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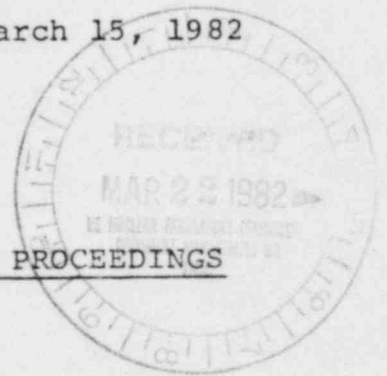
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 Number R-71)

March 15, 1982



CURRENT STATUS REPORT ON DISCOVERY PROCEEDINGS

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK
590 University Hall
2200 University Avenue
Berkeley, California 94720
Telephone: (415) 642-2822

Attorneys for Applicant

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

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1 As requested by the Atomic Safety and Licensing Board
2 (Board) in its order of January 25, 1982, The Regents of the
3 University of California (Applicant) is providing a status
4 report on discovery between Applicant and the other parties to
5 this proceeding. As a convenience to the Board some background
6 to the discovery which has already occurred is provided.

7
8 I. INTRODUCTION

9 At a special prehearing conference convened on
10 September 25, 1980, the Board admitted four of the contentions
11 (Contentions II, III, IV and VII) submitted by the Committee to
12 Bridge the Gap (Intervenor). Because of certain ambiguities
13 and redundancies that appeared in the remaining contentions the
14 Board directed the parties to confer to attempt to reach
15 agreement on the language of the contentions and the admissibility
16 of each. At a second special prehearing conference convened on
17 February 4 and 5, 1981, the Board considered the remaining
18 contentions and issued its ruling on March 23, 1981 admitting
19 certain of those remaining contentions and setting a discovery
20 schedule.

21
22 Due to the very extensive discovery which had occurred
23 in this proceeding and the several discovery disputes which
24 arose between the parties, the discovery schedule set by the
25 Board was suspended by the Board in its order of July 1, 1981.
26 A revised discovery schedule was set in the Board's order of
27 August 24, 1981, and modified in one respect in its order of
28 September 4, 1981.

1 II. INTERVENOR'S DISCOVERY

2
3 A. Written Interrogatories

4
5 Intervenor served its first set of interrogatories to
6 Applicant on October 9, 1980. That set of interrogatories was
7 related solely to Intervenor's Contention II ("Wrong Class of
8 License"). A dispute arose between the parties concerning the
9 clarity of certain of Intervenor's questions and the sufficiency
10 of Applicant's responses to those questions and resulted in
11 Applicant's clarification of its initial responses in two sets
12 of further answers dated January 22 and June 11, 1981.
13 Intervenor served a set of follow-up interrogatories to the
14 further answers on July 1, 1981, and Applicant's responses to
15 the (set one) follow-up interrogatories were served September 18,
16 1981.

17
18 Intervenor's second, third and fourth sets of
19 interrogatories, which relate to all admitted contentions
20 including Contention II, were served April 20, June 10 and
21 October 5, 1981, respectively. Applicant's responses and
22 supplemental responses to these interrogatories appear in
23 documents dated May 20, June 29, August 14 and November 9, 1981
24 and March 3, 1982. Additional information was presented in
25 documents dated June 29 and August 26, 1981, responding to
26 Intervenor's motion to compel and its "updated" motion to compel
27 further answers to its second set of interrogatories.
28

1 Altogether, Intervenor submitted interrogatories
2 containing 3,429 questions and subparts of questions, clearly an
3 excessive number of questions. Moreover, a large number of
4 Intervenor's questions were unclear, imprecise, ambiguous, or
5 otherwise confused and Applicant has had a vexing time in trying
6 to make sense of such questions. However, except for those
7 interrogatories for which Applicant's protective order request was
8 sustained by the Board and remains in place (Board's order of
9 July 1, 1981) and one interrogatory for which a protective order
10 will be requested, Applicant has responded to each of Intervenor's
11 interrogatories and, in many cases, has responded two and three
12 times to the same interrogatory.

13

14 B. Production of Documents

15

16 Applicant has made available to Intervenor for
17 examination about 40,000 pages of Applicant's records, documents
18 and other correspondence. A stack of the particular pages of
19 those records copied by Applicant at the request of Intervenor
20 would measure about ten inches high. A list of the principal
21 technical documents and records offered by Applicant for
22 Intervenor's examination appears as "Exhibit A" attached to
23 Applicant's May 20, 1981 answers to interrogatories. Applicant
24 has also produced the past 20 years of accounting ledgers and
25 records for the NEL facility. Intervenor has requested numerous
26 assitional miscellaneous documents and records. With few
27 exceptions, Applicant has produced the records and documents in
28 its possession that have been requested by Intervenor. For the
benefit of Intervenor Applicant has arranged for document examination

1 sessions of approximately seventy (70) hours in total duration.
2 The sessions occurred principally during the months of April,
3 May, June and November, 1981, and January, 1982.
4

5 C. Inspecting, Testing and Photographing

6
7 In September, 1981, Intervenor served two separate
8 requests to inspect, test and photograph Applicant's NEL facility.
9 Initially, Applicant opposed these requests in pleadings dated
10 October 9 and 19, 1981, because the scope of the inspections
11 proposed was unclear and apparently unlimited. In subsequent
12 discussions Intervenor clarified its request and agreed to
13 certain conditions that Applicant imposed to preclude any
14 unnecessary disruptions to facility operations. As a result
15 of this agreement, Applicant arranged for a tour and inspection
16 of the facility which took place on November 17, 1981, and
17 which lasted five hours. Details of the inspection were re-
18 ported to the Board in Applicant's letter of November 23, 1981.
19

20 During the inspection on November 17, 1981, Intervenor
21 took over 200 photographs of the facility and its equipment.
22 According to procedures that has been previously agreed to by
23 the parties to provide Applicant some protection against the
24 release of any photograph(s) that might compromise the
25 security of the facility, Applicant took custody of the
26 undeveloped film and had it processed. In its letter of
27 November 19, 1981, Applicant requested a meeting with
28 Intervenor to discuss the release of specific photographs.

1 A meeting took place on February 9, 1982, to discuss several
2 outstanding discovery matters. At that meeting the parties
3 agreed to the terms of a stipulation which was to govern the
4 release of 194 of the photographs (Applicant objected to
5 release of 21 of the photographs on security grounds). When
6 the stipulation which Applicant has reduced to a writing and
7 has sent to Intervenor is signed and returned the 194
8 photographs will be released.

9
10 D. Discovery Conferences

11
12 As directed by the Board Applicant and Intervenor have
13 met on several occasions "to consider agreement on any matter
14 arising in dispute between them" (Board's Order of August 24,
15 1981; repeated in Board's Order of September 4, 1981). The
16 first such meeting occurred September 17, 1981 and the last
17 February 9, 1982. In all, about twenty (20) total hours were
18 spent in six different meetings attempting to resolve disputes.
19 Despite that effort a number of matters remain unresolved and
20 it is unlikely that anything productive can be accomplished
21 by holding additional meetings.

22
23 III. APPLICANT'S DISCOVERY

24
25 Mindful of the restrictions placed on discovery of the
26 NRC technical staff, Applicant requested permission of the NRC
27 Staff to serve fourteen short questions relating essentially
28 to whether Staff was misled by certain information contained
in Applicant's license renewal application. The Staff agreed
to answer the questions and the answers were received (in the

1 response of the NRC Staff dated May 20, 1981). Applicant's
2 discovery on the NRC Staff is complete.
3

4 Applicant served its initial set of interrogatories
5 on Intervenor on April 20, 1981. A follow-up set of
6 interrogatories was served on September 22, 1981, which, for
7 the most part, requested updated responses to certain of
8 Applicant's questions appearing in the initial set. With its
9 questions Applicant sought more specific statement of
10 Intervenor's claims and the technical support for those claims.
11 In particular, Applicant sought identification or description
12 of any studies, analyses, reports, calculations or technical
13 opinions which had been made by any of Intervenor's
14 qualified experts or consultants respecting the various
15 safety parameters of Applicant's reactor facility or questioning
16 the technical information introduced by Applicant or the NRC.
17 However, in responding to the interrogatories Intervenor has
18 not produced any technical information of, nor identified any
19 documents prepared by its qualified experts or consultants.
20

21 As a result of being unable to obtain information
22 on the technical support that may exist for Intervenor's
23 claims, information to which it is entitled during discovery,
24 Applicant is in a quandary concerning whether or not it should
25 pursue discovery on Intervenor and risk further delays in these
26 proceedings.
27
28

1 IV. UNRESOLVED DISCOVERY MATTERS

2
3 Applicant has made timely responses to all of
4 Intervenor's formal discovery requests. Moreover, Applicant
5 has met with the attorneys and representatives of Intervenor
6 on numerous occasions in good faith attempts to resolve
7 disputed discovery matters. Applicant has received clarification
8 of certain of Intervenor's discovery requests and has responded.
9 Applicant has also supplemented numerous of its interrogatory
10 responses to resolve ambiguities or to update with newly
11 acquired information. Applicant's discovery efforts have
12 resulted in unreasonable burdens being placed on Applicant's
13 small technical staff. Despite these efforts certain
14 matters remain unresolved.

15
16 A. Amendments to the Application

17
18 As Applicant has informed the parties, Applicant is
19 developing an emergency response plan to comply with
20 research reactor emergency response criteria recently adopted
21 by the Commission. The new plan will be submitted as an
22 amendment to the relicensing application. In addition, as a
23 result of the publication last summer of the generic studies of
24 Argonaut reactors (NUREG/CR-2079 and NUREG/CR-2198), Applicant
25 intends to amend its safety analysis report to adopt the
26 NUREG/CR-2079 fuel-handling accident as the "maximum credible
27 accident" for emergency planning purposes at Applicant's
28 facility. Finally, Applicant intends to amend certain
non-technical narrative parts of its application describing

1 NEL facility usage and costs of operation by substituting
2 portions of the more current and precise information provided
3 in the D.C. Rebok (UCLA Finance Office) letter to J.R. Miller
4 (NRC) of January 25, 1982, a copy of which was previously sent
5 to Intervenor.

6
7 The new emergency response plan is a document that
8 "speaks-for-itself" and will not require extensive discovery.
9 The other amendments to the application will not introduce any
10 substantially new information. Most of this information has
11 previously been provided in one form or another.

12
13 B. Security Matters

14 In the Board's July 1, 1981 order Applicant was
15 granted protection from answering certain questions that would
16 have required disclosing part or all of the security plan for
17 the facility or that were otherwise related to physical
18 security matters. The Board stated that if Intervenor wished
19 to pursue discovery on physical security matters it was to
20 follow the guidelines set forth by the Appeal Board in the
21 Diablo Canyon proceeding (Pacific Gas and Electric Company
22 (1977), ALAB-410, 5 NRC 1398). The Board was very explicit
23 in its July 1, 1981 order about the steps Intervenor was
24 required to take:

25
26 "The first step is for the Intervenor
27 to fully identify who they propose to
28 qualify as a witness possessing the
necessary technical competence with
regard to the security system for the
evaluation of the other parties and
the Board. If the first step is
achieved, the next step is the acceptance

1 of a proper Protective Order modeled
2 after the Appeal Board guidelines in
3 ALAB-592. If these matters are resolved
4 to the satisfaction of the licensing
5 Board, then discovery will be opened
6 to the depth of the guidelines in
7 ALAB-410 as appropriate to this
8 research reactor." (page 4).

9 In the nine months that have elapsed since that Board
10 order Intervenor has failed to identify any individual it
11 intends to qualify as a security expert. In light of the
12 Board's clear directive on this matter and the established case
13 law procedures, Applicant has declined to discuss with Intervenor
14 any alternative procedure. Applicant notes that the process of
15 qualifying an expert, adopting a suitable protective order, and
16 pursuing discovery under the protective order can be very time-
17 consuming and much time has been lost already.

18 V. CONCLUSION

19 Aside from the matters discussed above, discovery
20 between Applicant and the other parties to the proceeding is
21 essentially complete. To avoid further delay, Applicant
22 requests that the Board set a beginning date for the filing of
23 summary disposition motions, including accepting for consideration
24 at that time the motion for summary disposition of Contention XX
25 (the security contention) previously submitted by the NRC Staff
26 on April 13, 1981. Applicant notes that the use of summary
27 disposition motions is encouraged by the Commission as a means
28 of expediting the proceedings.

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Respecting security matters, the NRC Staff has argued in its motion that much of Intervenor's security contention is based on a mistaken interpretation of the physical security regulations that apply to Applicant's research reactor facility. Applicant agrees with the Staff's argument. A ruling on the summary disposition motion at this time will resolve the question of the material facts, if any, that are in dispute. The parties can then place appropriate limits on subsequent discovery and avoid having to devise overly elaborate procedures to restrict the release of security information.

Dated: March 15, 1982.

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK

By William H. Cormier
William H. Cormier
UCLA Representative

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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5 THE REGENTS OF THE UNIVERSITY) Docket No. 50-142
6 OF CALIFORNIA) (Proposed Renewal of Facility
7 (UCLA Research Reactor)) License Number R-71

8 CERTIFICATE OF SERVICE

9 I hereby certify that copies of the attached: _____
10 CURRENT STATUS REPORT ON DISCOVERY PROCEEDINGS

11 In the above-captioned proceeding have been served on the following by deposit
12 in the United States mail, first class, postage prepaid, addressed as in-
13 dicated, on this date: March 16, 1982.

13 John H. Frye, III, Chairman
14 U.S. Nuclear Regulatory Commission
15 Atomic Safety & Licensing Board
16 Washington, DC 20555

Counsel for NRC Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555

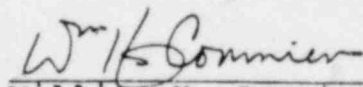
16 Dr. Emmeth A. Luebke
17 U.S. Nuclear Regulatory Commission
18 Atomic Safety & Licensing Board
19 Washington, DC 20555

Daniel Hirsch
Committee to Bridge the Gap
1637 Butler Avenue, #230
Los Angeles, CA 90025

18 Dr. Oscar H. Paris
19 U.S. Nuclear Regulatory Commission
20 Atomic Safety & Licensing Board
21 Washington, DC 20555

21 Chief, Docketing and Service Section (3)
22 Office of the Secretary
23 U.S. Nuclear Regulatory Commission
24 Washington, DC 20555

John Bay
2261 Columbia Street
Palo Alto, CA 94306

24 
25 William H. Cormier
26 UCLA Representative