

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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

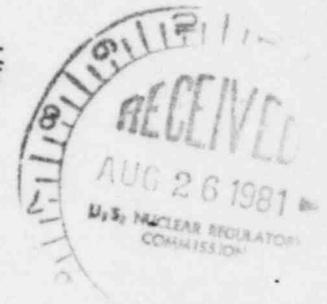


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In the Matter of
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
(UCLA Research Reactor)

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

August 24, 1981



ORDER RELATIVE TO INTERVENOR'S
REQUEST FOR SANCTIONS

On May 13, 1981, CBG filed a third motion to compel on UCLA and requested sanctions be imposed. CBG stated that despite the Board's order of March 10, 1981, granting the second motion to compel certain interrogatories based on Contention II, no further answers were received from UCLA. CBG requested the Board to issue a favorable ruling on Contention II and to cause UCLA to pay reasonable expenses of \$500.00 incurred by CBG due to the lack of compliance by UCLA with the previous Board order. This motion was filed subsequent to an inquiry from CBG on April 24 and a response from UCLA on May 1 which stated that the Board's order of March 10 did not require further answers.

On May 29 the Board issued an order which informed the parties that the March 10 order responding to the second motion to compel had informed UCLA of its responsibility to furnish additional answers. The May 29

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order also requested UCLA to show cause why a sanction should not be imposed under 10 C.F.R. § 2.707 and a citation of counsel issued under 10 C.F.R. § 2.713, with responses to both due in ten (10) days.^{1/}

On June 11, UCLA responded to the show cause requests with the explanation that its actions had not been deliberate or willful; rather, that there was simply an honest but reasonable misinterpretation of the Board's order of March 10. UCLA said that full cooperation would be given to the CBG discovery requests. The response also enclosed an affidavit of Glenn R. Woods in further explanation.^{2/}

On July 15, CBG filed a "clarification" of its May 13 motion for sanctions. The filing repeated the prior request with a more detailed recital of the history of the dispute and stressed the limited resources available to CBG.

On July 27 the Board directed the NRC Staff to state its position on the CBG request for sanctions. On August 7 the Staff set forth its position in a thorough discussion that was very helpful to the Board in considering this matter. The Staff concluded that the request for sanctions should be denied.

^{1/} A filing by UCLA of May 28 in response to the third motion to compel crossed in the mail with the Board's order of May 29, but the Board subsequently has carefully considered this document.

^{2/} An article appearing in the June 26 issue of SCIENCE, Vol. 212 at page 1484 appeared to be at variance with response received to the show cause request of the Board. We received a satisfactory explanation to our inquiry of June 25 from UCLA on July 9, 1981.

The Staff based its conclusion on its position that sanctions for non-compliance with discovery orders should be imposed only upon a finding that a party has engaged in conduct which amounts to a "default" or the willful disregard of its obligations as a litigant. Further, the Staff believes that the Applicant's conduct in this proceeding does not amount to a default or a willful disregard of litigation responsibilities. Finally, the Staff is of the opinion that even if such a default had occurred, the two particular sanctions requested by CBG are unwarranted and, in any event, that any such default has already been cured.

At the first prehearing conference in September 1980, not only did the Intervenors have numerous questions concerning procedure and housekeeping matters, but also the counsel representing the Applicant had similar questions since this was a first impression experience for Applicant's counsel. We agree with the Staff that UCLA was slow to fully recognize its obligation in responding to discovery requests. We also agree with the Staff that there is no clear evidence of default in the early responses, and most certainly after the third motion to compel was granted UCLA fully realized its obligation and responded accordingly. It is not unusual for intervenors in our proceedings, particularly those proceeding pro se or pro bono, to have difficulty in complying with 10 C.F.R. Part 2, but our usual experience with applicants is normally the reverse. A utility seeking a permit or a license usually has "been down the road before" in

prior proceedings, and often, if they have not, they retain experienced Washington counsel who specialize in our proceedings. We did not have such experienced counsel for Applicant here and have concluded that a sanction or censure of counsel is not required.

While we recognize CBG did experience some frustration in this situation, we also recognize that the other parties have also no doubt experienced frustrations in this complex proceeding. While we need not reach the merits of the requested sanctions, we think it is appropriate for the guidance of the parties to state that the Staff is correct that a Board could not determine prior to the evidentiary hearing that a contention had been proved and the funding sanction requested is understandably nebulous. Therefore, the CBG motion for sanctions is denied.

Incidentally, while we think the CBG challenge to Mr. Cormier's standing is out-of-time, our files show a notice of appearance for Mr. Woods and Ms. Helwick but not Mr. Cormier. We request that this omission be corrected.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

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

Bethesda, Maryland
August 24, 1981