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9 (Contention XX)
10 COMMITTEE TO BRIDGE THE GAP

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

13 In the Matter of)
14)
15 THE REGENTS OF THE UNIVERSITY) Doc. No. 50-142 OL
16 OF CALIFORNIA)
17) Proposed Renewal of Facility
18 (UCLA Research Reactor)) License No. R-71
19)

20 COMMITTEE TO BRIDGE THE GAP'S RESPONSE TO
21 NRC STAFF PETITION FOR RECONSIDERATION OF
22 THE LICENSING BOARD'S MEMORANDUM AND ORDER
23 RULING ON STAFF'S MOTION FOR SUMMARY DISPOSITION

24 I.

25 INTRODUCTION

26 On July 26, 1982 in an attempt to expedite the hearing
27 process Atomic Safety and Licensing Board ("Board") requested that
28 Intervenor COMMITTEE TO BRIDGE THE GAP ("CBG") submit an initial
response to the NRC Staff Motion for Summary Disposition of Con-
tention XX, which response was to be limited to the issues of whether
Applicant must protect against radiological sabotage and whether
Applicant must meet the requirements of 10 C.F.R. § 73.60. On
September 7, 1982 CBG submitted the requested response. On May 11,
1983 the Board denied Staff's summary disposition motion. On August

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1 15, 1983 the Staff filed a motion for reconsideration. On this date,
2 over one year after the Board's initial request, CBG hereby submits
3 its reply to the motion for reconsideration in what it hopes will be
4 the last pleading on this issue.^{1/}

5 In its May 11, 1983 Order, the Board ruled that the PuBe
6 sources possessed by Applicant were to be included in determining the
7 applicability of 10 C.F.R. § 73.60 and that, pursuant to 10 C.F.R.
8 § 73.40(a), Applicant must protect against radiological sabotage.
9 The NRC Staff has requested reconsideration of these two rulings. As
10 will be shown below, the Board's previous ruling was correct and
11 should be upheld.

12 II.

13 PuBe SOURCES ARE NOT EXEMPT UNDER
14 10 C.F.R. § 73.60

15 In our September 7, 1982 brief, CBG set forth and discussed
16 at length the statutory provisions mandating the inclusion of PuBe
17 sources under 10 C.F.R. § 73.60. In its May 11, 1983 Order, the Board
18 provided its own extensive and well-researched interpretation of 10
19 C.F.R. § 73.60 and 10 C.F.R. § 73.67 and the regulatory history of
20 those sections. The conclusion in each instance was that PuBe
21 sources are exempt from § 73.67 and not from § 73.60. Staff and
22 Applicant argue that this interpretation leads to untenable and
23 inconsistent results. In fact, this interpretation is perfectly
24 consistent with and promotes the Commission's safeguards policy.

25 _____
26 ^{1/} As stated above, CBG has not been given an opportunity to conduct discovery
27 and respond to the factual portions of Staff's summary disposition motion.
28 Therefore, should Staff prevail on the instant motion for reconsideration, CBG
will request the opportunity to conduct discovery and so respond.

1 As is evident from pages 5 and 6 of SECY-79-38, may
2 licensees possess only PuBe sources or only PuBe sources and self--
3 protected fuel. The PuBe source exemption reduces the number of
4 licensees for SNM of low strategic significance from approximately
5 500 to only about 61. In other words, approximately 440 licensees
6 with PuBe sources possess no other non-exempt SNM. Thus, for these
7 licensees, the exemption removes them from NRC security regulations,
8 saves them hundreds of thousands of dollars each, and thereby
9 promotes the Commission's policy of reducing regulatory costs for
10 research and educational licensees. It is clear that these 440
11 licensees do not constitute potential targets for adversaries.
12 Therefore, the PuBe exemption for 70 C.F.R. § 73.67 licensees
13 relieved them from an unnecessary regulatory burden without com-
14 promising health, safety and common defense. This is not the
15 situation at UCLA.

16 A PuBe source only ceases to become a security risk when
17 it is not found on a contiguous site with other PuBe sources or other
18 SNM such that the total SNM on site constitutes a formula quantity.
19 Thus, while there may be no need to protect single isolated PuBe
20 sources, facilities with formula quantities of SNM, whatever type,
21 are potential targets and must be protected. UCLA, possesses at one
22 contiguous site at least 4920 grams U-235 and three PuBe sources, 240
23 grams SNM equivalent.^{2/} At UCLA, an adversary can obtain a formula
24 quantity of SNM on one site. Thus, Applicant is subject to 10 C.F.R.

25 ^{2/} 10 C.F.R. § 73.60 provides that "each non-power reactor licensee who,
26 pursuant to the requirement of Part 70 of this Chapter, possesses at any site or
27 contiguous sites subject to control by the licensee" [a formula quantity of SNM]
28 must comply with the requirements of this section. At the August 27, 1979 meeting
 held by the NRC Staff at Glen Ellyn, Illinois to discuss the "Impact of the
 Safeguards Upgrade Rule on Nonpower Reactor Licensees," Mr. Donald Carlson and
 Mr. Steve Ramos of the NRC Staff indicate that the Office of the Executive Legal
 Director has interpreted contiguous to mean anything within one mile. Meeting
 transcript p. 23:8-19 attached hereto as Exhibit A. All three PuBe sources
 possessed by Applicant are well within a mile of the reactor and, more
 accurately, within several hundred feet.

1 § 73.60, and increased security is called for, and it would be
2 inconsistent with rationale safeguards policy to interpret 10 C.F.R.
3 § 73.60 in any other manner.

4 III.

5 APPLICANT MUST PROTECT
6 AGAINST SABOTAGE

7 As the Board correctly ruled in its May 11, 1983 Order,
8 Applicant is required by the provisions of 10 C.F.R. § 73.40(a) to
9 protect against sabotage. Staff argues that § 73.67 provides the
10 sabotage protection requirements for this Applicant. In fact, §
11 73.67 does not provide any sabotage protection and does not purport
12 to deal with sabotage.

13 The Statement of Consideration issued with 10 C.F.R. §
14 73.67 and SECY-79-38 and cited on page 11 and 12, respectively, of
15 Staff's Petition make it clear that sabotage is outside the scope of
16 10 C.F.R. § 73.67.

17 The proposed amendments, that are the subject
18 of this paper are limited to consideration of
19 theft of SNM and do not include sabotage pro-
20 tection. (SECY-79-38 p. 5)

21 To assert that these comments by the NRC Staff mean that 10 C.F.R.
22 § 73.67 provides the sabotage protection requirements for licensees
23 with less than formula quantity of SNM is sophistry.^{3/} The fact of
24 the matter is that in adopting § 73.67 the Commission acted according

25 ^{3/} It is even more difficult to square the statements found in footnote 4, page
26 9 of Staff's petition with the Code of Federal Regulations. In footnote 4, Staff
27 asserts that non-power reactors of higher power and greater fuel consumption are
28 obviously subject to more stringent regulations than low power research
reactors. Staff sites no authority for this statement. CBG submits there is
none. Nowhere in Part 73 is there a differentiation between non-power reactors
based on operating power or fuel consumption.

1 to Staff's recommendation to deal with theft and diversion first.
2 The Commission has not, to date, resolved the issue of specific
3 sabotage requirements for such licensees. Therefore, the Board's
4 citation to the Columbia proceeding (Trustees of Columbia Univer-
5 sity, ALAB-3, 4 AEC 849 (1972) was appropriate in that there are no
6 specific sabotage provisions under which to implement the general
7 requirement to protect against sabotage found in 10 C.F.R. §
8 73.40(a). The Board must determine on a site specific basis whether
9 Applicant has adequate security to meet the requirements of 10 C.F.R.
10 § 73.40(a). This determination must, in part, be based on a con-
11 sideration of the potential health and safety consequences of an act
12 of sabotage at the facility. Contrary to the citation by Staff to
13 the abstract of a report that implies that sabotage at UCLA would not
14 endanger the public health and safety, CBG's expert has already
15 testified in response to Staff's and Applicant's summary disposition
16 motions that an act of sabotage could result in a release of 80% of
17 the fission product inventory causing radiation releases to the
18 public of millions of ^{rems} ~~curies~~. Declaration of Dr. Kaku ¶ 83. At the
19 very least, a factual dispute exists as to the consequences of
20 sabotage and, thus, as to the adequacy of Applicant's sabotage
21 protection.

22 IV

23 CONCLUSION

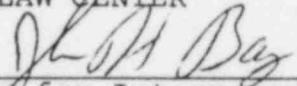
24 Staff has shown no basis for reconsideration of the
25 Board's May 11, 1983 Order. PuBe sources are not exempt from the SNM
26 count for § 73.60. At facilities such as Applicant's, where a
27 formula quantity of SNM is found on one contiguous site, the PuBe

1 source as well as the unprotected fuel is a target for diversion.

2 10 C.F.R. § 73.40(a) requires protection against sab-
3 otage. 10 C.F.R. § 73.67 provides specific requirements only for
4 protection against theft and diversion and does not even purport to
5 cover sabotage. Thus, until such time as the Commission promulgates
6 specific requirements or exemptions, the Board must apply the
7 general requirements of § 73.40(a) to this Applicant on a site
8 specific basis. Based on the foregoing, the NRC Staff Petition for
9 Reconsideration should be denied.

10 Respectfully submitted,

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14 By 
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16 (Contention XX)
17 Committee to Bridge the Gap
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A-7

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

IMPACT OF THE SAFEGUARDS UPGRADE RULE

ON

NONPOWER REACTOR LICENSEES

Place - Glen Ellyn, Illinois

Date - August 27, 1979

Pages 1 - 153

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EXHIBIT A

5

1 maintain them both under a trigger quantity, is it
2 NMSS's contention to bring the fuel together or keep
3 them apart in separate licenses? If the fuel on our
4 site is brought together, then we'll go over trigger
5 and go into Category I. If it's kept under a reactor
6 license and an SNM license, then we'll stay out of
7 Category I.

8 MR. CARLSON: Depends on if they're contiguous.

9 MR. RAMOS: I forget how far apart that is,
10 Pat.

11 MR. DORAN: 150 yards.

12 MR. RAMOS: That's considered one site.

13 MR. LIGHT: Ron Light, General Electric.

14 Based on what?

15 MR. RAMOS: The only thing we've gotten out
16 of our Office of Executive Legal Director so far is a
17 mile. Anything greater than a mile is not considered --

18 MR. LIGHT: Is that in writing?

19 MR. RAMOS: -- a contiguous site.

20 I think so, but I'm not positive.

21 MR. LIGHT: So then it's a determination and
22 not an interpretation?

23 MR. RAMOS: Yeah.

24 MR. LIGHT: Therefore, it's not legal.

25 MR. RAMOS: That's right. Not legal unless

United States of America
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

THE REGENTS OF THE UNIVERSITY)	Docket No. 50-142 OL
OF CALIFORNIA)	(Proposed Renewal of Facility
(UCLA Research Reactor))	License)
_____)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached COMMITTEE TO BRIDGE THE GAP'S RESPONSE TO NRC STAFF PETITION FOR RECONSIDERATION OF THE LICENSING BOARD'S MEMORANDUM AND ORDER RULING ON STAFF'S MOTION FOR SUMMARY DISPOSITION 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: September 12, 1983

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Washington, D.C. 20555

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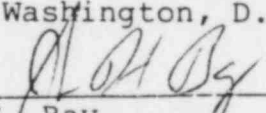
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