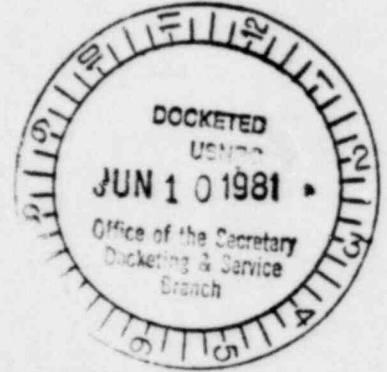




UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Elizabeth S. Bowers, Chairman
Dr. Emmeth A. Luebke
Dr. Oscar H. Paris



SERVED JUN 10 1981

In the Matter of
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
(UCLA Research Reactor)

Docket No. 50-142 OL
(Proposed Renewal of Facility
License)

June 9, 1981

ORDER RELATIVE TO NRC STAFF'S
MOTION FOR RECONSIDERATION OF
BOARD ORDER OF APRIL 30, 1981

In our Order of April 30, 1981, we stated the following:

Normally, the Board would await the responses of Applicant and Staff to a motion from the Intervenor but in this situation, time is of the essence. We will rule this date and if the parties are not in agreement, they can file motions for reconsideration.

The Staff filed a motion for reconsideration on May 12, 1981, of the Board's Order of April 30, 1981. At the request of the Licensing Board, a secretary called Committee to Bridge the Gap (CBG) and learned Intervenor were not filing a response to the Staff motion. On May 27, 1981, the Applicant (UCLA) filed a memorandum in support of the Staff's motion.

The Staff's motion for reconsideration is GRANTED.

This dispute arose after the Staff filed a motion for summary disposition on April 13, 1981 relative to Contention XX (security). On April 24, 1981,

8106120 329

G

DS02
50/1

CBG protested that motions for summary disposition could not be filed until July 30, 1981, in accordance with the schedule stipulated by the parties and adopted by the Board. The CBG filing on April 24, 1981 was a motion to strike the Staff's motion for summary disposition as premature. The Board's Order of April 30, 1981 agreed with CBG that it had been stipulated and approved by the Board that motions for summary disposition would not be filed until July 30, 1981. The Order also mentioned that if the schedule were not in place, motions for summary disposition could be filed any time up to forty-five (45) days before the hearing started.

The Staff stated in its motion for reconsideration that it was not its intention to propose a radical change from the procedure in 10 C.F.R. § 2.749 and if that had been the intent, it would have been explicit in bringing that fact to the attention of the parties and the Board. The Staff also stated that the filing of the motion for summary disposition supports its position that there was no intention that such motions could not be filed prior to July 30, 1981. The Staff further mentioned that it is only reasonable that such motions be filed ahead of or during discovery. The Staff suggests that CBG be given twenty (20) days from the date of this Order reversing the prior Order to respond to the motion for summary disposition.

UCLA fully supports the Staff's position and states any other interpretation is illogical, mistaken and counter to expressed Commission policy. UCLA further states that neither Staff nor Applicant would ever agree to the interpretation of the stipulation suggested by CBG.

We said in our Order of April 30, 1981, that this is a unique situation. We do not discount the sincerity of the Staff and the UCLA intentions but we are bound by the language in the transcript quoted in our April 30 Order.

It is our determination that the language supports the CBG's position that motions for summary disposition are not to be filed prior to July 30, 1981. - It would be patently unfair to hold CBG to the "terms" of a stipulation that are not those to which it had agreed. Our Order of April 30, 1981 is AFFIRMED.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Elizabeth S. Bowers, Chairman

Bethesda, Maryland

June 9, 1981