10/8/82

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 OF CALIFORNIA	)	(Proposed Renewal of Facility License)
	)	
(UCLA Reactor Research)	)	

NRC STAFF RESPONSE TO CBG MOTION TO SUMMARILY DISMISS STAFF AND APPLICANT MOTIONS FOR SUMMARY DISPOSITION OR ALTERNATIVE RELIEF

I. Introduction

On September 20, 1982 the Intervenor, Committee to Bridge the Gap (CBG) filed a motion (Motion) to summarily dismiss the motions for summary disposition filed by Staff and Applicant (SD Motions) on September 1, 1982. The Motion requests one of the following four alternatives if the Board denies the motion to summarily dismiss Staff and Applicant motions:

(1) deferral of responses to SD Motions until the Board determines them genuinely ripe for consideration or;

(2) establishment of a "bifurcated" response procedure whereby CBG could either:

(a) file a written "threshold" response to the SD Motions or

(b) respond orally at a prehearing conference convened to hear CBG's description of evidence it possesses to contradict the SD Motions,

with a second opportunity, provided by Board direction, as to the supplementation necessary if either the written or oral

threshold response described in (a) and (b) is unsuccessful; or

(3) a brief to address only the issue of whether or not a serious accident at the UCLA Argonaut UTR could produce significant offsite radiological consequences and a denial of all except "residual" SD Motions if the brief is successful, with instruction from the Board as to what "residual" matters remain to be answered by CBG; or

(4) a six month extension of time for CBG to prepare a response of several thousand pages with the understanding that no documents will be attached to the response, but that the Board will request submission of any documents referenced which it does not possess or cannot obtain.

The Staff opposes the Motion and all alternative requests for the reasons which follow.

II. Background

CBG was admitted as a party to this proceeding on September 25, 1980. Twenty complex, multipart contentions of CBG were admitted for litigation. Discovery began in 1980 and has produced an extraordinarily large amount of information for CBG.[1/] Discovery is complete except for one contention.

1/ CBG filed more than three thousand interrogatories against UCLA; five hundred and seventy-three against Staff; CBG obtained copies of a large number of UCLA records; CBG has inspected the UCLA facility twice and taken more than 200 photographs; and has filed a lengthy Freedom of Information Act (FOIA) request with the Commission.

On May 6, 1982 the City of Santa Monica filed a notice of intent to participate as an interested municipality pursuant to 10 C.F.R. § 2.715(c) and was admitted by Board Order of June 4, 1982.[2/]

On June 29-30, 1982, the third prehearing conference in this proceeding was held in Los Angeles to discuss a schedule for completion of discovery and for filing motions for summary disposition and responses. During the conference the Board conferred with the parties as to the time necessary to prepare summary disposition motions and responses.

The original schedule proposed by the Board called for opposing responses to summary disposition motions on October 5. This date was extended to October 15 after CBG requested more time to respond since CBG had previously been informed of Staff's intent to file a motion to dispose of all contentions (Tr. 761) as well as UCLA's intent to file a similar motion or one in support of Staff's motion. (Tr. 759, 763). The Board modified the schedule to allow CBG more time for response and stated that if good cause were shown, the schedule could be further modified (Tr. 766). CBG made no objection during the conference to the October 15 date for responses opposing summary disposition. The following schedule was finally determined at the conference.

September 1, 1982	Final date for filing summary disposition motions

---

2/ Memorandum and Order (Admitting the City of Santa Monica Under 10 C.F.R. § 2.715(c), June 4, 1982. In the Order the Board stated its interpretation of Congressional intent in § 241(1) of the Atomic Energy Act (42 U.S.C. 2021(1)) as providing full procedural rights to interested states as described in § 189 of the Act. Order at 3. However, the Board stated that Santa Monica must take the proceeding as it found it. Order at 4.

September 20, 1982	Due date for responses in support of summary disposition motions
October 15, 1982	Date for responses opposing summary disposition

The Board later issued an Order establishing this schedule.[3/] At the conference the Board stated that if the schedule were followed, that it would be possible to go to hearing in December 1982 or January 1983. (Tr. 765-767).

On September 1, 1982 Staff and Applicant (The Regents of the University of California, termed UCLA for convenience in this proceeding) filed motions for summary disposition of eighteen of the twenty admitted contentions.[4/]

On September 20, CBG filed the instant Motion and on the same date, Counsel for Santa Monica sent a letter to the Board stating, among other matters, that the City intends to request an extension of time beyond October 15, 1982 to respond to the Staff and Applicant SD Motions due, partly to the fact, that present Counsel will leave her position on October 1, 1982 and her replacement will require time to become familiar

---

3/ Prehearing Conference Order, July 26, 1982 at 8.

4/ Contention XX (security plan) has been subject to a motion for summary disposition pending since April 1981 because of a suspension of response dates by Board Order issued after complaint by CBG and a recent Board provision for a CBG brief describing the security regulations applicable to UCLA for which an extension of time has been given beyond the original due date of September 7, 1982. See Order Relative to NRC Staff's Motion for Reconsideration of Board Order of April 30, 1981 and Prehearing Conference Order, July 26, 1982. Contention XXI is not ripe for summary disposition since CBG recently submitted an addition to the contention to address the revision of the UCLA emergency plan submitted July 1982. Discovery concerning the revised plan has not yet been filed.

with this proceeding. Staff will not respond to the letter but will await the City's motion.

By Order issued September 28, 1982 the Board suspended the schedule for responses in opposition to SD Motions in light of the CBG Motion and the Santa Monica letter; and directed Staff, UCLA and Santa Monica to have their responses to CBG's Motion in the Board's hands by October 8, 1982.

III. Discussion

A. The Motion to Summarily Dismiss the Summary Disposition Motions Should Be Denied

The Intervenor states that "[d]espite direction from the Board to the contrary, the Staff and Applicant have moved for summary disposition as to every contention . . . as well as each and every subpart of said contentions"; that such motions are a "delaying tactic" and "harassing" in a "unique situation" where Applicant continues to operate until the issues raised by CBG contesting the renewal of the license for the UCLA research reactor are decided. Motion at 1. The "Board direction" to which CBG refers is the comment by the Board at the prehearing conference that the Board would prefer summary disposition motions to be filed only where the movants felt they had a very strong case and where there was some assurance that the burden of proof could be carried. (Tr. 535, 536, 764, 765). This "direction" has been followed by Staff and Applicant.

The Board's "directive" concerning summary disposition was as follows:

> Judge Frye: Since we are on summary disposition in general, let me give you our thoughts, which are very general thoughts with regard to that procedure. We don't look upon it very kindly frankly. You have got contentions that are fairly detailed in this case. You have had a wealth of discovery that has gone on. And I personally, and I don't think any of us are privy to all of the information that has been passed back and forth with regard to discovery.5/ I think that if we got into an extended summary disposition procedure we are going to be delaying the hearing three to four months.
>
> I personally, and I think my colleagues agree, would prefer as a general proposition to go to hearing. If we have questions we can ask witnesses. We can't ask affidavits. I think that the whole thing would go much faster, and the result would be on a much sounder basis after an evidentiary hearing.
>
> I think with regard to summary disposition, surely there may be items in here that are amenable to that process that could be handled very quickly. But I would urge you, when you file motions for summary disposition, that you do so on items that you feel you have got a very strong case for summary disposition. Don't spend a lot of time preparing affidavits. In the same amount of effort you put into preparing your motion for summary disposition, you could prepare your case for trial. And we would go to trial just that much faster. Tr. 535-536.
>
> Judge Paris: I would like to emphasize the point raised by Judge Frye yesterday with regard to the filing of motions for summary disposition. The Board would urge you not to do this in a shotgun, broadside fashion. Our problem with motions for summary disposition is that we are unable to ask questions, and from our experience in dealing with them in the past, frequently, questions will come up. So unless you feel that you can carry the burden of proof on an issue, let us let it go to trial rather than putting all the parties

---

5/ The Staff notes that all discovery pleadings were filed with the Board by the parties.

> and the Board through the problem of hashing with the motion for summary disposition. I am not trying to discourge it. But I am trying to save us all time and effort. Come forth with the ones where you think you can really carry the point. Tr. 764-765.

The twenty contentions admitted in this proceeding contain highly technical language, many subparts, and appear to raise many complex questions. In reality, they allege only a few issues, which the Staff submits are not genuine issues of material fact. The Argonaut, which is a very simple, fail-safe, low power, mechanism, has been operating safely for twenty years under Commission licenses and regular inspections on five university campuses. Accordingly, it is reasonable to expect that the scientific data concerning its safe design and operation would be well known and easily demonstrated. Therefore, Staff's decision to file motions for summary disposition was a considered judgment, since the bases originally offered in support of the contentions have proved groundless; CBG response to Staff interrogatory "A" indicated no expert witnesses, and discovery showed that CBG can produce no independent analyses, and no evidence other than that in the UCLA docket. Thus, the Staff and Applicant motions are in accord with the Commission's directive that

> In exercising its authority to regulate the course of a hearing, the boards should encourage the parties to invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.6/

6/ STATEMENT OF POLICY ON CONDUCT OF LICENSING PROCEEDINGS, CLI-81-8, 13 NRC 452, 457 (1981).

Additionally, 10 C.F.R. Part 2, Appendix A, § VIII(d) expressly states

> In operating license proceedings the procedure for summary disposition of the proceeding on the pleadings described in § 2.749 may be used to determine the ultimate issue of whether the operating license should be issued.

Most of the contentions were stipulated by Staff according to the standards set out by the Appeal Board in the Allens Creek decision. There, the Appeal Board stated that although the merits of the bases offered in support of contentions may not be considered before admission, that if the bases are found, upon investigation, to be insubstantial that summary disposition should be sought.[7/]

In short, CBG's complaint that the motions of Staff and Applicant are harassing and contrary to the Board's direction is unjustified. CBG provided no information during discovery which would justify a hearing, and as previously indicated, the bases for contentions provided by CBG do not support the contentions. Staff and Applicant filed SD Motions on all contentions for valid reasons, and the SD Motions do not contravene the Board's directive.

In additional support of its Motion, CBG argues that the pending SD Motions are vague; have not "discriminated" those issues where no material dispute exists and alleges that recent I&E reports contradict the SD Motions. Motion at 7-8.[8/] CBG further states that the Board "must" dismiss the Staff and Applicant motions as "mandated" by 10 C.F.R.

7/ Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546-551 (1980).

8/ The UCLA motion for summary disposition included all I&E reports from 1976 to date as proof of safe operation of the reactor.

§ 2.749 because a hearing date has been set and CBG's resources would be strained by a response.

The part of this Rule to which CBG refers provides that boards "may" dismiss summarily motions filed "shortly before the hearing commences . . . if the other parties or the board would be required to divert substantial resources from the hearing in order to respond adequately to the motion." 10 C.F.R. § 2.749(a). CBG claims that response to the pending motions would be a tremendous drain on resources and would take away time from preparation for hearing, (Motion at 8) which CBG states has been "determined" and "tentatively set" by the Board for "sometime in December or January" (Motion at 6) which CBG states is "shortly . . . [but] tentatively scheduled to commence . . . " Motion at 8.

This assertion is obviously insupportable by its own words. No hearing date has been established. As previously indicated, the Board simply estimated the probable time which would be appropriate for hearing after completion of all prehearing matters. Further, the Board advised CBG at the prehearing conference that summary disposition motions and responses were essentially preparation for hearing and would not divert CBG resources. (Tr. 762-763). As indicated in its motion, CBG has known for nearly a year that Staff intended to file a motion for summary disposition of all contentions. Motion at 5.[9/] Neither its claim of

---

9/ Staff counsel not only informed CBG representatives including John Bay, Esquire during a November 1981 meeting in San Francisco of the intent to file the motion, but also agreed to support a request for a greater amount of time for CBG response than the twenty days provided by 10 C.F.R. § 2.749, due to the necessary length of the motion.

harassment or inability to respond to the motions in the time provided has any credibility, and certainly no legal or factual basis exists for dismissal of the Staff and Applicant motions for summary disposition.

The Staff and Applicant filed their SD Motions as directed by Board Order. The appropriate portion of 10 C.F.R. § 2.749(a) concerning the present situation states

> Motions shall be filed within such time as may be fixed by the presiding officer.10/

Indeed, CBG itself filed two motions for summary disposition on September 7, 1982 after having been granted an extension of time by the Board from the September 1, 1982 date. CBG would be guilty of the same "late" filing of which it accuses Staff and Applicant, if such were true.

It is clear that CBG's Motion to dismiss Staff and Applicant's SD Motions rests on a misrepresentation of the facts of record and a misapplication of the Commission's Rule of Practice.11/ The Motion must be denied as a matter of law.

10/ The Rule further provides that "Any party to a proceeding may move . . . for a decision by the presiding officer . . . as to all or any part of the matters involved in the proceeding. 10 C.F.R. § 2.749(a). (Emphasis added)

11/ It should be noted by the Board that this is the second time CBG has complained of unfairness concerning summary disposition. See fn. 4 supra.

B. The Alternative Requests Are Without Merit and Should Be Denied

1. Deferral of Consideration of the Summary Disposition Motions

In this alternative proposal, CBG asks that the Board exercise "its authority to regulate scheduling" and defer consideration of the summary disposition motions and responses thereto because, CBG states, it would be "appropriate" to defer responses until the Board "views particular ones to be genuinely ripe . . . at which time it may direct CBG to respond to those motions viewed as ripe . . ." Motion at 8. No reason is provided in support of the request nor any explanation of use of the term "ripe for consideration."

This request is baseless in view of the fact that the Board scheduled the dates for filing summary disposition motions and responses thereto. Two years have passed since this proceeding began. Discovery is complete on the issues subject to the summary disposition motions. CBG provided no information during discovery to indicate that a material issue of fact exists on any contention. The contentions are now appropriate subjects for summary disposition motions. The consideration of Staff and Applicant motions should not be deferred, and the request for deferral should be denied.

2. Bifurcated Response Procedure

CBG proposes a novel, fail-safe form of response whereby it will be allowed to make a threshold showing in opposition to the SD Motions and then require the Board to determine therafter on which of the contentions CBG has failed to make its threshold showing and allow CBG to file "detailed" and extensive summary dispositon responses. Motion at 10.

CBG proposes that this procedure could be done in alternate ways by either (a) a written CBG response demonstrating the "insufficiency and contradicting nature of the (SD) motions" (Motion at 11); or (b) CBG could "brief" the "central issue" of whether a serious accident with offsite consequences is possible at the UCLA reactor and thus, "dispose of the bulk of the summary disposition motions" with subsequent Board instruction as to necessary written response (Id) or (c) by convening a (fourth) prehearing conference so that CBG could orally outline those matters it views in dispute "identifying the facts, documents, witnesses and so on which, if a firm hearing date were kept to, it would put forth as evidence . . . [which] would amount to a screening procedure." Motion at 12. CBG proposes that the Board could then make a determination, on the oral representation of CBG, what issues required written responses. Motion at 12. CBG states it would require six weeks from the date of Board decision on this present Motion in order to prepare its "threshold" responses for the "bifurcated" procedure and an additional 1-2 weeks for the "brief" of the "central issue." Motion at 14.

The reason stated by Intervenor for requesting the bifurcated responses is that the Staff and Applicant's motions are "short generalizations" and that therefore, CBG has been given a "burden" of providing lengthy responses to the "extremely short motions (i.e., 2 pages per contention)" . . . Motion at 9. This is a contradiction in terms. If the summary disposition motions are short, consisting of "vague weak arguments," (Id) then under the legal standards concerning summary disposition referenced in CBG's own motions for summary disposition, as well as by Staff and Applicant, CBG's opposing response should be quite

simple to prepare. As set out by CBG's September 7, 1982 motions for summary disposition of Contentions XIII and XVII, the burden of proof lies on the movant for summary disposition who must demonstrate the absence of any genuine issue of material fact; the motion can only be granted where it is quite clear what the truth is; the record will be viewed in the light most favorable to the party opposing the motion, and, finally, a contention will not be summarily disposed of where the Licensing Board determines that controverted issues of material fact exist.[12/] CBG argues that Staff and Applicant have burdened CBG by their "short motions" because CBG will be forced to respond with "extremely detailed argument, affidavits, and other documentary evidence . . . likely to be roughly thirty pages of response each and 70-100 pages of exhibits, for every contention so that CBG will be faced with the "burden of producing a several thousand page response." Motion at 9. This is an incredible proposition in light of CBG's clear exposition of legal standards to the contrary. CBG obviously knows that the burden of proof is on Staff and Applicant. Thus, it should be easy work for CBG to submit a response to the "short motions" by simply providing the essential facts which show that issues of material fact exist. This hardly requires the effort described by CBG. Contrary to CBG's complaint, the legal burden lies on Staff and Applicant and there is no reason whatsoever for CBG to file a response of several thousand pages.

12/ CBG Motions for Summary Disposition as to Contentions XIII and XVII; Preface, September 7, 1982.

Additionally, in CBG's description of the "70-100 pages of exhibits, for every contention"; "voluminous evidence . . . of [the UCLA] operating history"; "facts, documents, witnesses and so on which . . . it would put forth as evidence" (Motion at 9, 12), the Staff submits that the above statement raises a question of CBG's forthrightness in its response to Staff and Applicant interrogatories. As set out in Staff's motion for summary disposition, CBG interrogatory responses stated that CBG has no witnesses and no documentary evidence to support its contentions other than the application and inspection records in the UCLA docket except for a few references to academic texts. If CBG has the voluminous amount of material to present in its case ar witnesses to testify in its behalf then it follows that CBG has failed to comply with the Commission's discovery rules in 10 C.F.R. § 2.740(e)(1) and (2) which require complete responses under oath and supplementation of discovery answers. Staff was not provided with any proposed witnesses' names nor did CBG indicate it possessed the massive amount of evidence described in the Motion. CBG cannot be allowed to circumvent the Commission's discovery rules and to keep its evidence secret, nor may the Board countenance an attempt to hold back evidence until hearing while avoiding response to summary disposition motions.[13/]

13/ Northern States Power Co. (Tyrone Energy Part, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1977); Surkin v. Charteris, 197 F.2d 77, 79 (4th Cir. 1952).

The Appeal Board recently had occasion to instruct another intervenor as to the duty to perform its obligations as a party as follows:

> To be sure, participation in Commission proceedings can be burdensom and time-consuming -- as can be any complex litigation.
>
> x x x
>
> (But) . . . A litigant may not make serious allegations against another party and then refuse to reveal whether those allegations have any basis.
>
> x x x
>
> In a ruling that has received explicit Supreme Court approval, the Commission has stressed that an intervenor must come forward with evidence "sufficient to require reasonable minds to inquire further "to insure that its contentions are explored at hearing.14/

The Commission's Rules of Practice state that contentions sought to be litigated must have the "basis for each contention set forth with reasonable specificity." 10 C.F.R. § 2.714(a)(3). CBG submitted a lengthy explanation of the bases for its proposed contentions as well as many attachments in its Supplemental Contentions.15/ On the basis of this submittal, the Staff and Applicant stipulated to many contentions and the Board admitted nearly all of the contentions proposed by CBG.16/ Staff and Applicant then inquired during discovery as to CBG's information, possible evidence and witnesses, as well as clarification of the bases stated in the Supplemental Contention and other matters, aimed at

---

14/ Pennsylvania Power and Light Co. and Allegheny Electric Coop. Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 339-340 (1980) citing Vermont Yankee Nuclear Power Corp. v. NRC, 435 U.S. 519, 553-54 (1978).

15/ CBG Supplemental Contentions, August 25, 1980.

16/ Order Subsequent to Prehearing Conference, March 20, 1981.

learning the extent of CBG's evidence to support its assertions. CBG served extensive discovery requests on Staff and Applicant and received extensive answers, many of which were references to elementary principles of nuclear technology. The substance of discovery information is known to the parties and provides no support for CBG. CBG cannot be heard in its allegation that it now possesses significant evidence which it would be burdensome to produce to support its contentions, so that a two-step procedure for response should be devised.

The Commission's Rule concerning summary disposition motions states that a party opposing the motion may not rest upon mere allegations or denials but must set forth specific facts showing that a genuine issue exists. 10 C.F.R. § 2.749(a) and (b). Further, the Rule states that the presiding officer shall render the decision sought if the composite filings in the proceeding show there is no genuine issue of material fact and that the moving party is entitled to a decision as a matter of law. 10 C.F.R. § 2.749(d).

CBG by the instant Motion appears to request exemption from § 2.749 to be allowed to make "mere allegations" rather than provide specific facts. It is stated in the CBG motions for summary disposition that only a threshold showing of an issue of material facts is necessary for an opposing party to defeat a motion for summary disposition, yet CBG, 20 days after service of summary disposition motions, has filed a 15 page Motion asking that various special proceedings be established and alleges possession of a large amount of evidence not described during discovery. It is contradictory to assert on the one hand, that the CBG can make a threshold showing of facts at issue and then decline to do so unless

provided counsel by the Board that the threshold showing was insufficient and allowed a second opportunity to try again in lengthy, detailed filings and attachments. The same is true of CBG's proposal that the Board provide a "mini-hearing" where CBG would orally describe without producing, evidence and witnesses available for hearing which CBG alleges would suffice to defeat the summary disposition motions.

The Staff believes that if CBG does possess evidence to show that material facts are at issue that it should produce it as a response as scheduled at the prehearing conference. To date, CBG has not disclosed this alleged evidence, which, under cover of refraining from inundating the Board with a mass of materials, CBG states in the Motion that it would prefer not to produce, or, if required, would take six months to accomplish. This argument is suspect, and entirely unpersuasive. CBG's requests for a bifurcated procedure and what amounts to legal assistance from the Board, until a successful showing of factual issue is made, seeks to circumvent the Commission's Rules of Practice and common notions of fairness. The task undertaken by Staff and Applicant in preparing summary disposition motions to controvert the large number of references to the Application and inspection reports in CBG's supplemental contentions and its scientifically unfounded assertions has been difficult. But CBG's complaint that a response to Staff and Applicant motions is an overwhelming burden is without merit since the contentions and their bases are CBG's and since, as the Board explained, preparation of the response would be little different from preparation for hearing. The request for a bifurcated response procedure is insupportable and must be denied.

3. Brief in Response to the "Central Issue"

As another alternative to responding to the motions for summary disposition, CBG proposes that it could "brief the arguments raised by Staff and Applicant (that the most serious credible accident at an Argonaut would not threaten public health and safety) and provide opposing evidence demonstrating that there are material disputes as to the matter." CBG proposes that a finding by the Board that there is an issue of material fact concerning this matter, "could thus dispose of the bulk of the Summary Disposition motions" with the provision that again, the Board would direct CBG to respond to "any residual matters" on which it was unsuccessful. Motion at 11. CBG references a discussion in UCLA's summary disposition motion that, if it is shown by reliable scientific evidence that an accident threatening public health and safety is impossible, then all of the contentions which rest on this assumption must be dismissed.[17/] CBG wishes to reverse this concept in its favor so that if it can demonstrate that significant radiological releases could occur as a result of a serious reactor accident at UCLA, then CBG would defeat all SD Motions on contentions which assume significant releases are possible. CBG's logic is unsound.

If, as Staff and Applicant contend, the maximum credible accident at UCLA will not result in releases beyond 10 CFR Part 20 limits, then there is no real issue raised by the contentions based on the reverse assumption. For example, unless significant releases are possible there is no reason

---

17/ University's Motion for Summary Disposition of Contentions I, II, IV, V, VI, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX, September 1, 1981 at 35-36.

to require a containment, an ECCS system, boron injection system, etc., as alleged in Contention XII. But the converse of this is not necessarily true. Even if CBG could prove that significant offsite releases could be produced from an accident at UCLA, the safety systems required for power reactors would not necessarily be appropriate for a small research reactor. Thus, the CBG proposal to respond to only one issue with a consequential defeat of most, if not all, motions for summary disposition is invalid.

CBG's proposal to file a "brief" and provide evidence opposing the arguments in the Staff and Applicant motions concerning the consequences of a serious accident at the UCLA reactor appears again, to be a request to be relieved of its responsibility to confront the evidence and opinions of experts in the pending SD Motions, so that the twenty CBG contentions which Staff and Applicant have addressed are reduced to a single one for CBG.

CBG's proposal is also legally insupportable. The Board is only authorized to grant or deny the motions for summary disposition on the basis of the pleadings before it according to its determination of whether or not there is a clear demonstration by the motions and responses that a material issue of fact exists. CBG's proposal would require findings of fact by the Board in relation to the contentions which propose many actions by UCLA and additions to the facility and, ultimately, denial of the license renewal. This is not the purpose of

summary disposition procedure.[18/] Additionally CBG's proposal to place the Board in the role of legal counsel by requiring the Board to determine which contentions or parts thereof require supplemental response is indefensible. The Board was appointed to adjudicate the issues on the basis of the evidence presented by the parties, not to act as legal counsel or advocate for intervenors.[19/] CBG's proposal is both factually and legally insupportable. The Staff submits the "briefing alternative" must be denied.

4. Motion for Extension of Time of Six Months to Prepare Response

Finally, CBG asks that if its other requests are denied that it be allowed six months time to prepare the "full voluminous response necessary to thoroughly respond to the assertions made in the Staff and Applicant motions." Motion at 13. According to CBG, if it is required to respond to the summary disposition motions it will delay the proceedings and "cost CBG nearly half of its annual budget." Motion at 13. It is stated that one week per contention is required for writing the response in addition to preparing affidavits and acquiring exhibits. Id.

These assertions by CBG are inconsistent. CBG states it wishes to go to hearing yet cannot produce evidence in response to SD Motions.

18/ 10 C.F.R. § 2.749(d) authorizes boards only to grant or deny motions. See also, APA 556(e) which sets out record requirements for decision. Cf. Marathon Oil Company v. EPA 564 F.2d 1253 (9th Cir 1977).

19/ 10 C.F.R. §§ 1.11, 2.718; 2.719, 2.721; 2.751a; 2.752; 2.755; 2.757; 2.760. See also, Appendix B to Part 2, 10 C.F.R.

CBG states that the SD Motions are short and that CBG can make a written or oral threshold showing which will contradict the motions; yet CBG also states that its response must be extremely lengthy and complex.

CBG has known for a year of Staff's intent to file summary disposition motions on all contentions; CBG discovery responses indicated no evidence outside the UCLA docket to support its contentions; CBG made no assertion at the June 1982 prehearing conference that it possessed a mass of material to submit in a response to SD Motions; CBG knows from its own discussion of legal standards for summary disposition that the motion for summary disposition must clearly show the material facts; CBG did not object at the prehearing conference to the schedule established by the Board, who made clear that the schedule could be modified upon a showing of good cause. Therefore CBG's request for such a great extension of time is patently unreasonably and unjustified by any explanation in the Motion. CBG accuses Staff and Applicant of "delaying tactics," yet it is obvious that that a six month extension of time would be a significant delay which, when coupled with a stated purpose of submitting to the Board hitherto undisclosed evidentiary documents, appears to be something other than a legitimate request. It seems to Staff CBG's Motion asks relief from its responsibilities as a party while it takes full advantage of all rights.

The Appeal Board in Susquehanna recently pointed out the necessity of compliance by all parties with the Commission's Rules of Practice.

> We have stated that those Rules were not promulgated capriciously. They were drafted to insure that, when followed, the arguments and positions of all parties -- applicants, staff and intervenors -- would be spread fully upon the record in order to permit fair rebuttal

> by those holding opposing views and to facilitate our ultimate evaluation of the the competing contentions. Disregard of the Rules frustrates those salutary purposes and burdens rather than assists the adjudicator's task.20/

CBG must now be required by this Board to fulfill its responsibilities as a party. Certainly CBG cannot be allowed to create its own procedures and due dates entirely for its benefit, yet claim unfair treatment simply because Staff and Applicant have made the effort to sift through the enormous amount of discovery and docket material referenced by CBG as "evidence" of its allegations, in order to show that all assertions are baseless. In a similar situation the Appeal Board pointed out that:

> The orderly functioning of the administrative process scarcely would be furthered were we to allow parties to our proceedings simply to ignore prescribed time limits whenever it suited their convenience to do so.
>
> x x x
>
> But no good reason exists why a double standard should obtain in so far as observance of deadlines is concerned.21/

In accord with this direction, the licensing board in the OPS case advised intervenors that

> [T]here is a definite requirement that each party to a proceeding, whether with or without counsel, perform their procedural duties in accordance with the

---

20/ Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station,Units 1 and 2) ALAB-693, Slip op; September 28, 1982 at 5, citing Consumers Power Co. (Midland Plant, Units 1 and 2) ALAB-270, 1 NRC 473, 476 (1975).

21/ Metropolitan Edison Company et al (Three Mile Island Nuclear Station, Unit No. 2) ALAB-474, 7 NRC 746, 748 (1978)

> Commission's Rules of Practice (10 C.F.R. Part 2) and do so in a diligent, timely fashion. This includes answering or responding to documents filed by adverse parties, within the time periods established by the Rules or the presiding Board. A party cannot, at one and the same time, claim entitlement to all the "rights" of a party while claiming immunity from the basic "duties of a party.22/

The Salem Appeal Board stated, similarly,

> Above all else, however "it is... incumbent upon intervenors who wish to participate [in NRC proceedings] to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions."23/

Finally, the Staff believes the Commission's "Statement of Policy on Conduct of Licensing Proceedings" is applicable here.

> Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. When a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party.24/

In summary, the Staff believes it has clearly demonstrated that CBG has mischaracterized the facts of record to support its Motion for summary dismissal of Staff and Applicant motions for summary disposition and

---

22/ Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants) LBP 75-67 2 NRC 813, 815 (1975).

23/ Public Service Electric and Gas Co. Salem Nuclear Generating Station, Unit 1) ALAB-650, 14 NRC 43, 50 (1981) citing Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Counsel, Inc. 435 U.S. 519, 553 (1978).

24/ CLI-81-8, 13 NRC 452, 454 (1981).

that therefore the Motion is legally insupportable; that the Motion's requests for a bifurcated response procedure, and a brief on one issue contravene the Rules of Practice as well as lack factual or logical foundation; and that the requests for an indefinite deferral or a six month extension of time are unjusified.

Additionally, since the CBG Motion has already produced an extension of time for CBG, responses having been suspended until further Order from the Board, the Staff believes that CBG should not be allowed a lengthy additional extension of time but should be required to respond to summary disposition motions by November 15, 1982. CBG would thus be allowed a month's extension which seems entirely reasonable, given all the facts explained above.

IV. Conclusion

For the reasons stated above, the Staff submits each request made in the CBG Motion must be denied, but that an extension of time until November 15, 1982 should be granted for CBG response to the pending summary disposition motions.

Respectfully submitted,

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of October, 1982

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 OF CALIFORNIA	)	
	)	Proposed Renewal of Facility License)
(UCLA Research Reactor)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CBG MOTION TO SUMMARILY DISMISS STAFF AND APPLICANT MOTIONS FOR SUMMARY DISPOSITION OR ALTERNATIVE RELIEF" 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, or, by double asterisk, hand-delivery, this 8th day of October, 1982:

John H. Frye, III, Chairman**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Emmeth A. Luebke**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Oscar H. Paris**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Committee to Bridge the Gap
1637 Butler Avenue, #203
Los Angeles, CA 90025

William H. Cormier, Esq.
Office of Administrative Vice Chancellor
University of California at Los Angeles
405 Hilgard Avenue
Los Angeles, CA 90024

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

Christine Helwick, Esq.
Glenn R. Woods, Esq.
Office of General Counsel
2200 University Avenue
590 University Hall
Berkeley, CA 94720

Roger Holt, Esq.
Office of City Attorney
200 North Main Street
City Hall East, Room 1700
Los Angeles, CA 90012

Daniel Hirsch
Box 1186
Ben Lomond, CA 95005

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

Atomic Safety and Licensing Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Panel (5)*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section ( )*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert M. Meyers
City Attorney
Sarah J. Shirley
Deputy City Attorney
1685 Main Street,
Room 310
Santa Monica, CA 90401

Colleen P. Woodhead
Counsel for NRC Staff