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Attorneys for Intervenor (Contention XX)
 Committee To Bridge The Gap

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 50-142
)	(Proposed Renewal of Facility
THE REGENTS OF THE UNIVERSITY)	License Number R-71)
OF CALIFORNIA)	
)	July 27, 1982
(UCLA Research Reactor))	
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INTERVENOR'S RESPONSE TO UNIVERSITY'S PROPOSED
 PROTECTIVE ORDER AND AFFIDAVIT OF NON-DISCLOSURE

I. INTRODUCTION

Pursuant to direction of the Board at the Prehearing Conference of June 29 and 30, 1982, Intervenor, Committee to Bridge the Gap (CBG) hereby submits its responses to the proposed protective order and proposed affidavit of non-disclosure for discovery of physical security information filed by Applicant, The Regents of the University of California (University) on or about July 12, 1982.

The University's proposed protective order and affidavit of non-disclosure are virtually identical to the amended protective order and affidavit of non-disclosure approved by the Atomic Safety and Licensing Appeal Board (Appeal Board) in the Diablo Canyon proceeding (Pacific Gas and Electric Co., Diablo Canyon Nuclear Power Plant, Units 1 and 2, ALAB-600, 12 NRC 3, at 14-17.

Preliminarily, it is noted that the NRC Staff has raised no objection to the proposed protective order and affidavit of non-disclosure submitted by CBG, except to object to applicability of the protective order or affidavit of non-disclosure to the NRC Staff.

University, on the other hand, has raised extensive objections to the protective order and affidavit of non-disclosure proposed by CBG and, as noted, has submitted an alternative form of both the affidavit and order modeled after the Diablo Canyon documents. University initially contends that it is entitled to the same protection of its security information as that provided to other licensees notwithstanding that there is much less of such information in existence for University's facility. This contention is contrary to University's persistent position that the facility requires less security because it does not approach the magnitude of the large power reactors, either in the physical facility itself or the information contained therein. Assuming, arguendo, that University's position is correct as to the requirement for less security, it follows that there is less information to be protected and therefore, less need for onerous or extensive protective measures.

II. DISCUSSION

A. Protective Order

University's proposed protective order seeks to impose obligations only upon "qualified counsel and experts of CBG and the City of Santa Monica." University vehemently objects to application of the protective order to either the University staff or University's employees. This position is a direct challenge to the requirements of 10 CFR 73.21 which requires "each person" who "produces, receives or acquires..." protected information to be subjected to the prohibitions of non-disclosure. For this reason alone, University's objections to this element of CBG's proposed protective order are not well taken.

Moreover, University's requirement that only Intervenor's and City's counsel and experts be required to sign an affidavit of non-disclosure flies square in the face of the Administrative Judge's statements at the Prehearing Conference that any protective order would apply to all parties. Judge Frye explicitly stated: "Obviously, the protective order would apply across the board to all parties without any question." (See Reporter's Transcript of Proceedings, June 29, 1982, page 557, lines 19-20.)

University also argues that under CBG's proposed protective order, the Board retains no control over the number of CBG or City authorized persons who would be entitled to receive the protected information. University has apparently ignored the proposed schedule

submitted by CBG with its proposed protective order and affidavit of non-disclosure, which explicitly sets forth a time table whereby counsel or other representatives, clerical personnel and witnesses must be identified to the Board. All other parties would then have an opportunity to raise objections as to who may execute affidavits of non-disclosure and the Board will rule as to who may execute an affidavit of non-disclosure. University's wild speculations about lack of control over persons executing affidavits are irrelevant and have no basis in fact.

University also objects to paragraph 8 of CBG's proposed protective order which requires Applicant to provide necessary typing, reproduction and mailing services for Intervenor at Applicant's expense. However, the Appeal Board precedent upon which University has modeled its proposed protective order specifically required Pacific Gas and Electric Co., the Applicant in that case, to provide secretarial services and a safe place for use of protected information at Applicant's own expense. It is entirely consistent to require Applicant to pay for the expense of protecting its information and, moreover, it is entirely consistent with the Pacific Gas and Electric Co. precedent that University seeks to emulate.

B. Affidavit of Non-Disclosure

University's proposed affidavit mandates the use of all protected information at facilities on the UCLA campus and University's discussion states that University expects "that all CBG witnesses and counsel will agree on a single location to work with

such materials." Surely University must realize the onerous burden this requirement would place on CBG. Witnesses and counsel for CBG who need access to protected information are not located in the Los Angeles area and to require them to make a trip to UCLA to review materials would preclude their participation in this proceeding and seriously hamper CBG's ability to prepare for the hearing. It is totally unreasonable to expect these witnesses and counsel should travel to the UCLA campus to review the materials. CBG fully realizes, however, that it would be equally unreasonable to expect that the materials could be used in any place whatsoever. As an alternative, CBG would propose that the materials be made available at other facilities, particularly at the University facilities in Berkeley and Walnut Creek and at the NRC facilities in Bethesda, Maryland, where it is anticipated that much of the protected information will be generated.

University's definition of protected information is far too broad in that it seeks to impose prohibitions of non-disclosure not only on information obtained by reason of the proceedings on the reactor security plan, but on any information obtained in any part of these proceedings from any source. Obviously, there are a myriad of references to the security plan and the physical security system which are not necessarily protected information. Under any circumstances, there is no justification for extending the prohibitions to information which CBG obtains from outside, independent third parties.

University's definition of an authorized person is, as previously noted, contrary to the requirements of 10 CFR 73.21.

Paragraph 2 of University's proposed affidavit of non-disclosure prevents disclosure of any information unless it has been disclosed in the public record of this proceeding. This limitation is far too narrow, inasmuch as the ability to disclose should be applicable to any information in the public domain and not just information in the public record of this proceeding.

Given its broadest reading, paragraph 3 of University's proposed protective order would require CBG to make an application to the Board each time it wished to copy a document for use in its preparation for the hearing in this case. Such a requirement would not only be burdensome and non-productive, but it would seriously delay CBG's ability to prepare its case.

Paragraph 4 is totally unacceptable, as noted above, to the extent that it requires CBG to conduct its review of the information at a single location.

The requirements of the University's proposed paragraph 7 impose completely unnecessary recordkeeping requirements upon anyone who executes an affidavit of non-disclosure, a burden which in itself would tend to chill the use of the information and execution of affidavits by potentially necessary witnesses and counsel with the end result of possibly weakening CBG's ability to gather the evidence necessary to prove its contentions.

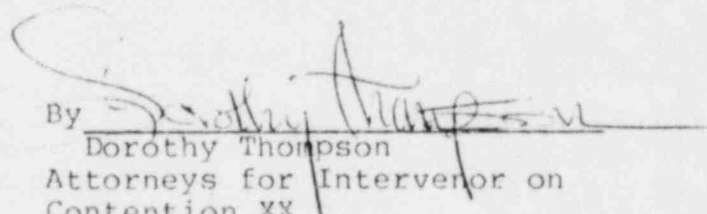
Paragraph 8 of University's proposed affidavit of non-disclosure contains the reprehensible limitation that the protected information gained through the hearing process may not be used to corroborate information obtained from other sources. This is a grossly unfair restriction and could potentially destroy CBG's ability to demonstrate all of the elements raised by Contention XX.

III. CONCLUSION

For all the foregoing reasons, CBG respectfully requests that its proposed protective order and affidavit of non-disclosure be adopted by the Board for use in this proceeding.

DATED: July 27, 1982

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By 
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Contention XX

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached INTERVENOR'S RESPONSE TO UNIVERSITY'S PROPOSED PROTECTIVE ORDER AND AFFIDAVIT OF NON-DISCLOSURE FOR DISCOVERY OF PHYSICAL SECURITY INFORMATION in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, postage prepaid, addressed as indicated on this date: July 27, 1982.

John H. Frye, III,
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U.S. Nuclear Regulatory Commission

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Dr. Oscar H. Paris
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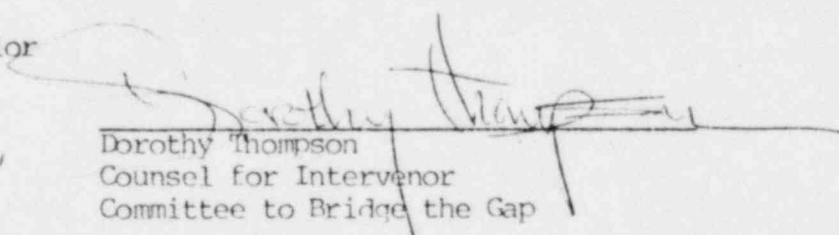
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