

BEFORE THE COMMISSION

(Proposed Renewal of Facility License)

51011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF RESPONSE TO INTERVENOR'S MOTION
FOR DISQUALIFICATION OF COMMISSIONER ROBERTS

I. INTRODUCTION

On March 13, 1982, Committee to Bridge the Gap (CBG), the Intervenor in this proceeding, filed a motion seeking disqualification of Commissioner Thomas Roberts from participation in any decisions regarding the contested application of the Regents of the University of California ("Applicant"). Motion at 1. CBG claims that Commissioner Roberts and certain members of his staff violated the Commission's ex parte rules in four meetings held with representatives of the Applicant on January 26, 1981, at the Applicant's facility, and that, in addition, they violated 10 C.F.R. § 2.780(c) by failing to file the required reports detailing the contents of the ex parte communications which took place during those meetings. Motion at 2. Further, CBG alleges that Ms. Laverty's current role as legal advisor to Commissioner Roberts violates the Commission's separation of functions rules because she previously served as counsel for the NRC Staff, one of the parties in the proceeding. Id. Finally, CBG contends that those violations evidence such a substantial bias in favor of two of the parties in the contested proceeding, Applicant and Staff, and against the remaining

party, Intervenor, that the taint of partiality can only be removed by Commissioner Roberts being recused from participation in any decision related to any aspect of the proceeding. Motion at 1, 36. In the alternative, CBG requests that it be granted discovery rights to further develop the facts as to matters related to the alleged ex parte contacts, separation of function violations, and appearance of bias. Motion at 36. The Staff opposes the Motion in its entirety for the reasons set forth below.

II. DISCUSSION

This proceeding is currently in the discovery phase, with all aspects of the proceeding pending before the Atomic Safety and Licensing Board ("Board"). No evidentiary hearings have been held and no initial decision by the Board has been made on the license renewal application. No appeals on any subject have been filed by any party before either the Appeal Board or the Commission. In sum, there are no matters in this proceeding pending before the Commission requiring it to act in an adjudicatory role and therefore the requested relief is, at best, premature. Further, even in the hypothetical case that any matters were before the Commission, the requested relief should not be directed to the Commission as a body. It is only the Commissioner whose disqualification is sought who may judge if his past conduct forecloses him from participation in an adjudication. As stated in Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-6, 11 NRC 411 (1980): "Consistent with the Commission's past practice, and the generally accepted practice of federal courts and administrative agencies, the Commission has

determined that disqualification decisions should reside exclusively with the challenged Commissioner and are not reviewable by the Commission."

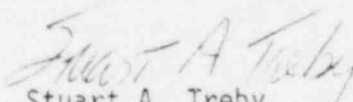
11 NRC at 411-12. Should any issue concerning ex parte communications be raised if and when the Commission is engaged in consideration of any aspect of this proceeding, that matter could then be decided by the involved Commissioner. For these reasons, CBG's claims for relief do not warrant consideration by the Commission and should be denied.

In the alternative, CBG requests that it be granted discovery rights to further develop the facts as to matters related to the alleged ex parte contacts, separation of function violations, and appearance of bias. As recently noted by a Licensing Board in Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), ____ NRC ____ (March 26, 1982), Slip Op. at 3. "This type of relief is inconsistent with the self-policing remedy provided by NRC Rules for ex parte contacts. 10 C.F.R. § 2.780. [footnote omitted]" For this reason, the alternative relief should also be denied.

III. CONCLUSION

For the reasons stated above, CBG's request that Commissioner Roberts be recused from participation in any decision related to any aspect of the UCLA reactor license renewal proceeding does not warrant consideration by the Commission and should be denied. Further, CBG's request for the alternative relief that CBG be granted discovery rights to further develop its allegations should be denied.

Respectfully submitted,


Stuart A. Treby
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 31st day of March, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENOR'S MOTION FOR DIS-QUALIFICATION OF COMMISSIONER ROBERTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 31st day of March, 1982:

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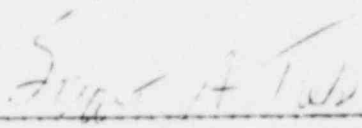
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