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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor) |))))))))) | Docket No. 50-142 OL (Proposed Renewal of Facility License R-71) July 3, 1984 |
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COMMITTEE TO BRIDGE THE GAP'S RESPONSE
TO UNIVERSITY'S REQUEST TO WITHDRAW
ITS APPLICATION FOR LICENSE RENEWAL

I.

INTRODUCTION

On July 14, 1984, Applicant, the University of California, announced that it was withdrawing its application for renewal of its facility license for the UCLA nuclear reactor. Simultaneously the University filed a motion for withdrawal of its application with the Licensing Board in this proceeding. The University also proposed, as appropriate conditions for the acceptance of the withdrawal, that the

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reactor remain out of operation and that the facility be dismantled.

Committee to Bridge the Gap supports University's request for withdrawal and its conditions, if the Board in its order accepting the application withdrawal makes definite the terms of the conditions which University has proposed and takes care of certain procedural matters.

II.

UNIVERSITY'S WITHDRAWAL OF APPLICATION SHOULD BE ACCEPTED CONDITIONED UPON UNIVERSITY'S TERMS AS SPECIFIED BELOW

University has requested that its license-application withdrawal be accepted subject to certain conditions which it proposes. Request to Withdraw Application (June 14, 1984), at 1-2.

It is certainly appropriate to attach conditions to the withdrawal of a license application. 10 CFR § 2.107(a); Toledo Edison Company (David-Besse Nuclear Power Station, Units 1 and 2), ALAB-622, 12 NRC 667, 669 (1980). Safety and Licensing Boards regularly attach conditions to application withdrawals. In Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2) LBP-83-10, 17 NRC 410, 412 (1983), the Board conditioned withdrawal on the dismantling of improvements and on site restoration by dates certain and subject to NRC Staff's monitoring and approval.

In Pacific Gas and Electric Company (Stanislaus Nu-

clear Project, Unit 1), LBP-83-2, 17 NRC 45, 55-57 (1983), the Board conditioned the withdrawal on the preservation of documents.

In Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), LBP-82-37, 15 NRC 1139 (1982) [NIPSCO], the Board conditioned the withdrawal upon a number of conditions. The applicant was required to implement a specific site-restoration plan, to begin and to be completed by dates certain; applicant was to report progress every three months to all parties, and Staff was in turn to send reviews of these reports to all parties; and parties were entitled to site inspections upon completion of the restoration. These conditions were imposed subject to enforcement by the Commission and the courts. 15 NRC at 1140-42.

CBG approves University's request for withdrawal and its proposed conditions, provided that they be explicitly detailed in the order accepting withdrawal of the application as indicated below and that certain procedural matters are also taken care of, such as document preservation and the dissolution of the protective orders.

A. THE REACTOR WILL REMAIN OUT OF OPERATION

The University has proposed as a condition of withdrawal that the reactor remain out of operation, Request to Withdraw Application, at 1, and has stated that the reactor will not operate again, Letter from Walter F. Wechst, Jr.,

Director, Research and Occupational Safety, UCLA, to Harold Denton, Director, Office of Nuclear Reactor Regulation, NRC (June 14, 1984).

CBG agrees that this is an appropriate condition to be included in the Board's order accepting withdrawal.

B. UNIVERSITY SHALL DISMANTLE THE UCLA REACTOR

University has agreed that the license withdrawal is appropriately conditioned on "the terms described above" in its Request to Withdraw Application, one of them being "to dismantle the facility and dispose of its component parts." University has elsewhere expressed the same intent of dismantling the reactor. Letter from Walter F. Wechst, Jr., to Harold Denton (June 14, 1984). We agree that this is an appropriate condition and, see Black Fox, 17 NRC at 412, one that the Board can and should include in its order.

C. UNIVERSITY SHALL SHIP ALL SNM (HELD PURSUANT TO LICENSE L-71) OFF-SITE BY JANUARY 1, 1985

University has stated its intention to ship its fuel off-site now that the reactor is shut down and University is requesting withdrawal of its license application. The Board has ordered UCLA to "ship the nuclear fuel presently onsite to a suitable recipient as soon as reasonably practicable consistent with applicable regulations and with its security, public health, and safety obligations...." Board Memorandum and Order (June 22, 1984).

University has expressed concern that shipment off-

site could not be accomplished before the Olympic Games. Since the University has already begun the appropriate planning, six months should provide ample time. Thus the Board should make definite this step of University's condition of dismantling of the reactor, and include a date certain, see Bailly and Black Fox, of January 1, 1985 for completion of the shipment off-site of the special nuclear material held by UCLA pursuant to license R-71.

D. UNIVERSITY SHOULD SUBMIT BY JANUARY 1, 1985, A
PLAN FOR DISMANTLEMENT OF THE UCLA REACTOR

The University has, as a condition for withdrawal of the application, committed itself to dismantle the UCLA reactor and to develop plans for so doing. See Letter from Charles E. Young, Chancellor, UCLA, to Nunzio J. Palladino, Chairman, NRC (June 14, 1984), at 2; and Letter from Walter F. Wechst, Jr., to Harold Denton (June 14, 1984).

It is appropriate and usual for licensing boards to require plans for site restoration after termination of license applications. NIPSCO (Bailly), 15 NRC 1140-42; Black Fox, 17 NRC at 412. These plans contain dates certain for completion and implementation of the plans. Doubtless University has already begun the development of such a plan. CBG agrees that such a plan as University proposes is appropriate, and that a date certain-- January 1, 1985-- by which time University shall complete and submit a plan for

final dismantlement of its reactor, be incorporated as a condition of the Board's acceptance of University's withdrawal. Consistent with the case law, the plan itself should contain dates certain for completion of phases, and final completion of the dismantlement. Copies of the plan should go to NRC Staff and to CBG.

The Boards in both Black Fox, 17 NRC at 412, and Bailly, 15 NRC at 1141, included reporting and monitoring of the plans by Staff. In Bailly, Staff itself requested a role of independent reviewer, 15 NRC at 1140, and the Board ordered that reports by applicant, to be followed in twenty days by written reviews by Staff, be sent to all parties regarding progress on the plan every three months. This would be an appropriate term to University's plan. But, to be less burdensome, the Board should require University, beginning with the January 1, 1985 plan implementation, to send progress reports to Staff and CBG thereafter only every six months (followed as in Bailly by written Staff reviews), until completion of dismantlement.

E. CBG SHALL BE KEPT INFORMED IN THE MATTER
OF THE UCLA REACTOR

Fundamental fairness, procedural due-process rights, and CBG's considerable investment of money, time, and effort, Stanislaus, 17 NRC at 53, argue for keeping CBG informed in the matter of the UCLA reactor. CBG therefore

asks that the Board require that Staff-University and University-Staff correspondence continue to be served upon CBG until the completion of dismantlement per the dismantlement plan, in analogy to the service continuation mandated by the Appeal Board in Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 183 (1974).

For like reasons, CBG requests that the local public document room be maintained until dismantlement is complete. In the context of the length and volume of the past proceedings in the matter of the UCLA reactor, the continued maintenance only through dismantlement should require only a negligible administrative effort.

Finally, and for like reasons, the Board should require notice to CBG of any intended change in licensing status including but not limited to application by University for a construction or operating license or license for possession of special nuclear material for a fission reactor at UCLA until the end of the period of the renewed operating license for which University had applied.

III.

THE BOARD'S ORDER ACCEPTING WITHDRAWAL SHOULD WRAP UP CERTAIN PROCEDURAL MATTERS

The Board should conclude certain procedural matters concerning disposition of documents and the dissolution of the protective orders now that the licensing proceeding

is to be terminated.

A. THE BOARD SHOULD DISSOLVE THE PROTECTIVE ORDERS

The Board promulgated protective orders on June 17, 1982 and on January 18, 1984, revised April 20, 1984 and amended June 1, 1984 (see Memorandum and Order of June 8, 1984). The protective orders were promulgated to protect information regarding security measures for the physical protection of special nuclear material (SNM) from theft and radiological sabotage.

Disclosure of information is to be so restricted only for "compelling reasons." 10 CFR §§ 2.744(e), 2.790(a). Moreover, the Board has an affirmative duty to remove information from the protected category when the original justification vanishes. "Documents ... shall be removed from the Safeguards Information category whenever the information no longer meets the criteria...." 10 CFR § 73.21(i). Upon off-shipment of UCLA's SNM, the original justification for the protection vanishes and the protective orders should dissolve.¹ The Board should thus order its protective orders dissolved effective at the date on which the SNM (held pursuant to license R-71) has departed the UCLA reactor site.

¹ Nor should the protective orders remain to protect generic security information. Generic security and safeguards information is unprotected, see, e.g., Interior Intrusion Alarm Systems, NUREG-0320 (public document); and Regulatory Guide 5.59 (public document). Congress deliberately deleted any provision in § 147 of the Atomic Energy Act, 42 U.S.C. § 2167, for protection of generic safeguards information. See SECY-81-464A, Enclosure A, at 16 (Sept. 16, 1981).

At the same time that the protective orders dissolve, University should be required to give CBG sufficient opportunity to copy, for its records, the items and documents known as "the Security File" for the UCLA reactor facility (including but not limited to the items described in greater detail in Letter from Roger L. Kohn, Attorney for CBG, to William H. Cormier, representing UCLA (May 2, 1984) at 2-3) which were previously withheld from CBG with regard to copying only because of the presence, and security consequences, of the SNM at the reactor facility.

B. APPLICANT SHOULD PRESERVE DOCUMENTS PENDING
FINAL DISPOSITION OF THE REACTOR

The Board in Stanislaus, 17 NRC 52-53, recognized a clear legally cognizable harm to intervenors in allowing applicant to withdraw after heavy investment in money, time, and effort, and promulgated an "explicit and comprehensive" document-preservation order. Since the UCLA proceedings have progressed further through hearings than the Stanislaus proceedings, CBG has a greater legal investment than did the Stanislaus intervenors. CBG is thus entitled to protection of its interest and investment in these proceedings until the UCLA reactor is finally dismantled and disposed of.

The Board should thus require University

1. to preserve, until final dismantlement of the reactor, (a) all items contained in what is known as

the University's Security File for the UCLA reactor facility; and (b) all items in the list attached below as Attachment 1; and

2. to give CBG sufficient opportunity to copy, for its records, the above documents at such time as University intends to destroy them.

C. CBG AND ITS SUCCESSORS WILL RETAIN CBG'S RIGHTS AND OBLIGATIONS

The Board's order should specify that any rights that exist or accrue to Committee to Bridge the Gap will devolve upon CBG at any future address or upon its designated successor, if CBG notifies University and NRC Staff of any future changes in address or of a successor organization (or person) to CBG.

IV.

THE CONDITIONS IMPOSED BY BOARD'S WITHDRAWAL ORDER SHALL BE OBLIGATIONS ASSUMED BY UNIVERSITY

Licensing boards have regularly imposed conditions on their acceptance of application-withdrawal requests. Black Fox, 17 NRC at 412; Stanislaus, 17 NRC at 55-57; Bailly, 15 NRC at 1139. University has requested that its withdrawal be accepted subject to its proposed conditions. In Bailly, 15 NRC at 1139, the Board specified with admirable clarity how it could best integrate such conditions with its immediate acceptance of applicant's withdrawal. The Bailly Board required "[t]hat the conditions imposed by this

termination order be considered as an obligation assumed by NIPSCO in consideration of the Commission's terminating this proceeding prior to the restoration of the site, enforceable by the Commission and the courts. Bailly, 15 NRC at 1142.

University has proposed its withdrawal be conditioned upon certain terms. This Board should follow the Bailly model and likewise order that the conditions imposed by its order accepting University's withdrawal request be considered as an obligation assumed by University in consideration of the Board's accepting the withdrawal at this time, which obligation is enforceable by the Commission and the courts.

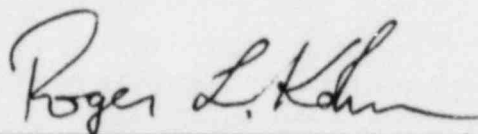
V.

CONCLUSION

The Board should accept University's request for withdrawal of its application for renewal of license R-71, effective immediately. It should do so with the conditions as set forth above, the conditions representing terms already proposed by University in its own request and its supporting correspondence, and certain procedural matters. The conditions should be incorporated in the Board order accepting the withdrawal, in accordance with the cited regulations and case law. With these conditions, the Board should order, effective immediately, the withdrawal accepted and the proceedings terminated.

For the Board's convenience, a proposed order is attached as Attachment 2 which comprises the necessary terms and conditions to be incorporated in a Board order accepting University's request to withdraw its license-renewal application.

July 3, 1984
Los Angeles, California



ROGER L. KOHN
Attorney for Intervenor
COMMITTEE TO BRIDGE THE GAP

ATTACHMENT 1

UNPROTECTED DOCUMENTS TO BE PRESERVED

1. Radiation Use Committee Minutes
2. Operating, Maintenance, and Calibration Logs
3. Engineering Change Orders
4. Experimental Safety Analyses
5. License Amendments, Documents, and Correspondance
6. Internal Audits
7. Responses to Notices of Violations
8. Abnormal-Occurrence Reports
9. SCRAM Reports
10. Dissertations at and Relating to the Reactor
11. Health Physics Survey Records
12. Other NRC/AEC - UCLA Reactor Correspondance

ATTACHMENT 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
John H. Frye, III, Chairman
Glenn O. Bright
Emmeth A. Luebke

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| _____) | |
| In the Matter of) | Docket No. 50-142 OL |
|) | (Proposed Renewal of |
| THE REGENTS OF THE UNIVERSITY) | Facility License |
| OF CALIFORNIA) | R-71) |
|) | |
| (UCLA Research Reactor)) | July , 1984 |
| _____) | |

ORDER

I.

The Regents of the University of California's application for renewal of license R-71, dated February 28, 1980 and as amended, for the UCLA reactor facility is hereby ordered withdrawn.

II.

The following conditions apply:

- A. The reactor will remain out of operation;
- B. University shall dismantle the UCLA reactor;
- C. University shall ship all special nuclear material (held pursuant to license R-71) off the UCLA site to a suitable recipient as soon as reasonably practicable consistent with its security, public health, and safety obliga-

tions, the completion to be no later than January 1, 1985;

- D. University shall submit, by January 1, 1985, a plan for the dismantlement of the UCLA reactor which shall contain dates certain for the completion of phases, and for final completion, of the dismantlement; copies of the plan are to go to NRC Staff and to CBG; University is to prepare progress reports every six months and send them to Staff and CBG beginning on January 1, 1985, and Staff is to prepare written reviews of these reports twenty days later and send them to University and CBG;
- E. Staff and University will continue to serve Staff-University and University-Staff correspondence on CBG, and the local public document room will be maintained, until dismantlement is completed; University and Staff will promptly notify CBG of any intended changes in licensing status, including but not limited to application by University for a construction or operating license or license for possession of special nuclear material for a fission reactor at UCLA until 2000, the end of the period of the renewed license for which University applied in these proceedings;
- F. The Board herewith dissolves Protective Orders of June 17, 1982 and of January 18, 1984, as revised and amended, effective on the date on which the SNM (held pursuant to license R-71) has departed the UCLA reactor

site; University shall at that effective date provide CBG sufficient opportunity to copy the items known collectively as "the Security File" for the UCLA reactor facility (including but not limited to the items listed in Letter from Roger L. Kohn to William H. Cormier (May 2, 1984), at 2-3);

- G. University shall preserve, until dismantlement is completed, all items in its "Security File" and all items on the list in Attachment 1 herewith, and shall give CBG sufficient opportunity to copy those documents at such time as University intends to remove or destroy them; and
- H. Any rights that exist or accrue to CBG will devolve upon CBG at any future address or upon its designated successor, if CBG notifies University and Staff of any address changes or of a successor organization (or person) to CBG.

III.

The conditions imposed by this withdrawal order are to be considered as an obligation assumed by University in consideration of the Board's acceptance of the withdrawal request at this time, enforceable by the Commission and the courts.

IV.

The above application is hereby ordered withdrawn and

the renewal proceedings terminated effective this date.

It is so ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Glenn O. Bright
ADMINISTRATIVE JUDGE

Emmeth A. Luebke
ADMINISTRATIVE JUDGE

John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

July , 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)
(UCLA Research Reactor))

Docket No. 50-142 OL
(Proposed Renewal of
Facility License
R-71)

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SECRETARY'S SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached COMMITTEE TO BRIDGE THE GAP'S RESPONSE TO UNIVERSITY'S REQUEST TO WITHDRAW ITS APPLICATION FOR LICENSE RENEWAL in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or express mail, postage prepaid, addressed as indicated, on this date: July 3, 1984 .

- * John H. Frye, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Dr. Emmeth A. Luebke
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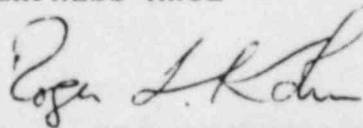
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