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5 UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

6 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
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10 In the Matter of)
11 THE REGENTS OF THE UNIVERSITY) Docket No. 50-142
OF CALIFORNIA) (Proposed Renewal of Facility
12 (UCLA Research Reactor)) License Number R-71)
13) June 11, 1981
14)

15 APPLICANT'S RESPONSE TO THE BOARD'S ORDER TO "SHOW CAUSE"
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17



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THE REGENTS OF THE UNIVERSITY
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1 On June 1, 1981, Applicant, THE REGENTS OF THE
2 UNIVERSITY OF CALIFORNIA, received an Order of the Atomic Safety
3 and Licensing Board (the Board), dated May 29, 1981, directing
4 Applicant to "show cause" why it is not appropriate under
5 10 C.F.R. §2.707 to impose a sanction and why counsel for
6 Applicant should not be cited under 10 C.F.R. §2.713 for refusal
7 to comply with a Board direction. Applicant responds to the
8 Board's Order as follows.

9
10 I. INTRODUCTION

11
12 The Commission's rules of practice provide for
13 sanctions that may be imposed on a party for failures to comply
14 with Board orders or pleading requirements or on a party's
15 counsel for failures to comply with Board orders or otherwise
16 engaging in conduct that is disorderly, disruptive or
17 contemptuous. In such cases, the rules clearly contemplate
18 deliberate, wilful acts of the party or the party's counsel.

19
20 Respecting the Board's Order of March 10, Applicant
21 has not refused to comply but rather has acted with the belief
22 that it was complying fully with the Board's Order. As the
23 Board's Order now makes clear, Applicant's counsel have
24 misinterpreted the Board's Order. This misunderstanding and the
25 resulting "failure to comply" was not knowing, deliberate nor
26 wilful in any respect and Applicant's counsel by their conduct
27 certainly did not intend to act disruptively, nor contemptuously,
28 nor insultingly to the Board. Applicant's counsel interpreted

1 the Board's March 10 Order to direct Applicant to make all its
2 records and documents available, that is, "to disclose all
3 relevant information." Applicant did not understand the order
4 to require Applicant to file a further written answers document.

5
6 Applicant submits that its misunderstanding was made
7 in good faith; that reasonable questions can be raised concerning
8 the clarity of the Board's Order of March 10; and, that under
9 such circumstances it would not be fair to impose sanctions on
10 Applicant or Applicant's counsel.

11
12 In support of this response, Applicant respectfully
13 requests that the Board consider three documents: "Declaration
14 of Glenn R. Woods in Response to Show Cause Order Pursuant to
15 10 C.F.R. §2.707 and §2.713", which is attached hereto;
16 "Applicant's Further Answers to Intervenor in Response to the
17 Board's Order of May 29, 1981", which is attached hereto; and
18 "Applicant's Memorandum in Opposition to Intervenor's Third Motion
19 to Compel; Request for Sanctions", dated May 28, 1981 and served
20 that date and which the Board has not yet considered.

21 22 II. DISCUSSION

23 24 A. Standards for Imposing Sanctions in NRC Proceedings

25
26 The Commission's rules of practice provide in
27 10 C.F.R. §2.707 that on the failure of a party to comply with
28 any discovery order issued by the presiding officer pursuant to

1 §2.740, the Commission or the presiding officer "may make such
2 orders in regard to such failure as are just." By its language
3 and as it has been applied in Commission proceedings, this
4 default provision applies to deliberate failures to comply and
5 not to "failures" that are inadvertent, not to failures that
6 occur because of reasonable mistake, and never to failures
7 respecting which the party had no knowledge that the failure
8 occurred. 10 C.F.R. §2.707; Northern States Power Company, et
9 al., Order, ASLB, May 31, 1977.

10
11 The Commission's rules also provide in 10 C.F.R. §2.713
12 that a presiding officer may, if necessary for the orderly
13 conduct of a proceeding, reprimand, censure or suspend any
14 representative of a party "who shall refuse to comply with its
15 directions, or who shall be guilty of disorderly, disruptive, or
16 contemptuous conduct." Clearly, this sanction only applies to
17 deliberate, wilful conduct, conduct which questions the authority
18 of the Board to direct the proceedings.

19
20 It is inappropriate to impose either sanction in
21 situations where the offending conduct is not deliberate and the
22 apparent affront is not intended.

23
24 B. Applicant's Reasonable Misinterpretation

25
26 Applicant interpreted the Board's March 10 Order as
27 requiring Applicant to be "responsive" to Intervenor's requests
28 for relevant information, meaning that Applicant would make

1 available its records and documents relevant to Intervenor's
2 questions and respond reasonably to Intervenor's requests for
3 examination of those records and documents. Applicant proceeded
4 to do just that. However, Applicant did not understand the
5 Board's Order to direct that Applicant file "further written
6 answers" to Intervenor's "first set" questions 4, 5, 6 and 9.
7

8 As the declaration of Glenn R. Woods, attached hereto,
9 makes clear, Applicant did not interpret the March 10 Order as
10 imposing no duty on the Applicant. On the contrary, Applicant
11 understood the Board's Order as directing Applicant to be
12 responsive by disclosing to Intervenor its relevant records and
13 documents. At the time of the issuance of the March 10 Order
14 Applicant was in the process of making its records available for
15 Intervenor's examination and has continued those actions, which
16 are limited only by Applicant's currently pending request for a
17 protective order. In good faith, Applicant did not understand
18 that the Board was directing Applicant to file "further written
19 answers."
20

21 That Applicant's interpretation of the March 10 Order
22 was reasonable, although incorrect, can be seen by re-examining
23 the language of the March 10 Order and reviewing the context of
24 the pleadings on this subject filed prior to the issuance of the
25 order.
26
27
28

1 The first substantive paragraph of the Board's Order
2 discussed the May 13, 1980 letter from UCLA to the NRC staff which
3 Applicant failed to provide Intervenor and which led to the motion
4 to compel of February 6, 1981. That paragraph concludes as
5 follows:

6 "In our view, by the NRC rules for the
7 production of documents . . . that letter
8 should have been made available to CBG by
 UCLA in response to CBG's first set of
 interrogatories." (Emphasis added).

9 The next paragraph begins as follows:

10 "Once again, we direct UCLA to be open
11 and candid as to the details of all
 existing records." (Emphasis added).

12 After advising CBG that Applicant is not required to create new
13 information or reshape its records, the Board continued in that
14 paragraph to state:

15 "Put more bluntly, UCLA shall not hold
16 back any information it possesses . . .
17 and Intervenor shall take advantage of
 the opportunities provided it by UCLA
18 to inspect and copy relevant documents."
 (Emphasis added).

19 All of the emphasized language suggested to Applicant
20 that the Board was concerned with the production of documents
21 and not with the provision of further written answers to Inter-
22 venor's specific questions 4, 5, 6 and 9. Applicant further
23 notes that the Board's order did not discuss any of the
24 subject questions, made no mention of further answers, and did
25 not address any of the arguments set forth in Applicant's
26 February 23, 1981 memorandum respecting the ambiguity of those
27 questions, nor did the Board in any other manner explain its
28 reasoning.

Moreover, Applicant had previously filed a document entitled "Further Answers of The Regents of the University of California to Intervenor's First Set of Interrogatories," dated January 22, 1981, subsequent to the Board's initial order on this matter, which was dated December 22, 1980. No comment was made regarding the sufficiency of this response and, as a result, Applicant assumed that the production of documents and records for inspection was a reasonable and accepted approach. Indeed, as Applicant's February 23, 1981 memorandum demonstrates, Applicant believed that the issue presented to the Board was whether Applicant should have made available its May 13, 1980 letter to the NRC Staff which included the table on operating time which Intervenor deemed relevant to its contention. Applicant submits that the language of the Board's Order could reasonably be understood as directing UCLA to be responsive by disclosing all records and documents, like the document dated May 13, 1980, rather than calling for further written answers.

C. Applicant's Related Pleadings

Applicant respectfully requests that the Board fully consider "Applicant's Memorandum in Opposition to Intervenor's Third Motion to Compel; Request for Sanctions," dated May 28, 1981.

That memorandum explains Applicant's interpretation of the Board's Order and reviews the basis for Applicant's opposition to Intervenor's first set of questions. On those

1 matters Applicant can only urge the Board to review carefully
2 Applicant's arguments in support of its opposition to Intervenor's
3 questions. In particular, Applicant requests that the Board
4 re-examine all of Applicant's arguments related to questions
5 4 and 5. Applicant it still uncertain as to the interpretation
6 of these questions and Intervenor has not been helpful in
7 relieving any of this uncertainty in simply repeating its
8 complaints that we are being unresponsive. Notwithstanding that
9 Applicant is now providing further answers to Intervenor in
10 response to the Board's Order, Applicant continues to assert that
11 there exists substantial justification for its opposition to
12 Intervenor's questions and that Applicant's opposition on these
13 matters has been brought before the Board in good faith.
14

15 Applicant further requests that the Board consider
16 "Applicant's Further Answers to Intervenor in Response to the
17 Board's Order of May 29, 1981." In that response, Applicant has
18 gone beyond the Board's directive that Applicant answer
19 Intervenor's questions. Applicant has provided a broad
20 explanation of Applicant's reactor operations and a chart which
21 summarizes the relevant financial activity of the Nuclear Energy
22 Laboratories during the past six years. Applicant's staff have
23 spent over thirty person hours in the last several days deriving
24 this data and preparing the chart and explanation. Applicant is
25 attempting to extend the data for earlier years but that effort
26 will be time-consuming and limited because of the incompleteness
27 of the data. Moreover, at Intervenor's request, Applicant will
28 have its staff explain in more detail, at a scheduled record

1 examination session, its methods of recording reactor usage
2 and income and other matters pertaining to its financial activity.

3
4 Applicant undertakes these additional efforts as a
5 showing of good faith and with the understanding that the Board
6 has advised Intervenor that Applicant is not required to "create
7 new information or engage in a work effort to reshape its records
8 to Intervenor's categories."

9
10 III. CONCLUSION
11

12 Applicant concedes that, in retrospect, it should have
13 sought clarification from the Board regarding its March 10 Order.
14 In failing to do so, however, and interpreting the Order as it
15 did, Applicant did not intend to refuse to comply with the
16 directive of the Board. For the reasons above, and those
17 contained in the related pleadings, Applicant respectively
18 requests that the Board make the following rulings:

19
20 (1) That Applicant's actions were based on a
21 reasonable misinterpretation of the Board's March 10 Order and
22 that no cause exists to impose sanctions on Applicant or
23 Applicant's counsel;

24
25 (2) That Applicant continue to make available
26 its records and documents and provide some assistance to
27 Intervenor by explaining how it collects and records its reactor
28 usage and income data;

1 (3) That, in consideration of Applicant's offer
2 of its records and related assistance and the reasonable questions
3 that have been raised as to the certainty of some of Intervenor's
4 questions, Applicant's further answers served June 11, 1981 are
5 responsive to Intervenor's questions; and
6

7 (4) That Intervenor, as it wishes, pursue its
8 inquiry into these matters by means of follow-up questions
9 according to the schedule set by the Board for the other
10 interrogatories that parties may wish to submit in these
11 proceedings.
12

13 Applicant respectfully submits that the requested
14 rulings are fair and that they will do much to expedite these
15 proceedings.
16

17 Finally, Applicant wishes to advise the Board that it
18 is prepared to stipulate as to its financial activities, which
19 are unexceptional and raise no special issues. Applicant is
20 prepared to demonstrate that with respect to Contention II
21 ("wrong class of license") there are no material facts in dispute
22 and the contention is suitable for summary disposition.
23

24 Dated: June 11, 1981

25 DONALD L. REIDHAAR
26 GLENN R. WOODS
27 CHRISTINE HELWICK

28 By Glenn R. Woods
Glenn R. Woods

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4 UNITED STATES OF AMERICA
5 NUCLEAR REGULATORY COMMISSION

6 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
7

8 In the Matter of) Docket No. 50-142
9) (Proposed Renewal of
10 THE REGENTS OF THE UNIVERSITY) Facility License)
11 OF CALIFORNIA)
12 (UCLA Research Reactor))
13
14

15 DECLARATION OF GLENN R. WOODS IN RESPONSE TO "SHOW CAUSE"
16 ORDER PURSUANT TO 10 C.F.R. § 2.707 AND § 2.713
17

18 Dated: June 8, 1981
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21

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1 I, Glenn R. Woods, say:

2
3 1. I am an Associate Counsel of The Regents of
4 the University of California.
5

6 2. It is apparent that my letter of May 1, 1981
7 has been interpreted to suggest that UCLA believed that it
8 was not required to do anything further in response to the
9 Board's March 10 order. This was certainly not the case and
10 I apologize to the Board for giving that impression. There
11 was never any question in our minds that the Board had
12 ordered UCLA to be responsive to Bridge the Gap's interroga-
13 tories. The only question which was intended to be discussed
14 in the letter of May 1 was whether the Board's order contem-
15 plated further written answers in addition to the response
16 which was actually made.
17

18 3. When the Board's order of March 10, 1981, was
19 received there was concern that we immediately comply with
20 the Board's directive. I contacted UCLA and informed the
21 staff that Bridge the Gap should be given access to every
22 document and record and all information in our files which
23 was in any way relevant to these interrogatories. I was
24 informed that this would be done and I was also told that
25 UCLA was already in the process of allowing Bridge the Gap
26 full and complete inspection. Therefore, it was my

1 belief that we were, at that time, complying with what I
2 thought the Board was ordering--i.e., to be "open and candid
3 as to the details of all existing records" and "not hold
4 back any information [we] possessed which [was] relevant to
5 the Intervenor's interrogatories." I felt that these
6 actions were responsive to the above directions and to the
7 Board's specific order that "UCLA respond to CBG inter-
8 rogatories with a complete disclosure of all relevant
9 information." (Emphasis added.)
10

11 4. In addition, the campus staff also informed
12 me that when this process of disclosure was completed that
13 Bridge the Gap would have had access to all of the
14 information, records and materials which UCLA had in its
15 possession with regard to these interrogatories. Since this
16 was the case, and since the Board was aware that this
17 inspection process was underway and had stated that UCLA was
18 not required to create new information or engage in a work
19 effort to reshape its records, I assumed that there was some
20 significance in the fact that the Board did not order that
21 further answers be filed and in the different wording of the
22 Board's order of March 10, 1981 from its previous order. In
23 other words, I assumed that UCLA's compliance with the
24 Board's order by production for inspection of all relevant
25 documents, information and details of records was responsive
26 and that further written answers were not necessary. It is

1 now clear that the Board intended otherwise and that we
2 should have gone one step further to file additional written
3 answers indicating exactly what information we were
4 providing to Bridge the Gap and how we were complying with
5 the Board's order. We are in the process of doing this at
6 this time.

7
8 5. In summary, my letter of May 1, 1981, was
9 written under a time deadline and was not intended to
10 address all of the circumstances regarding our intentions
11 and actions taken in response to the Board's order. It
12 apparently created the incorrect impression that we were not
13 taking any action and I apologize to the Board for the
14 inconvenience this has caused. The fact remains, however,
15 that we were making a good faith effort to comply with the
16 Board's order by giving Bridge the Gap all of the records,
17 information and materials relevant to these interrogatories
18 and I had no intention, whatsoever, to refuse to comply with
19 the Board's order.

20
21 I declare under penalty of perjury that the
22 foregoing is true and correct.

23
24 Executed on June 8, 1981, at Berkeley, California.

25
26 
Glenn R. Woods

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

8 CERTIFICATE OF SERVICE

9 I hereby certify that copies of the attached: APPLICANT'S
10 RESPONSE TO THE BOARD'S ORDER TO SHOW CAUSE

11 in the above-captioned proceeding have been served on the following by deposit
12 in the United States mail, first class, postage prepaid, addressed as indicated, on this date: June 11, 1981.

13 Elizabeth Bowers, Esq.
14 U.S. Nuclear Regulatory Commission
15 Atomic Safety & Licensing Board
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21 Chief, Docketing and Service Section (3)
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