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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

- 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  
(CLI-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

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

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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

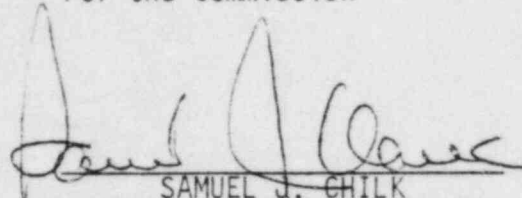
Commission attention, then the staff should avail itself of the available adjudicatory procedures.<sup>2</sup>

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.

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<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.