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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

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

Docket No. 50-142 (2,206)
(Proposed Renewal of Facility
License Number R-71)

July 11, 1984

UNIVERSITY'S RESPONSE IN OPPOSITION TO COMMITTEE
TO BRIDGE THE GAP'S JUNE 21, 1984 EMERGENCY PETITION

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK
590 University Hall
2200 University Avenue
Berkeley, California 94720
Telephone: (415) 642-2822

Attorneys for Applicant

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

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does not identify the regulatory authority under which this matter is being brought directly before the Commissioners. As justification for the relief it requests CBG cites "the potential ramifications of an untoward terrorist incident at the Olympics involving irradiated nuclear fuel at a reactor adjacent to Olympic Village. . ." Id. CBG also claims that UCLA stipulated to shipping its fuel "as soon as possible", which CBG apparently interprets as a commitment to ship the fuel from the UCLA facility prior to the Olympics; that an order of the Licensing Board requires that the fuel be shipped prior to the Olympics; that UCLA has failed to comply with that order; that UCLA even refused to participate in a conference call to resolve the dispute; and that CBG has exhausted its remedies in the matter. Id., at 4. The concerns expressed in the petition are based on speculation only and no factual basis has been provided to support the "emergency" action requested. Furthermore, the request was not made to the Director of an appropriate Office of the Commission and hence does not conform to procedures established for the expeditious consideration of such requests. University opposes the petition.

II. BACKGROUND

University submitted an application to renew the license of its 100 kW UCLA Argonaut research reactor in February, 1980. The Licensing Board granted CBG's petition to intervene and accepted 20 contentions for litigation, including Contention XX, of relevance here, which alleges that physical security at the UCLA reactor facility is inadequate. Several evidentiary hearings were held during 1983 to resolve various of the factual issues raised by the contentions. The Licensing Board summarily disposed of a contention directed against the

financial qualifications of the University, but has not issued decisions on any other factual questions. In a motion³ filed in December, 1983, CBG sought an order from the Licensing Board to shut down the UCLA reactor and to ship the fuel offsite. CBG claimed that such measures were necessary to adequately protect the UCLA facility from acts of terrorism during the Olympic Games. The Board denied the motion.⁴

On June 14, 1984, University informed the Commission of its intent to withdraw the license renewal application and to seek to decommission the reactor.⁵ University's formal request to withdraw the application was submitted to the Licensing Board pursuant to 10 C.F.R. §2.107(a) together with a motion to suspend the proceedings forthwith.⁶ (A hearing on Contention XX had been scheduled to begin on June 21, 1984.) On June 18, 1984, the Licensing Board issued a Memorandum and Order reciting its understanding of an oral stipulation among CBG, UCLA, and Staff which, as summarized by the Board, provided that UCLA would ship its fuel offsite as soon as possible, and if possible prior to the Olympic Games. Subsequently, the Board became aware that agreement between CBG and UCLA concerning the language of the stipulation did not exist and on June 22, 1984, the Board vacated its

³ "Motion for Curtailment of Activities (II)", dated December 23, 1983.

⁴ "Memorandum and Order (Ruling On CBG's Motions for Curtailment of Activities (I) and (II))", dated January 18, 1984.

⁵ Letter from UCLA Chancellor Young to Chairman Palladino.

⁶ "University's Request to Withdraw Application" and "University's Motion to Suspend Proceedings Pending Board Action on University's Request to Withdraw Application", both dated June 14, 1984.

June 18th Order and directed instead that UCLA ship its nuclear fuel "as soon as reasonably practicable consistent with applicable regulations and with its security, public health, and safety obligations". The language adopted by the Board was the language University had proposed in its June 19th version of the stipulation. In a Memorandum, dated June 25, 1984, the Licensing Board explained the reasons for its June 22nd Order, stating that it viewed UCLA's concern over the proposition of shipping fuel prior to the Olympic Games as a reasonable one. University's request to withdraw the application is pending before the Board.

III. DISCUSSION

A. Legal Standards Applicable to the Taking of Emergency Action by the Commission

In exercising its regulatory responsibilities within the framework of the Administrative Procedure Act (APA), the Commission may take "emergency" action to revoke, suspend, or modify a license if, in the Commission's judgment, public health and safety so requires. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 404 (1978). While generally Commission action affecting the rights and interests of a licensee must be in accord with the notice and opportunity to comply procedures of the APA, 5 U.S.C. §558(b), if public health and safety so requires such actions may be taken with immediate effect. Id., at 404, citing 5 U.S.C. §558(c), 42 U.S.C. §2236(b), and 10 C.F.R. §§2.202(f) and 2.204.

In deciding whether to exercise its emergency powers, the Commission acts on the basis of information assembled, reviewed, and evaluated by the NRC Staff, or a factual record developed by one of its adjudicatory Boards. Under the Commission's rules of practice no warrant exists for petitioning the Commissioners directly for the taking of emergency action against a Commission licensee. However, any person may petition the Director of Nuclear Reactor Regulation, Director of Nuclear Material Safety and Safeguards, Director, Office of Inspection and Enforcement, as appropriate, to issue a show cause order or to take other proper action, including action that may be made immediately effective. 10 C.F.R. §§2.206 and 2.202. The decision of the Director with respect to such requests is reviewable by the Commission sua sponte. 10 C.F.R. §2.206(c)(1). No petition or other request for Commission review of a Director's decision is to be entertained by the Commission. 10 C.F.R. §2.206(c)(2). The standard of review exercised by the Commission is whether the Director abused his discretion. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978); Licensees Authorized to Possess or Transport Strategic Quantities of Special Nuclear Material, CLI-77-3, 5 NRC 16, 19, 20 (1977); Consolidated Edison Company of New York, Inc. (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 175 (1975).

Despite its claim to the contrary, in directing its petition to the Commission CBG has failed to "exhaust" the available remedy under the Commission's rules of practice. CBG's petition should have been directed in the first instance to the Director of Nuclear Materials

Safety and Safeguards (NMSS), or other appropriate Director, in accord with the procedure provided in 10 C.F.R. §2.206. Moreover, CBG gains no advantage in attempting to bypass the appropriate forum. The Commission cannot take action affecting the rights and interests of a licensee based on vague speculations or unsupported and untested claims. In order to act on CBG's petition, assuming it had some merit, the Commission would be obliged to pause long enough to build a factual record and ordinarily would defer to the staff of the Commission for that purpose.

The substance of the claim being made in CBG's petition is that the presence of reactor fuel at the UCLA facility during the period of the Olympic Games poses an unacceptable risk to public health and safety. This claim had previously been considered during the course of the relicensing proceeding and was rejected by the Licensing Board in its January 18, 1984 Memorandum and Order.⁷ University has now requested the withdrawal of its license renewal application. CBG apparently perceives this action as an opportunity to force shipment of the fuel offsite immediately but, in fact, CBG has provided no reason to justify the "emergency". Circumstances have not changed to warrant emergency action. The request for withdrawal of the application in itself has no adverse effect on public health and safety.

⁷ See, also, the Licensing Board's Memorandum of June 25, 1984, where, in expressing its view that the Staff, the Board, or the Commission did not lack authority to enter an order requiring shipment of the fuel, the Board noted ". . . all CBG has presented to this Board are generalized concerns regarding the presence of fuel onsite during the Olympic Games. This is hardly a basis to require UCLA to take steps which in themselves might pose a greater threat to security than the status quo." Memorandum, at 4.

B. No Factual Basis Exists for the Claims Made in the Petition

CBG's claim that the irradiated nuclear fuel in the UCLA reactor could be involved in a terrorist incident during the Olympics is based on speculation only. The statements that have appeared in certain media stories that the UCLA reactor is a prime target for terrorists, upon which CBG apparently relies, are uninformed. The statements represent idle speculations by individuals who obviously know little or nothing of the design and operating characteristics of the UCLA Argonaut reactor. The actions of individuals who seek to draw widespread attention to pronouncements that the reactor is an attractive terrorist target are irresponsible. Some individual or group may come to believe those pronouncements and attempt an act of radiological sabotage at the facility. The UCLA staff believes that under no credible circumstances could an act of sabotage at the facility result in radiological releases endangering the public. Nevertheless, an attempt to cause such consequences could result in harm to University employees and damage to University property. Primarily because of concern for its employees and property, UCLA has planned to take additional security precautions at the reactor facility during the period of the Olympic Games.⁸

The inherent protections provided by the Argonaut reactor design and operating characteristics and the security system that is in place at the facility to protect against adversary actions are matters

⁸ These additional security precautions have been described in letters to the Licensing Board dated March 14, March 15, June 26, and July 11, 1984. UCLA committed itself to keeping the reactor shut down (it had been shut down for maintenance in February) until after the Games had concluded, erecting concrete barriers to prevent vehicle access to the reactor, and maintaining an armed guard presence at the facility.

of record in this proceeding.⁹ Briefly described, the uranium fuel is dispersed in the form of an aluminum/uranium alloy, 98.3% aluminum by volume. The fuel meat is metallurgically encased in malleable and ductile aluminum plates. The fuel plate assemblies are inserted in aluminum fuel boxes in the reactor core (about 3.6 kg. total SNM). The core is surrounded by about 12,000 pounds of reactor-grade graphite which, in turn, is surrounded by about 300 tons of high-density, reinforced concrete shielding. University's security system provides significant additional protection against authorized access to the facility and the fuel. The average operating intensity of the UCLA reactor had been quite low (average 20-year power level about 2½ kW) and therefore the fission product inventory had been relatively low. The reactor has not operated since January of this year and the fission product inventory has decayed substantially in the subsequent months. Subsequent to the decision to decommission the reactor, UCLA took steps to render the reactor permanently inoperable.¹⁰ As part of its Olympic Games security plans, concrete barricades have been placed in front of the reactor building to prevent vehicle access to the reactor.

⁹ See the UCLA Physical Security Plan. See, also, the Declaration of Dr. Walter F. Wegst, UCLA Director of Research and Occupational Safety, attached to "University's Response to Board's Order Concerning Level of Threat of Sabotage", dated March 9, 1984, and the written testimony of NRC Staff witnesses Dennis Schaeffer and Donald Carlson prefiled on June 15, 1984, which was to be offered at the in camera hearing on the security contention scheduled for June 25, 1984, but subsequently cancelled. The Declaration of Dr. Wegst and the testimony of the NRC witnesses contain sensitive security information and, in accordance with the Board's Protective Order of January 18, 1984 (Revised April 20, 1984), were served as "Protected Information".

¹⁰ See University's letter to the Board of June 25, 1984, which was served as "Protected Information".

The claim apparently being made in CBG's petition that UCLA refused to comply with an oral agreement to ship its fuel prior to the Olympic Games is mistaken. No such agreement was reached. UCLA did agree to act expeditiously and consistent with its obligations as licensee in returning the reactor fuel to the Department of Energy. But UCLA also informed CBG that in the judgment of the UCLA staff shipping the fuel prior to the Olympic Games period¹¹ was not an achievable objective. University objected to the expression "as soon as possible" as unacceptably vague since surely it was not intended in the literal sense. University also pointed out that the accompanying phrase "and if possible prior to the Olympic Games" was logically redundant.

¹¹ University also objected because CBG's request that the fuel be shipped "prior to the Olympic Games" was uncertain. Concern with security during the Olympic Games begins at least at the time the Olympic Village opens and the athletes arrive. That date is July 14, 1984. In fact, however, University has an agreement with the Los Angeles Olympic Organizing Committee (LAOOC) which establishes a 40-day security period beginning on July 7, 1984 when the LAOOC takes formal control of the Village area. More significantly for reactor security, UCLA had committed to installing concrete barriers to prevent vehicle access to the reactor facility on or about July 7, 1984, but in any case in advance of the opening of the Village (the installation was completed on July 10, 1984). Once the barriers were installed and until they had been removed after the Games, the UCLA staff knew that there would be no way to get a shipping cask for the fuel into and out of the facility. CBG was informed that the relevant date for completing shipment of the fuel was July 7th and not July 28th, the day the Games were scheduled to begin. Moreover, none of the shipping casks which the UCLA staff had determined might be available (including the "GE" and "Battelle" casks; UCLA has not been informed about the existence of any "Brookhaven" cask) had the capacity to transfer all of UCLA's irradiated fuel in a single shipment. The UCLA staff concluded that to ship all the UCLA irradiated fuel prior to July 7th was a "practical impossibility".

University proposed the expression "as soon as reasonably practicable" as best indicating its intent. University also insisted that any action it would take would have to be consistent with its public health and safety and security interests, and in accord with the applicable regulations. CBG's assertion that counsel for UCLA refused to participate in a conference call with the Board is totally unfounded.¹²

Finally, CBG's assertion that UCLA did not act expeditiously in following up on the information provided by the NRC Safeguards Staff concerning the availability of certain shipping casks is uninformed. The UCLA staff had been aware of the "GE" and "Battelle" casks (CBG appears to be mistaken in asserting the availability of an acceptable "Brookhaven" cask). The UCLA staff knew that neither one of the casks had sufficient capacity to transport all of the irradiated UCLA fuel in a single shipment. The UCLA staff had also determined that use of the Battelle cask would involve at least two shipments of the fuel; use of the GE cask would involve three shipments. In addition, because UCLA was not a certified user of any approved cask, the staff knew that a quality assurance plan for use of a particular cask would have to be developed for approval by the NRC. Further, some lease/use arrangement would have to be made with the owner/custodian of the cask to be used.

¹² At one point during the negotiation of the language of the stipulation, the Board's law clerk inquired whether a conference call would be necessary to resolve the impasse. Apparently, CBG attorney Mr. Kohn had requested such a call. UCLA's attorney informed the Board's law clerk that he was dealing with Mr. Bay and that he had had no dealings with Mr. Kohn in the matter, that he had re-drafted the proposed stipulation for Mr. Bay's approval, that Mr. Bay had agreed to consider the re-draft which was in the mail at the time, and that under the circumstances a conference call did not appear to be necessary. A conference call was not scheduled by the Board.

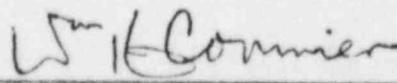
Other approvals were required to be obtained from the Department of Energy (DOE) as well as the NRC. Certain representation made in CBG's petition seem to imply that the NRC Staff intended for UCLA to overlook these complications. University appreciates the assistance of the NRC Staff in expediting return of the fuel to the proper facility, but also understands that the NRC Staff does not intend its assistance to operate to relieve UCLA of any of its obligations as a licensee.

IV. CONCLUSION

For the reasons above, University respectfully requests that the Commission deny CBG's petition. Alternatively, the matter should be referred to the Director of the appropriate Office of the Commission for disposition in accordance with the Commission's rules of practice.

Dated: July 11, 1984.

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK

By 
WILLIAM H. CORMIER
Representing UCLA

