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June 9, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

(UCLA Research Reactor)

Docket No. 50-142

(Proposed Renewal of
Facility License)

CBG'S RESPONSE TO APPLICANT'S REQUEST FOR
"CLARIFICATION" OF BOARD'S MAY 13, 1983, MEMORANDUM AND ORDER

I. Introduction

Applicant, in a Motion dated June 2, 1983, seeks permission to introduce at the July inherent safety hearings testimony on the seismic matters deferred by the Board in its May 13, 1983, Memorandum and Order Concerning Contention XVII. In that Memorandum and Order, the Board deferred ruling on the motions for summary disposition of that contention, and consideration of evidence on any matters not summarily resolved, pending the outcome of the inherent safety hearings. The Board specifically indicated that the issue of "credibility" (i.e., degree of probability) that the core would be damaged by various earthquakes possible at the site would not be heard during the inherent safety hearings, that what is at issue in the inherent safety hearings is the assertion by Staff, supported by Applicant, that no adverse consequences would result from an earthquake

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induced accident which crushed the core of the reactor. As the Board put it regarding its decision to defer ruling on the summary disposition motions on the seismic matters:

Accordingly, we will continue to defer ruling on those motions pending the outcome of the inherent safety hearings. Those hearings will examine Staff's accident analysis, which is here in question. They will not go into UCLA's position stated in § 3.4 of the Application that no substantial damage to the building housing the reactor would result from any credible accident.

Memorandum and Order, p. 4
(emphasis added)

Applicant, in the guise of a "request for clarification" and with the disingenuous assertion that "University does not seek to disturb the Board's ruling deferring Contention XVII," requests precisely that relief, reversal of the Board's ruling. CBG files in opposition.

II. BACKGROUND

Contention XVII deals with the seismicity of the reactor site and the vulnerability of the reactor core and reactor building to seismically induced damage.^{1/} The Staff in its SER sets as the design basis accident for the UCLA reactor core-crushing induced by an earthquake; based on studies performed for the Staff, the Staff asserts that such an accident would result in doses of 30 - 43 Rem to the thyroid. The University relies upon the Staff analyses, and has included the Staff studies by reference in its own Application.

^{1/} Part of the contention asserts that the application does not contain the current information on siting required by 10 CFR 50.34(b)(1), particularly regarding seismicity of the site. UCLA has argued that it need not perform a detailed seismic review of the site because the reactor, due to inherent self-limiting features, cannot cause doses to the public in excess of 10 CFR 20 limits were the core crushed in an earthquake. It is that assertion which the Board has set for the inherent safety hearings.

At the June 30, 1982, prehearing conference, UCLA attempted to prevent CBG from obtaining use of photographs it had taken of the reactor structure and related facilities, in part as support for CBG's contention that the building could fall down and crush the reactor core in an earthquake. Judge Frye inquired, during those discussions, whether it was necessary to have the photographs to resolve that argument...

JUDGE FRYE: I am assuming the University will stipulate to the fact that the --

MR. CORMIER: We are going to concede that the building is going to collapse and crush the reactor. There is a generic study already done at Los Alamos that assumes that, and we are not going to say that the building is not going to collapse.

TR 696^{2/} (emphasis added)

In part because of the above assertion, numerous of the photographs CBG had taken were clipped or replaced altogether.

On September 7, 1982, CBG moved for partial summary disposition of Contention XVII. The Staff opposed none of the material facts asserted by CBG to not be in dispute; UCLA disputed only four of the facts (all relating to capability and location of specific earthquake faults), citing only CBG's exhibits in opposition. None of the other fourteen facts were disputed at all. No counterfactuals were put forth in response to CBG's motion; the only opposing fact put forth by UCLA's motion for summary disposition of the same contention was an inherent safety assertion, that decay heat build up in a crushed core would not be sufficient, because of 100 kw power limitation, to cause fuel melting.

The Board, perceiving that UCLA's disputing of the four CBG facts appeared to be over minor semantic reasons, directed UCLA and CBG to confer and attempt to resolve the disputes on the facts. The parties did so, and by CBG agreeing to modify the language of the facts, UCLA withdrew its objections.

^{2/} Shortly thereafter in the same prehearing conference, counsel for UCLA appeared to contradict himself on this same matter, a tendency which has been a source of repeated frustration in this proceeding.

In light of the lack of any dispute by Staff of Applicant to CBG's statement of 18 material facts, CBG requested the Board grant the requested partial summary disposition. In its March 23, 1983 Memorandum and Order, the Board granted the request, absent objection, viewing the facts as a stipulation among parties.

UCLA objected, attempting to draw a distinction between having stipulated that the reactor core could be crushed in an earthquake, resulting in fission product release to the environment and doses of at least 10 rem thyroid, and whether the reactor core would be crushed.^{3/} The Board, on April 14, directed UCLA to explain itself, saying that UCLA

seems to say that UCLA will stipulate that the building could fall down in a major earthquake, but it won't. That is an inconsistent statement.

Order, p. 3

In its response, UCLA, apparently ignoring its statement at the prehearing conference cited above, argued that it "has never conceded" that such core-crushing was "credible." (p. 5, April 29 Response). Applicant further referred to a portion of its Application (not cited, as required, in opposition to CBG's facts or as basis for any counterfactuals during the factual response portion of the Board's bifurcated procedure) which asserts, not that it is not possible nor even that it is not credible that the "reactor core would be crushed in the event of the collapse of the reactor building," but rather that it is "by no means certain" that such would be the result.^{4/}

^{3/} During the discussions between UCLA and CBG ordered by the Board to attempt to work out disagreements about the language of the Contention XVII facts, UCLA never raised this semantic hairsplit.

^{4/} Note that the cited Application section asserts, not that no substantial damage to the building housing the reactor would occur from an earthquake (as implied in the paraphrase at p. 3 of the May 13 Order), but that it is "by no means certain" that were the building to collapse onto the reactor core, the core would be damaged.

Based on this response, the Board decided to continue to defer its ruling on the pending motions for summary disposition, and to not include in the inherent safety hearings the Applicant's new assertion that although the core could be crushed in an earthquake, the probabilities were too low to be considered "credible." The Board reiterated its position that the inherent safety hearings were to determine if the reactor was inherently safe (i.e., if it was protected by automatic self-limiting features working by the laws of physics). Only after that determination was made would it be relevant, if at all, to determine the probability of specific events occurring or the effectiveness of engineered safety features such as shield blocks and supports. The first determination was whether Staff and Applicant are right in their assertion that, based on inherent self-limiting characteristics of the reactor, no endangerment of the public could occur if the core were crushed in an earthquake. It is this decision which Applicant wishes **reversed**.

III. Discussion

UCLA's request at the last minute to include the deferred seismic matters would make it impossible for CBG to present its case on that matter. Prefiled testimony is due 5 days from today. There is no way CBG can prepare its presentation in that time on matters that have been deferred by the Board's Order, or put aside because of the Applicant's stipulation (now apparently being attempted to be wriggled out of) of the facts not in dispute on the seismic contention. To grant UCLA's request would be to deny CBG the opportunity to effectively present its case on the matter.

Furthermore, the Board has yet to rule on the motions for summary disposition. Without such a ruling, as Applicant has itself indicated several times in the past, hearings are premature. Considerable unnecessary matters

would have to be heard that might otherwise be summarily dismissed. Under the Board's procedures, a ruling on the summary disposition motions is necessary before setting the matter for hearing. Given the fact that no party disputes CBG's statement of eighteen material facts, CBG is entitled to a ruling on its motion prior to remaining matters, if any, being set for hearing. To do otherwise would be to permit UCLA to ignore stipulated-to facts and its own previous statements and litigate matters that could be resolved summarily.

Lastly, UCLA's proposal is massively unwieldy. To deal at hearing with UCLA's new contention that the building and/or reactor has a specific probability of withstanding the maximum credible earthquake (whatever that is determined to be) at the site will obviously require evidentiary consideration of the following issues: the location of all nearby earthquake faults, the magnitude of the largest earthquake credible along those faults, the soil conditions in the area and beneath the reactor structure (to assess liquefaction potential, etc.), the maximum ground displacement and acceleration possible at the site, the probable shape of the acceleration spectra, the response spectra for the buildings and for the reactor, the strength of supporting columns, etc.^{5/} Out of this must come a probabilistic risk assessment of the likelihood (presumably quantitative probability) that x earthquake on y fault will produce z acceleration spectra and thus B damage to the building and C degree of crushing of the reactor core.

There will be difficulty concluding all inherent safety matters during the time set aside for the inherent safety hearings. Litigating the deferred seismic matters at the same time is impossible.

^{5/} The statement of facts supposedly stipulated to refers to only some of the potential faults in the area, saying merely that they come to at least within x distance of the reactor and have at least y capacity, and thus could cause core crushing. If the University's distinction between could and would is allowed to stand, it will be necessary to litigate location of other faults, as well as how much closer to the site and how much larger magnitude the identified faults may obtain, as well as the complicated acceleration and liquefaction matters.

IV. Conclusion

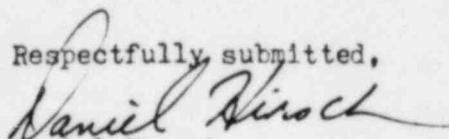
CEG objects to UCLA's request that the deferred seismic matters be included at this late date in the inherent safety hearings. There is no time for CEG to prepare its testimony on those matters, the Board has yet to rule on the pending motions for summary disposition, and consideration of the credibility of various seismic events at this time would make impossible hearing of the inherent safety matters already set.

Staff and Applicant have asserted that the reactor is inherently safe. The Board has set hearings to assess that assertion. To start at this stage to argue that the reactor may not be inherently protected against adverse consequences of earthquakes but instead that the probability of specific magnitude earthquakes on specific faults producing specific ground motion responses and specific building responses is numerically low enough to be somehow "acceptable" would unacceptably broaden the scope of the inherent safety hearings. The seismic questions for the inherent safety hearings are whether, as the Staff asserts, the reactor is inherently protected by the nature of the fuel and the size of its inventory from adverse effects of seismically-induced core-crushing. To start arguing probabilities rather than inherent protection would unravel the entire purpose of the inherent safety hearings as defined in the Board's March 23 Order. Otherwise the deferred matters of history of violations, inadequate managerial controls, frequency of maintenance problems, etc., would all have to come in during the upcoming hearings, for they form the basis for any determination of the probability of specific accident sequences. The inherent safety hearings are to determine whether the reactor, by virtue of inherent self-limiting features which "kick in" automatically by the laws of physics, is, as argued by Staff and Applicant, protected by these inherent features against the possibility of serious accident.

If the Applicant wants to concede now that it cannot meet its burden to demonstrate inherent safety, then there is no need for the upcoming hearing. But if it wants to argue that the reactor does indeed meet the inherent safety standard, then it cannot rest that case on assertions about engineered safety features and probabilities, which have been deferred by the Board and are thus outside the scope of the inherent safety proceedings.

For the above reasons, CBG respectfully opposes UCLA's request. CBG further records its strenuous objections to UCLA's continuing behavior in the seismic matter: the initial concessions, in an effort to get CBG to agree to cut up its own pictorial evidence, that the reactor would be crushed in an earthquake, pledging not to argue otherwise in the future, pledges quickly reversed and now even denied; getting CBG to alter language in its statements of fact on the seismic matter in exchange for withdrawing opposition to the statement of facts, then after the fact raising new, hairsplitting objections to the stipulated facts; and now requesting "clarification" of the Board's deferral Order, with the assertion that it did not seek to reverse the Board's Order, when that was indeed its request, the result of which would permit UCLA, a few days before the deadline for pre-filing of testimony, to present evidence on a deferred matter while making it essentially impossible for other parties to do likewise. Such behavior, if tolerated, will unravel all the Board's efforts to structure the proceedings, and would unacceptably broaden the scope of the upcoming hearings from whether the reactor is inherently protected against accidents to whether engineered safety features are adequate and probabilities low enough.

Respectfully submitted,


Daniel Hirsch
President
COMMITTEE TO BRIDGE THE GAP

dated at Ben Lomond, CA
this 9th day of June, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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THE REGENTS OF THE UNIVERSITY
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DECLARATION OF SERVICE

I hereby declare that copies of the attached: CBG'S RESPONSE TO APPLICANT'S
REQUEST FOR "CLARIFICATION" OF BOARD'S MAY 13, 1983, MEMORANDUM AND ORDER

in the above-captioned proceeding have been served on the following by
deposit in the United States mail, first class, postage prepaid, addressed
as indicated, on this date: June 9, 1983.

- * John H. Frye, III, Chairman
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- * Dr. Emmeth A. Luebke
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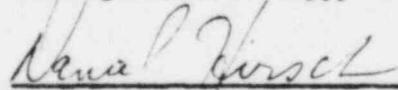
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COMMITTEE TO BRIDGE THE GAP

* by express mail