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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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)

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Docket No. 50-142 DL  
(Proposed Renewal of  
Facility License)

NRC STAFF REPLY TO CBG RESPONSE TO  
UNIVERSITY'S REQUEST TO WITHDRAW ITS APPLICATION

I. INTRODUCTION

On June 14, 1984 the University of California filed with the Atomic Safety and Licensing Board (Board) a request to withdraw its application for renewal of the license for the research reactor at UCLA. On July 2 and 3, 1984 NRC Staff and the Committee to Bridge the Gap (CBG), respectively, filed responses to the University's request. By Order of July 6, 1984 the Board indicated that UCLA and Staff could reply to CBG's response. The Staff hereby submits a reply.

II. BACKGROUND

The University's June 14, 1984 request for withdrawal of application indicated that the University proposed to apply to the Commission to terminate the license for the UCLA research reactor according to the provisions of 10 CFR § 50.82.<sup>1/</sup> The request also proposed that the Board

<sup>1/</sup> University's Request to Withdraw Application, June 14, 1984.

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grant the request for withdrawal with the conditions that the reactor remain out of operation and that application be made to the Commission for termination of license pursuant to 10 CFR § 50.82. Staff responded<sup>2/</sup> in support of the withdrawal request and recommended that the Board grant the request upon conditions that the University promptly apply for termination of license and comply with the procedures in 10 CFR § 50.82. CBG also responded<sup>3/</sup> in support of the request but recommended that the Board condition withdrawal with several orders. The orders proposed would require University to ship all nuclear materials offsite by January 1, 1985, to submit by January 1, 1985 a plan for dismantlement of the UCLA reactor which includes dates certain for completion of steps toward, and completion of, final dismantlement (Response, pp. 4-6); submission of progress reports by UCLA to NRC Staff and CBG every six months; written evaluation of the reports by NRC Staff twenty days after receipt; continuation of service of Staff-UCLA correspondence to CBG; notice to CBG of changes in licensing status until the year 2000 (Response, pp. 6-7); vacation of the Board's protective orders concerning the documents subject to 10 CFR § 2.790 in the proceeding; preservation of all documents in UCLA's "security file," and maintenance of any rights that exist or accrue to CBG. (Response, pp. 8-10).

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2/ NRC Staff Response to the Request by the University of California to Withdraw the Application for Renewal of the License for the UCLA Research Reactor, July 2, 1984.

3/ Committee to Bridge the Gap's Response to University's Request to Withdraw its Application for License Renewal, July 3, 1984.  
(Response.)

### III. DISCUSSION

In its response, CBG cites a number of Commission proceedings<sup>4/</sup> in which the adjudicatory boards conditioned withdrawal of construction permit applications on actions to redress the sites and other matters, arguing that the rulings of the boards in these construction permit proceedings support imposition of the conditions proposed by CBG here. However, as demonstrated in Staff's Response, CBG misapplies the decisions it cites.<sup>5/</sup> The conditions imposed by the adjudicatory boards in the cited construction permit proceedings were imposed in order to correct, mitigate or redress actions specifically authorized in, or resulting from, the proceedings before the boards on the construction permit applications which were withdrawn. That is, the conditions for withdrawal of the applications were imposed to deal with changes or

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<sup>4/</sup> Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1 and 2), ALAB-622, 12 NRC 667 (1980); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), LBP-83-10, 17 NRC 410 (1983); Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45 (1983); Northern Indiana Public Service Co. (Bailey Generating Station, Nuclear-1), LBP-82-37, 5 NRC 1139 (1982).

<sup>5/</sup> Staff cited the same decisions referenced by CBG to illustrate the matters to be addressed by licensing boards when requests for withdrawal are presented.

activities authorized in the proceeding as a result of the application.<sup>6/</sup> In this proceeding, no changes to the facility were made as a result of the proceeding or pursuant to the application for license renewal.<sup>7/</sup> Thus, no conditions to redress actions resulting from the proceeding are necessary.

The conditions proposed by CBG would make the dismantling and termination action a continuation of the license renewal proceeding. However, the voluntary termination of license pursuant to 10 CFR § 50.82 is a different action from the 10 CFR § 50.51 license renewal application described in the notice of opportunity for hearing in 1980 which provided CBG the opportunity to intervene. Consequently, CBG is mistaken in its apparent view that the termination of license procedures are issues before the Board and parties in the license renewal proceeding. CBG's proposed conditions are ill founded, and some would extend this license

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<sup>6/</sup> As noted in CBG's citations, the Bailly board ordered site restoration along with progress reports (Response, pp. 3, 5), however, CBG inaccurately terms the Bailly and Black Fox proceedings as involving license applications whereas they were actually construction permit proceedings. Bailly, supra, at 1140; Black Fox, supra, at 411-12. In Davis Besse, the licensing board had issued two partial initial decisions in a construction permit proceeding for two nuclear plants, an LWA had been issued, and site preparation performed. Davis Besse, supra, pp. 667-668. The Stanislaus proceeding addressed preservation of anti-trust discovery documents for a reasonable period of time due to the uncertainty of California law prohibiting nuclear plant construction and the possible reapplication for construction permit. Stanislaus, supra, at 48, 52-53. There is no similarity between this proceeding and the circumstances in Stanislaus.

<sup>7/</sup> Changes have been made to the reactor recently due to the University's plans for future dismantling and increased safeguards during the Olympics. The University asked that the license be amended to allow only possession of the reactor and nuclear materials since the reactor has been made permanently inoperative. Letter, Wegst to Denton, June 22, 1984 served on Board and parties July 2, 1984.

renewal proceeding beyond the subject matter described in the notice of opportunity for hearing, contrary to the licensing board decisions cited by CBG.

Similarly, CBG's request for continuing service of Staff-Applicant correspondence, rests on misapplication of the Vermont Yankee<sup>8/</sup> decision. The Appeal Board in Vermont Yankee ordered continuing service of Staff-Applicant correspondence because the opportunity for judicial review of the licensing board's initial decision had not lapsed. In the instant proceeding, there is no initial decision which is subject to administrative or judicial review. Thus, upon grant of the request for withdrawal, the adjudicatory proceeding terminates along with CBG's status as a party.

Beyond this, CBG offers no reasons to support its proposed conditions involving the establishment of dates certain for removal of irradiated fuel and submission of a dismantling plan, vacation of the protective order, and maintenance of security files. As discussed in previous documents,<sup>9/</sup> UCLA must obtain a suitable cask and contact the Department of Energy to arrange for transfer of the irradiated fuel as expeditiously as practicable, but it is not known when the actual shipment can be performed. It is equally unclear whether or not January 1, 1985 is

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<sup>8/</sup> Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 183 (1974).

<sup>9/</sup> Letter from W. Wegst to H. Denton dated June 14, 1984; letter from W. D. Schaefer to Hon. Gray Davis dated June 25, 1984 attached to letter from W. Cormier to the Board dated June 26, 1984; University's Response in Opposition to Committee to Bridge the Gap's June 22, 1984 Emergency Petition, July 11, 1984, p. 10-11.

a reasonable date for completion of a dismantling plan.<sup>10/</sup> Without explanation, CBG's proposed date of January 1, 1985 appears to be entirely arbitrary. Additionally, the proposals for progress reports, Staff evaluations and continued service are burdensome, and vacation of the Board's protective order is inappropriate so long as fuel remains onsite. To the contrary, in accord with paragraph 6 of the Protective Order, the Board should require an accounting by CBG of all protected information in its possession and return the documents prior to dismissal of the proceeding.

In summary, as discussed above, the license termination procedures are separate from this proceeding, CBG is not a party to the license termination action, and the conditions proposed by CBG generally are related to the license termination proceeding rather than this operating license renewal proceeding. CBG opposed the license renewal in this proceeding so that granting the request for withdrawal of the application for license renewal is consistent with CBG's position, whereas, several of the conditions for granting withdrawal proposed by CBG are not within the scope of the license renewal proceeding and should not be imposed. CBG has failed to justify its proposed conditions in any event, and its conditions should be rejected.

As explained more fully in Staff's previous response, in accord with past licensing board decisions concerning withdrawal of applications, the

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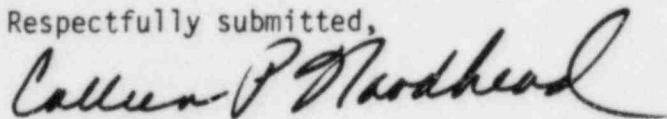
<sup>10/</sup> However, UCLA has rendered the reactor inoperable and has applied for amendment to reduce the license to one permitting possession only. Letter dated June 22, 1984 to H. Denton from W. Wegst.

Board should address those matters related to and resulting from the license renewal proceeding and grant the request for withdrawal with the conditions of prompt application for termination of license and compliance with necessary procedures to obtain an order of termination from the Director of NRR.

IV. CONCLUSION

The Board should grant the University's request for withdrawal on the sole condition that 10 CFR § 50.82 procedures are initiated and followed.

Respectfully submitted,



Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 27th day of July, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	)	(Proposed Renewal of Facility License)
(UCLA Research Reactor)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REPLY TO CBG RESPONSE TO UNIVERSITY'S REQUEST TO WITHDRAW ITS APPLICATION" 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 27th day of July, 1984:

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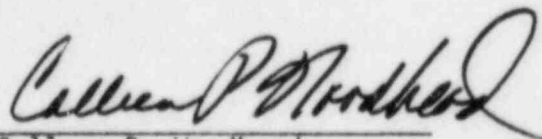
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