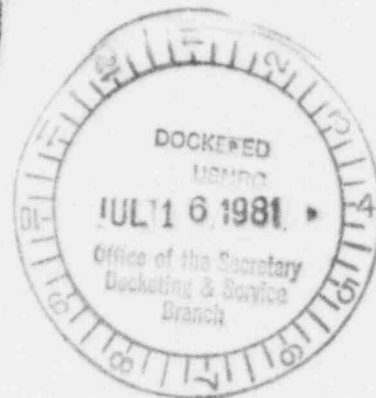


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7/10/81

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COMMITTEE TO BRIDGE THE GAP



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Elizabeth S. Bowers, Chairman  
Dr. Oscar H. Paris  
Dr. Emmeth Luebke

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

Docket No. 50-142

(Proposed Renewal of  
Facility License)

INTERVENOR'S MOTION FOR RECONSIDERATION  
OF CERTAIN PORTIONS OF PROTECTIVE  
ORDER OF JULY 1, 1981, RELATIVE TO  
INTERROGATORIES VI. 55,a,b,c, 57e, 59, & 60.

I. THE MOTION

The Committee to Bridge the Gap, Intervenor in the above-captioned proceeding, hereby respectfully moves the Atomic Safety and Licensing Board to reconsider one portion of its July 1, 1981, Order Relative to Applicant's Motion for a Protective Order. That portion deals with Intervenor's Second Set Interrogatories as to Contention VI (radiation protection), Nos. 53-61, in particular: 55,a,b,c, 57e, 59, and 60..

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## II. INTRODUCTION

On March 20, 1981, the Board issued its "Order Subsequent to Second Prehearing Conference" in which certain contentions submitted by Intervenor were admitted and others denied admission as issues in the proceeding. In particular, contentions regarding inadequate radiation protection and monitoring, violation of NRC rules, and inadequate managerial and administrative controls were admitted. Contention XXIV dealing with Applicant's ability to take proper precautions (primarily of a security nature) for transfer and shipment of SNM was denied.

On April 20, 1981, Intervenor submitted to Applicant Interrogatories as to the admitted contentions. Certain of these Interrogatories (IV.20 and VI.53-61) made reference to the June 1980 shipment incident which had formed the basis for Intervenor's disallowed Contention XXIV. On May 21, 1981, Applicant served answers to the Interrogatories. Applicant answered two interrogatories related to Cobalt-60 contamination at NEL, but objected to the interrogatories that contained specific references to the June 1980 shipment (which had been contaminated with Cobalt-60).

On May 28, Applicant filed a motion for a protective order as to the objected interrogatories and certain other matters. On July 2, the Board served an Order as to UCLA's requested Protective Order. The Order addressed many interrogatories and other matters contained in Applicant's May 28 request. In pertinent part, the Order granted Applicant protection from answering Interrogatories IV.20 and VI. 53-61. Of the 38 parts of those Interrogatories, Intervenor hereby respectfully requests that the Board

reconsider its Protective Order as to 7 parts: VI. 55,a,b,c; 57e; 59, and 60.

### III. DISCUSSION

The Board gave as its reason for granting the protective order in question that "shipment of fuel was not admitted as a contention" (Interrogatory IV.20) and "not relevant to admitted contentions" (Interrogatory VI.53-61). July 1 Order, p. 3. The Order gave blanket protection to Interrogatories VI.53-61, whereas Intervenor herein argues that there is a distinction between certain of those interrogatories and others. In particular, 55,a,b,c, 57e,59 and 60, Intervenor asserts, have clear relevance to issues of radiation protection and monitoring put at issue by Contention VI.

10 CFR 2.714 provides that contentions are not to be admitted when the requisite basis has not been demonstrated. It was apparently on these grounds that the Board denied Contention XXIV. The Board summarized the issues related to Contention XXIV as follows:

CBG contends that UCLA shipped special nuclear materials without adequate precautions and the grant of the application would be a threat to public health and safety. All parties apparently agree that the one and only shipment that UCLA has made to date was in June 1980. CBG also confirms that UCLA contacted the Staff by telephone prior to the shipment and apparently got explicit instructions. The regulations, all are agreed, changed two weeks later. The Staff takes the position that any problems that developed in that shipment are not before the Board but were an Inspection and Enforcement matter for the NRC. The Staff stated at the prehearing conference that no I and E punitive action (i.e., report) was taken. CBG has taken the position that because some problems developed in the June 1980 shipment, UCLA cannot be entrusted to operate the facility and consequently arrange for any possible future shipments.

March 20, 1981 Order Subsequent to Second Prehearing  
Conference, p. 14-15

The Board then gave its decision:

We have determined that UCLA took the precaution of getting instructions from the Staff, and that any problems which might have been experienced by the shipper, and under its control, do not establish a pattern that UCLA is irresponsible in shipping nuclear materials. A basis has not been established and the contention is denied. Tr. 450

March 20 Order, p. 15

Intervenor respectfully asserts that while a contention can be denied admission by a Board, each and every aspect of the basis for that contention is not automatically rendered inadmissible as evidence regarding contentions which were admitted and for which such evidence may be relevant. Furthermore, discovery in NRC proceedings is generally liberally construed. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 6 AEC 240 (1974). The test as to whether particular matters are discoverable is one of "general relevancy." This test will be easily satisfied unless it is clear that the evidence sought can have no possible bearing on the issues. Commonwealth Edison Co. supra. Intervenor asserts that Interrogatories VI. 55, a, b, c, 57e, 69 and 60 meet that "general relevancy" test and that although CBG is constrained from raising at hearing matters exclusively related to UCLA's competence to transfer and ship SNM, it is not constrained from raising matters related to radiation protection and monitoring as they relate to admitted Contention VI.

Contention VI states in pertinent part that "Applicant has in the past and is at present emitting excessive radiation, violating radiation standards, and conducting inadequate monitoring." Intervenor asserts that evidence related to Applicant's apparent failure to detect a high level of Cobalt-60 contamination--both within NEL and elsewhere--and possible causation of the contamination, resulting in possible excessive exposures

in unrestricted areas, is clearly relevant to Contention VI, even though it alone may not have provided sufficient basis to win admission of former Contention XXIV, which dealt primarily with security measures for transferring and shipping special nuclear materials.

The allegedly inadequate monitoring and radiation control procedures that may have led to the release of a high level of radioactive contamination into unrestricted areas had nothing to do with either Applicant's compliance with 10 CFR 73.37 (the regulation which changed shortly after the shipment took place) nor the matters for which Applicant requested Staff instruction regarding shipment procedures. Nor does it appear that the problems that occurred relating to the contamination were problems experienced by the shipper, and under its control. The contamination and monitoring problem relate to problems experienced by Applicant, and under its control. Thus it would appear to Intervenor that the contamination and monitoring problems related to the shipment incident are not "forbidden territory" regarding admitted Contention VI on radiation contamination and monitoring problems.

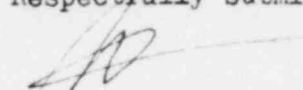
The new information provided by Applicant in response to Interrogatory VI. 51 (stating that Applicant has twice had problems with leaking Cobalt-60 sources, storing both in the room where spent fuel is stored, and in one case actually storing it in a spent fuel storage hole) gives new impetus for inquiring further as to Applicant's monitoring efforts relative to Cobalt-60. There is reasonable assurance that such discovery would lead to evidence of failure to detect Cobalt-60 contamination within NEL for several years and the monitoring practices that failed to detect the contamination then and before the shipment left UCLA. Intervenor notes that the information in the documents to which Applicant directs CBG in

response to Interrogatory VI.52 relative to Cobalt-60 contaminants in effluents further indicates the presence of such contamination products on site and likewise provides reasonable assurance that were discovery to proceed on the Interrogatories in question, evidence relevant to Applicant's ability to control release of radioactive material to unrestricted areas may be produced.

#### IV. CONCLUSION

Intervenor respectfully requests that the Board reconsider its grant of protective order with regards Second Set Interrogatories 55, a, b, c, 67e, 59 and 60 as to Contention VI. Intervenor respectfully asserts that the above-mentioned Interrogatories are likely, if fully answered, to lead to admissible evidence clearly relevant to Contention VI's concerns regarding excessive radiation emissions, inadequate radiation monitoring, and violation of radiation protection standards.

Respectfully submitted,

  
Mark Follock  
Attorney for Intervenor  
COMMITTEE TO BRIDGE THE GAP

Dated: July 10, 1981  
at Los Angeles, CA

JKR-24-713



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

(Proposed Renewal of Facility  
License)

DECLARATION OF SERVICE

I hereby declare that copies of "INTERVENOR'S MOTION FOR RECONSIDERATION OF CERTAIN PORTIONS OF PROTECTIVE ORDER OF JULY 1, 1981, RELATIVE TO INTERROGATORIES VI. 55,a,b,c,57e,59 AND 60" in the above-captioned proceeding have been served by me on the following by deposit in the United States mail, first class, this 13th day of July, 1981.

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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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Administrative Judge  
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Dr. Oscar H. Paris  
Administrative Judge  
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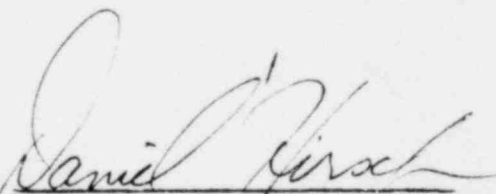
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