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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

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OFFICE OF SECRETARY
FOR THE COMMISSION
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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 RESPONSE IN OPPOSITION TO THE
PETITION FILED BY COMMITTEE TO BRIDGE THE GAP

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July 9, 1984

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I. INTRODUCTION

By petition dated June 22, 1984, Committee to Bridge the Gap (CBG), the intervenor in the license renewal proceeding pending before the Atomic Safety and Licensing Board (Board) concerning the research reactor at UCLA, requested the Commission to direct UCLA to ship offsite the irradiated fuel in the reactor, prior to the arrival, in early July, of the athletes who will participate in the Olympic Games at Los Angeles. The Staff opposes the petition because there is no valid basis for the action requested.

II. BACKGROUND

In February, 1980 the Regents of the University of California applied to the Commission for the second renewal of the license, originally issued in 1960, for the 100KW Argonaut-UTR at UCLA. After notice of opportunity for hearing was published, an intervention petition filed by CBG was granted and twenty contentions were admitted. The adjudicatory proceeding began in late 1980, and hearings were held on issues concerning the inherent safety of the Argonaut-UTR and the proper

class of license for the UCLA reactor. The proceeding continued until June 14, 1984 when UCLA filed a request for withdrawal of the license renewal application with the Board pursuant to 10 CFR § 2.107(a). The University notified the Board and the Commission of its intent to seek termination of the license according to 10 CFR § 50.82. Accordingly, the Board suspended the adjudicatory proceeding by Memorandum and Order dated June 18, 1984. The Board indicated in its order that a telephone conference had been previously held among the Board Chairman and the parties and an oral stipulation was reached to ship the fuel at the UCLA facility offsite as soon as possible, and, if possible, prior to start of the Olympics at Los Angeles. Subsequently, because of disagreement about the terms of the stipulation concerning fuel shipment, the Board rescinded its June 18 order by Memorandum and Order of June 22, 1984 in which the suspension of the proceeding was affirmed and UCLA was directed to ship the nuclear fuel at the facility offsite as soon as reasonably practicable consistent with its security and public health and safety obligations, and to take necessary steps to prevent entry of water into the core. On June 25, 1984 the Board issued a Memorandum explaining the reasons for the June 22 Order. In the Memorandum the Board expressed its concern about removal of the massive concrete shield covering the core, at the same time UCLA intends to increase safeguards at the research reactor facility, beginning with the arrival of the Olympic teams in Los Angeles in mid-July.^{1/} In reference to the stipulation urged by CBG and opposed

^{1/} Memorandum, June 25, 1984, at 2. The Board referred to notice given by letter dated March 20, 1984, from counsel for UCLA who notified the Board that the Chancellor at UCLA had decided to provide armed guards and barricades for the reactor facility during the Olympics, and that the reactor would remain shutdown during this period. The reactor has been out of operation since February 1984 due to a mechanical problem.

by UCLA, the Board stated that the UCLA research reactor is a licensed facility subject to the Commission's regulations and, since CBG had only presented generalized concerns as basis for ordering immediate offsite shipment of the reactor fuel, the Board was in no position to direct such shipment.^{2/}

III. DISCUSSION

The CBG petition^{3/} alleges that the oral stipulation as described in the Board's June 18, 1984 Memorandum and Order has been violated and the Board's Order disobeyed, by UCLA's refusal to sign the stipulation prepared by CBG, and by UCLA's failure to take actions necessary to arrange prompt offsite shipment of the reactor fuel currently at the research reactor facility. Petition at 3-4. CBG also alleges the NRC Safeguards Staff has "determined" that a shipping cask is "apparently" available from Brookhaven and another "possibly available from GE" and that the Safeguards Staff has told UCLA "to make arrangements for the casks." Petition, at 3. CBG further alleges it has "exhausted its remedies," reciting its participation in the adjudicatory proceeding and telephone calls to UCLA counsel. Petition, at 3-4. Finally, CBG alleges that the

^{2/} The Board denied two prior CBG motions to require UCLA to ship its fuel offsite. Memorandum and Order of January 18, 1984. No appeal was filed.

^{3/} Since the petition is not an appeal of a decision below, Staff considers it to be a motion pursuant to 10 CFR § 2.730.

UCLA research reactor is no longer a licensed facility because of the request for withdrawal of the application for license renewal pending before the Licensing Board, and thus, the "Commission need not reach any factual or legal issue" but only need immediately accept the request for withdrawal, upon conditions set by the Board, and order immediate fuel shipment to avoid a "serious international terrorist incident." Petition at 5. In an addendum, CBG refers to the Licensing Board's June 22 order and requests the petition be deemed an "emergency appeal" of the Board's "failure to enforce the June 18 order."^{4/} Petition at 6. None of the allegations presented by CBG are correct, as demonstrated below.

The Licensing Board's Memoranda and Order of June 22 and June 25, 1984 contradict CBG's assertion that UCLA has failed to comply with either the oral stipulation or the Board's Order. The June 22 Order directing UCLA to ship the irradiated fuel as soon as "reasonably practicable" with due regard for public safety and security made clear that the oral agreement for fuel shipment "as soon as possible" was not to be interpreted as one which overlooked practical considerations^{5/}

^{4/} CBG's request that the petition be deemed an appeal of the Board's "failure to enforce the June 18 Order" is insupportable. The Board's June 18, 1984 Memorandum and Order simply noted an oral stipulation which the Board clarified by a direct order requiring reasonable and prudent measures to remove and ship the reactor fuel, explained in detail by the subsequent Memorandum. Thus, the Board's June 18, 1984 Order is clarified by an Order on June 22 which set out the circumstances of the action to be taken by UCLA, including due regard for safeguards and health and safety concerns.

^{5/} The MTR fuel at UCLA is owned by the Department of Energy and must be returned to the Department according to its direction. In addition, a suitable cask must be obtained and transportation arranged before offsite shipment could take place.

nor one which disregarded the significant safeguards concern in uncovering the reactor core. The Board provided further explanation in the June 25 Memorandum stating its concern that the massive biological shield, presently protecting the irradiated fuel in the reactor core, could be removed at the same time that security concerns arise because the Olympics. Memorandum, pp. 2-3. As noted by the Board, to remove the biological shield, composed of concrete blocks weighing up to ten tons each, for fuel handling would expose the irradiated fuel and thus present a "much more readily accessible target to any group bent on terrorism" whereas the fuel in place in the assembled reactor is presently well protected. Id. The Board acknowledged UCLA's concern over shipping fuel prior to the Olympics as a reasonable one and agreed that the risks of moving fuel now rather than after the Olympics, must be considered. Id. at 3. Additionally, the Board expressed a question of the propriety of ordering immediate fuel shipment in view of the fact that UCLA is still a Commission licensee and must comply with the Commission's regulations, including security regulations. Id. at 3. Thus it is clear that CBG's allegation that UCLA violated the oral stipulation and subsequent Board Order of June 18 is incorrect. Neither the oral stipulation nor the Board Order required UCLA to immediately ship the irradiated fuel in the research reactor. In any event, as the Board's Memorandum illustrates, CBG's proposal to require UCLA to ship fuel offsite now, as the Olympics are rapidly approaching, may create a greater risk to health and safety than retaining the fuel under the massive biological shield in the assembled reactor until after the Olympics.

CBG asserts that the NRC Safeguards Staff "told" UCLA to make arrangements for casks at either Brookhaven or GE Vallecitos. However, the Commission has been advised to the contrary by Staff, in a Memorandum to the Commissioners from the Executive Director for Operations dated June 28, 1984.^{6/} The Memorandum informed the Commission that the Staff had been contacted by CBG representatives to whom Staff responded that it had no legal authority to order fuel shipment by UCLA. In short, the Staff has not directed UCLA to take any action related to fuel shipment.

CBG's allegation of a potential terrorist incident at the UCLA reactor was a subject of the adjudicatory proceedings, and the basis of two motions, noted previously, to require offsite shipment of the UCLA reactor fuel, which were denied by the Board (note 2 supra).^{7/} Moreover, CBG was granted permission by the Board to present witnesses on terrorism during the hearing scheduled to begin June 21, 1984. Testimony was filed by and depositions were taken of CBG proposed witnesses on terrorism just prior to the suspension of proceedings. However, the Board's June 25, 1984 Memorandum points out the speculative nature of CBG's assertions of terrorist threats against the UCLA reactor. The allegation of potential terrorism at the UCLA research reactor has no evidentiary basis. Furthermore, as stated, UCLA will provide additional safeguards for the reactor during the

^{6/} The Memorandum has been filed with the Board and served on the parties.

^{7/} CBG should have either appealed the previous denials or filed a motion before the Licensing Board in the first instance. 10 CFR § 2.730(a). Cf. Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3) ALAB-591, 11 NRC 741, 742 (1980). Both the license renewal proceeding and the request for withdrawal of application are pending before the Licensing Board.

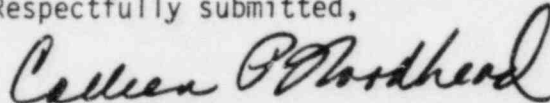
Olympics. In short, CBG, despite having ample opportunity to do so, has provided no basis for precipitous Commission action requiring removal of the UCLA reactor fuel prior to the Olympics.

In sum, there is no merit to the allegations underlying the petition. The petition should be denied.

IV. CONCLUSION

For the reasons stated, the Commission should deny the petition filed by CBG.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of July, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO THE PETITION FILED BY COMMITTEE TO BRIDGE THE GAP" 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, this 9th day of July, 1984:

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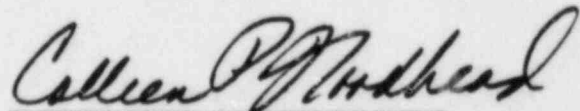
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