12/01/80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. 50-142
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	)	(Proposed Renewal of Facility License)
	)	
(UCLA Research Reactor)	)	

NRC STAFF POSITION ON UNSTIPULATED CONTENTIONS

Pursuant to an agreement among the parties, which was explained to the Board by letter of October 27, 1980 from Staff Counsel, a stipulation on some contentions has been reached and provided to the Board. The unstipulated contentions are contained in attachments B and C which categorize the remaining contentions and bases according to the positions of Staff and Applicant in support of or in opposition to the contentions. The Staff hereby submits its statement of position on those contentions not included in the stipulation.[1/]

Unstipulated Contentions in Attachment B

Contention I.1.

The Staff continues to oppose admission of this assertion that experimental vibration of the reactor caused damage since the Intervenor's document

1/ The Staff has previously filed, on September 16, 1980, "NRC Staff's Position on Contentions of Committee to Bridge the Gap" (Staff's Initial Position on Contentions) in response to the contentions originally filed by Intervenor on August 25, 1980. In that filing, the Staff set forth what it believes to be the standards for admissibility of contentions at pp. 2-5. The Staff's position on the admissibility of contentions in the instant response are based on the standards set forth in the Staff's September 16, 1980 filing.

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provided as the basis for this contention shows that the damage was corrected, and thus, that there is no issue raised by the allegation.

Contention V.3. and 11.

The Staff views subparts 3 and 11 to be additional bases for stipulated contention V and thus does not oppose their inclusion with the bases listed on pages 4 and 5 of the stipulation.

Contention X

The Staff supports admission of Contention X and supporting bases 2.a.-g. but opposes bases 1.a. and b. as invalid since they suggest application of regulations which do not apply to research reactors and they appear to challenge the basic structure of the Commission's regulatory process and raise matters inapplicable to the facility in question. Phildelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20-21 (1974). The Staff opposes bases 3.a.-c. and 4.a.-f. which deal with matters to be considered in the event that it is determined that an environmental impact statement must be prepared. If an EIS is found necessary, the Staff would support Sections 3.a-c and 4.a-f, but at this time these subparts are premature and contingent on a finding not yet determined.

The Commission's regulations set forth in 10 CFR § 51.5(a) do not list the licensing of research reactors as an action requiring preparation of an EIS. Further, the regulations provide that only the Commission may determine that

an EIS is required for licensing actions not specifically listed in § 51.5(a), depending upon the circumstances. (see 10 CFR § 51.5(b)(1)). Therefore, the Staff believes that the Licensing Board does not have authority to direct the Staff to prepare an EIS, but it does have authority to review the facts concerning the license renewal proposed by this proceeding in order to determine whether or not a significant environmental impact would result from the proposed licensing action. If the Licensing Board found a significant environmental impact would result, it could recommend to the Commissior that the Commission direct the Staff to prepare an EIS. The Appeal Board found the authority to review the factual record in the Columbia Research Reactor case[2/] where the issue raised was the same as that raised here by Contention X. To this end the Staff proposes that a maximum credible accident be addressed by Staff and Applicant incorporating those considerations raised in bases 2.a.-g. for Contention X, so that the Board may make a determination regarding the degree of environmental impact of the proposed license renewal.

Contention XI.

The Staff opposes this contention which complains of insufficient information in the application concerning environmental matters since it implies that the Applicant must prepare the environmental impact appraisal and make conclusions concerning the significance of any impacts. As previously

2/ Trustees of Columbia University (Columbia Research Reactor) ALAB-50, 4 AEC 849, 865 (1972). See also the Appeal Board consideration of accident considerations for research reactors in Trustees of Columbia University (Columbia Research Reactor) ALAB-3, 4 AEC 349, 351-53 (1970).

pointed out in the Staff's Initial Position on Contentions, p. 21, preparation of a statement concerning the environmental impact of the proceeding is the responsibility of the Commission and not the Applicant. Any inadequacies in information provided by the Applicant will be remedied by Staff requests for information. An assertion that the application contains insufficient information raises no litigable issue, since the Board must find whether the Staff has adequately evaluated the environmental effects in accordance with NEPA, not whether the Applicant has provided sufficient information.

Contention XII.1.-9.

The Staff supports the contentions raised in the subparts of this contention concerning engineered safety features since they are specific and litigable issues. Contention XII.2. which deals with the adequacy of the Applicant's monitoring system repeats the issue raised in Contention VI and should be rejected on the ground that it is duplicated and repetitious. (10 CFR § 2.714(e)(1)).

Contention XV.

The Staff supports this contention on the grounds that it satisfies the specificity and basis requirements of 10 CFR § 2.714 and raises an issue appropriate for consideration in this proceeding. The Staff believes that this contention should be consolidated with factors to be considered in determining the environmental impact to be considered in Contention X since consideration of a serious accident must include effects on the nearby population.

Contention XVII.

The issue raised by this contention concerns the safety of the reactor in the event of earthquake. The Staff supports this contention as an issue of safety with apparent basis in fact.

Contention XVIII.

The Staff supports this contention as rewritten since it satisfies the specificity and basis requirements of 10 CFR § 2.714 and since subpart 3 is written in conditional terms so that an adverse finding on Contention II will eliminate this part of the contention.

Contention XXI.

The Staff supports this contention as appropriate for litigation and provision of sufficient bases in fact listed as subparts 1-9.

Unstipulated Contentions in Attachment C

VI.1.

This assertion is merely a repetition of Contention VI.; adds nothing to the contention and should be rejected as duplicative. (10 CFR § 2.714(e)(1)).

VI.6.

The Staff opposes the assertion made here in that it presupposes that 10 CFR Part 50 Appendix I standards apply to research reactors whereas Appendix I is applicable only to nuclear power reactors. (See: 10 CFR § 50.34a and

Appendix I headings specifically limiting these regulations to nuclear power reactors. See: 10 CFR § 100.3(d) for a definition of a nuclear power reactor). Therefore matters are raised which the Appeal Board in the Peach Botton case, supra, declared inappropriate. In addition, the Staff opposes the postulate made in this subpart of Contention VI. that the licensing board engage in rulemaking to set numerical guidelines for emissions in regard to the Part 20.1 ALARA requirement, which is, of course, outside both the jurisdiction of this board and the subject of this proceeding. Rulemaking procedures are set forth at 10 CFR § 2.800 et seq.

Contention VIII.3.

The Staff opposes this assertion that the Applicant must comply with 10 CFR Part 100 whereas 10 CFR § 100.2 clearly states that the reactor site criteria regulations apply only to stationary power and testing reactors as defined in 10 CFR § 100.3(d) and (e). Again the principles set out in the Peach Bottom case apply here. (See Contention X response)

Contention X.4.e.

The assertion made here concerns the economic costs of reactor operation and decommissioning which could be addressed by an environmental impact statement. Standing alone, economic costs are not relevant to a determination of the environmental impact of a proposed facility.[3/] Economic costs raises no issue but merely anticipates contents of an EIS. The Staff believes this assertion is not appropriate for litigation at this time, but would support this contention in the event that an EIS is found to be required.

3/ Consumers Power Co. (Midland Plant, Units 1 and 2) ALAB-58, 7 NRC 155, 163 (1978).

Contention XIII

This contention is a revision by the Intervenor of Contention XII submitted in the Intervenor's supplement to the petition to intervene and was presented by the Intervenor during a telephone conference among the parties.

The Staff opposes this contention on the grounds that no basis for the allegations has been presented and that the contention's assertions as to lack of information to meet the requirements of the regulations and the "excessive" nature of the requested enrichment level and quantity of fuel are too vague to alert the parties as to what they must defend against.

Contention XIV.

The Staff opposes this contention on the basis that it raises a generic issue outside the scope of this proceeding which is limited to the proposed license renewal of the UCLA reactor, and because it is vague and thus not litigable. The allegation made here deals with "problems" of all reactors of the type of the UCLA reactor but no specific problem is identified pertinent to the specific reactor under review in this proceeding. Thus the Staff is of the opinion that this contention should be denied because it is both vague and fails to show a nexus between the undefined problems and the particular reactor under consideration.

Contention XVI.2, 3, 4, 5.

The Staff believes these assertions are merely repetitions of the allegation made in Contention XVI., namely, that the UCLA reactor is unsafe because of

its age and that the allegations should be denied because they are duplicative and repetitious. (10 CFR § 2.714(e)(1)).

Contention XVII.2.

The Staff opposes admission of this contention on the ground that it is vague and fails to adequately identify the specific concern of Intervenor. In addition, to the extent that Intervenor raises concerns similar to those raised in other parts of Contention XVII, this subpart is duplicative and repetitive and should be rejected. (10 CFR § 2.714(e)(1)).

Contention XIX.

This contention raises three discrete issues, two of which are repetitions of other contentions, and one of which has not been shown to have a basis. Subpart 1 alleges a security hazard from sabotage which is encompassed in the lengthy Contention XX dealing with security matters. Subpart 2 alleges that a hazard from a plane crash into the building containing the reactor exists. No basis has been provided for this assertion other than a representation by Intervenor of a conversation with an FAA official. The Intervenor's November 6, 1980 submission admits that no flight paths exist over UCLA and rests the assertion on a speculation that planes could go over the campus. Thus there is apparently no basis to support the assertion of a plane crash hazard. Subparts 3 and 4 deal with a design basis accident (or maximum credible accident) which is encompassed by Contention X and is

therefore, merely a repetition of a previous assertion. Operator error as cause of the design basis accident adds nothing to the substance of a contention dealing with such an accident, since the safety issue to be addressed is the accident itself and its consequences and whether the cause is operator error or equipment malfunction is irrelevant to the issue of accident considerations.

Thus, for the above reasons, the Staff opposes parts 1, 3, and 4 of this contention as repetitious and part 2 as without basis.

Contention XX.

The Staff opposes this contention (submitted November 6, 1980) because no basis is provided to support any allegation regarding the asserted inadequacies of the Applicant's security plan.

Subparts 1 and 2 of Contention XX attempt to describe various areas of the building containing the reactor according to 10 CFR Part 73 security regulations. The Intervenor is correct in considering the reactor room and the fresh fuel storage area as areas of controlled access according to the requirements of Part 73. The Intervenor is incorrect in labeling all other areas listed in subparts 1 and 2 as areas containing vital equipment and special nuclear materials, since these areas do not comport with Part 73 definitions.

Subpart 3 of Contention XX alleges certain preceived defects in the Applicant's security measures for controlled access areas whici have no basis in fact or regulation. In allegation 3a, the Intervenor asserts that "presence by guards and watchmen is too infrequent." This is a vague allegation since no definition of "too infrequent" is given, but in any event, the Intervenor asserts a requirement that does not exist. 10 CFR 73.67(d)(3)[4/] states that licensees shall monitor controlled access areas with either intrusion alarms or other devices or procedures, so that guards are not a requirement if licensees choose alarm systems or other devices. Subpart 3b. asserts a requirement for explosive and metal detectors and routine searches where no such requirement exists. Section 73.67(d)(10) requires only random searches of vehicles and packages leaving the controlled access areas. No requirement for the detection devices or searches described in XX.3.b. exists in 10 CFR 73.67. (The § 73.55 requirement for detection devices does not apply to non-power reactors) Subpart 3c. asserts that "physical barriers to penetration are inadequate" and alleges deficiencies in fences, walls, windows and doors. However, this allegation suffers from vagueness as it is entirely unclear as to the meaning intended since the only fence known to the Staff is near an area not subject to security regulations and the description of windows, doors etc., is likewise vague and unclear. Further, there is no requirement for fences in Section 73.67 nor "dual or redundant barriers" stated in 3.c.iii. Subpart 3d. asserts inadequate doors and locks are

4/ See the Commission's Statement of Consideration Concerning the Physical Protection Upgrade Rule, 44 Fed. Reg. 68184, November 28, 1979 where it is stated that non-power reactors are subject only to Section 73.67 (and in some cases Section 73.60) of 10 CFR Part 73.

installed but it is not clear what doors or what locks to what areas are in question. Thus, this assertion is insufficiently precise to be litigable. Subpart 3.e. asserts procedures to control access are "inadequate" because tour groups are "too large" and go into vital and material access areas and that NEL personnel have ready access to vital and material access areas. None of these allegations is supported by any basis. It is unknown to Staff what constitutes a group that is "too large" in Intervenor's opinion so that this is a vague and unknown allegation. Tours of controlled access areas are permissible under conditions of 10 CFR 73.67(d)(7) so that no issue is raised by the allegation here. The asserted "ready access" of NEL personnel has no basis since the "egresses" described are exits from the controlled access areas and not into the controlled areas. Thus, Intervenor has mischaracterized the facts.

On the fourth page of this contention the Intervenor explains in paragraphs a., b., and c., why certain areas are, in its opinion, vital or material access areas. The reactor room is clearly an area subject to security regulations, but Intervenor is mistaken in defining the control room as an area containing vital equipment as defined in 10 CFR § 73.2 since damage or destruction of the control room mechanisms would not result in a threat to the public health and safety from exposure to radiation. The safeguards of this reactor design would result in a reactor scram in the event of control room destruction, and thus would not pose the threat alleged by Intervenor.

As to the Intervenor's lengthy description of various actions necessary to sabotage the air supply from the third floor equipment room coupled with other actions as well as the introduction of "disabling gas" into the air supply for the reactor area in an attempt to support the Intervenor's postulate that the third floor equipment room is a "vital" area, is highly imaginative, but entirely speculative. To support such a postulate one would have to believe the UCLA campus is entirely deserted so that no one inside or outside the reactor building could observe such a complicated, subversive attack. For this reason, the assertion made here is clearly sheer speculation without any basis for belief. Part d. accurately describes the fuel storage area as a material access area but part e., which attempts to support definition of the roof area containing the stack and exhaust fan as a vital equipment area, suffer the same speculative basis as does c. and has no basis to support such a "scenario".

Subpart 2 on the fifth page of this contention attempts to support the Intervenor's inaccurate definition of areas adjacent to security areas as also controlled access areas but all the explanations provided depend on a speculation of a massive armed force which somehow penetrates locked doors, and vaults; avoids watchmen and intrusion alarms and proceeds without detection by anyone on the university campus in search of a small amount of SNM. These imaginative episodes are fanciful and speculative and not a substantive basis to support the assertions made.

Subpart 3 on the seventh page of the contention describes various events which the Intervenor believes are indicative of inadequate security measures. 3.a. states that the Intervenor has not seen guards or watchmen where he evidently is of the opinion there should be guards, but as previously explained, the assumption that guards are required is invalid, and in addition, the areas deemed by Intervenor to be controlled access areas are actually not security areas. (Listed are: the third floor equipment room, the 8th floor restricted area, and adjacent areas). In addition, contrary to Intervenor's implication, the NEL entry lobby is not a controlled access area. In paragraph 3.b.i the Intervenor repeats the complaint about lack of mechanical detection devices, previously explained as not required by § 73.67 (Section 73.55 which requires these detection devices applies only to nuclear power reactors). In addition, contrary to the implication of 3.b.ii, no physical searches are required by § 73.67. Paragraphs 3.c.i, ii, and iii deal with areas of the building not subject to security regulations and thus raise no issue. The allegation that doors can be "penetrated" does not acknowledge the requirements in § 73.67 which ensure <u>detection</u> of unauthorized access so that no issue is raised by alleging that doors can be penetrated. Paragraphs d.i, ii, iii, and iv again describe matters dealing with areas not subject to security regulations and thus raise no issue. Paragraphs e.i and ii. deal again with vague and speculative assertions concerning visitor tours, whereas e.iii misrepresents an NRC inspector's report which deals with access to the roof of the building which is a <u>radiologically</u> restricted area. The I & E report (79-04) in no way deals with security

matters and even more significantly, the report clearly states that no items of noncompliance were discovered during the inspection.

For the reasons described above, the Staff oppcses all allegations made in Contention XX as baseless and outside the requirements of 10 CFR Part 73 pertinent to nonpower reactors.

Contention XXII.

The Staff opposes the assertions made in subparts 1-4 of this contention for the following reasons. Subpart 1 repeats subpart 3.c(ii) of Contention I; Subpart 2 repeats 3.c(iii) of Contention I. These subparts should be rejected on the ground tha* they are duplicative and repetitive. (10 CFR § 2.714(e)(1)). Contrary to the assertion of Subpart 3, the ALARA requirement exists in 10 CFR Part 20 so that it need not be contained in a technical specification. In Subpart 4, the Intervenor alleges that omission of technical specifications concerning exhaust stack height, flow rate, and roof access restrictions poses a threat to public health and safety. This assertion has no basis. The original license technical specifications concerning these stack height and air flow matters have been superceded by the UCLA reactor's license amendment number 10, issued February 5, 1976 and need not be included as technical specifications in this application. The amendment was based on a determination by the Staff that doses to individuals in unrestricted areas are within allowable Part 20 limits. This matter was explained to this Intervenor in the Director's Decision denying his 10 CFR § 2.206 request issued September 24, 1980. The Staff agrees that access to the reactor

building roof should be restricted by the Technical Specifications and will require its inclusion. Therefore, for the reasons explained, the Staff opposes admission of any part of Contention XXII. for failure to raise an issue, or as repetitious.

Contention XXIII.

The Staff opposes this contention for failure to raise a litigable issue. The Intervenor complains that the installation of decay tanks by Applicant to be addressed in a license amendment in the future is somehow an issue undermining the validity of the license application and (in subpart 3) a threat to public health and safety. The Staff believes that the Intervenor fails to understand the facts and legal requirements of the situation. First, the Part 20 ALARA requirement is an obligation placed on licensees to reduce emissions to as low a level as reasonably achievable below the allowable limits in Part 20. The fact that the Applicant intends to request a license amendment for installation of decay tanks and notes this intent in the renewal application raises no issue of public health and safety or "improper" license renewal application. Secondly, the additional assertion by Intervenor that some issue is raised by failure of the Applicant to apply for a license amendment concerning installation of decay tanks by September, 1980 as intended is also insupportable since it was merely an intention and not relevant to any requirement. The basic thrust of this contention is that Applicant should not reference a future application for license amendment in the license renewal application. This concept is baseless and should be

denied since the referenced modification is not a part of the license renewal application nor subject to review in this proceeding. This contention should be denied.

XXIV.

The Staff opposes this contention which is not a contention but an assertion of a past violation of regulations, and therefore, an enforcement matter rather than an issue concerning renewal of the license. The Intervenor proposes that Applicant's precautions during transfer and shipment of SNM are inadequate based on an event in June, 1980 prior to a change in the regulations, which the Intervenor readily admits are not now applicable, and which to some extent, as indicated by the Intervenor, may have occurred due to a misunderstanding between Staff and licensee. The assertion that Applicant violated 10 CFR § 73.37 on one occasion especially when the regulation has been modified to exempt licensees who ship irradiated fuel of 100 grams or less (45 Fed. Reg. 37399, June 3, 1980, effective July 3, 1980), is not sufficient to support a contention that the Applicant will not take adequate precautions during future fuel shipments. Thus, the Staff is of the opinion that the allegation is not supported by sufficient basis.

Conclusion

For the reasons set forth above, the Staff supports the following Contentions:

V.3. and V.11
X.2.
XII (excluding subpart 2)
XV (for consolidation with X)
XVII (except subpart 2)
XVIII
XXI

and opposes admission of Contentions:

I.1
X.1., 3., and 4.
XI
XII.2
VI.1. and VI.6.
VIII.3.
X.4.e
XIII
XIV
XVI.2., 3., 4., and 5.
XVII.2.
XIX.
XX.
XXII.
XXIII.
XXIV.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 1st day of December, 1980

ATTACHMENT

For ease of reference, the Staff herein lists the CBG contentions in numerical order as rewritten and contained in the stipulation and attachments along with the Staff position on each contention and subpart.

Contentions	Status or Position
I.2. and 3.	Stipulated
I.1.	Opposed by Staff
II.	Admitted by Board
III.	Admitted by Board
IV.	Admitted by Board
V.1., 2., 4., 5., 6., 8., 9., 10., 12., 13., 14	Stipulated
V.3. and 11.	Supported by Staff
VI.2-5	Stipulated
VI.1. and 6.	Opposed by Staff
VII.	Admitted by Board
VIII.1.	Stipulated
VIII.3.	Opposed by Staff
IX.	Stipulated
X.2.	Supported by Staff
X.1., 3., 4.	Opposed by Staff
XI.	Opposed by Staff

Contentions	Status or Position
XII.1., 3., 4., 5., 6., 7., 8., 9.	Supported by Staff
XII.2.	Opposed by Staff
XIII.	Opposed by Staff
XIV.	Opposed by Staff
XV.	Supported by Staff for consolidation with X
XVI.1.	Stipulated
XVI.2., 3., 4., and 5.	Opposed by Staff
XVII.1., 3., 4., 5.	Supported by Staff
XVII.2.	Opposed by Staff
XVIII.	Supported by Staff
XIX.	Opposed by Staff
XX.	Opposed by Staff
XXI	Supported by Staff
XXII.	Opposed by Staff
XXIII.	Opposed by Staff
XXIV.	Opposed by Staff