CITY OF
SANTA MONICA
CALIFORNIA

OFFICE OF THE CITY ATTORNEY
1685 Main Street
Santa Monica, California 90401
Telephone: (213) 393-9975

March 15, 1982

John H. Frye III
Administrative Judge
Chairman
Atomic Safety and Licensing Board
Washington, D.C. 20555

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

Dr. Oscar H. Paris
Administrative Judge
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)
RE: CONFERENCE CALLS OF MARCH 9 AND MARCH 11, 1983

Dear Administrative Judges:

The City of Santa Monica is somewhat concerned about being unintentionally left off the conference call

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on March 9 and not given adequate notice of the March 11 conference call. We understand that a number of important matters were discussed during those conferences, matters in which the City has a significant interest. While our knowledge of what was discussed during those conferences is limited to second-hand information provided after the fact, we feel compelled to make known our views on some of the issues that were discussed.

The topics to be addressed in this letter include (1) the scheduling of hearings and the deadline for pre-filed testimony; (2) the disclosure by all parties of the identity and nature of testimony of their witnesses; (3) the proper evidentiary burdens in the hearings; (4) disposition of the sabotage portion of Contention XIX; (5) the class of license and financial qualification contentions; and (6) summary disposition procedure with respect to Contention XX. These issues are discussed below.

(1) The City wishes to be included in discussions relating to scheduling of the evidentiary hearings, particularly dates for hearings and for prefiling of testimony. The City is concerned that sufficient time be provided in the prefiling of written testimony for serious preparation for hearing.

In conference calls with Staff and the other parties prior to the prehearing conference, Staff indicated it could go to hearing on the safety issues in late May or in June, its only difficulty being the availability of one witness, who was tied up for a few weeks during the May-June period. Now Staff claims it cannot go to hearing before late July and cannot prefile its testimony before mid-June, which would give the parties only a few weeks to review the material.

Staff and Applicant will have had what amounts to CBG's pre-filed testimony for nearly eight months, yet the City will only have a few weeks to review Staff and Applicant's material in preparation for hearing. This will prejudice the City's ability to cross-examine Staff's and Applicant's witnesses in a thorough, competent manner. The City therefore requests that pre-filed testimony be submitted by all parties by May 15, 1983.

(2) In estimating the amount of time necessary for the City's cross-examination, the City needs to know who the parties intend to call as witnesses and have an

idea of the nature of their testimony. The parties have a fairly good idea of CBG's case, due to the extensive declarations submitted in CBG's response to the summary disposition motions. We know a far less of who Staff and Applicant intend to call and the nature of their testimony.

We are particularly concerned about the University's apparent reluctance to state how many witnesses it intends to call, who they are and about what they will testify. During the conference call between the parties shortly before the February 23 prehearing conference, the University indicated it would be calling "one, perhaps two" witnesses, whom it declined to name. At the prehearing conference the University likewise indicated intention to call approximately two witnesses. We understand that in the Friday conference call the University indicated its intention to call approximately six witnesses, and indicated it would not reveal the identity of its witnesses until the Board has disposed of the class of license issue. The City desires to have the names of the witnesses and the nature of their testimony revealed soon. The parties should not be required to wait until resolution of the class of license issue to discover the identity of safety witnesses.

(3) The City is concerned by some suggestions we understood were made during the conference calls in question dealing with the University's evidentiary burden in light of its failure to perform its own safety analyses and its almost total reliance upon the work performed by and for Staff. We are particularly concerned by some suggestions we understand were made that appear to be attempts to assist the University in impermissibly shifting its burden to the Staff. We refer here particularly to suggestions to pre-admit the Staff studies as evidence for the University and other suggestions that the University and Staff "case" (as opposed to "cases") be somehow put on together.

One of the central concerns the City has about the Applicant's license request is whether, in light of its continued failure over 23 years to perform a single comprehensive safety analysis of its own reactor, the Applicant has the competence, or the willingness to apply that competence, to operate the reactor for another 17 years and to analyze safely new experiments, facility modifications, and the like.

Moreover, from a legal perspective we are quite concerned about any action that even appears to shift the burden of proof from Applicant to Staff. After all, it is the Applicant's reactor; it is the Applicant which must operate it, if relicensed; and it is the Applicant's application. Staff independent review of the Applicant's safety analysis is of course reasonable, but grant of a license based on virtually no application and solely on a Staff review would raise very serious legal questions. In the City's view, these questions should be thoroughly briefed.

(4) The City also seeks clarification of what the Board is considering regarding the inclusion of sabotage among the hazard scenarios contained in Contention XIX. Our understanding at the prehearing conference was that the Board was merely considering deferring consideration of that section of the contention until a later stage (which the City would, however, oppose). But we are informed that there appears to be some disagreement among the members of the Board as to whether mere deferral or outright removal of that section of the contention is being considered.

One of the City's primary concerns is what effect sabotage of the UCLA reactor might have upon our residents. This is particularly underscored by the motion for summary disposition on Contention XX (Security) by Staff, endorsed fully by Applicant, which asserts that the Applicant is not required to protect against sabotage. Thus the only possible protection for our residents would be some inherent self-limiting features in the reactor design itself or in its siting that would keep consequences of sabotage to an acceptable level. We understood that that matter was going to hearing with the other hazards scenarios to determine whether the reactor is sufficiently protected by inherent safeguards, e.g., fuel design. This is one of the most important issues of concern to the City; the City does not quite understand on what basis the Board may now be proposing dismissal of a major part of a contention previous admitted, after having in its recent Orders dismissed Staff and Applicant motions for summary disposition of this particular contention.

The City strongly believes it would be improper to relitigate the admissibility of this portion of Contention XIX, long-ago decided, particularly in the absence of ary new information or consideration. In fact, because of the upcoming 1984 Olympics, part of which will be held at UCLA, with all the ensuing fears

of terrorist attack, consideration of the possible consequences of sabotage should be undertaken speedily, rather than be deferred or dismissed. If the Staff is correctly asserting that the consequences of sabotage are less than those of its maximum credible accident, then that should be resolved now.

In short, the City requests that the Board clarify whether it is considering deferral or dismissal of the sabotage consideration in Contention XIX. If the Board is indeed, on its own motion, considering the latter, the City requests that it be informed of the full basis for that motion so that it might respond appropriately. (The City notes, by the way, that the contention does not deal with "accidents" alone, but with hazards scenarios.)

(5) The City furthermore is concerned about the procedures being considered to deal with the class of license and financial qualifications contentions. UCLA and Staff have motions for summary disposition pending on these matters; at UCLA's request, the Board has decided to take these motions up now. According to the procedures put in place by the Board orders on summary disposition in this case, there should first be a ruling by the Board on which facts, asserted to not be in dispute, are in fact disputed; if it is determined that no genuine dispute on these facts exists, then the second phase of the procedure, the legal arguments, is to be undertaken.

A quick review of the sole "fact" put forth by UCLA regarding class of license, and the few put forth by Staff, indicate to the City that there is no need to go to the second phase. Disputes of fact clearly exist; summary disposition must be denied and the matter must go to the hearing. A direction to brief legal issues at this stage, prior to a ruling on the facts by the Board, appears both unnecessary and violative of the procedures established by the Board. If the University has failed to meet its burden in summary disposition, the matter must go to hearing; all the Board can provide is a rapid ruling on the summary disposition motion, which in the City's view can most expeditiously and appropriately be done by ruling on the facts.

Moreover, the City notes that the sole "fact" put forth by UCLA on the class of license issue is not really a fact but a legal conclusion, in which case the motion must be denied because no facts whatsoever have been put forth to demonstrate lack of dispute or

foundation for the legal conclusion. The City thus respectfully suggests an immediate ruling on the facts put forth on those two contentions; if that does not dispose of the motions for summary disposition, then briefs of the legal consequences of the facts found not in dispute by the Board can be undertaken. It is the City's view, however, that the Staff and Applicant have not met their burdens in these summary disposition motions, that the motions must be denied, and that the matters must go to hearing. Resolving the factual disputes on the papers would go well beyond summary disposition rules.

(6) Lastly, the City also wishes to indicate its concern regarding giving the Staff and Applicant a "second bite at the apple" on the Staff's motion for summary disposition of Contention XX (Security). Staff and Applicant assert that the current inventory of fuel is less than 5000 grams of SNM. CBG has effectively disputed that assertion. The Board has implicitly so indicated in its order, but has provided Staff and Applicant an opportunity to respond to CBG's summary disposition response. Responses to summary disposition responses are generally not permitted (10 CFR 2.749(a)). As a genuine dispute exists, the motion for summary disposition should be denied. Response by UCLA or Staff cannot demonstrate that no dispute exists; all that response can do is indicate an additional position of UCLA or Staff regarding that dispute.

Thank you for your consideration of these matters.

Sincerely,

Lynn G. Naliboff

Lynn G. Naliboff
Deputy City Attorney

cc: Chief, Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Ms. Colleen Woodhead

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

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

COMMITTEE TO BRIDGE THE GAP
1637 Butler Avenue
Los Angeles, California 90025

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

John Bay
3755 Divisadero #203
San Francisco, California 94123

Daniel Hirsch
Box 1186
Ben Lomond, California 95005