

University of California (University or UCLA) opposes the petition and opposes any deferral of a ruling on the petition.

II. DISCUSSION

The Federal Register notice indicated that the Commission was considering the issuance of Orders authorizing UCLA to decommission its reactor and terminate its facility license. The first of the orders would authorize implementation of UCLA's plan for disposal of the radioactive components of the reactor and decontamination of the facility or some alternate disposition plan for the facility. The second of the orders would terminate the facility license. The notice provided that petitions to intervene could be filed by October 24, 1984, and must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding as required by 10 CFR § 2.714.³ The notice also provided that nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the presiding officer

³10 CFR § 2.714 (a) (2). The notice also directed the petitioner to specifically explain the reasons why intervention should be permitted with particular reference to the factors described in 10 CFR § 2.714 (d) which are to be relied upon by the Commission in ruling on petitions to intervene: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest.

designated to rule on the petition that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request, the determination to be based on a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and 2.714(d).

The provisions of 10 CFR § 2.714 require that a petition to intervene set forth with particularity the interest of the petitioner in the proceeding, the manner in which that interest may be affected by the proceeding, and the aspect or aspects of the proceeding as to which intervention is sought. In determining whether a petitioner for intervention has alleged an "interest [which] may be affected by the proceeding" within the meaning of section 189a of the Atomic Energy Act and § 2.714 of the NRC's Rules of Practice, contemporaneous judicial concepts of standing are to be used. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Application of the judicial standing rules requires that the petitioner for intervention satisfy two tests. First, the petitioner must allege some injury that has occurred or will probably result from the action involved, that is, an "injury-in-fact", and, second, the injury must be to an interest "arguably within the zone of interest" protected by the statute. Pebble Springs, at 4 NRC 613-14.⁴

⁴The Commission in its Pebble Springs decision also discussed the circumstances under which intervention could be granted as a matter of discretion, where intervention could not be granted as a matter of right. However, CBG has not requested discretionary intervention and, therefore, that matter is not discussed here.

Consistent with federal standing doctrine, organizations generally do not have independent standing to intervene in NRC licensing proceedings, but rather, the standing which an organization may possess is ordinarily wholly derivative in character. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979); citing Sierra Club v. Morton, 405 U.S. 727 (1972). An organization may establish its standing by identifying specific individual members who satisfy the interest requirement, describing how the interest of those members may be affected by the proceeding, and providing the members' authorization for the organization to act on their behalf. Allens Creek, at 9 NRC 390-94.

CBG's Petition fails to satisfy the well-established pleading requirements for intervention in NRC licensing proceedings. The Petition fails to describe CBG's interest in the instant proceeding; it fails to discuss the potential effects of the proposed action on that interest; and, it fails to identify the specific aspects of the proceeding on which intervention is sought. CBG has participated as an intervenor in the UCLA reactor license renewal proceedings for the past four years and cannot now complain that it is unfamiliar with the applicable pleading requirements. On the contrary, CBG's 1980 Petition to intervene in the license renewal proceeding contained a discussion of the legal requirements for intervention as a matter of right and for discretionary intervention in NRC licensing proceedings.⁵

⁵"Petition for Leave to Intervene" (1980 Petition), dated May 22,
(Footnote Continued)

CBG's Petition states that it "incorporates by reference" the arguments about standing and interest contained in CBG's 1980 Petition to intervene in the license renewal proceedings. The Commission's Rules of Practice do not expressly permit such an unnecessary departure from the usual pleading requirements. In any event, the arguments concerning interest and standing submitted in support of the 1980 Petition will not sustain CBG's current claim for participation in the license termination proceeding. CBG's 1980 Petition is based on allegations of injury resulting from operation of the UCLA research reactor.⁶ Nowhere in the 1980 Petition does CBG allege injury that might result to its members from dismantling the reactor and terminating the license. CBG cannot now argue that the allegations in the 1980 Petition were intended to include that manner of injury to its members.

(Footnote Continued)

1980, consisting of a 12-page petition and a 6-page "Points and Authorities" containing a discussion of the legal arguments in support of the petition.

⁶Specifically, see the 1980 Petition, pages 1-12, which contain the following allegations: that operation of the UCLA reactor would expose CBG's members to excessive emissions of Argon-41 (paragraphs 2,3,4 and 5); that CBG's members were subjected to the danger of significant radiation hazard resulting from reactor accidents or failures (paragraph 6); that the reactor was too old to operate and maintain properly (paragraph 7); that the placement of the reactor in the midst of a highly populated campus poses unacceptable risks (paragraph 8); that the reactor had been operated in violation of regulations (paragraph 9) and with substandard supervision (paragraph 10) and that the dangers to the public presented by those conditions were exacerbated due to inadequate backup systems and safety systems (paragraph 11); that the hazards analysis supporting the application was inadequate (paragraph 12); that the risks of operating the reactor outweighed the benefits (paragraph 14); that the number of unscheduled shutdowns and problems with fuel elements and control blades raised additional safety questions (paragraph 15); that the license renewal period should be ten years instead of twenty years (paragraph 16); and that continued operation of the reactor might further injure petitioner's members (paragraph 18).

The Petition CBG now submits fails entirely to establish CBG's interest and standing to participate in the license termination proceeding. The Petition does include a request "that action on this petition for leave to intervene be deferred". Petition, at 2. However, deferring action on the Petition, that is, deferring the decision of the Licensing Board established to rule on the Petition, will not cure its defects. The Petition is deficient now and will still be deficient at whatever time in the future the Board decides to issue its ruling. A petitioner is not entitled to reserve an opportunity to establish its interest and standing at some indefinite time in the future for a proceeding that the Commission has decided is to begin presently. CBG certainly was aware that the Federal Register notice of September 24, 1984, signalled the commencement of a new and separate proceeding for the termination of the UCLA reactor license and that CBG would have to formally intervene to preserve its right to participate further.⁷

The reasons that CBG advances for deferring a ruling on its Petition have little to recommend them. First, CBG seeks to defer action on the Petition until "UCLA submits the detailed dismantlement/disposal plan that would be subject of such a proceeding".

⁷ Indeed, CBG President Hirsch in his September 12, 1984 letter to NRC Staff attorneys Gray and Woodhead, stated: ". . . to preserve [CBG's] rights, CBG hereby requests prompt notification when the Staff issues formal notice of opportunity for hearing and intervention on UCLA's termination and dismantling requests."

Petition, at 2. Although there may be some merit in deferring until after a specific plan is submitted the time when a successful petitioner in these proceedings would be required to submit a statement of specific contentions, there is no justification at all for deferring a ruling on whether the petitioner has established its interest and standing to participate further.

Second, CBG seeks to defer action on the petition until "the parallel matters currently being litigated in the existing UCLA proceeding to which CBG is already a party are resolved" in order to avoid "redundant proceedings on the same matter". Petition, at 2. However, CBG's view that parallel matters are being considered in other proceedings is mistaken. This license termination proceeding is concerned with UCLA's application made under § 50.82 of the Commission's regulations and it raises matters that are not properly before the Licensing Board in the license renewal proceeding. In the license renewal proceeding CBG has argued that the Licensing Board should set certain terms and conditions relating to the decommissioning of the UCLA reactor before terminating that proceeding.⁸ The NRC Staff and the University have both opposed the conditions proposed by CBG.⁹ Whatever

⁸See, "Committee to Bridge the Gap's Response to University's Request to Withdraw its Application for License Renewal", dated July 3, 1984, and "CBG Response to Staff's Proposed Conditions for UCLA Application Withdrawal", dated August 1, 1984.

⁹See, "University's Reply to CBG's Response to University's Request to Withdraw Application", dated July 20, 1984; "NRC Staff Reply to CBG Response to University's Request to Withdraw its Application", dated July 27, 1984; and, "University's Reply to CBG's August 1, 1984 Response (Footnote Continued)

the merits of CBG's arguments those arguments have been fully briefed by the parties to the license renewal proceeding and a final decision by the Licensing Board in that proceeding is expected soon. It is unnecessary to reconsider those arguments again here. In any event, it appears that CBG's current position, that further consideration of the decommissioning of the UCLA reactor be deferred until UCLA submits its detailed plan, is inconsistent with the position advanced by CBG in the license renewal proceeding, that the Licensing Board set certain conditions pertaining to the decommissioning of the UCLA reactor.

Finally, CBG's deferral request is not timely. If CBG wished to defer consideration of its petition to intervene, it should have so notified the Commission and the parties at the earliest opportunity so that that issue could have been addressed by the parties and resolved as a separate, preliminary matter.

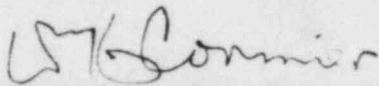
(Footnote Continued)
Concerning University's Request to Withdraw the Application", dated September 7, 1984.

III. CONCLUSION

CBG's Petition for Hearing and Leave to Intervene fails to satisfy the requirements for such petitions and good cause does not exist for deferring a ruling on the petition. University respectfully requests that the licensing Board deny the petition without leave to amend.

Dated: November 13, 1984.

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK

By 

WILLIAM H. CORMIER
Representing UCLA

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) (Proposed Issuance of Orders
(UCLA Research Reactor)) Authorizing Disposition of
Component Parts and Terminating
Facility Operating License R-71)

Docket No. 50-142-78

CERTIFICATE OF SERVICE

I hereby certify that copies of "UNIVERSITY'S ANSWER TO CBG'S PETITION FOR HEARING AND LEAVE TO INTERVENE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, postage prepaid or, as indicated by an asterisk, by express mail, on this date: November 13, 1984.

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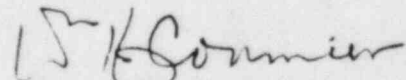
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