

# COMMITTEE TO BRIDGE THE GAP

1637 BUTLER AVENUE #203  
LOS ANGELES, CALIFORNIA 90025  
(213) 478-0829

as from: Box 1186  
Ben Lomond, CA 95005  
(408) 336-5381

May 25, 1982

John H. Frye, III, Chairman  
Dr. Oscar Paris  
Dr. Emmeth Luebke  
Administrative Judges  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

Dear Administrative Judges:

Pursuant to the obligation of all parties to keep the Board advised of significant changes and developments relevant to the proceeding, CBG reports as follows:

Yesterday, May 24, 1982, CBG was made aware of two new NRC regulations, recently put into effect, which would appear to have significant implications for the matters now being considered relative to a protective order and affidavit of non-disclosure as to the security contention in this proceeding.

The new regulations are 10 CFR 73.21 and 2.744(e) and deal with requirements for protection of unclassified safeguards information. The new rules were added in response to the provisions of a new Section 147, SAFEGUARDS INFORMATION, that was added to the Atomic Energy Act by PL 96-295.

Those new provisions prohibit the unauthorized disclosure of certain information relating to the protection of nuclear materials and facilities and appear to apply automatically to all participants in an adjudicatory proceeding who are given access to protected information. (2.744(e): "When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission Staff, it shall also be protected according to the requirements of § 73.21 of this chapter." 73.21 provides requirements as to how to protect such information.)

The protection formerly provided by protective orders and affidavits of non-disclosure is now incorporated directly into the regulations, which appear to make such affidavits and orders optional. Boards, the new regulations say, may impose such orders and affidavits and may impose restrictions that go beyond those provided for in the new regulations, but the kind of protection previously contained in individuals protective orders is now written directly into the regulations.

8206010 342 C

DS03  
5/1/82

JUDGES FRYE, LUEBKE, AND PARIS

May 25, 1982

Page Two

The above statements are initial impressions of the implications of the new regulations based upon a first reading thereof and what I was told by phone yesterday by Donald J. Kasun, Physical Security Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Standards, who is the responsible NRC staff official for the new regulations.

Mr. Kasun informs me that the regulations do apply to research reactors; that they bind all parties to a proceeding, including applicants, staff, intervenors, and interested governmental agencies to whom protected information may be revealed during discovery or at hearing; and that information generated by intervenors or interested agencies through their access to security plans and related protected information (for example, inspection reports or testimony by intervenors' experts as to weaknesses in a security plan) likewise must be protected by all parties. Mr. Kasun told me that weaknesses in a plan that are identified by an intervenor through access to protected information are likewise protected information, and that all parties are bound to non-disclosure thereof.

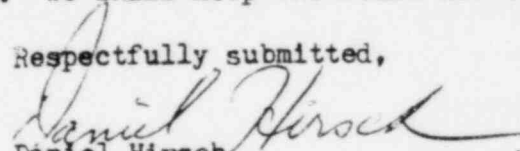
Mr. Kasun also indicated that the regulations recently enacted place into rule form protections that previously required protective orders and affidavits of non-disclosure in licensing proceedings dealing with security matters. Mr. Kasun indicated that it was, as he put it, "the position of Staff" that such orders and affidavits would no longer be necessary, except where Boards wished to impose stricter restrictions, but that Boards might not see the matter the same way as does Staff.

Recognizing that Mr. Kasun's statements as to the position of Staff regarding the general implications of the new regulations, for which he is responsible, may differ from the position of counsel for Staff in this particular proceeding, I spoke yesterday in addition with Colleen Woodhead about the new regulations.

Like CBG, Ms. Woodhead said she had not been aware of the new regulations. (One should note that they are not included in the bound CFR book commonly used as a handy reference). She said she would review the new rules and report back to CBG within a few days her view of the implications thereof.

Thereafter CBG will report once again to the Board. At that time we may request that the parties be directed to brief the matter of the implications of the new regulations, or that oral argument thereon be heard at the June pre-hearing conference. We shall keep the Board advised.

Respectfully submitted,

  
Daniel Hirsch

President

COMMITTEE TO BRIDGE THE GAP

cc: service list