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In the Matter of
The Regents of the University of California
(UCLA Research Reactor)
Docket No. 50-142
(Proposed Renewal of Facility License)



RE: REPORT ON PROGRESS TOWARDS RESOLVING DISCOVERY DISPUTES

Dear Administrative Judges:

Pursuant to several Board Orders directing the parties to meet and confer in attempts to resolve discovery disputes without necessity of motions to the Board, several discovery conferences have taken place among the parties in recent weeks. This memorandum updates previous reports of September 14 and October 27 as to progress made towards resolving said disputes.

Applicant-Intervenor Matters

Representatives of Applicant and Intervenor met and conferred on November 4 and again on November 12 in efforts to resolve a series of outstanding disputes, principal among them being the content of Applicant's and Intervenor's final sets of follow-up interrogatories to each other and CBG's requests for document production and for right to enter upon property for purposes of inspection. In addition, there had been substantial disagreement as to whether Applicant has a duty to serve Intervenor copies of all Applicant-Staff correspondence and to notice Intervenor of Staff-Applicant face-to-face meetings. Progress on all these matters has been made, although certain matters remain outstanding, and agreements need finalizing and, in some cases, clarification.

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At the discovery conference of November 12, discussion was begun as to disputes as to the adequacy of certain of Applicant's most recent interrogatory answers. That discussion did not proceed very far before the conference ended; it will be continued at the next conference, as yet unscheduled.

Applicant had initially objected entirely to permitting an inspection of its facility by Intervenor and the taking of photographs during said inspection. Much discussion ensued regarding these matters, with the preliminary result that Applicant permitted an inspection, limited to areas and items of Applicant's choosing, on November 17, from 7:00 a.m. to noon. Photographs, with certain exceptions, were permitted; however, Intervenor was to immediately, upon completion of shooting of each roll of film, provide a representative of the Applicant with the film itself. Applicant is to develop the film, and at a future discovery conference the parties are to discuss objections, if any, Applicant may have to releasing specific photographs or groups of photographs.

It is understood by the parties that if agreement cannot be reached between them as to specific items or groups of photographic evidence, motions to the Board would be a last resort. Both parties are hopeful, however, that agreement can be reached.

Likewise, by agreeing to attend the inspection permitted by Applicant, Intervenor in no way waived its discovery rights as to the areas or items identified in its inspection requests of September 3 and 11 nor such other rights as it may desire to exercise in the matter. Certain aspects of the inspection requests were not permitted during the November 17 inspection. It was understood that the parties would discuss these disputes at a subsequent conference and that additional inspection might be necessary.

Hal Bernard of the NRC Staff attended the inspection as an observer and, we later learned, returned to the facility on November 19 to take additional photographs.

Matters related to the CBG photographs, disputed aspects of the inspection, Applicant's answers to CBG interrogatories, service of Staff-Applicant correspondence and notice of Staff-Applicant meetings, plus certain other outstanding matters as well as finalization of previous agreements, will be discussed at future discovery conferences. The Board will be kept informed of developments.

Staff-Intervenor Matters

Representatives of Staff and Intervenor met and conferred in San Francisco November 24 as to the matters in dispute between them, primarily the CBG interrogatories to Staff as to the SER, EIA, and the two related Staff documents (the Battelle and Los Alamos reports). Certain other matters (e.g. service of Staff-Applicant correspondence and notice of Staff-Applicant meetings) were also discussed. Considerable progress appears to have been made as to most issues.

As to the interrogatories related to the SER and EIA, Intervenor, mindful of the Board's Order in this regard, proposed a large reduction in the number of said interrogatories. As to certain other interrogatories, Staff provided verbal answers which were sufficient for the purpose intended. As to a great majority of the remaining interrogatories, Staff indicated that it had no independent information other than that contained in the primary documents in the case, copies of which Intervenor had. This left a relatively few questions, for which Staff had answers not readily available elsewhere and importance of which to the case was tentatively agreed to by both parties. In order to reduce the burden on Staff, a new preface to the CBG interrogatories was tentatively agreed to; it succeeds in both putting CBG on notice as to what independent information Staff has on certain matters, while not requiring any written response to the interrogatories for which Staff had no independent information. The new preface to CBG's SER and EIA interrogatories is as follows:

1. In answering the following set of interrogatories, NRC Staff need only specifically answer those questions where the Staff has in its possession or knowledge, information relevant to such questions other than information contained in the following documents:

UCLA's Application, the Facility Annual Reports, I & E Inspection Reports, Applicant's two sets of answers to NRC Staff questions, NUREG/CR-2198, NUREG/CR-2079

or where such information is derived solely from the engineering judgements of the NRC Staff.

The absence of a response to any specific interrogatory will be deemed an answer to such interrogatory stating that the NRC Staff has no information relevant to such interrogatory other than such information as is contained in the above referenced documents or information which is derived solely from the engineering judgement of the NRC Staff.

2. In answering any interrogatory where the sole source or sources of Staff information are documents, other than those referenced above, believed to be on file in the Local Public Document Room, Staff need only answer such interrogatory by indicating by date and description such documentary source.

The above preface only refers to those interrogatories not already offered to be withdrawn by CBG.

The November 24 Intervenor-Staff meeting thus appears to have resolved the dispute as to the EIA and SER interrogatories, although Staff indicated that as it prepares its answers it may have to discuss modifications of the tentative agreement with CBG. CBG likewise indicated that should significant modifications be proposed, its offer of withdrawal of certain interrogatories might need to be reconsidered. Both parties appear hopeful that the matter is now resolved and that, if modifications of the Nov. 24 solutions are proposed, they can be agreed to without resort to motions to the Board.

Progress was also made with regards CEG's interrogatories as to the Battelle and Los Alamos studies commissioned by Staff. The discussions were complicated slightly by the unique status of those reports due to Applicant's recent announcement that it intended to amend its Application by removing certain contested sections and replacing them by reference with the two Staff documents. Thus the documents in question are important to the case of both Staff and Applicant.

Intervenor indicated at the discovery conference that it would be prepared to significantly reduce the number of interrogatories as to the two documents were, as in the case of the SER and EIA, another means for acquiring the necessary information (i.e. cross-examination of the authors of the reports at hearing). Staff indicated, however, that it did not intend to call as a witness G.E. Cort, the author of the Los Alamos study, and intended to call only one of the three authors of the Battelle report, although Staff continued to rely on both reports in aspects of its case.

Nonetheless, Intervenor proposed substantial reductions in the number of interrogatories as to the Battelle report and eliminated a lesser number of interrogatories as to the Los Alamos report. Staff indicated that it would consult with the authors of those reports as to the remaining interrogatories and that further discussions, if necessary, between Staff and Intervenor could take place thereafter by phone.

Today a message was received from Ms. Woodhead indicating its current position as to the remaining interrogatories as to the two reports. Thus, certain disputes remain to be discussed, discussion of which can hopefully take place by phone next week.

Progress was made on the issue of Staff-Applicant correspondence and Staff-Applicant meetings. Staff indicated it was its policy to serve Intervenor all such correspondence and to give Intervenor as much notice as possible regarding Staff-Applicant meetings and permit representatives of the Intervenor to attend as observers. Certain issues remain in need of clarification in these regards and they will be pursued in subsequent sessions. Staff agreed to search its files for past correspondence Intervenor may not have been served and to update its service list.

Physical Security Matters

Intervenor has, in several recent discovery conferences with Applicant and in the November 24 conference with Staff, attempted to put on the agenda certain matters regarding the physical security contention and the procedures for dealing with it at hearing that might result in full discovery, deferred at present by Board Order, not being necessary regarding the sensitive information involved. Both parties expressed willingness to discuss the matters further, but time did not permit, and the issue has been put off to future conferences. Staff in particular indicated it wished to consult with the particular Staff representatives involved prior to further discussion.

Intervenor might be willing to forgo certain of its rights to access to information about the physical security plan, both during discovery and perhaps even at hearing, if Intervenor's ability to present its case on the security contention were not significantly reduced in the process. Intervenor does not have a clear idea at this time precisely how that could be accomplished, but it is Intervenor's intent to provide Staff and Applicant an opportunity to discuss proposals in this regard. This presupposes an interest on the part of Applicant and Staff in restricting Intervenor's access to the security information, interest which may or may not exist.

Prior to making motions to the Board regarding the lifting of the deferred status of discovery regarding security, Intervenor is attempting to seek agreement among the parties that could reduce or even conceivably eliminate the necessity of Intervenor's access to proprietary security information. We will keep the Board apprised of developments thereto.

Application Amendments

One final matter that may affect scheduling is that of possible modification of the Application. What Intervenor knows of the matter is reported in what follows.

At several of the past discovery conferences with Applicant, Mr. Cormier has indicated an interest in discussing with Intervenor possible withdrawal or modification of contentions. He has indicated that this possible action might be considered in light of possible modifications intended to be made to the Application. Intervenor expressed willingness to discuss the matter, but indicated a need to see the actual amendments. Mr. Cormier indicated it was his tentative intention to propose the amendments all at one time, including an amended emergency plan, and that he did not, as last we talked, know when those amendments would formally be made. The matter was left there--a willingness to discuss both modification of Application and contentions, but no timetable for the amendments to be introduced.

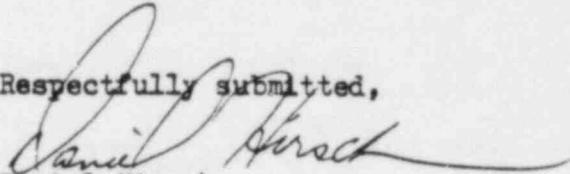
The matter was discussed briefly with Staff on November 24. Intervenor indicated its concern that amended Application might necessitate amended contentions, which could significantly delay the proceeding. Staff indicated that the modifications Applicant has indicated to date, with the exception of the Emergency Plan, would not alter the matters in controversy significantly nor the thrust of the contentions and that at best some minor language modification in a few contention subparts might be necessitated where the Application section to which they refer has been changed. Staff indicated it did not anticipate significant delays resulting in that regard, particularly as it has viewed the contention subparts as bases rather than part of the main contention anyway.

Thus, it would appear, at this point at least, that possible amendment of the Application should not cause significant delay. Withdrawal of contentions, if any, actually mooted by Application amendment can be done rapidly; and modification of contention subparts altered slightly by Application changes should not be significant. Consideration of the emergency plan contention, however, is likely to be affected by the submission of a new plan by the Applicant, whenever that occurs.

For the information of the Board, please be advised that by agreement of the parties the discovery conferences have been taped to assist in recall of agreements reached.

The Board will be kept informed of developments in the continuing efforts to resolve the remaining disputes.

Respectfully submitted,



Daniel Hirsch
President
COMMITTEE TO BRIDGE THE GAP
Intervenor

cc: service list