

'82 NOV -4 A11:10

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
THE REGENTS OF THE UNIVERSITY) Docket No. 50-142
OF CALIFORNIA) (Proposed Renewal of Facility
) License Number R-71)
)
(UCLA Research Reactor))

MOTION FOR RECONSIDERATION
OF BOARD'S ORDER OF OCTOBER 22, 1982

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I. THE MOTION

University moves the Board to reconsider certain positions of its October 22, 1982 Memorandum and Order (Ruling on CBG's Motion to Summarily Dismiss Staff's and UCLA's Motions for Summary Disposition, or for Alternative Relief). Specifically, University respectfully requests that the Board clarify the bifurcated response procedures set forth in paragraphs "4", "5", and "6" of its Order, or, in the alternative, that the Board eliminate the (proposed) bifurcated response procedures and direct CBG to respond to Staff and University summary disposition motions in the usual manner, according to the Commission's rules of practice.

II. DISCUSSION

In paragraphs "4" and "6" of its Order the Board sets out a two-step procedure for responding to summary disposition motions. The bifurcated response procedure is further explained in the Board's Memorandum. The Board implies that the two-step response procedure corresponds to the two-steps that are involved in deciding motions for summary disposition: "(t)he first is a determination of facts about which there is no genuine dispute . . . the second step is to apply the law to them to determine what legal result is called for." Memorandum and Order at 8.

Accordingly, the Board directs the opponent of a summary disposition motion to indicate, as a first step, whether they agree or disagree that each fact listed by the movants is not in dispute and if the opponent disagrees it is to cite the documents it maintains establish that a dispute exists. Memorandum and Order at 9. Based on these submissions the Board will, in accord with the rules and precedents, make a determination of the facts which are not in dispute and the facts which are in dispute. Memorandum and Order at 10. The Board will then schedule further proceedings (the second step) to address legal issues incident to the facts not in dispute including arguments as to the relevance of any particular fact and the legal consequences of any set of facts. Memorandum and Order at 10.

The Board's procedures leave certain matters unclear. Summary disposition is granted where there is no genuine dispute as to any material facts. A hearing is not required to resolve a disputed factual question unless the dispute concerns a factual question material to the decision to be rendered. At what time is it appropriate for a party to argue that a certain asserted factual dispute is not material (as distinguished from being relevant) to the matter to be decided and therefore should not be considered by the Board?

More importantly, the Board's procedures seem to suggest that the Board may determine that certain factual matters are genuinely disputed on the basis of citations to evidence only, not by an examination of the evidence itself. See Memorandum and Order at 10, referred to above. Since this initial determination occurs prior to the second step of the procedure which is to "address legal issues incident to the facts not in dispute" (id., emphasis added) it implies that the Board would be making its decision as to factual issues requiring a full evidentiary hearing without considering the materiality of the disputed matter nor the admissibility of the evidence which purportedly establishes that a genuine dispute exists. It is only material factual disputes which are properly the subject of a full evidentiary hearing.

Moreover, the summary disposition rules require that an opponent of such a motion establish the existence of a material fact dispute by introducing admissible evidence. If not properly supported by admissible evidence the alleged factual dispute is not deemed genuine.

University requests that the Board make explicit at what point in the procedures the parties are to address the question of materiality. In addition, if the documents which the Board permits a party to cite but does not require to be

produced include documents which are not matters of record in this proceeding, the Board and parties may be unable to promptly examine the proffered evidence for its admissibility. To avoid such unnecessary delays, University requests that the Board modify its Order to require all documents which are not already matters of record in this proceeding to accompany any responsive pleading in which they are cited. University does not wish to waive any objection it may have to the admissibility of proffered evidence. Some clarification of the intended effect of the Board's initial determination and of citation to documents would be helpful.

With the requested clarification, the procedures set out by the Board in its October 22, 1982 Memorandum and Order are acceptable to the University; provided, however, that the overall effect of the bifurcated response procedure is not to circumvent the summary disposition standards or otherwise deny to University the determination to which it is entitled.

Alternatively, University would prefer that the Board direct any opponents of Staff and University motions to file a response in the usual manner. Once those responses are made the Board can always request the further responses of the parties to assist it in its deliberations on the motions. University submits that any multi-tiered response procedure will introduce

more pleadings, more questions, and more opportunities for delay. University does not fully understand the Board's statement that some means of segmenting or bifurcating the responses to the motions for summary disposition would be advisable. Memorandum and Order at 7. Regardless of the response procedures the Board finally orders, University respectfully requests that the summary disposition motions be given fair consideration and that they be decided as soon as possible in order to avoid unnecessary and burdensome evidentiary hearings.

For the reasons discussed above, University respectfully requests that the Board reconsider its Order of October 22, 1982.

Dated: November 1, 1982.

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK

By W H Cormier
William H. Cormier
UCLA Representative

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached: MOTION FOR
RECONSIDERATION OF BOARD'S ORDER OF OCTOBER 22, 1982

In the above-captioned proceeding have been served on the following
by deposit in the United States mail, first class, postage prepaid,
addressed as indicated, on this date: November 1, 1982.

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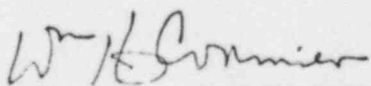
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