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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION FOR RECONSIDERATION OF A PORTION OF THE BOARD'S
MEMORANDUM AND ORDER OF OCTOBER 22, 1982

I. THE MOTION

CBG respectfully moves the Atomic Safety and Licensing Board to reconsider a portion of its October 22, 1982, Memorandum and Order, in particular, the twenty day response period to the summary disposition motions.

II. BACKGROUND

At a prehearing conference on June 29-30, 1982, the Board gave the parties sixty (60) days in which to prepare summary disposition motions and forty-five (45) days in which to respond thereto. In early September, all parties to this proceeding filed such motions. CBG filed motions with regards two contentions. The Applicant and the NRC Staff filed motions

on each and every contention, with the exception of security, already the subject of such a motion by Staff, and emergency planning, not yet ripe for consideration. CBG, viewing such all-inclusive motions as contradicting what it had perceived as a Board directive given at the prehearing conference (TR 635-6, 764-5), moved that the summary disposition motions be struck. Certain alternative relief was also suggested, primarily with regards extension of the 45-day time to respond and bifurcation of the response process. The City of Santa Monica supported CBG's motion; the Applicant and Staff opposed it.

On October 22, 1982, the Board issued a Memorandum and Order ruling on CBG's motion. The Board denied CBG's request that the summary disposition motions be dismissed, on the grounds that the Board's statements at the prehearing conference were not intended as a direction but rather as a non-binding admonition (memorandum and Order, p. 6) and that a hearing date had only tentatively been set rather than firmly scheduled (id., at 7). The Board further rejected CBG's three proposals to bifurcate the response process on the basis that they would "afford CBG a preferred procedural status which is not in accord with the rules." (id.).

Instead, the Board adopted another method of bifurcating the summary disposition process and established a schedule for responses pursuant to that procedure. Recognizing that the procedures adopted are "novel" and have not been addressed by the parties, the Board afforded the parties an opportunity to move for reconsideration. (id., at 10). CBG herein avails itself of said opportunity with regards one aspect of that

procedure.

III. DISCUSSION

At the June pre-hearing conference, the Board established a schedule for summary disposition based on two months for parties to prepare said motions and forty-five days for response. The sixty day preparation period was granted at the request of the Applicant (TR 759), and the forty-five day response period given on the understanding that the parties would follow the Board's admonition to move for summary disposition only on those few items "that are amenable to that process that could be handled very quickly." (TR 536).

The Board clearly indicated that if CBG were served with "a whole stack of motions," "any of these schedules, you know, can be modified for good cause. There is no question about that." (TR 766). Furthermore, the Board established the forty-five day response period with the explicit "understanding that if, you know, you are inundated, obviously, we will have to make some adjustments." (TR 766).

CBG was, indeed, inundated--with the maximum number of summary disposition motions possible, and from both Staff and Applicant. In requesting relief in its September 20 Motion, CBG requested 6-8 weeks from date of Board Order to prepare its bifurcated response, if the request for bifurcation were granted, and six months if not, indicating that the burden of preparing full responses to each of the motions would require roughly one week per contention.

The Board in its recent Memorandum and Order did not directly address the question of CBG's request for an extension, except by saying on page 10 that the Board's own bifurcated process moots CBG's request for a six month extension. CBG's request for 6-8 weeks to respond in a bifurcated manner was not addressed. It may be that the Board viewed its splitting off of legal argument from the factual responses as to so significantly reduce the workload as to mitigate the need for additional time to prepare responses. If so, CBG believes the Board is mistaken, because CBG's review of the motions by Staff and Applicant indicates that the bulk of the summary disposition motions address factual issues rather than legal matters, and thus by far the greatest portion of the workload still remains at this stage.

Furthermore, the Memorandum and Order does not explain why the Board, in response to CBG's complaint that forty-five days was not enough time to respond to these stacks of motions, instead of granting additional time, reduced the response time to twenty days. By way of comparison, the Applicant was previously given sixty days to prepare its motions, and the Staff, at the August 25, 1982, conference call convened by the Board, indicated it had been preparing its motions for a full year. The appearance of fairness and equity is not served by such a schedule.

It is simply impossible for CBG to adequately respond to these motions and the citations that are about to be added thereto in a twenty day period. That amounts to requiring full response to be completed in just half a day for each of the roughly 20 motions

by Staff and Applicant. The preparation of the declarations alone cannot possibly be prepared in such a short period. Many of the experts from whom declarations must be obtained live out of state. First drafts of declarations must travel through the mails, be discussed and revised, sent back for review and further revision, and final copies executed and transported once again. The declarations must be in hand before the response is written because of the requirements placed by the Board of citation to supporting document, including paragraph and page. As the Board is no doubt aware, a monumental amount of material has been obtained in discovery, which must be organized into exhibits and cited throughout the responses to each of Staff and Applicant's score of motions. Whereas responses to a few motions, as anticipated when the Board set a forty-five day response, could indeed be done in 45 days, not so responses to a score of motions by two parties.

The bifurcation of the legal aspects of the summary disposition motions from the factual matters provides but little relief. Staff and Applicant raise few legal arguments in their motions, the bulk of the material requiring response being factual matters that will, according to the procedure instituted by the Board, require response at this stage.

When Applicant requested sixty days to prepare its motions, the Board granted the request. When CBG requested sixty days instead of forty-five days to respond to a bifurcated process, the Board

instead cut the response period down to twenty, despite an understanding on the record of the June prehearing conference that the forty-five day response period would be relaxed if CBG were "inundated" with summary disposition motions. Surely no one disputes that CBG has been so inundated. In light of the time permitted the other parties for preparation of their motions, reduction of the response time to twenty days, if not reconsidered, would accord Staff and Applicant "a preferred procedural status", the very reason cited by the Board for denying CBG's initial motion for relief.

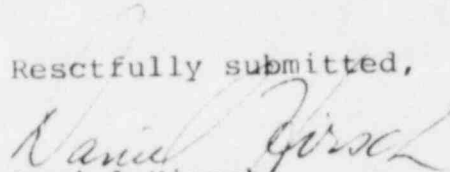
CBG has patiently plodded through the complexities and delays of this proceeding for three long years, awaiting the day when it could present the mass of evidence it has acquired before the Board for its final determination. That mass of evidence cannot be put into the special form of responses to specific summary disposition motions under unique, newly-ordered procedures in just three short weeks. Justice would be ill-served were matters of major safety significance disposed of arbitrarily because a party was inundated with frivolous motions which can readily be dismissed if only a reasonable amount of time is permitted to prepare the responses. To permit otherwise would make a mockery of the process, permitting a party with an unsafe facility to continue operating it as a risk to public health and safety and the common defense by simply making sure that the opposing party is never provided an adequate opportunity to present its case.

IV. CONCLUSION

For the above reasons, CBG respectfully requests that the schedule in the October 22 Order be reconsidered, as per the understanding indicated by the Board at the prehearing conference (TR 766) that the forty-five day response period would be relaxed if CBG were "inundated" with summary disposition motions. CBG respectfully requests that it be given sixty (60) days from date of Board ruling on this motion for reconsideration in which to respond to the motions and the citations. To comply in the twenty days provided in the Order is, CBG respectfully suggests, not humanly possible.

dated at Los Angeles, CA
November 1, 1982

Resctfully submitted,


Daniel Hirsch
President
COMMITTEE TO BRIDGE THE GAP

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

DECLARATION OF SERVICE

I hereby declare that copies of the attached MOTION FOR RECONSIDERATION OF PORTION OF BOARD ORDER OF OCTOBER 22, 1982 in the above-captioned proceeding have been served on the following on this date: November 1, 1982. Those marked with a single asterisk were served by express mail; those marked with a double asterick were served by hand; all others were served by deposit in the United States mail, first class, postage prepaid.

- * John H. Frye, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
 - * Dr. Emmeth A. Luebke
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
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 - * Dr. Oscar H. Faris
Administrative Judge
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 - * Counsel for NRC Staff
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