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October 30, 1985

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

(UCLA Research Reactor)

Docket No. 50-142 DL

(Proposed Renewal of Facility
License)



NRC STAFF RESPONSE TO MEMORANDUM
AND ORDER ON BEHALF OF THE PARTIES 1/

I. INTRODUCTION

On October 10, 1985, the parties to this proceeding forwarded to the Atomic Safety and Licensing Board (the Board) a settlement agreement signed by the parties ^{2/} along with a proposed Board order which reflected the parties' settlement of matters in dispute concerning both the proposed license renewal proceeding and the dismantlement proceeding. ^{3/} Subsequently, by Memorandum and Order dated October 16,

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- ^{1/} At the request of Mr. Hirsch, representative of intervenor Committee to Bridge the Gap (CBG) and Mr. Cormier, counsel for UCLA, the Staff is submitting a response to the Board's questions on behalf of all the parties. This response has been sent to Mr. Hirsch and Mr. Cormier who have no objection to its contents.
- ^{2/} The parties to the proceeding are CBG, UCLA, and NRC Staff.
- ^{3/} Prior to completion of the adjudicatory proceeding regarding the proposed renewal of license for the Argonaut-UTR at UCLA, the University, on June 14, 1984 requested permission from the Board to withdraw the application in order to seek an order authorizing dismantlement and termination of license pursuant to 10 C.F.R.

(FOOTNOTE CONTINUED ON NEXT PAGE)

1985, the Board posed three questions to be answered by the parties regarding the agreement and proposed order. The NRC Staff hereby submits a response to the Board's questions on behalf of the parties.

II. DISCUSSION

The Board's questions concern (1) an inconsistency between a portion of the agreement and the proposed order, (2) the possible limitation on Staff's authority to take action concerning the dismantlement of the UCLA reactor and (3) public release of information pertaining to UCLA's security plan. The Staff will respond to these questions below seriatim.

A. Board Question #1

The first question asked by the Board states:

Paragraph 6 found on page 2 of the proposed order appears inconsistent with § 2.8 of the settlement agreement in that paragraph 6 [of the order] prohibits any use of the component parts of the UCLA Argonaut in another reactor, while § 2.8 [of the agreement] limits this prohibition to another reactor at UCLA. Should paragraph 6 be amended?

Response to Board Question #1

The Board is correct that § 2.8 of the agreement and paragraph 6 of the proposed order are inconsistent. Through inadvertence, words were

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

§ 50.82. Notice of opportunity for hearing concerning UCLA's application for authority to dismantle was published on September 24, 1984 (49 Fed. Reg. 37484) and CBG filed a petition to intervene on October 24, 1984.

missing from the proposed order. The proposed order should be modified to read as follows: ^{4/}

6. The Argonaut-UTR at UCLA may never operate again nor may its component parts be used for another reactor at UCLA. (Emphasized words added.)

B. Board Question #2

The second Board question states:

Sections 11 and 13 of the settlement agreement might be construed to limit the authority of the NRC Staff to take enforcement or other action with respect to the dismantlement of the reactor in that § 11 would require Staff to obtain the consent of UCLA and CBG to any change in the agreement and § 13 seems to limit such Staff actions to those which enforce the agreement. What are the parties' views on this point? In particular, does Staff believe that it has freedom to act in a manner inconsistent with the settlement agreement should it determine in the future that such action is necessary?

Response to Board Question #2

To respond to this question, the Staff will briefly discuss the significant terms of the agreement concerning each party, since Sections 11 and 13 of the agreement concern amendments, modifications, and enforcement of the agreement. The two sections referenced state as follows:

11. Amendments and Modifications

No part of this Agreement may be amended, modified or supplemented except by a writing executed by all of the parties. No party shall have the right to seek modification or amendment of this Agreement by a state or federal court or by the NRC.

^{4/} Under separate cover, the parties are submitting a proposed modification to the proposed order signed by the parties to reflect this modification to the proposed order.

13. Enforcement

13.1 Notwithstanding anything in this Agreement to the contrary, it is expressly understood that the parties do not release or waive, but expressly reserve, all rights, remedies and privileges to enforce performance of this Agreement.

13.2 The parties expressly acknowledge that the provisions of this Agreement constitute obligations assumed by and benefits conferred to each party in consideration of the obligations assumed by and benefits conferred to the other parties and that the obligations assumed herein by CBG and UCLA shall be enforceable by the parties through the courts.

The essential terms of the two sections prohibit modification of the agreement except by a written agreement of the parties and provide for enforcement of the obligations of CBG and UCLA in the courts. Thus, the significance of these sections for the parties lies in the obligations assumed by each party by the agreement.

In regard to the Board's concern about possible restriction of Staff actions, it should be noted that the agreement itself directly obligates the Staff essentially only to service of documents to CBG and maintenance of the local public document room until completion of dismantlement if conditions allow (§§ 4.1, 4.3) and does not affect or address the Staff's actions concerning regulation of the dismantlement. The agreement obligates UCLA to dismantle the facility by dates certain, and not to use reactor components for another UCLA reactor, as well as to serve CBG with documents, to retain certain documents described in the Appendices to the agreement, to submit reports to NRC Staff and to allow CBG to inspect the facility at certain times. (§§ 2, 3, 4, 5, 6). The agreement also obligates CBG to withdraw its petition to intervene in the dismantlement proceeding and to waive its discretionary right to intervene, if any

(§ 7). Sections 11 and 13 of the agreement pertain only to the modification and enforcement of these specific obligations assumed by terms of the agreement.

With this summary description in mind, the Staff believes that none of the obligations described in the agreement limits the ability of the Staff to take any action necessary to assure the safe and proper maintenance of the facility, compliance with NRC regulations, and safe dismantlement of the reactor. Actually, it should be noted that the agreement says nothing about the method of dismantlement or disposal of components and materials except that it must be performed in compliance with the Commission's regulations. (Sections 2.3, 2.4, 2.7, 5.2) Essentially, the agreement concerns only (1) the dismantlement of the UCLA reactor in two stages by dates certain, (2) service and preservation of documents and (3) CBG's withdrawal from the dismantlement proceeding. There is nothing apparent to Staff which is stated or implied by the agreement, which would limit the Staff's authority to issue an order authorizing dismantlement after receipt and approval of a dismantlement plan submitted by UCLA, or to inspect the facility routinely and specially for compliance with all regulations and with the approved dismantlement plan. The agreement also does not affect the Staff's authority to issue an order authorizing unrestricted use of the reactor building, when appropriate, after completion of dismantlement. Moreover, the Staff may issue any other orders necessary for health and safety without prior agreement of the parties. Thus, since the most significant provision of the agreement only requires certain dates for completion of two phases of dismantlement which is not inconsistent with any

regulation, the agreement does not affect Staff's routine activities. UCLA's agreements to complete dismantlement by certain dates and to refrain from using any of the reactor components for another reactor at UCLA have no bearing on Staff's authority to assure that the facility is maintained safely and that the dismantlement is performed properly. The terms of the settlement agreement do not limit the authority of the NRC Staff to take necessary enforcement or other action with respect to safe maintenance of the facility or the dismantlement of the reactor.

In sum, the Staff's oversight of UCLA's activities which are governed by NRC regulations is not affected by Sections 11 and 13 of the agreement. These sections apply only to UCLA's agreement to dismantle the reactor by dates certain, not to reuse any reactor parts for another reactor at UCLA, to retain and to serve documents; Staff's obligations for document service, and CBG's obligation to withdraw. In the event modification or enforcement of any of these agreements is sought by a party to the agreement, Sections 11 and 13 would prescribe the actions required or permitted. Thus, since the terms of the agreement are unrelated to any applicable regulation, the Staff would not be acting in a manner inconsistent with the settlement agreement in the performance of its regulatory duties, nor is the Staff required to seek the agreement of the parties to take any action necessary for enforcement of the Commission's regulations, or the public health and safety.

C. Board Question #3

Question 3 states:

Section 3 of the settlement agreement appears to give CBG some right to UCLA's security files, while § 8 would vacate the

protective orders which safeguard security information. While we see no need to continue to protect security information which is solely applicable to UCLA in light of the status of the reactor and the absence of fuel, we are concerned that public release of information pertaining to an NRC approved security plan or the plan itself might compromise other security plans for operating research reactors. In this regard, we recall that the UCLA plan was modeled after a draft plan prepared by the Staff and contains information concerning the devices and procedures Staff deems necessary for adequate security. We question whether other security plans are sufficiently different so that their effectiveness would not be compromised by public release of the details of the UCLA plan. We wish Staff to respond to this concern.

Response to Question #3

As stated by the attached affidavit of Donald J. Kasun of the Commission's Division of Safeguards, there are currently no regulations or requirements prohibiting disclosure of nonpower reactor security plan information after special nuclear material is removed from the site. (Kasun ¶ 4). Additionally, the Safeguards Staff does not believe it is clear that any harm to other nonpower reactor security could stem from the release of the UCLA security plan, and believes there is not sufficient basis to support Commission action on this matter. (Kasun ¶ 5).

Also it is important to note that Section 3 of the settlement agreement would only allow CRG access to documents in the UCLA security file in the event UCLA wished to dispose of the documents prior to 1997. Of equal import is the fact that UCLA has informed the NRC Staff that it wishes to retain its present security system in the reactor building for general security purposes even though, without fuel on site, it is no longer required by NRC. For this and other reasons, UCLA does not intend to release the plan. Consequently, at least at present, UCLA does not intend to dispose of the documents in its security file so that, unless

circumstances change, it is highly unlikely that UCLA will transfer to CBG the security file under the terms of Section 3 of the agreement.

Finally, as to the 1979 sample security plan referenced by the Board, ^{5/} this document, which sets out the detailed requirements for physical security at non-power facilities, is public information. ^{6/} Therefore, the general description of security plans for nonpower reactors is already in the public domain. Consequently, if the UCLA plan were to be made public, only the particular method of implementation of the sample plan at UCLA would be added to present public information.

In brief summary of the responses provided above, the answers to the Board's questions concerning terms of the settlement agreement are (1) the parties agree that paragraph 6 of the proposed Board order should be modified to be consistent with section 2.8 of the settlement agreement, (2) the Staff is not limited in any way in the proper performance of its regulatory duties by the settlement agreement and (3) it is unlikely that information concerning the UCLA security plan will be released to CBG, but, in the event it were released, no regulation appears to require protection of the UCLA security plan from public knowledge, nor is it clear that any harm would result from release of the plan.

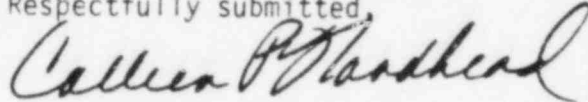
^{5/} Sample Physical Security Plan for Non-Power Nuclear Reactor Facilities Possessing Special Nuclear Material of Moderate Strategic Significance, Reactor Safeguards Development Branch, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

^{6/} The Sample Physical Security Plan was attached to the NRC Staff Response to Allegations of Misrepresentations Made by the Atomic Safety and Licensing Board, filed March 9, 1984, along with a 1979 cover letter by which the Staff forwarded the sample plan to all nonpower reactor licensees.

III. CONCLUSION

For the reasons explained above, the Board should modify paragraph 6 of the proposed order attached to the settlement agreement of NRC Staff, UCLA and CBG. Additionally, because there is no restraint on Staff's regulatory authority in the terms of the settlement agreement and because the Staff does not believe it is clear that harm could occur from release of the UCLA security plan, it is appropriate for the Board to approve the settlement agreement and to issue the proposed order.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen P. Woodhead".

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of October, 1985