

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

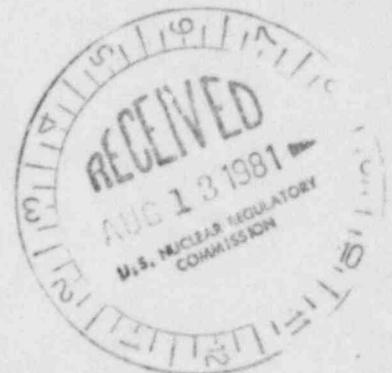


SERVED AUG 11 1981

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

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

August 10, 1981



ORDER RELATIVE TO PARTICIPATION
OF DANIEL O. HIRSCH UNDER 10 C.F.R. § 2.733

On June 3, 1981, CBG moved for the qualification of Daniel O. Hirsch as an expert interrogator under 10 C.F.R. § 2.733. The motion stated that approval was sought for all issues except the security issue. The motion alleged that Mr. Hirsch is qualified by virtue of his scientific and technical experience and that he would be fully prepared to conduct a meaningful and expeditious examination or cross-examination under the direction and control of counsel. The affidavit of Mr. Hirsch recited that he graduated magna cum laude from Harvard in Special Studies, has been a lecturer at UCLA on energy issues with a focus on nuclear power, has experience in researching the nuclear issue, and has testified in hearings on nuclear matters.

DS02
5
1/0

On June 12, 1981, UCLA stated that no objection was being made to Mr. Hirsch acting as interrogator but that Mr. Hirsch should be required to be more explicit about his formal education. The Board's order of June 16, 1981 requested Mr. Hirsch to be explicit about his formal education, since a degree in Special Studies was not informative, and also to be more explicit about the courses on "energy issues" he is teaching.^{1/}

On June 30, 1981, Mr. Hirsch responded to the Board's order by stating that his particular program at Harvard focused on how various disciplines are utilized in public policy decisions. He also stated that since his formal education, he has had a deep immersion in the scientific and technical aspects of energy issues with particular emphasis on nuclear power. He enclosed a thorough description of his course at UCLA entitled "Energy Alternatives and Public Policy". Mr. Hirsch is a member of the Los Angeles Federation of Scientists, and he enclosed a strong statement from that group in support of his expertise regarding nuclear matters. The statement mentioned his presentations to the organization on the technical aspects of the UCLA research reactor.

On July 16, 1981, UCLA stated that Mr. Hirsch's response was vague and that his technical and scientific training and experience are at best very limited. The statement concluded that Mr. Hirsch has not demonstrated

^{1/} On June 19, 1981, the Staff stated that since the Board's order was issued before their response to the motion was due, they would await Mr. Hirsch's answer before filing a response.

that he is qualified to proceed with interrogation on any contention. On July 20, 1981, CBG stated the UCLA filing did not explicitly withdraw the prior approval and that there was no basis for the criticism that Mr. Hirsch's information was vague and did not demonstrate his ability to proceed as an interrogator. Counsel for CBG reiterated his need to have this "modest" request granted because of his need for the aid of Mr. Hirsch in competently representing the interests of CBG.

On July 30, 1981, the Staff quoted 10 C.F.R. § 2.733 in part and concluded that an expert interrogator must meet the same standard of expertise required for an expert witness and that Mr. Hirsch does not qualify since he has not had formal education or working experience in engineering or physics or other areas directly related to the subject matter of the contentions. The Staff also states that Mr. Hirsch's formal education and teaching experience are in the field of public policy and since the proceeding is concerned with a research reactor and not a nuclear power plant, his involvement with public policy on energy issues could not be even remotely relevant here. The Staff requested the Board to deny the motion.

The Board does not agree with the Staff position that an expert interrogator must have the same standard of expertise as an expert witness. The standard to be applied is set forth in § 2.733(a) as follows: "That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination." (Emphasis supplied)

Mr. Hirsch's formal education was interdisciplinary proceeding under a committee composed of a geologist, an economist and a member of the school of education. For the last seven years, Mr. Hirsch has had a part time appointment as a Lecturer at UCLA, and for the last ten years he has been a researcher and technical advisor to CBG, with emphasis in the past few years on nuclear matters. His presentations on the UCLA research reactor to the Los Angeles Federation of Scientists were obviously well received. All of the above points to a probability that Mr. Hirsch might well have the ability to proceed as an expert interrogator. But what is most persuasive to the Board is the fact that at the pre-hearing conference on February 4 and 5, 1981, Mr. Hirsch in an articulate and technically knowledgeable manner discussed and explained the basis for the various contentions. He demonstrated an excellent grasp of the technical aspects of the issues.

We also recognize that CBG has limited resources, and if the burden can be shared, their resources can be used with greater productivity. However, if during the hearing the Board perceives that the interrogation by Mr. Hirsch indicates a lack of technical competence and is not contributing to the development of an adequate record in the proceeding, his approval to proceed will be rescinded in part or in the total.

Both Mr. Hirsch and counsel for CBG have acknowledged their respective obligations under § 2.733. Mr. Hirsch has the obligation under (b) and (c) to have read the written testimony or documents and to be prepared to

conduct a meaningful and expeditious examination or cross-examination. Counsel has acknowledged that he shall be responsible for Mr. Hirsch's conduct in proceeding with the examination or cross-examination.

The motion is granted.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Elizabeth S. Bowers
Elizabeth S. Bowers, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

August 10, 1981