

January 16, 1984

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

NRC STAFF RESPONSE TO CBG MOTION FOR "CURTAILMENT OF ACTIVITIES" AT UCLA

I. INTRODUCTION

By motion dated December 27, 1983,^{1/} CBG asked the Atomic Safety and Licensing Board (Board) to "curtail" activities at UCLA. The motion, which, in essence, seeks at least temporary revocation of the University of California license to operate the UCLA reactor, also requests the Board to order UCLA to remove the reactor fuel in the core and fresh fuel plates in storage to another site during the summer 1984 Olympics to be held in Los Angeles. CBG submits several news articles in support of CBG's allegation that terrorists will attack the UCLA reactor during the Olympics and that this Board must take the action described in the motion. There is no legal or factual basis for CBG's motion and, consequently it should be denied, as discussed below.

^{1/} CBG alleges in this motion that it filed a similar motion on December 14, 1983. However, NRC Staff was not served with the motion, but, on December 30, 1983, Staff received a CBG letter dated December 27 providing a "corrected" December 14 motion. The earlier motion is simply a shorter version of the one filed December 27.

II. DISCUSSION

CBG states that it has asked for expedited hearings on CBG's Contention XX, so that the issue of the UCLA security plan could be resolved in advance of the 1984 Olympics; that UCLA is an "obvious" target for terrorists; that since the Board recently ruled sabotage protection is required at UCLA, and many months are required to arrange for cooling and shipping SNM, the Board must immediately "curtail" operation of the UCLA reactor and order removal of all SNM fuel so "potential terrorists know there is nothing worth attacking at the reactor facility." Motion, at 1-3. CBG further asserts that "failure to take these precautionary measures now would foreclose the Board's later determination that they are necessary and could thus pose a major and irreversible threat to public health and safety." Motion, at 3. CBG alleges that a decision on Contention XX by late May would be "too late to take measures the Board may have determined necessary." Motion, at 4. CBG alleges "potentially catastrophic public injury" by successful sabotage of the UCLA reactor "could not be prevented without Board action." Motion, at 4. CBG points to sworn testimony and declarations (of CBG affiants) that sabotage of the UCLA reactor could have "devastating results," causing doses "in excess of a million Rem to the thyroid near the facility." Motion, at 4-5. CBG alleges that damage equivalent to that at the "U.S. Embassy and Marine Headquarters recently" (apparently in Lebanon) in addition to "release of hundreds of thousands of curies of radioactive fission products" could occur at UCLA. Motion, at 5. CBG, in support of its motion, quotes Newsweek, Los Angeles Times, and Playboy articles which state the 1984 Olympics will be a likely terrorist

attraction (Motion, at 6 and 8) and refers to the terrorist attack on the Israeli team at the Munich Olympics. Motion at 8. CBG concludes the UCLA reactor must be shutdown and the fuel shipped offsite during the summer 1984 Olympics because of the Board's delay in deciding Contention XX to the extent that the elaborate protective measures described by CBG are now foreclosed. Motion, at 10.

The CBG motion asks this Board to take an extraordinary action against the present valid license. In the Staff's view, allegations of significant radiological risk from sabotage of the UCLA reactor are not supported by the evidence of record. Further, the motion rests on the assumption, not only that the Board will decide Contention XX in CBG's favor, but also that the Board will ultimately order shutdown and removal of all SNM from the UCLA nuclear facility. Thus, the motion rests on mere speculation about the Board's future decision on CBG's Contention XX. Finally, CBG's assertion that UCLA must protect against attacks by foreign terrorists is contrary to the Commission's regulation 10 CFR § 50.13 which exempts licensees from such measures. These points will be discussed in more detail below.

- A. Under The Atomic Energy Act, The Administrative Procedure Act And The Commission's Regulations, Licenses Are Valuable Rights Which May Not Be Revoked Without Notice and Opportunity to Defend, Unless Necessary For Public Health And Safety

The University of California license R-71 authorizing operation of the UCLA 104c research reactor was issued in 1960 and renewed in 1971 for a term of ten years. The University timely applied for renewal of the license in February, 1980, and holds at this time, a valid license according

to the provisions for the effect of timely renewal in 10 CFR § 2.109. This regulation states that if a licensee applies for renewal of a license at least thirty days prior to its expiration date, the existing license will not be deemed to have expired until the application has been finally determined. This regulation reflects the same provision in Section 558 of the Administrative Procedure Act (APA)^{2/} which additionally states that:

Except in cases of willfulness or those in which public health, interest, or safety requires otherwise the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given--

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements. APA § 551.

Thus, the Commission's regulation § 2.109 and the APA, incorporated by the Atomic Energy Act, recognize a license as a valuable right which may not be revoked or suspended except where public safety requires it, without due notice and opportunity to demonstrate compliance with NRC requirements. CBG has, however, asked extreme action by the Board based on speculations of future activities by unknown persons which might damage the UCLA reactor. Furthermore, CBG advances mere allegations that damage to the reactor would threaten public health and safety from

^{2/} 5 U.S.C. 551 et seq. The Atomic Energy Act of 1954, Section 181, adopts the provisions of the APA, except for actions involving restricted data.

radiological releases. Speculations and unsupported allegations are far from sufficient to support such an extraordinary action as proposed by CBG.^{3/} In any event, insufficient factual basis exists to support license revocation as proposed by CBG, especially without the procedural safeguards described in the APA and required by the Atomic Energy Act.

B. The Evidence Of Record Shows That Severe Damage To The UCLA Reactor Would Not Create A Risk To Public Health And Safety

The scientific evidence of record disputing a radiological risk from sabotage of the UCLA reactor is abundant. The Staff's 1981 Safety Evaluation Report assessed hypothetical damage to the UCLA reactor resulting from complete collapse of the overlying classroom building, the reactor building and the reactor's massive biological shield onto

^{3/} There is also some possible question about the authority of the Board to take the action requested by CBG. The Notice of Hearing in this license renewal proceeding sets out the authority delegated to this Board by the Commission. It is well established that licensing boards may not act beyond their delegated authority (Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), CLI-8-20, 11 NRC 514, 517 (1980)) which is limited to that conferred either by regulation or otherwise (e.g. in notice of hearing for the specific proceeding or by adjudicatory order (Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 25 (1980)). The Commission notice of establishment of the Atomic Safety and Licensing Board for this proceeding delegates authority for the Board to preside over the proposed renewal of the UCLA reactor license, described in the notice of opportunity for hearing (45 Fed. Reg. 28028, April 24, 1980). It is at least arguable that the Board's authority is limited to a consideration of the proposed license renewal action described in the Federal Register and issues bearing directly on whether, and under what conditions, the operating license ought to be renewed, and does not extend to extraordinary affirmative measures of reactor shutdown, as requested by CBG.

the fuel boxes, resulting in severe damage to the core equivalent to shredding an entire fuel assembly into confetti. SER § 14. The results of this analysis of very substantial damage showed no risk to the public. Additionally, both a possible power excursion and a core crushing accident with a loss of coolant have been shown to be without risk to the public based on research by three National Laboratories whose methodology is on record. SER § 14.^{4/} The CBG testimony, presented during recent hearings, of possible large radiological releases from accidents at UCLA are allegations made without any supporting calculations and are without demonstrated scientific credibility.^{5/} The controverting Staff and UCLA testimony of record demonstrates, by the scientific analyses provided, that the CBG allegations of significant risk from severe reactor damage are invalid. Over the course of three years, scientists from the NRC Staff, Battelle Pacific Northwest Laboratory, Brookhaven National Laboratory, Los Alamos National Laboratory, UCLA, other universities and private industry, have painstakingly compiled an extensive scientific record consisting of extremely conservative analyses of consequences from the maximum credible accidents which could occur at the UCLA Argonaut

^{4/} The safety hearings held during the summer and fall of 1983 in this proceeding contain substantial scientific evidence concerning postulated severe accidents at the UCLA reactor. Tr. 991-3192.

^{5/} CBG's "Panel IV" rebuttal testimony contains unexplained charts of radiological releases larger than those calculated for 1000 MW power reactors which CBG's witnesses state would occur in case of an accident at the UCLA 100 KW research reactor which operates 3-4 hours per week.

UTR. These analyses demonstrate the public is not at risk even if the reactor were severely damaged. In short, the record compiled to date in this proceeding controverts CBG's allegations, affidavits and testimony of the potential effects of severe core damage of the type which could result from sabotage. Because of this, it is Staff's view that there is no factual basis for the extraordinary action sought by CBG.

C. NRC Licensees Are Not Required To Protect Against Sabotage By Foreign Terrorists

In regard to CBG's motion, the assertions of the potential for foreign terrorist activity during the Olympics in Los Angeles made by CBG provides no legal basis for its motion. The Commission's regulations specifically exempt licensees from any requirement to provide measures for protection against effects of "(a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person" (Emphasis added). 10 CFR § 50.13. The Statement of Considerations published^{6/} with this regulation states as follows:

The protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and of the various agencies having internal security functions. The power reactors which the Commission licenses are, of course, equipped with numerous features intended to assure the safety of plant employees and the public. The massive containment and other procedures and systems for rapid shutdown of the facility included in these features could serve a useful purpose in protection against the effects of enemy attacks and destructive acts, although that is not their specific purpose. One factor underlying the Commission's practice in this connection has been a recognition that reactor

^{6/} 32 Fed. Reg. 13445, September 29, 1967

design features to protect against the full range of the modern arsenal of weapons are simply not practicable and that the defense and internal security capabilities of this country constitute, of necessity, the basic "safeguards" as respects possible hostile acts by an enemy of the United States.

The circumstances which compel this recognition are not, of course unique as regards a nuclear facility; they apply also to other structures which play vital roles within our complex industrial economy. The risk of enemy attack or sabotage against such structures, like the risk of all other hostile attacks which might be directed against this country, is a risk that is shared by the nation as a whole.

Furthermore, assessment of whether, at some time during the life of a facility, another nation actually would use force against that particular facility, the nature of such force and whether that enemy nation would be capable of employing the postulated force against our defense and internal security capabilities are matters which are speculative in the extreme. Moreover, examination into the above matters, apart from their extremely speculative nature, would involve information singularly sensitive from the standpoint of both our national defense and our diplomatic relations.^{7/}

This regulation was challenged and affirmed in federal court more than 15 years ago when the court stated:

In short, Congress certainly can be taken to have expected that an applicant for a license should bear the burden of proving the security of his proposed facility as against his own treachery, negligence, or incapacity. It did not expect him to demonstrate how his plant would be invulnerable to whatever destructive forces a foreign enemy might be able to direct against it in 1984. Siegel v. Atomic Energy Commission, 400 F. 2d 778, 784. (D.C. Cir. 1968).

Therefore, UCLA is specifically exempted by the Commission from protecting against sabotage by foreign terrorists, and there is no legal ground for CBG's motion.

^{7/} The Commission has also stated that it considers the unique design and type of fuel of nonpower reactors to provide sufficient protection so that only safeguards against theft are necessary. 48 Fed. Reg. 34056, July 27, 1983.

D. The Motion Is Based On Speculation About The Licensing Board's Future Decision On Contention XX

CBG's Contention XX has not been decided by the Board. The parties only recently (December 13, 1983) provided analyses of remaining issues in the Contention after certain legal rulings by the Board relevant to consideration of the Contention.^{8/} However, CBG assumes in its motion that, because of the Board's determination that § 73.40(a) is applicable to nonpower reactors, the Board has decided the Contention in CBG's favor. Such is not the case. CBG recently submitted a second version of its view of portions of the Contention remaining at issue.^{9/} Thus, the present posture of the UCLA security plan, while challenged as to its adequacy by CBG in Contention XX, is that the plan has been reviewed and approved by the NRC Division of Safeguards as complying with applicable regulations in 10 CFR Part 73. Consequently, unless it is ultimately found by this Board that UCLA does not comply with applicable Commission safeguards regulations set out in Part 73, no legal basis exists for requiring UCLA to institute any additional safeguards measures beyond those presently in effect. It is significant that there is nothing alleged in Contention XX which would require such extreme measures as those requested in the present motion.

^{8/} Memoranda and Orders dated May 11, October 24, November 23, and December 23, 1983.

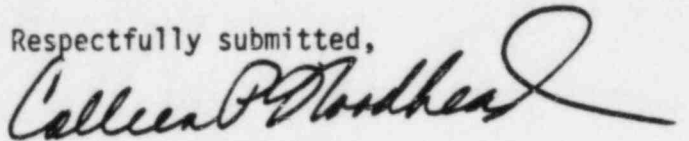
^{9/} CBG Memorandum Clarifying Contention XX Paragraphs 1, 2, and 3 dated January 6, 1984.

In sum, no factual or legal basis exists to support CBG's motion to, in essence, revoke the license for the UCLA reactor, and the Commission's regulation 10 CFR § 50.13 specifically exempts UCLA from protecting against sabotage attacks by foreign terrorists.

III. CONCLUSION

For the reasons stated above, CBG's motion for curtailment of activities at the UCLA reactor should be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen P. Woodhead".

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 16th day of January, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CBG MOTION FOR 'CURTAILMENT OF ACTIVITIES' AT UCLA" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 16th day of January 1984:

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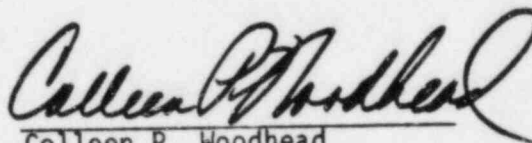
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