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November 13, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'84 NOV 15 A10:53

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

Docket No. 50-142 (SP)
(Proposed Dismantlement and
License Termination)

OFFICE OF SECRETARY
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BRANCH

NRC STAFF RESPONSE TO PETITION TO INTERVENE

I. INTRODUCTION

On September 24, 1984 the Commission published notice of opportunity for hearing on the application filed by the Regents of the University of California for dismantlement of the UCLA reactor and termination of the license. (49 Fed. Reg. 37484-85). On October 24, 1984, Daniel Hirsch, on behalf of Committee to Bridge the Gap (CBG) timely filed a petition to intervene and a request for hearing. The Staff's response to the CBG petition follows.

II. DISCUSSION

A. Legal Standards for Intervention

The Commission's rules of practice regarding intervention require that petitioners set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to (1) the nature of

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the petitioner's right under the Atomic Energy 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, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 CFR § 2.714(a)(2) and (d). The rule further provides that petitioners must file a supplement to the petition to submit at least one specific contention and its basis at least 15 days prior to the special prehearing conference or first prehearing conference. 10 CFR § 2.714(b).

To demonstrate standing to intervene as a matter of right, petitioners must show that (1) the action being challenged could cause injury-in-fact to the person seeking to intervene and (2) the injury is arguably within the zone of interests protected by the Atomic Energy Act. Public Service Co. of Indiana, (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980). An organization may demonstrate standing by showing a possible injury-in-fact to its organizational interest or by showing that a member or members are threatened by the proposed action. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646 (1979). Where standing rests on the interest of the members, an organization must specifically identify the name and address of at least one affected member who wishes to be represented by the organization and has authorized the representation. Detroit Edison Co. et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, aff'd, ALAB-549,

9 NRC 644 (1979). To establish standing a petitioner must have a genuine, actual, or direct stake in the outcome of the proceeding. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48 (1979). However, where the petition is signed by a ranking official of the organization who has the required personal interest, the organization is deemed to have shown standing to intervene. Duke Power Company (Amendment to Materials License SNM-1773), ALAB-528, 9 NRC 146, 151 (1979).

B. CBG's Petition

The CBG petition states that termination of the license for the UCLA reactor is being litigated in the ongoing [license renewal] proceeding to which CBG is already a party and, for this reason and because no detailed dismantlement plan has been filed, CBG requests deferral of action on the present petition until the dismantlement plan is submitted and the license renewal proceeding is resolved. Petition, pp. 1-2. Alternatively, CBG states it incorporates by reference the arguments concerning standing and interest contained in its petition to intervene dated May 22, 1980 submitted in the license renewal proceeding. Petition, p. 3.

The Staff has carefully reviewed the contents of CBG's May 22, 1980 and the October 1984 petitions to intervene and finds them insufficient in their present form to demonstrate standing in this proceeding according to 10 CFR § 2.714 and the Commission's decisions described above.

The 1980 petition to intervene which established CBG's standing in the license renewal proceeding rested on an affidavit of a student at UCLA and signatures of other students on a petition to UCLA officials

attached to the petition. 1980 petition, p. A/1. The primary allegation of potential harm asserted in the 1980 petition was the effect of Argon-41 and other, unspecified emissions resulting from reactor operation on CBG members. 1980 petition, pp. 1-12. However, allegations of potential injury to the 1980 petitioners from operation of the reactor are not sufficient to show interest in this proceeding for dismantlement and disposal of the reactor, and ultimate termination of license. Furthermore, in the October 24, 1984 petition, CBG makes no attempt to demonstrate standing by alleging potential injury to any CBG member which could result from this proceeding.

In sum, the 1980 and 1984 petitions to intervene, taken together, fail to suggest any genuine stake of CBG in this proceeding, and CBG has provided no information to show the personal interest required by the Atomic Energy Act and the Commission's regulation for intervention and institution of hearings in this proceeding. Although, in view of its clear standing to intervene in the license renewal proceeding, it is likely that CBG can establish the requisite interest for the instant proceeding, it technically has not done so in its pending petition. CBG should amend its petition ^{1/} to show interest in this proceeding, how that interest could be affected by the proceeding and why CBG should be permitted to intervene, as required by 10 CFR § 2.714(a)(2). CBG should also identify the aspects of the subject matter of this proceeding as to which it wishes to intervene as required by Section 2.714(a)(2).

^{1/} A petition to intervene may be amended without prior approval of the presiding officer up to 15 days prior to the first prehearing conference. 10 CFR § 2.714(a)(3).

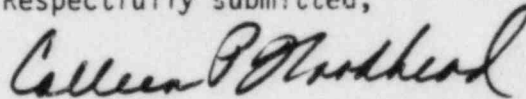
C. Request for Deferral of Dismantling Proceeding

CBG's requests for deferral of this proceeding until the license renewal proceeding is resolved and until submission of a detailed dismantlement plan are not well founded in all respects. Neither the pendency of the license renewal proceeding nor the lack of a detailed dismantlement plan affect CBG's ability to demonstrate the requisite personal interest in the dismantling proceeding. While there could be matters contained in the complete dismantlement/disposal plan which CBG would raise as issues, as a supplement to the petition, the subject matter of this proceeding is sufficiently clear to enable CBG to explain to some extent, the potential harm to its interest from the proposed action under consideration. CBG has provided no good reason to defer or forestall a ruling on its petition to intervene and request for hearing. A Board has been appointed to rule on petitions to intervene and requests for hearing. The application for dismantlement and termination of license pursuant to 10 CFR § 50.82 contains a general description of the proposed action adequate to define a petitioner's interest in the action. To that extent, there is no reason to defer the time for CBG's demonstration of its interest pursuant to the requirements of 10 CFR § 2.714 or for the Licensing Board to defer a ruling on CBG's standing. In view of the current lack of an explicit, detailed dismantling plan, however, there may be some difficulty in formulating adequately specific, pertinent contentions so that the staff would not oppose a temporary deferral of the time for filing contentions, of a final ruling on intervention and of other prehearing activities in this proceeding.

III. CONCLUSION

CBG's current petition to intervene does not establish CBG's standing and should be amended to show standing in accord with 10 CFR § 2.714. The Licensing Board should rule on CBG's standing to intervene although the Staff would not object to a further deferral of action in this proceeding beyond a ruling on standing until termination of the license renewal proceeding or UCLA's submission of its detailed dismantling plan.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of November, 1984.

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

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DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITION TO INTERVENE" 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 13th day of November, 1984:

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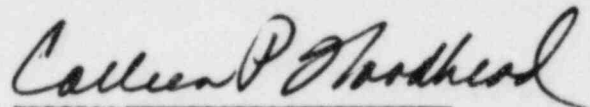
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