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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-142
THE REGENTS OF THE UNIVERSITY)	(Proposed Renewal of Facility
OF CALIFORNIA)	License Number R-71)
)	May 10, 1982
<u>(UCLA Research Reactor</u>)	

UNIVERSITY'S RESPONSE TO
CBG'S MOTION FOR DEFERRAL

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 directed by the Board in its Order of April 28, 1982,
2 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (University) responds
3 to the substance of CBG's Motion of April 23, 1982, as follows.
4

5 I. INTRODUCTION
6

7 The substance of CBG's motion is that all parties,
8 University and NRC Staff as well as CBG, be required to identify
9 and qualify those individuals who are to have access to physical
10 security information in this proceeding. CBG also requested that
11 the Board postpone the time for CBG to submit the identities and
12 qualifications of its proposed experts pending the Board's ruling
13 on the motion.
14

15 University objects. The relief requested by CBG runs
16 counter to the Commission's rules of practice and general discovery
17 procedure, is unnecessary and, in any case, would be ineffectual.
18 Moreover, the motion is based on misrepresentation and innuendo
19 and does not merit serious consideration. In view of the fact
20 that CBG is seeking relief, for the first time at this late date,
21 from an order that was issued ten months ago, University must
22 conclude that the motion has been introduced for the purposes of
23 delay.
24

25 Notwithstanding its objection, University would support
26 postponing the qualification of CBG's security experts for the
27 sole purpose of enabling the Board to consider first the NRC Staff
28 Motion for Summary Disposition (of Contention XX), dated April 13,
1981.

1 II. DISCUSSION

2
3 A. CBG's Motion

4 In its July 1, 1981, Order, the Board granted a
5 temporary protective order respecting discovery of physical
6 security information until such time as CBG satisfied certain
7 requirements for the discovery of such information and a permanent
8 protective order could be put in place. The Board referred
9 specifically to the procedures established in the Diablo Canyon
10 proceeding for the discovery of security information. Pacific
11 Gas and Electric Company, ALAB-410, 5 NRC 1398 (1977) and
12 ALAB-529, 11 NRC 744 (1980). No progress having been made on the
13 satisfaction of these requirements, the Board, in its Order of
14 April 16, 1982, directed CBG to file within ten days of the
15 Board's Order its proposed draft "affidavit of nondisclosure and
16 protective order to govern proceedings on Contention XX, along
17 with the identification and qualifications of the experts it
18 wishes to have access to security information, as well as an
19 identification of any attorneys or other representatives whom it
20 also wishes to have access."

21
22 CBG responded to the Board's order in two documents:
23 "Intervenor's Memorandum in Support of Proposed Protective Order
24 Relative to Physical Security Plan Information; and Certain
25 Related Requests" (Memorandum); and "Intervenor's Motion for
26 Deferral of Identification of Proposed Counsel, Representatives,
27 and Witnesses as to the Physical Security Matter" (Motion for
28 Deferral). Both documents were mistakenly dated. CBG subsequently

1 informed the Board and Parties that the correct date of the
2 documents was April 23, 1982, although the date of service is
3 uncertain.

4
5 Attached to CBG's Memorandum are a proposed "Affidavit
6 of Non-Disclosure" and a proposed "Protective Order," which are
7 discussed in the Memorandum briefly, and a proposed "Schedule,"
8 which is not explained. University reserves comment on these
9 items in accordance with the Board's April 28th Order, which
10 suspended the time for such responses. CBG also included in its
11 Memorandum a request that it have the right to substitute
12 "authorized persons" anytime prior to hearing. This specific
13 request is related to the substance of the CBG motion and is
14 discussed below.

15
16 The substance of CBG's Motion for Deferral (which is
17 further explained in CBG's Memorandum) is that the Board should
18 require all parties, University and NRC Staff as well as CBG, to
19 "identify (and qualify) proposed experts and other 'authorized
20 persons' and execute affidavits of non-disclosure" before access
21 to any security information under CBG's proposed protective order
22 is permitted (Memorandum, p. 3). CBG claims to find support for
23 its motion in the "fundamental principles of fairness . . .
24 equity . . . and due process," certain wholly speculative and
25 irrelevant claims that University and NRC Staff have been remiss
26 in the "protection of . . . information Intervenor believes to
27 be sensitive," and certain vague and insubstantial claims that
28 CBG intends to introduce information on how the reactor can be

1 sabotaged, which allegedly sensitive security information Univer-
2 sity and NRC Staff cannot be trusted not to disclose.

3

4 B. CBG's Motion is Contrary to Commission's Rules of Practice

5 CBG's badly reasoned motion can be interpreted as
6 seeking to impose protections for safeguards information that has
7 always been in the custody of University and NRC Staff. Indeed,
8 it is precisely this information respecting which CBG is seeking
9 discovery. The discovery rules do not permit one party to a
10 proceeding to use a protective order to restrict another party's
11 use of information rightfully in its possession. The Commission's
12 general provisions governing discovery are explicit on this point.
13 Motions for protective orders are permitted to be made only "by a
14 party or the person from whom discovery is sought." 10 C.F.R.
15 Sec. 2.740(c). Accordingly, only University or NRC Staff is
16 entitled to seek protection from disclosure of security informa-
17 tion related to University's facility. In the instant matter, it
18 is University that is seeking protection, not from its own
19 employees nor from employees of NRC, but, as it is privileged to
20 do, from CBG, its representatives and all others who are
21 collaborating with CBG. Certainly there is no equitable principle
22 that would suggest that an adverse party in litigation cannot be
23 so singled out.

24

25 Furthermore, CBG's professed concern for the handling
26 of "information" on how radiological sabotage of the reactor
27 could be accomplished is nonsense. University is not seeking the
28 disclosure of any such information. More to the point, such

1 information is not entitled to protection. CBG's speculations on
2 the possibilities of sabotage do not qualify as safeguards
3 information under 10 C.F.R. Sec. 2.790(d) and, as a result, are
4 not entitled to the special protections established in the Diablo
5 Canyon proceeding. University also notes that in light of the
6 publicity CBG has managed for its sabotage claims, its avowed
7 interest in the secrecy of such information rings particularly
8 hollow.

9
10 C. The Relief Requested is Unnecessary

11 CBG claims that unless all parties are required to
12 identify and qualify their proposed "authorized persons"
13 safeguards information cannot be adequately protected. That
14 claim lacks merit. Both University and NRC Staff are bound by
15 the requirements for the protection of safeguards information
16 contained in 10 C.F.R. Sec. 73.21. University is accountable
17 to the Commission in an enforcement action for any failure to
18 comply with the information regulations. It would be a meaning-
19 less exercise to require, in addition, that University employees
20 execute affidavits of non-disclosure. The protective order and
21 non-disclosure affidavit procedures are properly directed to
22 third parties who are not otherwise bound by Commission
23 regulations.

24
25 In support of its claims, CBG points to instances
26 when University and NRC Staff have supposedly not acted to protect
27 "sensitive security information." CBG's examples miss the mark.
28 None of the supposed inadvertent revelations concerns sensitive
security information. As one example, CBG claims that although

1 University requested protection (University March 23, 1982
2 protective order request) from revealing "sensitive security
3 information" related to the third floor equipment room interlock,
4 University has discussed the interlock during tours of the
5 facility. First of all, University never claimed that the matter
6 concerned "sensitive security information". Secondly, the fact
7 that the third floor equipment room is interlocked does not
8 raise a security issue (it is interlocked as a health safety
9 precaution). University objected to answering CBG's
10 interrogatory on the interlock solely to avoid having to explain
11 the precise nature of the interlocking mechanism which is related
12 to an aspect of the security system.

13

14 As its second example, CBG points to the meeting
15 minutes which University inadvertently permitted CBG to view but
16 then requested protection from having to produce. Contrary to
17 CBG's assertion, University never claimed that the minutes
18 contained "sensitive security information." In its request for
19 protection University merely stated that "the minutes discussed
20 a proposal to upgrade the security system for the facility with
21 certain modifications." In fact, the modifications discussed
22 were never implemented and the entire discussion has little
23 current relevance. However, because of the possibility that
24 inferences could be drawn from those minutes about the currently
25 existing security system, University, acting cautiously, decided
26 not to permit the minutes to be photocopied. As CBG itself
27 states in its motion (Memorandum, page 5): "No harm (is) done
28 by being cautious."

1 As its last example, CBG complains that although Univer-
2 sity is requesting protection pertaining to the release of certain
3 photographs of the facility, no measures are taken during public
4 tours of the facility to prevent members of the public "from
5 viewing what the camera viewed." This complaint is a sham. In
6 another context CBG has argued for unconditional release of
7 facility photographs; here CBG seems to be claiming that in the
8 interests of proper security not only should photographing be
9 restricted but public tours should be prohibited. University has
10 discussed this particular security concern elsewhere and need
11 only point out here that photographs represent permanent records
12 of the facility and its equipment. Once photographic records
13 are made public, University is powerless to control who gets
14 access to security information about the facility. CBG's
15 remaining allegations concern vague, frivolous and baseless
16 speculations which do not require direct response.

17
18 D. The Relief Requested Would Be Ineffectual

19 In addition to being unnecessary, the measure proposed
20 in CBG's motion would have no practical effect. University's
21 employees and, presumably, NRC Staff employees, with an establish-
22 ed "need to know" are already privy to all the safeguards
23 information related to University's facility that might be
24 considered in this proceeding. The Board's sole sanction for
25 an individual's failure to execute an appropriate affidavit of
26 non-disclosure is to preclude disclosure of the information to
27 that individual. However, University and NRC Staff employees
28 would have no need to execute affidavits of non-disclosure
since they already have access to that information. Moreover,

1 if applied to University and NRC Staff employees such affidavits
2 would, as a practical matter, be unenforceable because of the
3 impossibility of distinguishing previously-acquired from after-
4 acquired information. As applied to University and NRC Staff
5 employees, the procedures provide no new sanctions beyond those
6 that are already available under the Commission's regulations.

7
8 More importantly, CBG has made no showing that
9 University or NRC Staff is likely to disclose safeguards informa-
10 tion or call public attention to sensitive security matters. In
11 fact, the situation is quite the reverse. Throughout this
12 proceeding it has been CBG who has sought the widest possible
13 public discussion of certain sensitive security matters, including
14 the type and quantity of the fuel used at the facility and its
15 unsupported claims about the vulnerability of the facility to
16 sabotage. CBG's claim that it is the only party to this proceed-
17 ing that can be trusted to prevent the disclosure of safeguards
18 information is ludicrous. CBG's interests are self-evident and
19 in conflict with University's legitimate interests in protecting
20 its safeguards information. University submits that CBG's
21 Motion for Deferral has been introduced not for its stated
22 purpose but for purposes of delay.

23
24 E. CBG's Claim to a Right to Modify its List of "Authorized
25 Persons"

26 Related to CBG's motion is its request that it be
27 permitted to modify its list of "authorized persons. . .
28 so long as no substantial delay results." The request is
premature but, in any case, it has little to recommend it. By

1 the time this matter is likely to be resolved a year will have
2 passed since CBG was first directed to identify and qualify its
3 security experts. Any further delay at this point will be sub-
4 stantial. For each proposed expert or representative University
5 intends to exercise its right to examine the individual respecting
6 his or her qualifications. If substitutions are made the
7 additional examinations will cause unnecessary delay and needless
8 expense. Moreover, any procedure that would result in more
9 individuals having access to safeguards information than are
10 absolutely necessary is suspect and should be rejected. If
11 unusual and unforeseeable circumstances argue for a substitution,
12 the Board can consider the matter at the time it arises. Univer-
13 sity submits that an unwillingness to proceed under Diablo
14 Canyon-type protections or an inability to commit to remaining
15 throughout the security contention proceeding are insufficient
16 reasons for proposing substitutions. If CBG's experts or
17 attorneys do not like the rules or cannot commit to remaining
18 their names should not be offered in the first place for the
19 security contention part of the proceeding.

20

21 University has a specific concern related to the
22 participation of CBG's rotating panel of attorneys in this
23 proceeding that goes beyond the adjudication of the security
24 contention. Throughout this proceeding CBG has been advised and
25 represented by attorneys of the Nuclear Law Center (NLC) in Los
26 Angeles. At discovery conferences which have occurred during the
27 past year, University has dealt with four different NLC attorneys.
28 Currently, however, none of the NLC attorneys has entered a notice
of appearance in the proceeding.

1 If CBG intends to proceed in propria persona it ought to
2 so state. CBG has probably been advised and certainly is aware
3 of the advantages of proceeding without formal counsel, including
4 the very lenient standards that are applied to its pleadings.
5 However, the arrangement being proposed by CBG, especially as it
6 relates to disposition of security contention matters, is simply
7 unacceptable. The arrangement being proposed would permit CBG's
8 attorneys to drop in and out of the proceeding as it suits them
9 and CBG, without otherwise requiring that CBG's attorneys take
10 any responsibility for CBG's pleadings and participation in the
11 proceedings. Of course, under the ethical standards that govern
12 the legal profession such an arrangement cannot be excused solely
13 on the grounds that an attorney is appearing pro bono publico.
14 CBG's attorneys may enter an appearance and, if it becomes
15 necessary, they may ask to withdraw.

16

17 If CBG intends to be represented by attorneys of the
18 NLC or if it expects any of the parties to continue to deal
19 directly with its attorneys, CBG ought to be required to cause
20 its attorneys to enter notices of appearance in the proceeding.
21 Certainly, with respect to adjudication of the security contention,
22 no attorney who has not formally noticed his or her appearance
23 ought to be permitted to participate in the proceeding. Moreover,
24 any such attorney who does appear ought to be required to commit
25 to remaining until the security contention is resolved.

26 // //

27 // //

28 // //

1 III. ALTERNATIVE REMEDY

2
3 According to the standards established in the Diablo
4 Canyon proceeding, before the Board can permit disclosure of any
5 safeguards information CBG must demonstrate that the particular
6 information requested is relevant to its security contention.
7 Pacific Gas and Electric Company, ALAB-410, 5 NRC 1398 (1977),
8 at par. 3.(1). CBG has made no showing that the security plan or
9 any other specific item of information is relevant to its security
10 contention. Indeed, the NRC Staff Motion for Summary Disposition
11 (Staff's Motion), dated April 13, 1981, demonstrates that CBG's
12 contention is really an attack upon the NRC's safeguards regula-
13 tions. CBG's contention amounts to a claim that the safeguards
14 standards applicable to power reactor facilities ought to be made
15 applicable to University's research reactor facility. None of the
16 security information which University has withheld from disclosure
17 is relevant to the full and fair consideration of CBG's claim.

18
19 University requests that the Board defer the identifica-
20 tion and qualification of CBG's security contention experts for the
21 sole of considering Staff's Motion, at least to the extent needed
22 to determine whether any material facts remain in dispute and
23 whether discovery of security information is necessary to resolve
24 such disputes. University discussed this request in its status
25 report of March 15, 1982, and does not intend here to formally
26 petition the Board for this relief. University notes, however,
27 if the Board decides, on its own motion, to consider Staff's
28 Motion at this time and request that CBG respond to the motion,

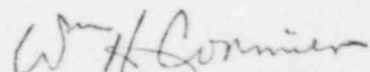
1 many, if not all, of the security issues will be resolved. As a
2 result, it is likely that the parties can get by with less complex
3 procedures for the discovery of security information relevant to
4 the resolution of any remaining issues.

5
6 IV. CONCLUSION
7

8 For the reasons discussed above, University requests that
9 the Board deny CBG's Motion for Deferral or, as a preferred
10 alternative, agree to defer the identification and qualification
11 of experts until the NRC Staff Motion for Summary Disposition is
12 resolved. As a related matter, in the event that the Board denies
13 CBG's motion and orders that CBG submit forthwith the identities
14 and qualifications of its experts, University requests that CBG
15 be required to limit its submission to the minimum number of
16 individuals necessary to a fair consideration of the security
17 contention and that each of those individuals express a commitment
18 to remain until the security contention is resolved.

19
20 Dated: May 10, 1982.
21

22 DONALD L. REIDHAAR
23 GLENN R. WOODS
24 CHRISTINE HELWICK

25 by 
26 William H. Cormier
27 UCLA Representative

28 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4 In the Matter of)
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: UNIVERSITY'S
10 RESPONSE TO CBG'S MOTION FOR DEFERRAL

11 in the above-captioned proceeding have been served on the
12 following by deposit in the United States mail, first class,
13 postage prepaid, addressed as indicated, on this date: MAY 10, 1982

14 John H. Frye, III, Chairman
15 Administrative Judge
16 ATOMIC SAFETY AND LICENSING BOARD
17 U.S. Nuclear Regulatory Commission
18 Washington, D.C. 20555

Mr. Daniel Hirsch
Cte. to Bridge the Gap
1637 Butler Avenue, #203
Los Angeles, Calif. 90025

17 Dr. Emmeth A. Luebke
18 Administrative Judge
19 ATOMIC SAFETY AND LICENSING BOARD
20 U.S. Nuclear Regulatory Commission
21 Washington, D.C. 20555

Mr. John Bay, Esq.
3755 Divisadero #203
San Francisco, CA 94123

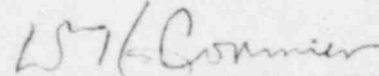
20 Dr. Oscar H. Paris
21 Administrative Judge
22 ATOMIC SAFETY AND LICENSING BOARD
23 U.S. Nuclear Regulatory Commission
24 Washington, D.C. 20555

Mr. Daniel Hirsch
Box 1186
Ben Lomond, CA 95005

23 Counsel for the NRC Staff
24 OFFICE OF THE EXECUTIVE LEGAL DIRECTOR
25 U.S. Nuclear Regulatory Commission
26 Washington, D.C. 20555

Nuclear Law Center
c/o Dorothy Thompson
6300 Wilshire Blvd. #1200
Los Angeles, CA 90048

26 Chief, Docketing and Service Section
27 OFFICE OF THE SECRETARY
28 U.S. Nuclear Regulatory Commission
Washington, D.C. 20555


WILLIAM H. CORMIER
UCLA Representative

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA