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March 15, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
THE REGENTS OF THE UNIVERSITY)
OF CALIFORNIA)
(UCLA Research Reactor))

Docket No. 50-142
(Proposed Renewal of
Facility License)

CBG MEMORANDUM AND MOTION REGARDING HEARING SCHEDULING MATTERS

I. Introduction

On March 9 and again on March 11, 1983, the Atomic Safety and Licensing Board initiated conference calls to discuss a number of hearing scheduling matters and related issues. Present for the conference calls were the three members of the ASLB and representatives of the Applicant, the Staff, and the Intervenor. 1/ A number of very important matters were discussed during those conference calls. As no transcript was kept for the conference calls and since certain recent developments affect matters discussed in those calls, CBG hereby respectfully submits this Memorandum and Motion in order to help resolve matters not resolved during those conferences and to preserve for the record certain of CBG's objections to matters which substantially and adversely affects CBG's ability to

1/ The City of Santa Monica was, through an oversight, not included.

represent its interests and assist the Board in ensuring an adequate evidentiary record.

II. Details

A. Mr. Cormier's Belated Witness Announcement Moots Consideration of an August 1 Hearing Date

At the close of the conference call on March 11, Mr. Cormier announced that the University intended to call not one or two witnesses, as he had indicated just two days earlier, but five or six, four of whom he declines to identify at this time.

This reversal of position, however, was not announced until after a lengthy discussion about scheduling the hearing had been completed, a matter significantly impacted by estimates of the time necessary for examination of witnesses. Mr. Cormier's belated change of mind on the witness issue requires, unfortunately, further modification to the hearing scheduling consideration and appears to rule out an August 1 starting date.

During the Wednesday conference call, UCLA had been asked by the Board how many witnesses it was going to call and who they were. Mr. Cormier indicated two, identifying for the first time as witnesses on the safety matter Mr. Ostrander and Dr. Wegst.^{2/} CBG was then asked to estimate the time necessary for cross-examination of those two witnesses, and on that basis the Board undertook on Friday extensive discussion about putting on both the Applicant's and the Staff's cases, or the Applicant's and CBG's cases, during

^{2/} In response to CBG's final interrogatories to UCLA, including #VI-33 which explicitly requested identification of witnesses, UCLA failed to identify a single witness. (In contrast, CBG in response to an identical question by UCLA identified the witnesses it knew at that time it intended to call--Dr. Kaku and Dr. Plotkin--and provided extensive biographical information. Since that time it has identified roughly a score additional witnesses and been forced--through misuse of the summary disposition procedure--to essentially prefile their written testimony half a year before UCLA and Staff do so.) Since that time, UCLA has thrice indicated it intended to call one or two witnesses, the most recent time being last Wednesday.

the same week. This would have permitted possibly starting the hearing on August 1, because it was at least conceivable to get CBG's witnesses on and off the stand before the August 9 date at which Mr. Norton becomes unavailable. (Uncertainties about Dr. Kaku's availability during the first week of August were the subject of considerable discussion as well, but the possibility of UCLA's case only taking a couple of days made consideration of the beginning of August not an immediate impossibility. However, six witnesses, four of whom are currently unidentified and their testimony not identified, will obviously take far longer than the two days estimated for a third as many witnesses, and starting in August appears to be out of the question.)

During all of the discussion on scheduling held on March 11, Mr. Cormier failed to mention that the witness identification he had provided just two days earlier and upon which all these scheduling considerations revolved was incorrect and that he actually intended to call three times the witnesses previously indicated. Furthermore, Mr. Cormier refuses to disclose their names, let alone the nature of their testimony beyond the vague phrase "basic physics," conditioning his disclosure on a resolution of an unrelated matter before the Board, that of class of license. This is most improper. It appears to CBG that the Applicant is playing games here.

Mr. Cormier's reversal appears to make an August 1 starting date impossible, requiring commencement of hearing on either July 18 or 25.

B. Testimony Containing New Material Must Be Prefiled Sixty Days in Advance

Mr. Cormier's refusal to identify witnesses and the nature of their testimony underscores an important issue which appears to have a vital effect on CBG's ability to protect its interests at hearing and ensure that the evidentiary record in this case is soundly based.

In late February of 1980, UCLA submitted its Application for relicensing. Based on extensive review, CBG submitted nearly two hundred pages of criticism of that Application, contained in CBG's Supplementary Contentions of August 1980. That criticism essentially destroyed UCLA's Application by pointing to a great many errors of calculation and analysis, so much so that UCLA eventually withdraw the bulk of the safety review from the Application. However, UCLA waited to do this until CBG had completed discovery on the original Application, in hopes of making the material obtained through that discovery process useless at hearing and in hopes of denying CBG discovery on the Application amendments, which it succeeded in doing.

UCLA rested most of its Application amendments on three studies performed for the NRC Staff. This practice is the subject of great objection by CBG and dealt with in part of Contention I. CBG had limited discovery of two of the studies and none of the third (Brookhaven's) because of its late issuance. In CBG's responses to Staff and Applicant's summary disposition motions, CBG has essentially devastated the Staff studies, upon which UCLA hoped to rest its amended Application.

Now Staff and UCLA, through dilatory tactics, appear to be attempting to delay the evidentiary hearing in hopes of having enough time to resurrect their case through new calculations, analyses, and revisions of the studies. Staff and UCLA are further attempting to prevent CBG from having enough time to review the totally new material so as to, as it did with the original Application and Staff studies, effectively find the errors in the new material. This must not be tolerated. Were it not for CBG's review of the Application and the Staff studies, the Board would not have been informed of the major problems with those documents which have led the Board to determine that genuine disputes exist about the inherent safety of the reactor, disputes which the Board must resolve through evidentiary hearing.

The Staff's case and that of the Applicant have crumbled under the scrutiny of CBG. By checking footnotes and references, reviewing calculations, examining the logs and original drawings and so on, CBG has devastated the opposing parties' case(s). They should certainly be provided an opportunity to rebut CBG's presentation. But CBG's right to examine, scrutinize, and rebut their presentation must be preserved as well. The opposing parties must not be permitted to "squeak" through hearing with what amounts to a third safety analysis after the first two had been shown by CBG to be so flawed simply by preventing CBG adequate time to check the references, examine the calculations, and review in depth the analyses.

CBG wishes to place on the record its strenuous objection to the procedure which has resulted in CBG being forced to prefile its written testimony in January, permitting the other parties half a year extra to prepare its testimony, and permitting, if the Staff's proposal is accepted, CBG only four weeks to review Staff and Applicant testimony. This is patently unfair and prejudicial to CBG's interests and to the interests of developing a full and complete record.

At a minimum, written testimony should be pre-filed sixty (60) days before hearing because of these circumstances. Furthermore, any rebuttal Staff and Applicant have to the material submitted in CBG's declarations in response to summary disposition, which amount to CBG's pre-filed testimony (aside from editorial changes and their sponsorship due to scheduling conflicts), should be contained in the direct testimony that is pre-filed.

This should pose no difficulty for either Staff or Applicant. At the conference call between the parties before the February 23 prehearing conference, Staff indicated it could go to hearing in late May or in June. This was also indicated at the prehearing conference, where the only problem was that the Board indicated beginning the hearing in late May or in June was not

possible for it. UCLA has all along indicated it could go to hearing as early as May. Since both parties have previously indicated they could go to hearing by late May, which would require pre-filing of testimony at least by early May, they should now not be permitted to withhold written testimony from opposing parties for trial preparation until mid-June. Particularly in light of possible inclusion of new material not seen before, not subject to discovery, not included in the application, SER, EIA, or published Staff studies. The very inclusion of this new material is objectionable. Certainly if it is to be tolerated, an adequate opportunity for its review must be provided. Particularly because, due to the misuse of the summary disposition process in this case, Staff and Applicant have already managed to obtain what amounts to CBG's prefiled testimony.

CBG formally requests pre-filed testimony be served at least sixty (60) days before the start of hearing, and that any rebuttal Staff and Applicant have to material contained in CBG's summary disposition declarations which are the basis of CBG's prefiled testimony be included in the Staff and Applicant direct written testimony.

C. Schedule Now Additional Proceedings

CEG, in a related separate Motion of this date, requests that the Board institute proceedings on Contention XIII, and perhaps Contention II, in May. As explained in that Motion, since the Applicant has said it would not pursue relicensing if either issue were resolved against it, prompt resolution of those issues is essential to efficient management of the proceedings. The Board had originally proposed the first two weeks in May and the last week therein for the safety hearings. CEG proposes using a portion of that time (the full three weeks are unlikely to be necessary for these issues; one week seems more reasonable, depending on whom the other parties intend to call as witnesses) ^{2/} for hearing on these two contentions.

CEG also proposes that a third hearing, dealing with the normal emissions issues of Contention VI and the related portion of Contention XV, be now scheduled, to occur sometime in the fall. It is a safety issue, but as discussed at the prehearing conference on the 23rd of February, the issue of non-accident safety matters will not be taken up in the summer hearings. It is important to schedule it now so that parties are on notice and can begin preparations.

Because of the unique situation of this case, where the proposed action being considered, and opposed on safety and other grounds by CEG, can continue until resolution of the dispute, expeditious conclusion of the remaining issues in the case is essential. We need not await resolution of one stage of the hearings to schedule the next stage; such delay could push final resolution many years more. The assertion by Applicant that it doesn't know whether to prepare for future stages in the proceeding until it knows if it has won, for example, the commercial vs. research dispute is spurious. The Applicant asserts it is right on all of these contentions and that it truly believes the reactor is needed and wishes it relicensed. To refuse to prepare to present its case on one contention

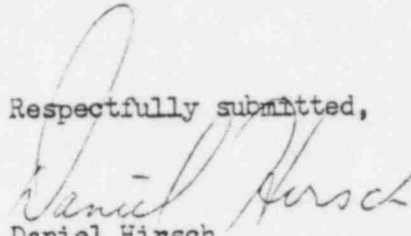
because it might lose on another is UCLA's own business, but it must not be permitted to delay the proceeding. Each major section of hearing is potentially dispositive of the application (and therefore should be expedited, not delayed), but it is also potentially not dispositive of the license request, which would require reaching the other issues before the Board. Hearings that are scheduled can be canceled if the Applicant withdraws its Application or the Board determines to deny the license on one basis without having to reach others; but delays can never be recouped. If other hearings are not now scheduled but await resolution of each issue serially, resolution may never be finally reached and the precise action requested by UCLA--permission to continue to operate a reactor the Board has determined to be the subject of genuine dispute as to its safety--will be granted by default, and a grave injustice done. Expeditious scheduling of hearings is thus essentially, and CBG moves the Board to set schedule for at least a May and fall hearing now.

D. Consider Portions of Contention I at the Summer Safety Hearing

A major evidentiary dispute that must be resolved at the inherent safety hearing this summer is the degree, if any, to which the Applicant may rely upon safety analyses it did not perform and cannot sponsor as evidence. This matter is directly addressed in Contention I. Significant portions of the testimony of CBG's witnesses on the inherent safety matters go to this issue, and to other portions of Contention I such as those dealing with excess reactivity and the SPERT tests. CBG requests that those portions of Contention I dealing with the reliance by UCLA on analyses it has not performed, and those other portions dealing with the inherent safety issues scheduled for hearing in the summer (e.g. I.3.e and g), be dealt with at the summer hearing. The witnesses who must deal with those issues are already being called for the safety issues, and the main additional witness CBG

intends for those issues will be out of the country for a year beginning in late August. Those portions of Contention I relevant to the inherent safety considerations should be heard in the inherent safety hearings.

Respectfully submitted,


Daniel Hirsch

dated March 15, 1983

at Los Angeles, California