

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
John H Frye, III, Chairman
Glenn O. Bright
Emmeth A. Luebke

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Served Jan 19, 1984

In the Matter of
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

(UCLA Research Reactor)

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

January 18, 1984

MEMORANDUM AND ORDER

(Ruling on CBG's Motions for Curtailment of Activities (I) and (II))

This is a proceeding on the University of California's (UCLA's) application for a renewal of its operating license for its Argonaut reactor located in the Nuclear Energy Laboratory (NEL) on the Los Angeles campus. The reactor has operated for over 20 years and continues to operate by virtue of the fact that, although the original license has expired, the renewal application was filed prior to the expiration of that license.

An admitted contention in this proceeding, Contention XX, concerns security measures at the NEL. Contention XX alleges, in part, that UCLA must take measures to protect against potential sabotage. Both Staff and UCLA have opposed this position. In two Memoranda and Orders (LBP-83-25A, 17 NRC 927 [1983] and LBP-83-67, 18 NRC ____ [October 24, 1983]), we held that 10 CFR § 73.40(a) does require UCLA to take some measures to protect against sabotage. The question of what those

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measures should be is to be resolved in a forthcoming evidentiary hearing. In response to those rulings, Staff has petitioned the Commission (SECY-83-500, December 6, 1983) to institute a rulemaking proceeding which would overturn them, thus eliminating any regulatory requirement that this facility provide protection against potential sabotage

While the Board is proceeding expeditiously with regard to the sabotage issue as well as the other issues raised by Contention XX, we are obliged to pause to decide two motions which request that the UCLA Argonaut be shut down which have been made by the proponent of Contention XX, The Committee to Bridge the Gap (CBG), in connection with the sabotage issue.

In the first of these motions,¹ CBG takes the position that because the security plan portions of UCLA's application were filed ten days late, and because UCLA's security plan does not provide for protection against sabotage, UCLA's license no longer exists. Further, CBG argues that a license cannot be granted. Therefore CBG believes that UCLA's utilization of special nuclear material must cease immediately and preparation to ship that material offsite must begin. UCLA and Staff oppose.

This motion is denied. We pointed out in our unpublished Memorandum and Order of December 23 (p.8) that Staff's position that

¹ Motion for Curtailment of Activities (I), dated December 14, and corrected December 27, 1983.

compliance with the antitheft provisions of the rules also satisfies § 73.40(a) with respect to sabotage may, after hearing, prove to be correct. CBG would have us reject this or any other position with regard to compliance with § 73.40(a) without hearing them. CBG's argument is utterly without merit.

Nor are we impressed with CBG's argument that the security plan portions of the application were ten days late. Even if this tardiness could be deemed significant, CBG's tardiness in making this argument (over three years from the filing of the security plan and CBG's petition to intervene) clearly dictates that CBG's position must be rejected.

In its second motion,² CBG takes the position that during the forthcoming Olympic Games to be held in Los Angeles this summer, adequate protection against potential sabotage requires that the reactor be shut down and the fuel stored offsite. UCLA and Staff oppose. We do not believe that the regulations provide us adequate authority to order the precaution CBG seeks. We have already held that the measures required by our rulings in LBP-83-25A and LBP-83-67 would be less stringent than those set out in the regulations.

In LBP-83-25A, we stated:

From the above we conclude that the provisions of §73.40(a), which have remained unchanged over a period of almost ten years despite substantial rulemaking on the subject of physical security, are applicable to Class 104(c) licensees. Where the Commission has set down detailed requirements, we conclude that these are intended to satisfy the general

² Motion for Curtailment of Activities (II) dated December 27, 1983.

requirements of §73.40. Where no detailed requirements have been set out, we conclude that some measures nonetheless must be taken to satisfy the §73.40(a) general requirements.

In the instant case, assuming that there is (or will be) less than a formula quantity of SSNM on hand at the NEL, this means that UCLA must institute some means of providing physical protection against sabotage. Because, under this assumption, §73.40(b), (c), and (d) and §73.60 are not applicable, these means necessarily must be less stringent than the requirements of those regulations. What these means should be is properly a subject for the parties to address.

(17 NRC at 942-43.) We remain of that view. Nothing in the provisions of § 73.40(b), (c), and (d) would authorize the relief CBG seeks so long as those provisions were satisfied. Similarly, assuming UCLA will comply with the less stringent means to protect against potential sabotage which will result from the forthcoming hearing, we cannot impose the precautions which CBG seeks.

In its motion CBG argues that the reactor must be shut down now to allow time for the fuel to cool and for shipping arrangements to be made. CBG points out that, if this step is not taken now, a later decision to ship the fuel offsite might not be able to be implemented prior to the Olympics. And CBG argues that these actions can be reversed if, after hearing, they turn out to be unwarranted. CBG does not cite any legal authority for such an extraordinary step.

Were we to take such an extraordinary step, we would be required to conclude, in advance of hearing, that UCLA would or could not comply with § 73.40(a). Such a conclusion would be a blatant violation of the Administrative Procedure Act which governs this proceeding.

For these reasons we must deny CBG's motion. In so doing, we must note the arguments advanced by UCLA and Staff to the effect that no

danger would be posed to the public by very substantial damage to this reactor or its fuel. These arguments are based on the record as it exists now. We have not yet evaluated that record and consequently must emphasize that our ruling should not be viewed as implying that we have reached a similar conclusion.

Licensing Boards have been admonished to take into account, in reaching their decisions, conditions which exist at the time those decisions are under consideration. Commonwealth Edison Company (La Salle County Nuclear Station Units 1 and 2), ALAB-153, 6 IEC 821 at 823-24 (1973). We thus officially notice the level of terrorist activity and the steps being taken in this county to prevent it recently reported by the press³, as well as the unfortunate fact that Olympic

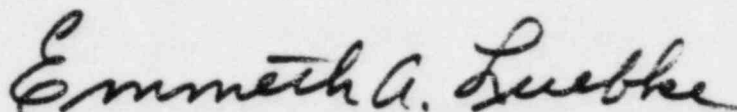
³ CBG has attached two such articles to its motion. Citations to a sampling of others follows:

- 1) GOP Convention Security Acknowledges Terrorism Possibility, United Press International, General News, Jan. 5, 1984 (PM cycle).
- 2) Freidman, State-Sponsored Terror Called a Threat to U.S., N.Y. Times, Dec. 30, 1983, at A1, col. 4.
- 3) Werner, Most U.S. Cities Are Taking No Special Measures to Curb Terrorism, N.Y. Times, Dec. 27, 1983, at A24, col. 1 (Late City Final Edition).
- 4) Shapiro, DeFrank, Shannon, America's Jingle-Bell Jitters, Newsweek, Dec. 26, 1983, at 14.
- 5) Ahead in '84: A World on Guard, U.S. News and World Report, Dec. 26, 1983, at 16.
- 6) More Barriers Erected to Guard White House, N.Y. Times, Dec. 22, 1983, at A12, col. 1 (Late City Final Edition).

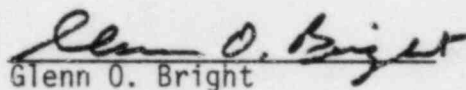
Games may provide a focus for such activity. The UCLA Argonaut is located in the midst of the 1984 Olympic Games. Consequently, we will expedite our consideration of Contention XX to the maximum extent possible so as to reach a timely resolution.

In consideration of the foregoing, it is this 13th day of January, 1984, ORDERED that CBG's Motions for Curtailment of Activities (I) and (II) are denied.

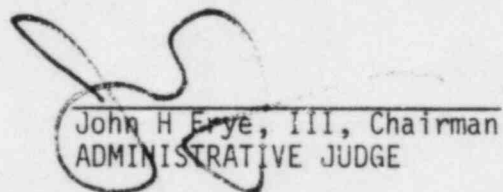
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Bethesda, Maryland

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