

PDR



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

June 28, 1984

The Honorable Edward J. Markey, Chairman  
Subcommittee on Oversight and Investigations  
Committee on Interior and Insular Affairs  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter of June 7, 1984 recommending that the Nuclear Regulatory Commission (NRC) take certain action regarding SECY-83-500, Clarification of General Physical Protection Requirement.

On June 8 the Commission issued the enclosed order in the University of California at Los Angeles research reactor relicensing hearing that declined the NRC staff's request in SECY-83-500 to initiate rulemaking.

On June 14 the Chancellor of the University advised me by letter that the University would withdraw its application for license renewal and take steps to terminate the relicensing proceedings. The Chancellor stated that his decision was dictated by diminished use of the reactor, rising costs and uncertainties in the future of research reactor programs. A copy of the Chancellor's letter is also enclosed.

Sincerely,

Nunzio J. Palladino

Enclosures:  
As stated

cc: Rep. Ron Marlenee

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED

COMMISSIONERS:

'84 JUN -8 P3:09

Nunzio J. Palladino, Chairman  
Victor Gilinsky<sup>1</sup>  
Thomas M. Roberts  
James K. Asselstine  
Frederick M. Bernthal

SERVED JUN 8 1984

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

Docket No. 50-1420L  
(Proposed Renewal of Facility  
License)

ORDER  
(CL1-84-10)

This proceeding concerns the University of California's application to renew the license for its Argonaut research reactor at the Los Angeles campus (UCLA). In the course of this proceeding, the Atomic Safety and Licensing Board held that 10 C.F.R. 73.40(a) requires UCLA to take some measures to protect the reactor from potential sabotage. LBP-83-25A, 17 NRC 927 (1983), and LBP-83-67, 18 NRC 802 (1983). The extent of those measures is an issue in the current adjudication.

The NRC staff, a party to this proceeding, believes that the Licensing Board's interpretation is contrary to NRC licensing practice. Therefore, the staff has requested Commission approval to initiate a rulemaking proceeding which would amend 10 C.F.R. 73.40(a) to explicitly

<sup>1</sup>Commissioner Gilinsky has recused himself from this proceeding.

~~8406110139~~

incorporate the staff's interpretation of that requirement. Such Commission approval could be taken as the Commission's tentative adoption of staff's interpretation.

The Committee to Bridge the Gap (CBG), the intervenor in this proceeding, contends that the staff's proposal is an ex parte communication and an impermissible interlocutory appeal which bypasses the NRC's normal adjudicatory procedures.

The staff has lodged a response to CBG. Staff believes that the opportunity to comment in a rulemaking proceeding provides CBG an adequate opportunity to comment to the Commission. Staff also claims that the rule is necessary to prevent placing other reactor licenses in jeopardy.

This situation raises some difficult issues regarding the interplay between the staff's participation as a party to an adjudication and its obligation to recommend to the Commission the resolution of issues by rulemaking. We need not reach those issues today. It is sufficient to note that the staff has made no showing as to why the available adjudicatory procedures are inadequate to address the Licensing Board's decision.

Accordingly, the Commission declines the staff's request to initiate a rulemaking proceeding to modify the Licensing Board's decision in LBP-83-25A and LBP-83-67. To eliminate any ex parte connotation, staff is instructed to provide copies of SECY-83-500 and SECY-83-500A to the parties to this proceeding. If the staff continues to believe that the Licensing Board's interpretation of 10 C.F.R. 73.40(a) requires prompt


Commission attention, then the staff should avail itself of the available adjudicatory procedures.<sup>2</sup>

Chairman Palladino's dissenting views are attached.

It is so ordered.

For the Commission



  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, DC,  
this 8<sup>th</sup> day of June, 1984.

---

<sup>2</sup>These procedures include: (1) a motion requesting the Licensing Board to certify the issue to the Appeal Board pursuant to 10 C.F.R. 2.718(i) and 2.730(f); or (2) a motion to the Appeal Board to certify this issue to itself pursuant to 10 C.F.R. 2.718(i).

DISSENTING VIEWS OF CHAIRMAN PALLADINO

I disagree with that portion of the Commission's order that declines to initiate rulemaking because "the staff has made no showing" as to why the available adjudicatory procedures are inadequate to address the Licensing Board's decision." Order at 2.

The Commission majority appears concerned that rulemaking may short-circuit the adjudicatory process. However, it appears that rulemaking was proposed by the NRC staff at the Licensing Board's suggestion. See NRC Staff Response to Board Order Concerning Contention XX at 5 (Dec. 13, 1983). Thus, it does not appear to me that the intent of the staff was to short-circuit the adjudicatory process.

Adjudication can address what NRC regulations require, but it is not a way to modify the regulations. Assuming that the staff first pursues its adjudicatory options as the majority suggests, the Licensing Board's interpretation of the regulations might be upheld on review. At that point under the majority's approach, the staff could apparently request rulemaking to amend the regulations and the Commission might conclude that rulemaking would be appropriate. Thus, I question what is to be gained by forcing the staff first to pursue adjudication before proposing rulemaking. On the contrary, delay in addressing

the question of rulemaking may create unnecessary uncertainty for other licensees.

I believe that the better course would be for the Commission to consider rulemaking now and propose an amendment to the rules if there exists a sound supporting technical basis.

I do not intend these views to intimate a judgment on my part on any issue in the UCLA proceeding. I have reached no such judgment.



OFFICE OF THE CHANCELLOR  
LOS ANGELES, CALIFORNIA 90024

June 14, 1964

Mr. Munzio J. Palladino, Chairman  
Office of the Commissioner  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20535

Dear Commissioner Palladino:

I write to inform you that I have decided to withdraw the application for renewal of the license for the UCLA research reactor (Docket No. 50-142; License No. R-71), currently pending before the Atomic Safety and Licensing Board, and intend to initiate steps to decommission the reactor. I have today informed the Board of Regents of the University of California of this decision, and have asked the University's attorneys to terminate the relicensing proceedings.

My decision to decommission the reactor four years after submitting an application for license renewal was reached after extensive consultation with academic administrators on the campus, and solely as a result of our examination of the changed circumstances affecting the academic benefits and escalating costs of continued operation of the reactor facility. The use of the fission reactor by the School of Engineering and Applied Science at UCLA for teaching and research purposes has declined in the years since we filed for license renewal. During this same period the costs of the reactor have risen dramatically. We have also had to take into account uncertainties in the future of research reactor programs. In the last several months the Commission seems to have moved rapidly in the direction of requiring research reactor facilities to convert from the use of high-enrichment uranium to low-enrichment fuel, with associated costs that are, at present, unknown.

The timing of our review of the fission reactor program and decision to decommission is related to the appointment, last summer, of a new Dean of Engineering, who has had to reevaluate the School's programs and priorities in light of available resources, and the current maintenance status of the reactor. As we recently informed the Commission, the UCLA reactor is out of operation, pending correction of a sticking control blade. Correction of the problem will require disassembly of the reactor core, and prudence dictates that we reach a decision on the future of the reactor now, before committing personnel and resources to such a major maintenance effort. We have concluded that the potential expense of maintenance, fuel conversion (perhaps involving another relicensing proceeding), and ongoing operation of the reactor simply cannot be justified in light of its declining importance to our academic programs.

5446180395

Mr. Nunzio Falladino, Chairman

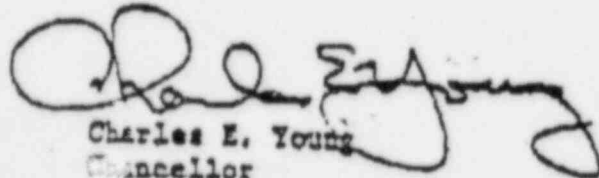
-2-

June 14, 1984

I regret that a final resolution by the Licencing Board of all the issues raised in the proceedings has not been obtained. Nonetheless, we are pleased to note that the technical staff of the Commission, which over the past several years has exhaustively reviewed our license renewal application, concluded in its published evaluations that the UCLA reactor has been operated safely throughout its 24-year history and would be expected to do so during the proposed renewal period.

We appreciate the assistance and cooperation of the staff of the Commission, particularly during the relicensing period, and look forward to working with them in carrying out a decommissioning plan.

Sincerely,



Charles E. Young  
Chancellor

cc: Director of Nuclear Reactor Regulation



MORRIS K. UDALL, ARIZ., CHAIRMAN

ABRAHAM KAZEN, JR., TEX.  
 JOHN F. SEIBERLING, OHIO  
 ANTONIO BORJA WON PAT, GUAM  
 JAMES WEAVER, OREG.  
 JAMES J. FLORIO, N.J.  
 PHILIP R. SHARP, IND.  
 EDWARD J. MARKEY, MASS.  
 BALDASAR CORRADA, P.R.  
 AUSTIN J. MURPHY, PA.  
 NICK JOE RAHALL II, W. VA.  
 BRUCE F. VENTO, MINN.  
 JERRY HUCKABY, LA.  
 JERRY M. PATTERSON, CALIF.  
 RAY KOGOVSEK, COLO.  
 DALE E. KILDEE, MICH.  
 TONY COELHO, CALIF.  
 BEVERLY B. BYRON, MD.  
 RON DE LUIGO, V.I.  
 SAMUEL GEJDENSON, CONN.  
 WILLIAM PATMAN, TEX.  
 PETER H. KOSTMAYR, PA.  
 JAMES MOODY, WIS.  
 ALAN S. MOLLOHAN, W. VA.  
 JAMES McCLURE CLARKE, N.C.  
 JAMES F. McNULTY, JR., ARIZ.  
 RICHARD H. LEHMAN, CALIF.  
 SARA BURTON, CALIF.

MANUEL LUJAN, JR., N. MEX.  
 DON YOUNG, ALASKA  
 ROBERT J. LAGOMARSINO, CALIF.  
 DAN MARRIOTT, UTAH  
 RON MARLENEE, MONT.  
 RICHARD B. CHENEY, WYO.  
 CHARLES PASHAYAN, JR., CALIF.  
 LARRY CRAIG, IDAHO  
 HANK BROWN, COLO.  
 DENNY SMITH, OREG.  
 JAMES V. HANSEN, UTAH  
 BILL EMERSON, MO.  
 JOHN McCain, ARIZ.  
 BARBARA VUCANOVICH, NEV.

## COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES  
 WASHINGTON, D.C. 20515

STANLEY SCOVILLE  
 STAFF DIRECTOR  
 AND COUNSEL

ROY JONES  
 ASSOCIATE STAFF DIRECTOR

LEE McELVAIN  
 GENERAL COUNSEL

TIMOTHY W. GLIDDEN  
 REPUBLICAN COUNSEL

June 7, 1984

The Honorable Nunzio J. Palladino  
 Chairman  
 U.S. Nuclear Regulatory Commission  
 Washington, D.C. 20555

Dear Mr. Chairman:

The protection of Nuclear Regulatory Commission (NRC) facilities from theft and sabotage is an important matter deserving of the Commission's full attention. As you know, I have expressed my concern about safeguards and security at commercial power plants to you on several occasions. I am similarly concerned about other NRC-licensed facilities.

According to the NRC's Annual Reports to Congress through 1981, protection against sabotage was required for research reactors (non-power reactors). For example, the 1980 Annual Report states:

All licensed non-power reactors have operative security plans as required by 10 CFR 73.40 ("Physical Protection: General Requirements at Fixed Sites") for protection against sabotage.

The 1982 Annual Report appears to be ambiguous on this matter.

It has recently come to my attention that the Commission has before it a proposed rule change, recommended by the NRC staff in SECY 83-500 (Proposed clarifying amendment to 10 CFR 73.40(a)). I am writing with respect to this proposal, which which appears to eliminate sabotage protection for the nation's research and other non-power reactors by specifying the application of 10 CFR 73.67 to such reactors.

The language of 10 CFR 73.67 does not deal with sabotage at all, even though the superseding language of 10 CFR 73.40 (a) mandates protection against radiological sabotage in all reactors, including non-power reactors:

Each licensee shall provide physical protection against radiological sabotage...

~~5406080135~~

The Honorable Nunzio J. Palladino  
June 7, 1984  
Page Two

Indeed, it is my understanding that NRC's Office of Inspector and Auditor (OIA) is presently investigating the claim of an Atomic Safety and Licensing Board (ASLB) that the NRC Staff has misrepresented the agency's regulations before the Board and to the Commission. Surely no action should be taken until this office completes its investigations.

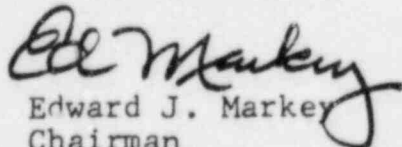
As a result, there is now considerable confusion about the intent and effect of the recommendation in SECY 83-500. Similarly, there appears to be particular concern in the public sector that research reactors are not protected adequately. In light of this concern, I urge the Commission to pursue the following course of action:

1. Take no action until a report has been issued by the Office of Inspector and Auditor of the NRC. This office is now investigating the staff recommendation.

2. Hold a public hearing at which the issue can be aired fully, and invite comments from all parties and the general public.

The public needs to have absolute confidence in the NRC in the matter of sabotage protection. I urge you to subject this matter to public discussion as I have suggested.

Sincerely,



Edward J. Markey  
Chairman  
Subcommittee on Oversight  
and Investigations

EJM/rw