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2  
3 UNITED STATES OF AMERICA  
4 NUCLEAR REGULATORY COMMISSION

5 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
6  
7

8 In the Matter of )

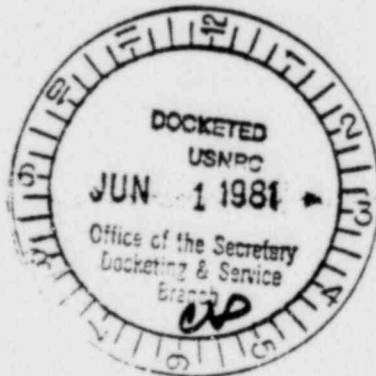
9 THE REGENTS OF THE UNIVERSITY )  
10 OF CALIFORNIA )

11 (UCLA Research Reactor )  
12

Docket No. 50-142  
(Proposed Renewal of Facility  
License Number R-71)

May 28, 1981

13 APPLICANT'S MEMORANDUM IN OPPOSITION TO INTERVENOR'S  
14 THIRD MOTION TO COMPEL; REQUEST FOR SANCTIONS  
15  
16



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1           Applicant, THE REGENTS OF THE UNIVERSITY OF  
2 CALIFORNIA, responds to Intervenor, Bridge the Gap's "Third  
3 Motion to Compel Answers; Request for Sanctions" concerning  
4 Intervenor's first set of interrogatories as follows.

5  
6           I. PRELIMINARY STATEMENT  
7

8           Applicant objects to Intervenor's third motion to  
9 compel; this motion has been propounded without substantial  
10 justification in any respect. In fact, Applicant has complied  
11 fully with what it has understood to be the command of the  
12 Board and has in good faith attempted to cooperate with the  
13 Intervenor, the NRC Staff and the Board in facilitating the  
14 resolution of the issues in this proceeding. Applicant has  
15 permitted the examination of its records and has gone to some  
16 length to explain the ambiguities in Intervenor's questions  
17 which prevent Applicant from providing further answers.

18  
19           II. DISCUSSION  
20

21           Applicant is unaware of the particular arguments  
22 which Intervenor intends to advance in support of its "wrong  
23 class of license" contention. However, it is clear to Appli-  
24 cant on the basis of the first set of interrogatories that  
25 Intervenor is confused as to the meaning of 10 C.F.R. 50.22.  
26 This confusion has resulted in Intervenor's framing ambiguous  
27  
28

1 questions. Intervenor states that Applicant is "strenuously  
2 resisting disclosing" information relevant to Intervenor's  
3 contention. Such is not the case. Applicant's inability to  
4 respond further is based solely on the fact that Intervenor's  
5 questions are unclear. Moreover, since Applicant has made an  
6 appropriate offer of its records and documents which will en-  
7 able Intervenor to extract whatever information exists relative  
8 to Intervenor's claim, Applicant has fully complied with the  
9 Federal Rules of Civil Procedure, Nuclear Regulatory Commission  
10 practice and the Board's Order.

11  
12 A. Production of Records

13  
14 Applicant has permitted the examination of all the  
15 records and documents in Applicant's possession offered in re-  
16 sponse to Intervenor's first set of interrogatories and has  
17 photocopied for Intervenor's convenience over 1200 pages of  
18 this material.<sup>1/</sup> The effect of the Board's March 10, 1981  
19 Order was to fault Applicant for failing to provide Intervenor  
20 with the May 13, 1981 document (the table of reactor port-hours)  
21 as a document which should have been offered in response to  
22 Intervenor's interrogatory no. 9 (Intervenor's first set of  
23 interrogatories.) Applicant accepts that admonishment as  
24 Applicant's May 1, 1981 letter to Intervenor's counsel clearly  
25 states. Applicant still intends to demonstrate at the appro-  
26 priate time in the proceeding that the subject document is not

27  
28 <sup>1/</sup> See Declaration of William H. Cormier, attached hereto.

1 what Intervenor claims it to be and that it does not provide  
2 the answer to Intervenor's question no. 9.  
3

4           Nevertheless, Intervenor has the questioned document  
5 in its possession and has had use of the information it con-  
6 tains. In addition, Applicant has just responded to the Conten-  
7 tion II questions contained in Intervenor's second set of inter-  
8 rogatories. In Applicant's response to one of Intervenor's  
9 questions, Applicant has extended the compilation of the May 13,  
10 1981 document data for the year 1980 and the first four months  
11 of 1981. (Prior to the preparation of the May 13, 1980 document  
12 this data had not been compiled in this form.)  
13

14           Applicant also indicated in its second set responses  
15 that it was preparing a brief study of the "educational" uses.  
16 that are made of the reactor and that this data would be made  
17 available to Intervenor when it is completed. Applicant had  
18 previously offered its general ledgers for all years of reactor  
19 operations and the available supporting financial documentation,  
20 but Intervenor has chose to avail itself of only part of this  
21 data. Applicant has repeated the offer of its general ledgers  
22 in its second set responses (see "Exhibit A," the document list  
23 of Applicant's Answers of Intervenor's second set of Interrog-  
24 atories.  
25

26           Since Applicant has made available or Intervenor  
27  
28



1 otherwise has in its possession, the records Applicant has  
2 offered in response to the first set interrogatories, the only  
3 issue remaining with this motion is whether Applicant was com-  
4 manded by the Board to provide additional answers to questions  
5 4, 5, 6 and 9 of Intervenor's first set of interrogatories. If  
6 not, there is no merit to Intervenor's motion.

7  
8 B. Further Answers  
9

10 Applicant has explained in its answers of November 14,  
11 1980, its memorandum of December 12, 1980, its further answers  
12 of January 22, 1981 and finally in its memorandum of February  
13 23, 1981 that Intervenor's questions (interrogatories 4, 5, 6  
14 and 9) were unclear and ambiguous. Applicant has explained in  
15 detail the reasons for the ambiguities and has provided Inter-  
16 venor with enough suggestions on how Intervenor could restate  
17 its questions to resolve the ambiguities. Applicant need not  
18 repeat those discussions here, but urges the Board to refer to  
19 those previous discussions.

20  
21 Applicant should not be required to provide answers  
22 to interrogatories that are as ambiguous as those propounded by  
23 Intervenor. Furthermore, applicant does not believe that the  
24 Board's March 10 Order commanded Applicant to redo its answers.  
25 If, in fact, the Board's intent was otherwise, the Applicant  
26 respectfully submit that the Board's Order was unclear and that  
27  
28

1 Applicant's interpretation was arrived at in good faith. Under  
2 such circumstances it would be unfair to impose the requested  
3 sanctions.

4  
5 But, Applicant believes that the Board was clear in its  
6 March 10 Order and that it did

7  
8 ". . . direct UCLA to be open and candid as to the  
9 details of all existing records. At the same time,  
10 we again advise CBG that the Applicant is not re-  
11 quired to create new information or engage in a work  
12 effort to reshape its records to the Intervenor's  
13 categories . . ."

14  
15 The Order of the Board stated as follows:

16  
17 "That UCLA shall respond to CBG interrogatories with  
18 a complete disclosure of all relevant information."

19 Unlike its previous Order (December 22, 1980) the Board did not  
20 state "The Motion to Compel is . . . GRANTED." Applicant does  
21 not believe that the Board's order contemplated further answers  
22 to Intervenor's past interrogatories but instead accepted Appli-  
23 cant's explanations of the difficulties it had in interpreting  
24 Intervenor's questions and ordered that Applicant disclose all  
25 of its records and documents in any way relevant to Intervenor's  
26 questions.

27  
28 In that regard, Applicant has identified the relevant

1 documents and has provided additional assistance at the several  
2 document examination sessions that have occurred by instructing  
3 Intervenor in the proper interpretation of its documents. The  
4 May 13, 1980 document (reactor port-hours) is simply a classi-  
5 fication by user of the reactor as is explained in that docu-  
6 ment. As to any other words, terms, definitions or expressions  
7 which Intervenor needs explained, Intervenor need only specify  
8 the context in which each appears and Applicant will explain the  
9 usage. What Applicant cannot do without Intervenor providing  
10 some additional clarification is respond further to Intervenor's  
11 first set interrogatories nos. 4, 5, 6 and 9.

12  
13 C. Specific Objections

14  
15 Applicant has discussed the ambiguities in Intervenor's  
16 questions at length in its previous memoranda on this matter and  
17 those explanations are incorporated herein by reference. How-  
18 ever, it is worth repeating part of that discussion here to in-  
19 sure that Applicant's position is made clear.

20  
21 Applicant's objections to Interviewer's questions are  
22 based on the fact that the questions as understood by Applicant  
23 are vague, ambiguous and uncertain. Consider by way of example  
24 interrogatory no. 4, which asks for the definitions of "re-  
25 search", "education", "training" and "sold services." Appli-  
26 cant has urged Intervenor simply to specify the context in which  
27  
28



1 the words appear and Applicant can explain the usage. Inter-  
2 venor has not done so with respect to its first set of questions.  
3 Contrast this first set of questions with a similar question,  
4 representing a vast improvement, that Intervenor has included  
5 in its second set of interrogatories (question 56 (a) of Con-  
6 tention II.) That question asks Applicant for its definition  
7 of "research" as the word is used by Applicant on page III/I-5  
8 of the license application. This question represents a restate-  
9 ment of the first set question and, as restated, Intervenor's  
10 question is clear and unambiguous and Applicant has been able  
11 to provide a clear response. Intervenor has not thus restated  
12 the question with respect to the other terms and as a result  
13 Applicant has no idea of where in Applicant's records the terms  
14 are used. Without knowing the context Applicant cannot provide  
15 a definition.

16  
17 Indeed, to Applicant's knowledge "education", "train-  
18 ing" and "sold services" are not categories or classifications  
19 that applicant regularly uses in reporting any of its financial  
20 or operating usage data. Applicant reports reactor operating  
21 time in the following categories: classroom instruction, main-  
22 tenance and research. Port hours of usage were aggregated for  
23 the first time in the May 13, 1980 response to the NRC staff's  
24 specific request and the exercise has been repeated for the  
25 period through the first quarter of 1981 to satisfy Intervenor's  
26 request made in its second set of interrogatories (see page 23  
27  
28

1 of "Answers of the Applicant to Intervenor's Second Set of  
2 Interrogatories" where "other extramural users" is Applicant's  
3 corrected expression for what Intervenor contends are "commer-  
4 cial" users and categories b, d, e, f and g correspond roughly  
5 to "research" as that is reported in the operating time tables  
6 although, as Applicant has explained elsewhere, port-hours of  
7 usage cannot be converted simply and directly into operating  
8 time hours of usage.)

9  
10 Applicant submits that Intervenor may have come up  
11 with four terms in question no. 4 in 10 C.F.R. §50.22, where  
12 those same expressions are prominent, and not from any specific  
13 place in Applicant's records. Intervenor may have assumed that  
14 since those terms appear in Section 50.22 that Applicant would  
15 be using the same categories to report specific data sets relat-  
16 ing to Applicant's operations. If so, then Intervenor is simply  
17 mistaken. If not, Intervenor can clear up the confusion by speci-  
18 fying the place in Applicant's records and documents where  
19 Intervenor's "question 4" terms appear.

20  
21 Indeed, it appears to Applicant that Intervenor's  
22 confusion and hence the ambiguity of its questions derives not  
23 from anything prompted by terms or expressions found in Appli-  
24 cant's records and documents but instead from its misreading  
25 and misinterpretation of certain phrases contained in 10 C.F.R.  
26 §50.22.

1 For example, consider further question 5a:

2  
3 "For each of the years 1960 up to and including  
4 1980 please specify: (a) What percent of the  
5 income derived from operating the Reactor was  
6 devoted to the sale of services?" (Applicant's  
7 emphasis.)

8 As it stands the question makes no sense. The phrase "devoted  
9 to", in the sense of having directed resources towards an object-  
10 ive, is properly applied to "costs", not "income", which, of  
11 course, is the way the term is used in 10 C.F.R. §50.22. The  
12 same confusion is apparent in questions 5b, 5c and 6a.

13 Similar arguments apply to the other first set ques-  
14 tions and the Board is referred to Applicant's earlier memor-  
15 anda where these matters have already been discussed.

16  
17 D. Intervenor's Third Motion to Compel

18  
19 Intervenor's third motion to compel has been pro-  
20 pounded without substantial justification. It is not only un-  
21 clear, but it contains several incorrect and misleading state-  
22 ments. Applicant believes its discussion above is fully dis-  
23 positive of the legal issues raised by Intervenor's motion.  
24 Nevertheless, Applicant feels compelled to respond to certain  
25 specific points.  
26  
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1           In the first place, Intervenor asserts that "two of  
2 the interrogatories in question (4 and 9) request definitions of  
3 terms . . . (which) definitions must exist, for Applicant's  
4 letter to staff (the May 13, 1980 document) divides reactor  
5 usage into virtually the categories for which Intervenor has  
6 requested definitions . . ." (Intervenor's motion, page 8).  
7 That is simply not correct. None of the "question 4" terms  
8 (education, training, research, and sold services) appears as a  
9 category in the May 13, 1980 document. The terms that are used  
10 in that document are explained sufficiently in that document  
11 beginning immediately below the table that lists the categories.  
12 Applicant does not possess any more precise definitions of  
13 those terms. The table is simply a breakdown of port-hour usage  
14 (not operating time, as question 9 requests) into categories of  
15 users as the NRC staff requested be done. For example, if the  
16 one whose experiment is being run in the reactor is a professor  
17 of physics at UCLA then his use would be categorized as a "UCLA  
18 User" use. Likewise, if the use were that of the notorious Dr.  
19 Kalil who is not a "UCLA User" nor a "College and University  
20 User" but instead runs his own business that use would have  
21 been categorized as "Commercial" or, as it will be referred to  
22 in the future, "Other Extramural User." There is nothing very  
23 mystical about this classification scheme; indeed, Applicant  
24 believes it is rather too obvious.

25  
26           Intervenor goes on, contradicting itself (see Inter-  
27  
28



1    venor's statement discussed immediately above), to state that:  
2    "these are Applicant's categories, used either in the letter to  
3    Staff or in the Application (pages 5, II/7-1, and III/1-5, for  
4    example)" (Intervenor's motion, bottom of page 8). The empha-  
5    sized phrase, including the parenthetical page references, is  
6    the first reference Intervenor has ever made in the six months  
7    that the parties have been considering these questions to a  
8    specific context for the terms respecting which it has been  
9    seeking definitions. These references are revealing. They dem-  
10   onstrate beyond reasonable question the insincerety of Inter-  
11   venor's claims of disadvantage in the discovery process. As  
12   Applicant expected the expressions are used in their simple  
13   common (dictionary meaning) sense.

14  
15               Intervenor's reference to page II/7-1 of the Applica-  
16   tion directs one to the following sentence: "The benefits (of  
17   the Nuclear Energy Laboratory facility) include, but are not  
18   limited to: (a) education of students and public . . . (b)  
19   research . . . and (c) training." The reference to page 5 of  
20   the Application directs one to the following sentence: "The  
21   reactor and its supporting laboratories will be used for the  
22   education of senior undergraduate and graduate students." These  
23   contexts are in no way related to Applicant's financial records  
24   and documents. Moreover, can Intervenor be seriously insisting  
25   that the meaning of the "question 4" terms as they are used in  
26   the above sentences is anything more than the straightforward



1 common sense meaning? Applicant thinks not and suggests instead  
2 that Intervenor's continued insistence on this line of argument  
3 has as its main purpose the harassment of Applicant and its  
4 Staff.

5  
6 As to Intervenor's third point complaining that Appli-  
7 cant has not extended the May 13, 1980 document data for the  
8 post-1979 period, the matter is moot. The requested data ap-  
9 pears on page 23 of Applicant's second set answers offered in  
10 response to Intervenor's second set interrogatory no. 41 (Con-  
11 tention II).

12  
13 The remainder of Intervenor's motion is concerned  
14 with Intervenor's interpretation of the Board's orders, its  
15 interpretation of the Staff's response, its conclusions on what  
16 it thinks the information it now possesses demonstrates, and its  
17 hollow assertions about what information it contends Applicant  
18 is presently withholding. Applicant has discussed the relevant  
19 matters above and has demonstrated that there is little merit  
20 to Intervenor's arguments. Consequently, Applicant believes  
21 that there is no further need to comment on these collateral  
22 matters.

23  
24 III. CONCLUSION

25  
26 For the reasons above, which are supported by explana-  
27  
28

1 tions contained in Applicant's previously filed memoranda on  
2 this matter, Applicant respectfully requests that the Board deny  
3 Intervenor's motion.  
4

5 Dated: May 28, 1981

6 DONALD L. REIDHAAR  
7 GLENN R. WOODS  
8 CHRISTINE HELWICK

9 By Glenn R Woods  
10 Glenn R. Woods  
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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4 In the Matter of )  
5 ) Docket No. 50-142  
6 THE REGENTS OF THE UNIVERSITY OF ) (Proposed Renewal of Facility  
7 CALIFORNIA ) License Number R-71)  
8 )  
9 (UCLA Research Reactor) )

10 DECLARATION OF WILLIAM H. CORMIER

11 I, WILLIAM H. CORMIER, declare as follows:

12 1. I am an attorney licensed to practice law in  
13 the State of California and the UCLA Representative for the  
14 Applicant, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, in  
15 the above-entitled action.

16 2. On three separate occasions I have arranged for,  
17 and there has occurred, an examination of Applicant's records  
18 and documents by representatives of the Committee to Bridge  
19 the Gap (CBG), which records and documents were offered by  
20 Applicant in response to Intervenor CBG's first set of  
21 interrogatories relating to Contention II in the proceeding.

22 3. The records and documents which were made available  
23 for examination consisted of the following: general ledgers  
24 of the University detailing Nuclear Energy Laboratory (NEL)  
25 financial transactions for the most recent five-year period of  
26 NEL operations and such supporting documentation as was requested  
27 by CBG and was available; NEL Operating Logs, 1960 through 1980;  
28 certain Specialized Activity Reports; certain NRC Annual Reports;  
and a current reactor operating schedule.

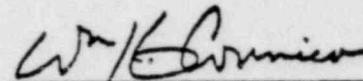
29 4. In connection with the above examination sessions  
30 I made arrangements to have an accounting officer of the  
31 University explain to CBG the interpretation of the financial  
32 documents and for the NEL Manager to be present at an Operating  
33 Log examination session to explain to CBG the interpretation of  
34 some typical log entries.

35 5. Respecting the footnote remark appearing in  
36 Intervenor's "Third Motion to Compel" (page 8) and contrary to  
37 the suggestion made there, I personally confirmed with the CBG  
38 office on May 13, 1981, that the examination session I had  
proposed by letter to occur on May 14 and 15 was acceptable and  
that I had made all the required arrangements. The confirmation  
was made by a telephoned message left on the CBG office message

1 (DECLARATION OF WILLIAM H. CORMIER; page 2)

2  
3 recorder after my several earlier attempts to reach anyone in  
4 the CBG office and my efforts to get my calls returned had failed.  
5 I received a call on May 14 from one Wendy Schneckler (spelling  
6 uncertain) who identified herself as a representative of the  
7 CBG. She acknowledged my call of the previous day and stated  
8 that she had only just discovered my message and that the team  
9 of CBG investigators would be unable to make the examination  
10 session scheduled for that day or the next. In response to her  
11 inquiry I indicated that arrangements for the following week  
12 could probably be made and, in fact, an examination session  
13 did take place on May 21 and 22.

9 Dated: May 26, 1981.

11 

12 William H. Cormier  
13 UCLA Representative

14 THE REGENTS OF THE UNIVERSITY  
15 OF CALIFORNIA  
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1 (DECLARATION OF SERVICE BY MAIL (CODE CIV. PROC. §§1013a & 2015.5)

2 I, the undersigned, say: I am a citizen of the United States,  
3 over 18 years of age, employed in Los Angeles County, California, in  
4 which county the within-mentioned mailing occurred, and not a party  
5 to the subject cause. My business address is 2214 Murphy Hall,  
6 405 Hilgard Avenue, Los Angeles, California 90024. I served  
7 the attached: APPLICANT'S MEMORANDUM IN OPPOSITION TO

8 INTERVENOR'S THIRD MOTION TO COMPEL; REQUEST FOR

9 SANCTIONS

10  
11 by placing a copy thereof in a separate envelope for each addressee  
12 named hereafter, addressed to each such addressee respectively  
13 as follows:

14 SEE ATTACHED SERVICE LIST

15  
16  
17  
18 Each envelope was then sealed and with the postage thereon  
19 fully prepaid deposited in the United States mail by me at  
20 Los Angeles, California, on May 28, 1981.

21 There is delivery service by U.S. mail at each place so  
22 addressed or regular communication by U.S. mail between the place  
23 of mailing and each place so addressed.

24 I declare under penalty of perjury that the foregoing is true  
25 and correct.

26 Executed on May 28, 1981 at Los Angeles, California



SERVICE LIST  
NRC Docket No. 50-142  
(UCLA Research Reactor)

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