

INTERVENOR

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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 No. R-71)

MEMORANDUM TO THE BOARD AS TO APPLICANT-INTERVENOR DISAGREEMENTS OVER RELEASE
OF INTERVENOR'S PHOTOGRAPHS

In its April 16, 1982 Memorandum and Order, the Atomic Safety and Licensing Board ("Board") directed Applicant and Intervenor, inter alia, within ten days to either execute a mutually agreeable stipulation as to the release of approximately 194 photographs taken by CBG during its November 17, 1981, inspection, or report to the Board that agreement cannot be reached, in which case the Board would dictate the terms of the release of the photographs. Agreement not being reached, Intervenor hereby reports to the Board, as directed, regarding the disputed matters.

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I. BACKGROUND

On September 3 and September 11, 1981, the Committee to Bridge the Gap filed two separate requests, as per 10 CFR 2.741(a)(2), to inspect and photograph certain items and areas, delineated therein, of Applicant's facilities. On October 9 and October 19, Applicant responded to said requests with blanket objections to both requests in their entirety. Applicant indicated, however, it was willing to discuss the matter at discovery conferences scheduled for October 16 and 22. At meetings on October 16 and 22, and again on November 5, 1981, Applicant and Intervenor attempted to resolve the disputes. Applicant eventually suggested as a method of moving the matter forward that it provide CBG with a tour, designed by Applicant, of the UCLA facility, and that any area or item which CBG wished to inspect that Applicant did not permit to be inspected would be discussed at subsequent discovery conferences. It was agreed that Intervenor would waive no right to see areas or items excluded in the tour, nor any right to bring such exclusion to the Board for a compelling order should subsequent discussions between Applicant and Intervenor fail to resolve the remaining disputes. As an expedient to at least perform what inspection UCLA was prepared at that time to provide, discussing later the remaining disputes, an inspection was scheduled from 7:00 a.m. until noon on November 17.

As to the matter of photographs to be taken during the inspection, Applicant expressed concern that the photographs might capture sensitive security features of the facility. As objections could not be raised to specific photographs prior to their being taken, it was agreed that CBG would hand over all exposed film to Applicant for developing, providing Applicant an opportunity to review the photographs for security objections prior to

their return to CBG. It was further agreed that any disputes as to the photographs would be discussed at a discovery conference after the photographs had been developed, and that if agreement could not be reached, only then, in keeping with the Board direction in this regard, would motions be made to the Board to resolve the disputes.

With these understandings, the inspection took place on November 17.* Intervenor has records of 217 photographs being taken (UCLA indicates approximately 215 photographs developed; the source of the discrepancy cannot be ascertained until CBG has access to its photographs). Mr. Hal Bernard of the NRC Staff had been informed of the inspection by Applicant and permitted to attend. A week later, at a discovery conference with NRC Staff in San Francisco, Intervenor was informed by Staff that Mr. Bernard had gone back to the UCLA facility on November 20 to take additional photographs. Intervenor was not given prior notice of that tour nor permitted to attend, although Mr. Bernard promised to provide CBG with a set of the photos he took. (CBG has not received said photos).^{1/}

On December 17, 1981, Intervenor wrote to Applicant inquiring as to the disposition of the photographs it had taken during its inspection, and suggesting a number of dates in January for a meeting to discuss any objections Applicant may have had as to release of the photographs. A discovery conference took place in Los Angeles on February 9, 1982. Glenn Woods and Christine Helwick were present from the General Counsel's office in Berkeley and William Cormier from the Vice Chancellor's Office at UCLA, representing the Applicant. Daniel Hirsch represented Bridge the Gap. He was accompanied by Steven Aftergood and Dorothy Thompson.

^{1/} Considerable discussion took place at that San Francisco meeting regarding the "Open Meeting" policy of the NRC with regards Staff-Applicant meetings and whether CBG should have been informed of Mr. Bernard's tour. Some dispute still remains between the parties as to that open meeting policy.

*CBG provided the film, the camera, and the photographer.

At that meeting, Applicant indicated there were 21 photos to which it had security objections (one of which it later indicated was a relevancy, not security objection). Applicant would not identify these photographs, permit Intervenor to view them, nor even indicate any basis for the assertion that they involved security matters. Applicant did indicate that all of these photographs were taken in the reactor room and had somehow captured "security equipment or apparatuses."

As to the remaining 194 or 196 photographs, Applicant indicated that it objected to release of the photographs unless certain conditions were attached to their use. Those conditions were essentially that they not be released to any third party--Applicant repeatedly mentioned the media as the party they most had in mind--and that they be returned to Applicant at the conclusion of the proceedings. As Mr. Cormier stated Applicant's concerns at the meeting:

[W]e propose to release these negatives to you -- the ones we will release -- for your use in the proceeding, to make exhibits or to make prints for exhibits or any other use you want for the proceeding on the condition that they not be release to any other third party and not be released to specifically the media or anybody who would convey them to the media.

CEG objected to those conditions, noting that no such conditions were imposed on the media itself, NRC Staff, or even people walking into UCLA's Nuclear Energy Laboratory off the street (see Rose affidavit, attached). Despite considerable discussion, Applicant indicated it refused to release the photographs unless said conditions were attached. As no resolution on permanent disposition of the photographs could be reached, and in order to expedite the close of discovery and beginning of summary disposition and hearing,

2/ This and other quotations are taken from the transcript passages made from the tape-recorded record of the Applicant-Intervenor discovery conference; copy attached.

Intervenor proposed as an interim measure the release of the photographs under the conditions proposed by Applicant, with Intervenor preserving its objections to those conditions and right to move the Board to compel release of the photographs without the conditions. CBG would abide by the conditions until such time as the Board ruled on the dispute. This way, it was felt, the proceeding, which had been terribly delayed by these disputes, could be expedited. CBG would have use of the photographs while the Board ruled on whether Applicant's proposed conditions were justified; at the same time, Applicant need not worry that the media or other third parties would have access to the photographs while the Board deliberated on Applicant's proposed restrictions. And CBG's objections to those proposed conditions would be preserved.

After the February 9 meeting, Applicant drew up a draft version of the interim agreement. The draft stipulation differed from CBG's understanding of what had been agreed in two regards (that the stipulation was merely an interim one until the Board ruled on UCLA's proposed conditions and CBG's objections thereto, and the placing of the burden of obtaining Board action on CBG when it was UCLA that was seeking protection from discovery). CBG drew up a stipulation that more accurately reflected its perception of what had been agreed to. Applicant, in a letter dated April 8, rejected the proposed Interim Stipulation prepared by CBG, proposing minor modifications to Applicant's original version, which remains unacceptable to CBG. The dispute over the language of the interim stipulation--essentially whether UCLA must apply for a protective order to make permanent its proposed conditions--is now made moot by the Board's Order of April 16 requiring the parties to report to the Board on any disagreement as to the release of the photographs that cannot be resolved between the parties. The parties couldn't even

agree on conditions for temporary release of the photographs while arguments were before the Board over whether any conditions should be in place at all. Thus, the dispute before the Board is not which interim stipulation should be accepted, but rather what conditions, if any, should adhere to release of CBG's photographs, the matter over which CBG and UCLA have been in dispute since the request for inspection and photographing was first made last September.

Representatives of Intervenor and Applicant conferred by phone on April 22. Agreement could not be reached even on the interim stipulation, let alone the ultimate issue of the photographs' disposition. Board action is thus required.

II. DISCUSSION

A. The Legal Standard

CBG's requests for inspection and photographing were made under 10 CFR 2.741(a)(2), part of the NRC's discovery rules. For discovery between parties other than the Staff, the discovery rules are to be construed very liberally. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974). Essentially all information, not privileged, is discoverable if it meets the test of "general relevancy," a test easily satisfied unless it is clear that the evidence sought can have no possible bearing on the issues. Ibid.

Privileged or confidential material may be protected from discovery under Commission regulations, however a substantial showing is required. To obtain a protective order (10 CFR 2.740(c)), it must be demonstrated that:

- (1) the information in question is of a type customarily held in confidence by its originator;
- (2) there is a rational basis for having customarily held it in confidence;
- (3) it has, in fact, been kept in confidence; and
- (4) it is not found in public sources.

Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976).

As shall be seen in what follows, UCLA's attempt to keep CBG's photographs from the public record fails to meet all of the above Wolf Creek standards.

B. None of the 194 or 196 photographs is objected to individually

Applicant has objected, on security grounds, to roughly 20 photographs not part of the group of photographs in question here. In fact, Applicant's counsel, Mr. Cormier, has stated that there is no specific objection Applicant has to any of the 194 or 196 photographs in question. (See transcript of February 9 meeting, p. 3, lines 21 and 22, attached). Furthermore, Applicant claims only one of the areas visited on the inspection is a security area--the reactor room itself--having claimed, in support of Staff's now-deferred summary disposition motion on Contention XX that no area besides the reactor room and the fresh fuel room (not toured) are security areas. And tour groups totaling roughly one thousand people per year are routinely taken through even the reactor room. Thus, the bulk of the areas in which photographs were taken are asserted by Applicant itself to not be security areas, and the one area that is, otherwise is routinely permitted public inspection. Each photograph individually is free of a security objection from Applicant; Applicant's only concern is regards the release of the photos collectively.

C. The information is not of a type customarily held in confidence by UCLA

In addition to routinely permitting unscreened individuals to tour the areas of the facility toured by CBG, Applicant has for many years permitted unrestricted photographing. For example, the Rose affidavit, attached, indicates that on one occasion he just walked into the facility, asked if he could shoot some movie footage, and was permitted to shoot two 50-foot rolls of film, without any restriction whatsoever. In fact, one of the reactor operators volunteered to demonstrate removal of certain shield blocks and withdrawal of material from the reactor core for Mr. Rose's movie camera. Mr. Rose was permitted to film whatever he wished and left the facility with the exposed film.

On another occasion, Mr. Rose and a friend went to the facility, again asked to take photographs, this time stills, and again permission was granted without any restrictions. Once again, Mr. Rose left the facility with the exposed film.

D. The news media have routinely been permitted unrestricted photographing at the facility.

As indicated in the attached transcript of the February 9 discovery conference, Applicant's primary concern seems to be acquisition of the photographs by the news media (whether this is out of genuine security concern or fear of bad publicity will be addressed later). However, the news media have been routinely permitted unrestricted photographing at the reactor facility. Many times this has occurred at the invitation of UCLA.

The Santa Monica Evening Outlook of July 3, 1981, features a large picture of the reactor itself. So does the Los Angeles Reader of August 7, 1981.* The UCLA Daily Bruin of September 30, 1981, January 31, 1980, and May 31, 1979, for example, feature prominent pictures of the reactor, the reactor controls in the control room, and the process pit.

*photo attached

On October 3, 1979, UCLA public information officer Thomas Tugend invited half a dozen television film crews, as well as several still photographers for different newspapers, to tour the facility and shoot what film or videotape they wished. Prior to that time, KNEC-TV was permitted to film the clean-up from a spill of radioactive water in the reactor room. And subsequent to that time, a number of other television stations have filmed inside the facility.

Some of the areas where CEG took photographs which are now being held by UCLA are in unrestricted, publicly-accessible areas such as the area around the reactor exhaust stack on the 8th floor of Boelter Hall. CEG in its contentions argues that that area should be restricted physically, but UCLA has argued that the entire rooftop should be kept unrestricted. Thus, anyone who wishes to go to that area, film camera or no, media person or no, is able to. Yet UCLA is refusing to release even those photographs to CEG, photographs which CEG took in unrestricted, public areas.

In the case of the media representatives mentioned above, as is the practice with news photographers, numerous photographs or many feet of tape were shot, from which a few selections were taken for airing or printing.

Applicant's assertions of new restrictions with regard to press photography of the facility are called into question by the variety of photographs taken and printed in the media throughout fall of 1981 when the restrictions were supposedly initiated. See, for example, the attached photos from the UCLA Daily Bruin of September 10, 1981, and from the Los Angeles Times of December 13, 1981 (in some editions it appeared December 10, 1981).

E. UCLA Places No Similar Conditions on Other Parties to this Proceeding

Applicant permitted the other party to this proceeding, NRC Staff, to take photographs of the facility without any restriction as to subsequent use or release. Staff was permitted to leave the facility with its exposed film and could do with it as it wished. The film is available to the media through the Freedom of Information Act, and no request for proprietary status has been filed by UCLA that would prevent its release. As the following portion of discovery conference transcript reveals, the reason no restrictions were placed on Staff was because, as Mr. Cormier put it, "Their interest is the same as ours." What follows is from the transcript, attached:

MR. HIRSCH: Are you placing upon NRC staff the same conditions you are requesting of us?

MS. HELWICK: They don't have the photos.

MR. HIRSCH: Excuse me?

MS. HELWICK: They don't have the photos.

MR. HIRSCH: No, but they have their own photos.

MR. CORMIER: We, if...

MS. HELWICK: We're not concerned about their photos.

MR. HIRSCH: Excuse me, you placed conditions on us that when we came through we had to provide you with the negatives...

MR. CORMIER: That is correct. (unintelligible)

MR. HIRSCH: But you provided no conditions on NRC staff and are asking--let me just get this clear--and are asking them no condition as to right to object to their filing or to restrictions on what's published.

MR. CORMIER: We are reliant on their discretionary use of it. Their interest is the same as ours. We don't see that same interest on your side.

F. UCLA Has Not Shown a Rational Basis for Keeping CBG's Photographs Out of the Public Record.

The Wolf Creek case, supra, makes clear that a party resisting discovery on the basis of proprietary privilege has a significant burden to show that there is a "rational basis" for such material being kept confidential. As stated in that case, there is a "strong public interest" in conducting a proceeding "which is as open as possible to full public scrutiny" (emphasis added). As the Appeals Board stated in that case regarding the strong public interest in keeping proceedings open to full public scrutiny:

That interest most assuredly would be disserved were a licensing board or ourselves to place a veil of secrecy over some aspect of a licensing proceeding in the absence of a concrete indication that it was necessary to do so to avoid significant harm to a competing, equally cognizable interest.

* The applicants suggest that, by "rational basis," the ECCS Hearing Board and the Commission may have had in mind only that the "procedures under which the information is classified proprietary be laid out, that they be reasonable, and that they be applied in a reasonable manner" (App. Tr. 20). We reject the suggestion. To us, "rational basis" plainly refers to the substantive underpinnings of the classification and not just to the procedures employed in making it; i.e. even if those procedures are beyond reproach, the classification nonetheless may be entirely without justification and, therefore, without a "rational basis." 3/

Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 417 (1976)

The Applicant has been singularly unsuccessful to date in showing the "rational basis" for its claim that the CBG photographs should be placed under "a veil of secrecy." Keeping in mind that for many years up to the time CBG made its request for inspection and photographing of the facility, UCLA routinely permitted the media and even people who walked in off the street to take photographs and movie film and video tape without restriction, observe the result when CBG attempted to have Applicant explain the basis for its objection to the release of the CBG photographs:

3/ the continuation of the footnote is found on page 14 of this Memorandum

MR. HIRSCH: You're concerned about release of these photos to the press--is that one of the concerns?

MR. CORMIER: And third parties that we wouldn't know about.

MR. HIRSCH: OK, do you have a restriction against press taking photographs of the facility?

MR. CORMIER: Yes, we do.

MR. HIRSCH: As of what date?

MR. CORMIER: As of, uh, I can't pick out the date, but, sometime in the fall.

Please note that CBG's requests to photograph and inspect the facility were made in the first few days of September. The conversation continued:

MR. HIRSCH: And on what basis is that?

MR. CORMIER: Security reasons.

MR. HIRSCH: Up until the fall you did not have that provision?

MR. CORMIER: We had, uh, an informal one, and I asked the staff to make it more explicit. We discuss^{ed} it as the explicit policies...

MR. HIRSCH: As of fall of 1981, all media are forbidden from taking any photos whatsoever within NEL?

MR. CORMIER: Is that a question or a statement?

MR. HIRSCH: A question.

MR. CORMIER: No.

MR. HIRSCH: Then what is the policy?

MR. CORMIER: I...

MS. HELWICK: What does it matter?

MR. HIRSCH: Well it matters in that you are worried apparently that photographs might be released to the press, but you apparently, at least until fall...

MS. HELWICK: We're concerned about handing over a deck of 194, which is quite different.

MR. HIRSCH: Well, is it? What is the restriction on the number of photos that the media can take when they go into the facility?

MR. CORMIER: We're not going to get into that. That's a ridiculous... if, if you can't accept it...

MR. HIRSCH: Let's talk...

MR. CORMIER: let's put the photographs back into the package and go on to the next topic...

MR. HIRSCH: You're not going to discuss what your rules are regarding the media taking photographs in the facility?

MR. CORMIER: No, we're not. (unintelligible)

MR. WOODS: We're willing to discuss what you can do with these photographs...

MR. HIRSCH: Okay, we'll be back in a minute.

As the above conversation so well typifies, it has been impossible to get Applicant to explain the rational basis for its objections regarding the photographs. Applicant first argues that it has a policy against media taking pictures, but then indicates the policy actually started apparently after CBG had made its requests to take photographs (an interesting coincidence). Applicant's counsel then says UCLA has always had such a policy (which is contradicted by all the evidence cited earlier about media and other photographing of the facility) and that all that has happened is that the policy has been made a formal one. (CBG has never been permitted to see any document indicating that there actually is such a formal policy at present). When pressed whether the new formal policy forbids all media from taking any photos whatsoever within NEL, the answer comes back that there is no such policy. When pressed about any limit on number of photos for the press, the answer is "We're not going to get into that," and a threat to put the photographs "back into the package and go on to the next topic." The reason Applicant is so unwilling to explain the rational basis for its objection is that there is none. The objection is obviously based not on any security concern but a public relations concern, an attempt to place a "gag order" on as much of

the proceeding as possible in order to avoid embarrassing information being passed on to the public through the news media covering a public hearing.

G. Applicant has failed to show that the release of CBG's photographs would "work a clearly defined and very serious injury"

The footnote cited at page 11 supra continues in its discussion of the showing necessary to prove a "rational basis" for confidentiality:

In this connection, compare United States v. International Business Machines Corp., 67 F.R.D. 40, 46 (S.D.N.Y. 1975). There, the court construed Federal Rule 26(c)(7)--the judicial counterpart to 10 CFR 2.740(c)(6)--as requiring a showing that the public disclosure of the allegedly confidential commercial information would "work a clearly defined and very serious injury to the *** business" of the applicant for the protective order."

emphases and **s in citation

Applicant has failed to make that showing. If a "clearly defined and very serious injury" could result from CBG's photos being part of a public proceeding, certainly it is extremely imprudent of Applicant to permit numerous representatives of the media to shoot extensive film and videotape in the reactor facility or to permit individuals who just walk into the facility that same privilege.

H. Applicant's true desire is to reduce public scrutiny of the proceeding

If Applicant's real concern was security, it would have a consistent policy against photographing its facility. It seems evident that that policy is directed against only one entity, the Intervenor, and against only one threat to continued operation of the facility, public scrutiny. Neither are sufficient grounds to impose a mantle of secrecy on this public proceeding.

If the concerns were security, the imposition of a policy of no photographs would be a clear-cut one, not imposed at the same time Intervenor was requesting right to photograph, and not ordered, as Mr. Cormier claims, by the attorney in the case. Counsel for Applicant certainly is not in a position to order changes in facility policy for security reasons. That must come from the security officer for the facility, and be approved by the Reactor Use Committee, the supervisory body for the reactor. A review of all RUC minutes provided to date by Applicant in response to CBG's production requests indicate no such review of policy or approval of a change in policy. If the attorney handling the litigative responsibilities in this licensing case directs reactor staff to do something it can only be surmised the action is for litigative reasons. This is supported by the explanation a reporter was given just two days ago-- a week after the Board's most recent Order--why she couldn't film inside NEL (see Hirsch affidavit). Not because of genuine security concerns, and not because UCLA doesn't want to let the media film, but because if UCLA lets the media in to take pictures, then they must let CBG have access to its photos. It is clear the reporter would have gotten a different answer a few months ago, and will after the proceeding (if relicensed), if not before then. But this week the media cannot film, because if UCLA permitted them to, it would have to let CBG have access to its own photographs.

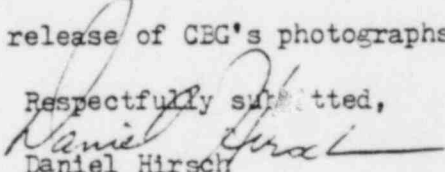
III. CONCLUSION

The dispute between Applicant and Intervenor over release of Intervenor's photographs is a simple one. Applicant wants to impose strict, complex conditions on their public scrutiny--essentially a kind of visual gag order. Applicant wants the photos not sent to the public document room without a chance first to veto the submission, wants their use at hearing restricted so that no one (particularly the media) can see them, and wants a restriction that no one

at any other time but the Board and the parties may view them.
Applicant says it has no security objection to any of them individually.
But it wishes these conditions anyway.

Intervenor believes simply no conditions for release are reasonable.
This is a public proceeding, with a public entity (a state-funded university) requesting a license from another public entity (the NRC) in a public hearing. NRC rules provide mechanism where, for very good cause, certain sensitive information can be kept confidential. But there are strict standards that must be met before such an application for secrecy can be granted, and UCLA has met none of them. Most telling is UCLA's consistent policy of non-confidentiality with regards photographing of its facility. There are simply no grounds for UCLA to now ask that the veil of secrecy be imposed upon CEG's photographs (particularly the ones for which no security objection has been raised) when it permits people off the street to photograph at will. CEG thus respectfully requests that the Board order the unconditional release of CEG's photographs.^{4/}

dated at Los Angeles, CA
April 26, 1982

Respectfully submitted,

Daniel Hirsch

^{4/} The Board's April 16 Memorandum and Order makes no mention of Motions to Compel or Motions for a Protective Order with regards the disputed photographs, but rather directs the parties to "inform the Board" if agreement cannot be reached. In telephone conversation with counsel for Applicant on April 22, Intervenor was informed that Applicant had not yet decided whether to make a formal motion for a protective order with regards the photos or more informally request the Board to order release of the photos only under the terms of the stipulation version drafted by Applicant.

Because of the language in the Board's Order and the uncertainties with regards Applicant's simultaneous pleading, CEG submits this request for release of the photographs in the form of a Memorandum. Should the Board determine a formal motion necessary, Intervenor requests that this Memorandum be considered as a Motion to Compel. Should the Board determine that responses are in order, Intervenor requests that it be so notified so that it may provide the Board with suitable response to Applicant's pleading. Should the Intervenor not hear from the Board to the contrary, Intervenor will assume that no response is to be permitted for either Applicant or Intervenor as to each other's cross-filings on the disputed photographs.

4/26/82

ATTACHMENTS TO INTERVENOR'S MEMORANDUM AS TO RELEASE OF CBG PHOTOGRAPHS

1. Transcript Portions from 2/9/82 Discovery Conference Between Applicant and Intervenor
2. Affidavit of Michael L. Rose, 4/21/82
3. Declaration of Wendy Schnelker, 4/25/82
4. Declaration of Daniel O. Hirsch, 4/26/82
5. Photographs (3) from local media

TRANSCRIPT PORTIONS FROM FEBRUARY 9, 1982, DISCOVERY CONFERENCE
BETWEEN APPLICANT AND INTERVENOR

MR. CORMIER: *** [W]e propose to release these negatives to you-- the ones we will release -- for your use in the proceeding, to make exhibits or to make prints for exhibits or any other use you want for the proceeding on the condition that they not be released to any other third party and not be released to specifically the media or anybody who would convey them to the media. Furthermore that they be returned --all prints and negatives-- be returned to us at the conclusion of the hearing or, if there is no hearing, at the time when it is determined that there will be no hearing in this proceeding. *** That's essentially it. We have stricken (sic) your use for exhibits in the hearing and, of course, at the time of the public hearing when (unintelligible) become public (unintelligible) that's different from getting photographs from a third party, that's different from getting photographs to the media.

MR. HIRSCH: *** Let's see if we understand the conditions that you are suggesting: there are two sets of photographs you have there. One is a set of photographs for which you have no objection to release them for use within the proceeding so long as it is conditioned upon those prints-- excuse

me, are you releasing the negatives?

MR. CORMIER: We're releasing the negatives.

MR. HIRSCH: Negatives, so long as neither negative nor print, I see, right so long as prints are not released to third parties.

MR. HIRSCH: I hear no condition as to the filing of these materials in the proceeding, as to how they are to be put into evidence and I hear no-- maybe you should clarify that, as I understand it is a public proceeding, any evidence that is placed on the record becomes public record. I hear no...

MS. HELWICK: We're not waiving our right to make some sort of objection if we think it necessary at the time of the hearing and certainly we'd expect you to make an offer and then we would have an opportunity to argue whether or not that particular document should go just to the Board or become a public document.

MR. HIRSCH: Prior to the time you make that objection, these materials obviously become part of the public record.

MR. CORMIER: You propose, you propose...

MS. HELWICK: What?

MR. CORMIER: Submitting, yeah, I think what he's getting at, you propose submitting the photographs and the prints themselves, as part of your written testimony in the proceeding.

MR. HIRSCH: We don't know, but obviously unless there is some explicit... I mean, the purpose of the material is evidence, evidence is put in in many fashions at hearing, prior to hearing in terms of pre-filed testimony and even in summary disposition responses.

MS. HELWICK: Let's say that before they're to be used in any fashion as evidence we should be given an opportunity to object if we deem it necessary.

MR. HIRSCH: Well, but on that one, its just that that seems an unnecessary delay in that you now have an opportunity to determine whether or not that material should be ... to make the conditions now, should we, prior to filing.

MR. WOODS: (unintelligible)

MR. HIRSCH: Excuse me?

MR. WOODS: I mean it depends on which ones and how many.

MS. HELWICK: Yes.

MR. CORMIER: We don't know what your use is, that's the problem. What we are concerned about, I'll repeat again, is that 194-- thats how many there are-- negatives and ultimate prints go out of the facility. If you're using a number of them picked here and there-- there's no specific objection we have to any of them-- picked here and there to supplement a pleading we're not going to have any objection to that, but we don't know...

MS. HELWICK: We'd like to be given the opportunity...

MR. CORMIER: Thats right, we don't know what your intended use is.

MR. HIRSCH: But you say you'd like to be given the opportunity, I don't hear a proposal as to format by which that would be done.

MR. CORMIER: Well at the time...

MS. HELWICK: It depends on the way in which you intend to admit it.

MR. HIRSCH: Well let me...

MS. HELWICK: Obviously-- if its at hearing...

MR. HIRSCH: Let me give an example, pre-filed testimony is due on a certain date, now obviously--and thats usually a very short time after a schedule has been ordered--

MR. CORMIER: Let's, let's, I've got a simple proposal.

We'd like to request then that you segregate the photographs as exhibits or attachments or supplements to pleadings; and submit those in a simply a seperate document that would give us sufficient time before they are released to the public document room to raise our objections to the Board, and we wouldn't have to do anything more than that as long as you agree to segregate them in your pleadings and to give us advance notice, to give us advance... maybe, maybe what we ought to do is request that you segregate them in such a fashion and with a notation that (unintelligible) this material as to which the Applicant has reserved his right to request of the Commission that the document be withheld from public disclosure some of them... just so it stands out seperately, like that and we can simply when we see your pleading, we'll get (unintelligible)

sometimes afterwards.

MR. HIRSCH: By that time, it will be public.

MS. HELWICK: Not if you have that notation.

MR. CORMIER: We're going to get your, I mean we're going to get them within at least the same time, maybe a day or two later than the Commission gets them. That will be sufficient time.

MR. HIRSCH: Certainly, but the pleading, by that time, will be at the public document room.

MR. CORMIER: It won't.

MS. HELWICK: Not if you retain that notation in any case.

MR. HIRSCH: Well you mean you can withdraw it after its already put in is what you're arguing.

MS. HELWICK: No, you put in subject to the right to make an objection.

MR. CORMIER: We are willing to take the risk that it will not, as long as you serve us at the same time you serve the Board.

MR. HIRSCH: Are you placing upon NRC staff the same conditions you are requesting of us?

MS. HELWICK: They don't have the photos.

MR. HIRSCH: Excuse me?

MS. HELWICK: They don't have the photos.

MR. HIRSCH: No, but they have their own photos.

MR. CORMIER: We, if...

MS. HELWICK: We're not concerned about their photos

MR. HIRSCH: Excuse me, you placed conditions on us that when we came through we had to provide you with the negatives...

MR. CORMIER: That is correct. (unintelligible)

MR. HIRSCH: But you provided no conditions on NRC staff and are asking-- let me just get this clear-- and are asking them no conditions as to right to object to their filings or to restrictions on what's published?

MR. CORMIER: We are reliant on their discretionary use of it. Their interest is the same as ours. We don't see that same interest on your side.

MS. HELWICK: Security questions--as to them, as to their use of the documents, we're not concerned that they're going to breach security.

MR. CORMIER: That's right.

MR. HIRSCH: Aha, so this is only a concern in your view that we might breach your security. Let me ask one other question: You're concerned about release?

MR. CORMIER: (unintelligible)

MS. HELWICK: (unintelligible)

MR. HIRSCH: You're concerned about release of these photos to the press-- is that one of the concerns?

MR. CORMIER: And third parties that we wouldn't know about.

MR. HIRSCH: Okay, do you have a restriction against press taking photographs of the facility?

MR. CORMIER: Yes, we do.

MR. HIRSCH: As of what date?

MR. CORMIER: As of, uh, I can't pick out the date, but, sometime in the fall.

MR. HIRSCH: And on what basis is that?

MR. CORMIER: Security reasons.

MR. HIRSCH: Up until the fall you did not have that provision?

MR. CORMIER: We had, uh, an informal one, and I asked the staff to make it more explicit. We discussed it as the explicit policies...

MR. HIRSCH: As of fall of 1981, all media are forbidden from taking any photos whatsoever within NEL?

MR. CORMIER: Is that a question or a statement?

MR. HIRSCH: A question.

MR. CORMIER: No.

MR. HIRSCH: Then what is the policy?

MR. CORMIER: I...

MS. HELWICK: What does it matter?

MR. HIRSCH: Well it matters in that you are worried apparently that photographs might be released to the press, but you apparently, at least until fall...

MS. HELWICK: We're concerned about handing over a deck of 194, which is quite different.

MR. HIRSCH: Well, is it? What is the restriction on the number of photos that the media can take when they go into the facility?

MR. CORMIER: We're not going to get into that. That's a ridiculous... if, if you can't accept it...

MR. HIRSCH: Let's talk...

MR. CORMIER: Let's put the photographs back into the package and go on to the next topic...

MR. HIRSCH: You're not going to discuss what your rules are regarding the media taking photographs in the facility?

MR. CORMIER: No, we're not. (unintelligible)

MR. WOODS: We're willing to discuss what you can do with these photographs..

MR. HIRSCH: Okay, we'll be back in a minute.

MS. THOMPSON: *** We're prepared to accept your conditions with the following provisos: that we have them in writing so that it's clear and understood between everybody as to what those conditions are and, secondly, that we reserve the right to go to the Board with an objection regarding the conditions and an appropriate application to the Board to remove the conditions , and if the Board rules in our favor as to any of the conditions then we'll abide by whatever...

MS. THOMPSON: I would not want an order from the Board on the stipulation itself. I would want an order from the Board on the formal objections, because I don't think that it's intended that the stipulation will encompass the scope of our objections and we would like an opportunity to...

MS. HELWICK: No, but the stipulation would state that this would be subject to your right to come in at a later time and challenge the stipulations. We could have the Board a party to that at this point that would facilitate the submission process up until such time as you deem it ad-

visable or necessary to present separate objections to the Board.

MS. THOMPSON: Well, then, that puts the Board, though, in the position of ruling on the validity of the stipulation prior to the time that the objections are actually raised before the board.

MS. THOMPSON: We can have the first designated as something in the nature of an interim stipulation, pending the decision of the Board as to the validity of the conditions.

MS. HELWICK: Well no, I mean, its a binding stipulation up until there's a change...

MS. THOMPSON: It's binding as far as we're concerned...

MS. HELWICK: Okay.

MS. THOMPSON: And as far as you're concerned, but we can't bind the Board to that and I'm suggesting that we have an interim stipulation that binds the two of us, then we can take a formal stipulation to the Board at another time and prepare to submit a stipulation with objections.

MS. HELWICK: I'm not sure I understand.

MS. THOMPSON: I don't think that we're ready to walk into the Board right now and ask the Board to rule on the objections...

MS. HELWICK: And so our stipulation (unintelligible)

MS. THOMPSON: It would take us a couple of hours at least to write them up...

+ MR. HIRSCH: And we would also need to see the written stipulation...

+ MS. HELWICK: And (unintelligible) we reserve that right.

MR. WOODS: Right, and the stipulation can contain a reservation of your right to do that at a later time...

MS. HELWICK: Right.

MR. HIRSCH: Making it clear that we do not, I mean we will be bound by those agreements until and unless there is some change, but that we do not necessarily, does not mean that we support each and every one of those conditions...

MS. HELWICK: That's fine.

MR. HIRSCH: That we have the right to make objections to the Board and that we will obey those conditions until the Board rules otherwise.

MS. HELWICK: No problem.

Identification of participants:

Mr. Cormier- Applicant's counsel

Ms. Helwick- Applicant's counsel

Mr. Woods- Applicant's counsel

Mr. Hirsch-President of Committee to Bridge the Gap, pro se representative, accompanied by

Ms. Thompson-Intervenors legal advisor

+ Spoken simultaneously.

**** Represents material deleted.

.... Indicates that the sentence wasn't finished by the speaker, information was not left out.