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September 6, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

In the Matter of  
THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA  
(UCLA Research Reactor)

'84 SEP 10 12:07  
Docket No. 50-142  
(Proposed Renewal of Facility  
License)  
BRANCH

NRC STAFF RESPONSE TO BOARD  
MEMORANDUM AND ORDER REGARDING UCLA'S  
REQUEST TO WITHDRAW ITS APPLICATION

I. INTRODUCTION

On August 6, 1984 the Atomic Safety and Licensing Board (Board) issued a memorandum and order regarding UCLA's request to withdraw its application for renewal of its operating license. Therein, the Board requested an elaboration on the Staff's position regarding the applicability of Section 189 of the Atomic Energy Act (the Act) to UCLA's request to terminate its license as well as the Staff's view on whether a hearing on such request should be offered as a matter of discretion if Section 189 of the Act were deemed to be inapplicable. The Staff's response is set forth below.

II. BACKGROUND

On June 14, 1984 UCLA notified the Board and the Commission of its intent to seek voluntary termination of its license according to 10 CFR § 50.82. Because of this intent, UCLA submitted a request to the Board

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pursuant to 10 CFR § 2.107(a) to withdraw the pending license renewal application. Staff responded to this request recommending that the Board grant the withdrawal request upon condition that UCLA promptly apply, and pursue procedures, for termination of license pursuant to 10 CFR § 50.82. The Staff noted in its response<sup>1/</sup> that Section 189 of the Atomic Energy Act does not provide for hearings for voluntary termination of licenses. The Board's August 6, 1984 Order made reference to a recent Federal Register Notice offering opportunity for hearing on a request for termination of license by a nonpower reactor licensee.<sup>2/</sup> Because of this notice the Board requested an explanation from Staff as to its position concerning § 189 of the Act as applied to the proposed license termination application and whether the Staff viewed a discretionary hearing as appropriate.<sup>3/</sup>

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<sup>1/</sup> 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, p. 9, fn. 10.

<sup>2/</sup> Memorandum and Order, August 6, 1984, p. 1. The Board referred to application for license termination by the Tuskegee Institute.

<sup>3/</sup> The Board also provided opportunity to UCLA and NRC Staff to reply to CBG's response to Staff's response to UCLA's request for withdrawal of license renewal application. The Staff hereby notifies the Board that it does not intend to file such response, in view of the July 25, and 26, 1984 requests from UCLA for a "possession only" license and for termination of license pursuant to 10 CFR § 50.82 along with notice of dismantling steps taken and those proposed for the immediate future. See Letter from W. Cormier dated July 27, 1984 and attachments. Because of these actions, CBG's Response appears to be moot.

### III. DISCUSSION

Section 189a of the Atomic Energy Act states in pertinent part, as follows:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees' and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding and shall admit any such person as a party to such proceeding. 42 USC § 2239.

By its terms, apart from rulemaking and certain other agency actions not pertinent here, Section 189 of the Act expressly provides for hearings for the granting, suspending, revoking or amending of a license or construction permit or the transfer of control. A voluntary licensee-initiated license termination is not a granting, suspending, revoking or amending of a license or construction permit nor does it involve transfer of control. Thus, Section 189 of the Act does not, by its terms, require a hearing, upon request, for license termination proceedings.

This is not to say, however, that an opportunity for hearing on license termination may not be offered apart from the provisions of the Act. In this regard, 10 CFR §50.82(b) requires prior notice of NRC's consideration of an application for license termination and it has been staff practice with regard to that provision to provide an opportunity for hearing in the Federal Register notices of application for license

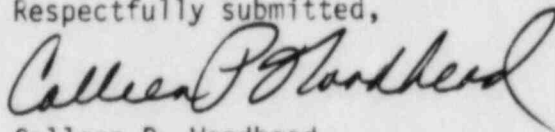
termination.<sup>4/</sup> This practice will be continued in the case of UCLA's application to terminate its operating license.

In summary in response to the Board's inquiry, the Staff finds no requirement in Section 189 of the Atomic Energy Act for hearings as a matter of right on license termination applications, but does, as a matter of practice (and will for UCLA), provide an opportunity for hearing on such applications.

#### IV. CONCLUSION

The Atomic Energy Act by its terms does not provide for hearings as a matter of right on voluntary license terminations but the opportunity for hearing is offered traditionally pursuant to the notice provision of 10 CFR §50.82(b). Consistent with such practice, the Staff will publish a notice of opportunity for hearing on UCLA's application to terminate license.

Respectfully submitted,



Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 6th day of September, 1984.

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<sup>4/</sup> An example of such a notice is that for the Tuskegee Institute (49 Fed Reg. 24189 (June 12, 1984)) noted in the Board's Memorandum and Order.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO BOARD MEMORANDUM AND ORDER REGARDING UCLA'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 6th day of September, 1984:

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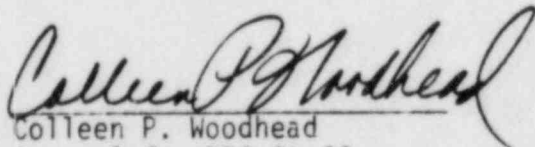
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