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June 12, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

(UCLA Research Reactor)

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Docket No. 50-142

(Proposed Renewal of Facility
License)

NRC STAFF SUPPLEMENTAL INFORMATION

I. Introduction

By Order dated December 23, 1983, the Atomic Safety and Licensing Board (Board) directed two members of NRC Staff to respond to allegations of misrepresentation. The Staff responded on January 9, 1984. By Order dated February 24, 1984, the Board directed counsel for Staff and UCLA, their supervisors and clients, to respond to the Board's charges of possible misrepresentation regarding the parties' views of the requirements of the Commission's regulations. Responses were filed on March 9, 1984. On April 13, 1984 the Board found that Staff counsel had not misrepresented the view of the NRC Staff concerning the regulations but did not reach the issue of possible misrepresentation by certain Staff members. The Board stated it would deal with this issue when additional information was provided and noted that some confusion existed about what requirements were being enforced by OIE Staff.^{1/} The Staff is hereby providing further

^{1/} Order, April 13, p. 1, fn. 1. The Board referred to a letter dated March 16, 1984 from Staff counsel advising the Board that an OIE Manual Chapter and recent inspection report indicated that nonpower reactors were to be, and have been, inspected for sabotage protection. Order, April 13, 1984 p. 13 n.2.

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information concerning OIE inspection procedures for nonpower reactors, and urges the Board to rule that the Staff made no misrepresentation of intended Staff safeguards policy or practice with regard to sabotage protection for nonpower reactors.

II. Background

In April, 1981, the NRC Staff filed a motion for summary disposition of Contention XX. The contention asserts that many security measures, such as those required by 10 CFR § 73.55 for power reactors, and described in 10 CFR § 73.1(a)(1) should be instituted at the 100KW UCLA Argonaut-UTR facility. Because Staff believed the contention to call for more than is required by, and therefore constitute an attack on, the regulations, the Staff decided to file a motion for summary disposition. This motion pointed out the Part 73 regulations applicable to UCLA in comparison to the safeguards measures asserted by the contention. The motion rested on affidavits from two members of NRC Staff who attested that the UCLA security plan met the applicable requirements of 10 CFR § 73.67.^{2/} The Board, over the course of the 1981-84 summary disposition procedure, requested several legal briefs from the parties to address questions about the Part 73 regulations applicable to the UCLA facility and the SNM inventory there. No question of the actual

^{2/} The Board issued a Memorandum and Order on December 23, 1983 directing a response to accusations by the intervenor that these Staff members had made false statements in their affidavits. The Staff responded fully on January 9, 1984. Further Staff responses were supplied to the Board regarding Part 73 regulations and the UCLA security plan on March 9 and May 1, 1984.

and specific contents of the UCLA security plan was raised during this time. The Staff's motion for summary disposition of Contention XX remained pending during the lengthy briefing on Part 73 requirements until January 26, 1984 when the Board denied the Staff's motion.

In conjunction with denial of the summary disposition motion, the Board issued orders in preparation for an evidentiary hearing on Contention XX, including a prehearing conference on February 8-9, 1984. On January 31, 1984 counsel for UCLA submitted the UCLA security plan to the Board with those portions marked which he believed to be exempt from discovery by the intervenor and which he requested the Board to order so protected. The security plan and the UCLA request for a protective order for certain sections were discussed by the Board and counsel for UCLA and CBG at the prehearing conference. Tr. 3552-3564. This was the first time the actual contents of the security plan were addressed in this proceeding.^{3/} The Board subsequently found the contents of the security plan to raise questions of misrepresentations as set out in its February 24, 1984 Order. After receipt of Staff responses to this Order, further questions about the contents of the security plan were asked by the Board in its April 20, 1984 Order. Those questions were

^{3/} Since the security plan contents were not an issue until denial of the Staff's summary disposition motion, the Board's April 13, 1984 Order at pp. 25-26 incorrectly states that there might have been "deliberate avoidance" of knowledge of the security plan by Staff counsel and that the technical Staff should have apprised counsel of the purpose stated in the plan. Staff counsel had no reason to inspect the security plan while presenting Staff's view of the Part 73 regulations and denies absolutely any intent to avoid reading the plan out of a fear that the plan may have contained information or provisions contrary to the Staff's position.

answered by Staff and UCLA on May 1, 1984. As far as Staff is aware, the only additional information still sought by the Board is the discussion of OIE inspection procedures now provided.

III. Discussion

OIE Safeguards Procedures and Inspections for Nonpower Reactors

In regard to the question of Staff misrepresentation still remaining, the Staff now provides further information^{4/} on various OIE written procedures which contain instructions to inspect nonpower reactors for safeguards against sabotage and which appear to conflict with the regulations as interpreted by the Division of Safeguards, NMSS. As explained by the attached affidavit of Loren Bush, OIE, Headquarters, nonpower reactors (NPRs) have been given a low priority in relation to other types of facilities, with the result that necessary revisions to inspection procedures for NPRs were not completed after rule changes, particularly in regard to 10 CFR § 73.67. (Bush ¶¶ 3e, 6a-b.) Other contributing factors in this matter were (1) development of some procedures by a contractor which were not thoroughly reviewed by NRC Staff, (2) reorganizations in OIE resulting in loss of staff and management continuity, (3) lapse of communication with NMSS, and (4) an undecided

^{4/} By letter dated March 16, 1984, Staff Counsel advised the Board that OIE Manual Chapter 2545 and an OIE inspection report for Virginia Polytechnic Institute contained instructions for, and evidence of, inspections of nonpower reactors for sabotage protection, respectively, and that more complete information would be provided when obtained. The Board referenced this letter in the April 13, 1984 Order at p. 13 fn.2.

question of requirements for a few large NPRs. (Bush, ¶¶ 5, 6c-g.) As explained by Mr. Bush, the January 1984 Manual Chapter 2545 referred to outdated procedures which were still in use in some NRC regions. (Bush, ¶¶ 7-8.)

However, to correct the present procedures, OIE has sent the attached "Temporary Instruction" to the regions to clarify the matter for the inspectors until the procedures are completely reviewed and formally changed. In the same manner, NMSS, Division of Safeguards, intends to prepare a letter to be sent to all NPR licensees requesting that such licensees review and correct security plans which contain inaccurate language concerning sabotage, as explained to the Commission in SECY-83-500A^{5/} on April 20, 1984. Since then the NRC Staff has initiated appropriate action to review, update and correct OIE procedures, NMSS guidance documents, NPR security plans, and the regulations pertinent to safeguards.

Thus, in summary of the information provided here and in Staff's responses of January 9, March 9, and May 1, 1984, the apparent contradictions in inspection procedures and practices on the one hand and the NMSS Division of Safeguards expressed position on the requirements of the regulations with regard to sabotage protection for NPRs on the other hand appear to exist due to failure on the part of the NRC Staff to correct and update old procedures and Staff guidance to licensees. This situation resulted from the primary allocation of resources in OIE and NMSS to power reactor and fuel facility safeguards, as well as discon-

^{5/} Both SECY-83-500 and 83-500A are attached. This is in compliance with the Commission's instructions to Staff on June 8, 1980, CLI-84-10.

tinuity in Staff assignments created by several office reorganizations. For these reasons, guidance documents concerning NPR safeguards from both NMSS and OIE were not corrected and/or updated after the many safeguards rule changes in 1978-80 for all NRC licensees. The failure to fully review and update such documents resulted in retention of old inspection procedures in OIE directives and continued use of these by inspectors in some regions, as well as retention of former provisions and language in NPR security plans. (Carlson affidavit, March 9, 1984). Although the OIE inspection procedures and language in some NPR security plans admittedly are confusing and contradictory, these matters are now being corrected by the means indicated in SECY-83-500A.

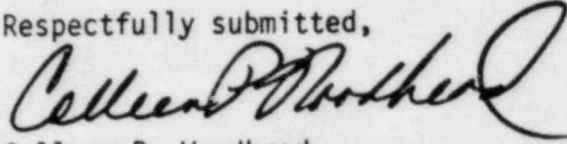
Briefly stated, the language in OIE procedures and NPR security plans which contradicts the Staff's explanation of its view of Part 73 regulations for NPRs appears in these documents due to failure to update and correct Staff and licensee documents to fully implement the new regulations. This failure does not alter the actual safeguards regulations for NPRs approved and issued by the Commission in 1979 or the Staff's expressed view as to the requirements of those regulations. Consequently, there were no misrepresentations by the NRC Staff concerning its views of safeguards regulations and policy.

IV. Conclusion

For the reasons set out in the Staff's January 9, 1984 and March 9, 1984 Responses to allegations of misrepresentation and the further explanations provided in the Staff Response to Board Questions, dated

May 1, 1984, and the additional information concerning OIE procedures provided herein, the Board should find that no misrepresentations were made by NRC Staff.

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 12th day of June, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF SUPPLEMENTAL INFORMATION" 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, or, as indicated by double asterisks, by express mail, this 12th day of June, 1984:

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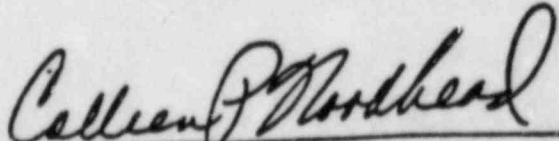
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