

NOV 01 1983

MEMORANDUM FOR: John G. Davis, Director
Office of Nuclear Material
Safety and Safeguards

FROM: Robert F. Burnett, Director
Division of Safeguards, NMSS

SUBJECT: HEARING BOARD FINDINGS ON UCLA

One of the findings of the UCLA Hearing Board with respect to a contention by The Committee to Bridge the Gap, the intervenor, was that NRC's regulations, namely §73.40(a), require UCLA to protect against sabotage. If it stands, this finding undoubtedly will be generalized to cover the entire non-power reactor community.

The staff has taken the position that §73.40(a) states that "physical security systems shall be established...in accordance with security plans approved by the Nuclear Regulatory Commission", that UCLA has an approved plan, and that the plan provides sufficient protection to meet Part 73 requirements, including any concern about sabotage. Further, the staff contends that the specific provisions of §73.67, as applied to non-power reactors, take precedence over the general requirements of §73.40(a).

The Board holds that the Commission's failure to exempt non-power reactors from §73.40(a) when §73.67 was issued, results in a conclusion that the regulatory requirement to protect against radiological sabotage in §73.40(a) applies to facilities otherwise covered by §73.67. The Board further finds that, if technical studies show that certain classes of non-power reactors pose no sabotage threat to public health and safety, staff should exempt such classes from the requirements of §73.40(a). Finally, the Board has found that, no specific measures have been promulgated with respect to sabotage for reactors covered by §73.67.

The staff has viewed sabotage as a lesser threat than theft for non-power reactors and, consequently, has reviewed licensees' physical protection programs from that perspective. Moreover, the IAEA Bulletin (INFCIR 225) on which §73.67 is based, states that protection against both theft and sabotage is provided by the provisions therein.

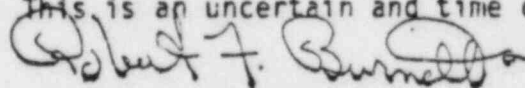
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Of the possible staff alternatives to bring this matter to a satisfactory resolution, two appear to be viable choices: the first is to appeal the hearing and the second is to clarify Part 73. The NMSS staff and ELD prefer the latter. The reasons for this are:

- o Once an issue is a subject of a rulemaking proposal submitted to the Commission, the issue is not subject to litigation. Consequently, an FR notice would take the issue out of contention and would provide the staff time to review the issue, obtain public comments, and make any needed corrections to Part 73.
- o An appeal possibly would be lost and that decision would have to be appealed to the Commission. This is an uncertain and time consuming process.



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Of the possible staff alternatives to counter the Board's findings, two appear to be viable choices: the first is to appeal the hearing and the second is to clarify Part 73. The NMSS staff and ELD prefer the latter. The reasons for this are:

- o Once an issue is a subject of a rulemaking proposal submitted to the Commission, the issue is not subject to litigation. Consequently, an FR notice would take the issue out of contention and would provide the staff time to review the issue, obtain public comments, and make any needed corrections to Part 73.
- o An appeal possibly would be lost and that decision would have to be appealed to the Commission. This is an uncertain and time consuming process.

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