UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	)	
GEORGIA INSTITUTE OF TECHNOLOGY	)	Docket No. 50-160-Ren
Atlanta, Georgia	)	ASLBP NO. 95-710-01-Ren
Georgia Tech Research Reactor	)	
Renewal of License No. R-97	)	

MEMORANDUM IN SUPPORT OF
MOTION TO BAR APPEARANCE
AS WITNESS AND TO EXCLUDE ANY
AND ALL TESTIMONY BY GLENN CARROLL

In the course of a telephone conference call held on February 29, 1996, the Board concluded that it would require the prefiling of the testimony on direct examination of those witnesses who were not hostile or agreeing to appear only under subpoena. This was confirmed in this Board's March 13, 1996 "Memorandum and Order (Telephone Conference Call, 2/29/96; Hearing Schedules)," p. 3. This prefiling of proposed written testimony is, of course, expressly authorized by 10 C.F.R. § 2.743(b)(1).

The most appropriate format for this prefiled written testimony is manifestly the traditional question and answer approach which courts routinely require when the testimony is given orally. The reason for this is that this is the only realistic manner of having the testimony focused on specific matters as opposed to rambling all over the lot. This is imperative not only for the presentation of precise objections by adverse parties of competence, relevancy, materiality, reliability and the like, but also for the Board's ability to precisely understand, analyze and rule upon these objections.

The difficulty in dealing with a lengthy narrative stew composed of all manner of mixed ingredients, including both permissible and incompetent opinions, hearsay, guesses and conjecture interspersed here and there with the witnesses' factual observations, in addition to presentation and disposition of objections, is that it greatly interferes with the ability of counsel to present a clear and concise cross-examination.

It would be difficult to imagine a more farcical attempt to end-run the very plain requirement for the prefiling of *written testimony* than Ms. Carroll seeks to perpetrate in this instance. Essentially she tells us that "The greater part of [her] testimony is contained within" the supplemental discovery responses which she filed on behalf of GANE on February 22, 1996. In attempting to convert this discovery response of GANE, an "organization" of some sort, into her own personal testimony, Ms. Carroll nowise identifies the particular parts

or sections of the discovery which are to be specifically included in "The greater part of my testimony." Looking at the discovery responses themselves, we find a mélange of matters to which Ms. Carroll was not a personal observer but simply "heard" about from people who can speak for themselves (i.e. Dr. Brian Copcutt who is an anticipated witness), not to mention her setting forth opinions on technical matters as to which she is plainly incompetent to testify.

Because the discovery response referred to is such a big stew, the presentation of specific objections and this Board's disposition of such objections becomes a hugh burden, and conceivably could require a clause by clause, sentence by sentence cross-examination likely to extend many days over what could be accomplished with dispatch had Ms. Carroll prefiled the *written testimony* she was directed to file.

Finally, allowing Ms. Carroll to avoid the proper consequences of her failure to file written *testimony* as required would be grossly unfair and prejudicial to the Georgia Institute of Technology. Counsel for the Georgia Institute of Technology believes that he has expended somewhere in the neighborhood of 50 or more hours preparing the appropriate question and answer testimonial format of its three principal witnesses. GANE (and Ms. Carroll) have had the benefit of carefully reviewing this examination prior to the evidentiary hearing both for purposes of preparing their cross-examination

of these witness, and for presenting their own counter-evidence. All of this has been precluded to THE GEORGIA INSTITUTE OF TECHNOLOGY by Ms. Carroll's failure to comply with the Board's direction respecting her prefiling of her written testimony.

CONCLUSION

A "level" playing field between adverse parties is *sine qua non* to the fairness and integrity to any judicial proceeding. To permit Glenn Carroll to ignore this Board's clear and unambiguous direction for the filing of written testimony, and to allow her in lieu thereof to present a discovery response either as testimony or as a documentary exhibit (complete with all of the objectionable materials contained therein) would be grossly unfair and prejudicial to The Georgia Institute of Technology and would permit Ms. Carroll and GANE to secure an unfair advantage over the Georgia Institute of Technology precisely because Georgia Tech did as it was supposed to have done (while Ms. Carroll did not) in prefiling of the testimony of its witnesses in proper question and answer form.

Respectfully submitted,

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Attorney General

(Signature continued on next page)

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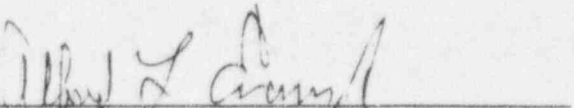

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CERTIFICATE OF SERVICE

I do hereby certify that copies of the foregoing Motion to Bar Appearance As Witness and to Exclude any and all Testimony by Glenn Carroll and Memorandum in Support of Motion to Bar Appearance as Witness and to Exclude any and all Testimony by Glenn Carroll have been served upon the following persons by U.S. Mail, except as otherwise noted and in accordance with the requirement of 10 C.F.R. Sec. 2.712:

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This 15th day of May, 1996.

Alfred L. Evans Jr.

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