP-79-6, 9 NRC 291 (1979) (applicants need not provide any measures for the specific purposes of protection against the effects of military attacks directed against a facility); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973) (finding that Siegel upheld section 50.13, which "obviates the necessity of consideration [of sabotage] in a licensing proceeding").

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their own protection.

As the Executive Director for Operations found in Ohio Citizens for Responsible Energy, DPRM-84-1, 19 NRC 1599, 1604 (1984), the Siegel decision "is no less valid today than it was [in 1968]." Boards considering this question uniformly have determined that protection from enemy or terrorist attack is not a valid issue under § 50.13. See, e.g., Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-42, 14 NRC 842, 843 (1981); Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), LBP-81-3, 13 NRC 103 (1981); Potomac Electric Power Co. (Douglas Point Station, Units 1 & 2), ALAB-218, 2 AEC 79 (1974).

C. GANE's Assertions Are Generic and Unsubstantiated.

GANE's assertions in Contention 5 fail to satisfy the standards set forth in 10 C.F.R. § 2.714(b)(2), requiring a "specific statement of the issue of law or fact to be raised or controverted." Not only has GANE failed to provide a regulatory basis for its contention, but also GANE has failed to provide a factual basis for its generic opinion that the GTRR might be a "tempting target" for terrorists during the 1996 Games, and the Board cannot infer one sua sponte. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1,2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). As Judge Kline stated, GANE's "general concern that the reactor might be specially targeted for attack by terrorists during the Olympics lacks both factual and regulatory bases." ASLB Memorandum and Order, April 26, 1995, at 52 (Kline, J., dissenting). With respect to factual basis for Contention 5, Judge Kline found that "Petitioners provided nothing suggesting they have undertaken any effort beyond formulating their personal opinion." Id. at 56-57. Similarly, Judge Kline found that GANE has failed to assert any regulation upon which to base its contention. Id. at 54. GANE's pleading therefore falls short of

providing acceptable bases for Contention 5 as required by 10 C.F.R. § 2.714(b)(2). Accordingly, Contention 5 must be denied as a matter of law.

III. GANE Has Failed to Demonstrate That The Current Management at the GTRR Raises Public Safety Concerns.

GANE's ninth contention is that safety is jeopardized by current management. This assertion has no merit.

The NRC Staff has determined that Dr. R. A. Karam, who has been the director of the GTRR since 1984, meets all NRC regulations and that his leadership poses no threat to the safety of the GTRR. Safety concerns at the GTRR are the responsibility of twelve independent safety experts who compose the Nuclear Safeguards Committee (NSC) and who review and approve all safety measures. The NSC is concerned with maintaining the public health and safety through compliance with NRC requirements. See GTRR License, Appendix A, § 6.2 (providing that the NSC "shall be responsible for maintaining health and safety standards associated with operation of the reactor and its associated facilities") (emphasis added).

That "GANE has never previously had an opportunity to contest in an adjudicative proceeding the acceptance by the Staff of the current Director," ASLB Memorandum and Order, April 26, 1995 at 27, is irrelevant. As long as the NRC has approved Dr. Karam and the safety committee, and as long as the GTRR is operating within the confines of its license, the licensing Board has no basis upon which to act. See 54 Fed. Reg. 33168, 33171 (Aug. 11, 1989) ("[T]he sole focus of the hearing is on whether the application satisfies the NRC regulatory requirements.").

The Board ostensibly permitted GANE to proceed on this contention because it did not have access to information "sufficient to buttress this contention in greater detail." ASLB Memorandum and Order, April 26, 1995 at 27. Just as GANE's prior opportunity to litigate this matter is irrelevant, so is whether GANE had access to information sufficient to form the basis for this contention because GANE simply cannot litigate this matter here. Nevertheless, it is worth noting that the Board's reasoning on this point is unfounded.

The Board supports this position with language from the federal register stating that the "license application should include sufficient information to form a basis for contentions." Id. at 28 (quoting 54 Fed. Reg. 33168, 33170-71 (Aug. 11, 1989)). The Commission's comment in no way requires a licensee, applying for a renewal of its license, to tailor its application to the needs of potential intervenors, nor to do the leg-work for them. In this case, GANE apparently did not make an adequate request for information from the local NRC office. The Board recognized the deficiency on the part of GANE, stating, "[w]hat GANE should have sought were Inspection Reports for the period in question (1988-94)." ASLB Memorandum and Order, April 26, 1995 at 28. GANE cannot now be permitted to assert this contention solely because it did not adequately research information that was fully available to it.

The Commission's statement quoted by the Board must be put in context. The Commission was responding to a comment that under the specificity requirements of 10 C.F.R. § 2.714, a petitioner not be required to set forth facts in support of its contentions until the petitioner has access to NRC documents. The Commission responded that the focus of the hearing is whether the application satisfies the NRC regulatory requirements and "[f]or this reason, and because the license application should include sufficient information to form a basis

for contentions, we reject commentators' suggestions that intervenors not be required to set forth pertinent facts until the staff has published its FES and SER." 54 Fed. Reg. 33171.

Other comments of the Commission in that same publication must be noted. The Commission clarified that discovery may not be used as a "fishing expedition" and a petitioner must set forth a material issue in its contentions. In the same Federal Register notice quoted by the Board, the Commission stated:

> [T]he rule [10 C.F.R. § 2.714] will require that before a contention is admitted the intervenor have some factual basis for its position and that there exists a genuine dispute between it and the applicant. It is true that this will preclude a contention from being admitted where an intervenor has not facts to support is position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts. The Commission does not believe this is an appropriate use of discovery or cross-examination. . . . [I]t is a reasonable requirement that an intervenor be able to identify some facts at the time it proposes a contention to indicate that a dispute exists between it and the applicant on a material issue.

Id. (emphasis added).

GANE makes one final assertion that must be put to rest. GANE asserts that a safety officer who reported an incident involving cadmium-115 to the NRC in 1987 was harassed and demoted because of his report. GANE is precluded from litigating that issue. That employee fully litigated the circumstances surrounding the 1987 incident in the United States District Court for the Northern District of Georgia, which ruled in favor of Georgia Tech on all issues.

Conclusion

This Appeal Board should deny GANE's petition to intervene for lack of standing, or alternatively deny both Contentions 5 and 9.

Respectfully Submitted,

Randy A. Nordin
Chief Legal Advisor
Georgia Institute of Technology

E. Gail Gunnells
Deputy Chief Legal Advisor
Georgia Institute of Technology

Dated at Atlanta, Georgia
this 11th day of May, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Georgia Tech Research Reactor	)	
(Renewal of Facility License No. R-97)	)	May 11, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal and Memorandum in Support Thereof 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, D.C. 20555

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Sherwin E. Turk, Esq.
Susan S. Chidakel, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Peter S. Lam
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dated at Atlanta, GA this
11th day of May, 1995

Respectfully Submitted,

Randy A. Nordin
Chief Legal Advisor
Georgia Institute of Technology

E. Gail Gunnells
Deputy Chief Legal Advisor
Georgia Institute of Technology