4/16/82



Intervenor

COMMITTEE TO BRIDGE THE GAP
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

INTERVENOR'S MEMORANDUM IN SUPPORT OF PROPOSED PROTECTIVE ORDER RELATIVE TO PHYSICAL SECURITY PLAN INFORMATION; AND CERTAIN RELATED REQUESTS

In its April 8, 1982, "Response to Applicant's Motion for a Protective Order," the Committee to Bridge the Gap (hereafter "Intervenor" or "CBG") indicated that it had prepared for consideration by the parties a draft protective order and affidavit of non-disclosure as to information relative to the Applicant's physical security plan. In its April 16, 1982, Memorandum and Order, the Board, inter alia, directed CBG to file its proposed affidavit and protective order by April 26 and established a schedule for responses by Applicant and Staff. Enclosed herewith are said drafts. This memorandum provides explanation and rationale for certain provisions in the proposed affidavit and order and makes certain related requests.

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The enclosed draft Protective Order and Affidavit of Non-Disclosure are modelled after those contained in ALAB-592[1] and subsequent modifications thereto by the Commission and the Appeal Board.[2] In most aspects of the enclosed documents, language has been taken directly from that guidance. Where changes have been made, they generally relate to the specific circumstances of this case that make it distinct from the Diablo Canyon Nuclear Power Plant case. We have, as the Board put it in its July 1, 1981, Order, attempted to follow the guidelines from the Diablo decision "as appropriate to this research reactor."

The Nature and Quantity of Protected Information in the UCLA Case is Far More Limited than in the Diablo Case

Staff and Applicant have contended that UCLA's security plan need be vastly less comprehensive than a comparable plan for a nuclear power plant.[3] In fact, Staff has argued that essentially all that is required of UCLA is either guards or alarms. Staff has argued repeatedly that UCLA is neither required to have a security plan to protect against theft of SNM nor one to protect against sabotage.[4] In fact, Staff has argued that all that is required is that UCLA be able to detect the theft of bomb-grade uranium, for example, not prevent the theft.[5] UCLA has repeatedly agreed with that position.[6]

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1/ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744 (1980)

2/ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980); ALAB-600, 12 NRC 957 (1980)

3/ see, for example, transcript of February 5, 1981 pre-hearing conference, at 388-398

4/ id. at 396-398; see Staff Motion for Summary Disposition of April 13, 1981, deferred by Board Order of April 30, 1981, as premature

5/ TR. 396-398

6/ TR. 394; see also Applicant's filings in support of Staff summary disposition motion, supra

Thus, the nature and quantity of information to be protected in the UCLA case is extremely limited compared to the Diablo case. As CBG has indicated in its contention, UCLA doesn't have explosive sniffers, metal detectors, SNM detectors and the like. The security system is, as Staff has indicated in its summary disposition motion, primarily one of intrusion alarms in two areas considered vital. In fact, CBG has contended that far more than two areas should be protected as vital, yet Staff and Applicant have argued that the protection necessary is far more limited. Thus, while the security plan for Diablo can reasonably be surmised to be extremely extensive and complex and lengthy, everything points to UCLA's plan being, by its own admission, extremely limited. Some modification of the Diablo protective order and affidavit of non-disclosure thus seems in order. Certainly it would be most inconsistent for Staff or Applicant to argue for a more rigorous protective order than was imposed in the Diablo Canyon case when both parties have so strenuously argued that no security precautions whatsoever are required to protect against either radiological sabotage or theft/diversion of SNM at UCLA.

All Parties Should Be Required to Identify Proposed Experts and Other "Authorized Persons" and Execute Affidavits of Non-Disclosure

Through discovery, in pleadings, and at hearing, information is likely to be revealed by all parties that is sensitive and which should be protected. For example, Intervenor intends at hearing to present evidence indicating half a dozen or more methods by which theft of the bomb-grade uranium could take place or radiological sabotage of the reactor be successfully accomplished, methods which neither Staff nor Applicant have apparently given thought to. If the security plan needs to be protected, so must information about its

specific weaknesses. And if three parties have access to that information, the only way that information can reasonably be protected is for all three to be required not to disclose it.

This is especially important when one of the parties has already admitted to inadvertently disclosing sensitive security information and when the other party has taken the position that virtually no security is required for the facility and that the consequences of attempts at theft or sabotage would be inconsequential.

UCLA, in its March 24,1982, Motion for a Protective Order, admits that it inadvertently produced and permitted unrestricted inspection of a document containing sensitive security information, information so sensitive that UCLA requested that the Board grant it a protective order prohibiting it from being required to provide a duplicate copy of the document. Representatives of Applicant have twice publicly disclosed intentions to ship bomb-grade SNM. Applicant has requested a protective order prohibiting it from being required to reveal how the interlock on the 3rd floor machine room can be overridden, yet Applicant's staff when giving tours of the facility have readily provided that information.[7/] Applicant has requested a protective order on 20 photos it alleges contain sensitive security information, yet there were no measures taken to prevent members of the public during tours from viewing what the camera viewed when it took the photos.

Similarly with Staff. Staff, in its summary disposition motion on the security contention, filed publicly, including in the Public Document Room, details what security measures UCLA does not have to have, in its opinion, and by clear implication, what measures are indeed missing from UCLA. Staff gives information in that pleading that would permit unauthorized persons to

7/ NEL tours of July 10, 1980, and November 17, 1981.

ascertain precisely where within the NEL facility the fresh fuel (as well as the lightly irradiated fuel) is kept. Other documents permitted by Staff to be placed on file in the PDR, or otherwise made publicly available, provide potentially sensitive information as to amounts of SNM on site at various times, plans for shipment, and methods of self-protection of the fuel. Other documents publicly distributed by Staff provide a virtual manual for barrier penetration for SNM vaults.

Intervenor has been necessarily vague in the above two paragraphs, as this is a public document also, but is prepared to detail the specific asserted laxities in protection of sensitive information in an appropriate setting. Suffice it to say here that these instances of information Intervenor believes to be sensitive and requiring protection from disclosure has not been so protected, and that it would appear essential that if sensitive information is indeed to be protected from disclosure, the commitment of non-disclosure must be made by all parties. Certainly the mechanisms currently employed with regards Staff and Applicant protection of information have not been working in this case, and the protective order should apply to all parties equally. This is particularly true given Staff and Applicant's formal positions that UCLA is not required to protect against theft or sabotage. Given that position, neither party can be reasonably expected to protect fully information which could conceivably be of assistance to someone making such plans. If the Board eventually rules that the Staff/Applicant position was correct, that all that is required is detection, not prevention, it would merely turn out that information which had been covered under the Affidavit of Non-Disclosure need not have been. No harm would have been done by being cautious. But if the Board should eventually rule against that position and determine that the bomb-grade uranium must be adequately protected against theft and the reactor against radiological sabotage, but prior to that ruling

Staff and Applicant were not required to join in non-disclosure commitments and obey protective order provisions, their rather relaxed views of security requirements and consequences of theft or sabotage might result in public disclosure of information that was later determined to be significant and sensitive. Thus, in the interests of adequately protecting the information, all parties should be subject to the protective order and required to execute Affidavits of Non-Disclosure.

Principles of equity and due process likewise require an even-handed approach here. To single out Intervenors to identify counsel, representatives, clerical personnel and especially witnesses, and to require only the Intervenors to obey the conditions of a protective order and to execute Affidavits of Non-Disclosure would be extremely prejudicial. It would imply that the Intervenors are inherently less trustworthy than the other parties, when in fact it is the Intervenors who have contended that the other parties have failed to adequately keep secret sensitive security information. Surely all parties should be required to meet the same standard.

This is particularly true in the matter of identification of proposed witnesses. If only one party is required, at a set date, to identify proposed witnesses, and if only the other parties are permitted the opportunity to respond as to the qualifications of opposing parties' witnesses, a clearly prejudicial situation would exist. If one party must identify proposed witnesses, all parties should be so required, and if some parties are permitted to comment upon qualifications of opposing parties' witnesses, all parties should be afforded the same right. Fundamental principles of fairness permit no less.

Parties Should Have Right to Modify List of "Authorized Persons" if No Substantial Delay Results Therefrom

Before the security matter reaches hearing, it is possible that substitutions will have to be made by one party or another in authorized clerical personnel, counsel of record, or witnesses. CBG proposes that such modifications be permitted, so long as no substantial delay results therefrom. For Intervenor, it is very difficult to know at this point in time that attorneys appearing pro bono will be able to remain throughout the proceeding. Further, it is extremely difficult without attorneys having reviewed the security plan to anticipate in advance thereof what kinds of technical experts will be necessary to help in its analysis. CBG therefore proposes that modifications of the list of "authorized persons" be permitted, but that such modification must be conducted, unless there is a showing of good cause, so as to not delay substantially the proceeding.

CONCLUSION AND RELATED REQUESTS

CBG respectfully requests the Board to approve the Protective Order, with attached Affidavit of Non-Disclosure and Schedule, as proposed by CBG. As we have yet to have had the opportunity to hear comments by the other parties on the proposal, and as some of the comments may be suggestions that we could use to further modify the proposal, reducing the Board's decisional load, CBG respectfully requests the right to respond to the suggestions of the other parties.

dated at Santa Cruz, CA
April 16, 1982

Respectfully submitted,

Daniel Hirsch

Daniel Hirsch
President
COMMITTEE TO BRIDGE THE GAP

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

DECLARATION OF SERVICE

I hereby declare that copies of the attached: INTERVENOR'S MEMORANDUM IN SUPPORT OF PROPOSED PROTECTED ORDER RELATIVE TO PHYSICAL SECURITY PLAN INFORMATION AND CERTAIN RELATED REQUESTS and PROPOSED PROTECTIVE ORDER and MOTION FOR DEFERRAL 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: April 16, 1982.

John H. Frye, III, Chairman*
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission

Dr. Emmeth A. Luebke*
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COMMITTEE TO BRIDGE THE GAP

* by express mail