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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

INTERVENOR'S RESPONSE TO CERTAIN "REQUESTS" CONTAINED IN APPLICANT'S "MEMORANDUM CONCERNING ADDITIONAL DISCOVERY MATTERS"

The April 16, 1982, Memorandum and Order issued by the Atomic Safety and Licensing Board ("Board") in this proceeding, among other things set a date for a pre-hearing conference to resolve any remaining discovery disputes and directed the parties to advise the Board of any elaboration on, corrections, deletions, or additions to the Board's listing of discovery disputes currently outstanding.

In stated response to that Order, Applicant, in a filing dated May 3, 1982, submitted a "Memorandum Concerning Additional Discovery Matters" in which it raised, in some cases for the first time, several matters for which it "requested" relief.

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While not clear from said "Memorandum" whether Applicant intended it as the requested report to the Board or as a Motion to Compel, CBG responds to the newly raised concerns, infra.

I. BACKGROUND

On March 20, 1981, the Board issued a discovery schedule as to the twenty admitted contentions. Interrogatories were to be due April 20, with responses due May 20. Second set interrogatories, limited to follow-up questions based on responses to the first set, were due June 10, with responses due June 30. Motions for Summary Disposition were due 30 days after the close of discovery.

Applicant and Intervenor served on each other initial sets of interrogatories on April 20 (CBG had previously filed interrogatories as to Contention II, which had been the subject of three Motions to Compel granted by the Board; for no stated reason, Applicant did not address Contention XX in its interrogatories). Both parties filed responses a month later. To the disputes then continuing about the Contention II interrogatories were added disputes about the sufficiency of responses to the April 20 interrogatories.

CBG filed its follow-up interrogatories on the stipulated date; Applicant filed none. However, nine days later Applicant requested that the Board suspend the discovery schedule, which the Board did on July 1, 1981, and that it be granted an opportunity to late-file its follow-up interrogatories, also granted; these second-set interrogatories were eventually filed September 22.

On June 12, 1981, Applicant filed a Motion to Compel Further Answers as to four interrogatories answered by CBG. The Motion also requested "that the Board direct Intervenor to supplement its written answers whenever it uncovers 'new' facts on which it intends to rely in any way in this proceeding." The Board denied Applicant's Motion in its entirety, determining as to the four disputed interrogatories that CBG had no additional information to provide and as to the broad request for supplementation, "We do not have any justification for such a radical departure from normal discovery and deny the UCLA request." July 20, 1981 Order. Thus, no portions of CBG's interrogatory answers were found deficient and Applicant's request for supplementation beyond that required by 10 CFR 2.740(3)(1) and (2) was explicitly denied.

The Board, however, directed Applicant to furnish responsive answers to a number of its May 20, 1981, responses, and in the end Applicant had to file several sets of additional answers in order to remedy some of the inadequacies in those initial answers to CBG's April 20 interrogatories.

Because of the continuing discovery disputes as to follow-up interrogatories and other matters, on August 24, 1981, the Board directed the parties to meet and confer as to any discovery disputes prior to bringing any motion before the Board. This direction was repeated in the Board's Order of September 4:

> ...if disputes arise, the parties must confer and make every effort to resolve differences before any motions are filed with this Board.

CBG and UCLA met approximately half a dozen times to attempt to resolve such matters. The discussions centered on UCLA's objections to permitting various forms of discovery requested by CBG (numerous documents which UCLA objected to producing, inspection it objected to permitting), adequacy of various UCLA responses to interrogatories, and CBG objections to certain forms of interrogatories submitted by Applicant.

Despite the Board's direction that second set interrogatories be follow-up interrogatories to specific answers to the first set, and despite the Board's Order denying Applicant's request for broad supplementation of answers by CBG, Applicant's interrogatories consisted almost exclusively of verbatim repitition of interrogatories asked in the first set. Furthermore, these interrogatories were vastly broad; in each case, repeating the contention and asking CBG to provide "all facts" upon which the contention was based. Attempts to discuss these objections with Applicant were fruitless in several meet-and-confer sessions; in order to avoid further delays to the proceeding, already very bogged down, CBG answered the interrogatories, in detail and to the best of its ability and knowledge at the time. In all the subsequent discovery conferences with Applicant, Applicant never raised for discussion any CBG answer to UCLA's interrogatories. Throughout, the discussions regarding adequacy of interrogatory answers were all involving the adequacy of Applicant's responses.

Thus, Applicant's May 3 "requests" to the Board regarding adequacy of certain CBG interrogatory responses, as well as the broad request for supplementation, come as something of a surprise. In particular, the concern about Dr. Plotkin's preliminary earthquake calculations has never been raised with Intervenor before; had that concern been raised--if indeed there is such a concern--it could, as will be seen, have been readily laid to rest.

II. DISCUSSION

A. Applicant's "Request" is Vastly Overbroad, and Amounts to An Unstated Request for the Board to Reconsider Its Previous Denial of Applicant's Similar Request.

In its May 3 "Memorandum", Applicant states:

> University requests that the Board direct CBG to supplement its responses or state that it has no supplementary information relevant to University's interrogatories.

In its June 12, 1981, Motion to Compel, Applicant made a virtually identical request. In its July 20 Order denying Applicant's previous Motion, the Board stated:

> CBG has interpreted this request as going beyond the requirements of 10 CFR 2.740(3)(1) and (2). That interpretation is reasonable since the obligation of 2.740(e)(1) and (2) is an existing requirement and UCLA is now apparently asking for Board action under 2.714(e)(3) [sic].
>
> The obligation now exists to supplement prior answers if new information renders a prior answer invalid. To impose an obligation to disclose all new information would undermine the basic concept of discovery which provides for specific questions to elicit specific answers. CBG also states that it is uncovering "new facts" virtually daily but most of the "new facts" are from UCLA's own records and are therefore known to UCLA and also to grant the request would be "vastly

> unwieldy". We do not have any justification for such a radical departure from normal discovery and deny the UCLA request.
>
> IT IS SO ORDERED.

As the Board determined when last UCLA made this request, a broad demand that CBG provide all information obtained after it had answered previous sets of interrogatories goes far beyond the requirements of the regulations and has no justification. (CBG notes that because of the delays in completion of discovery, caused largely by difficulties in getting Applicant to comply with its discovery obligations, CBG is likewise faced with dated answers from Applicant to CBG's interrogatories. However, if discovery were essentially repeated on all these matters, as Applicant appears to be suggesting, we would never get to hearing.)

As the Board noted in its July 20, 1981, Order, the obligation to supplement discovery r sponses is quite limited. In fact, the regulations make quite clear that a party is under no obligation to supplement discovery requests except in two narrow areas. 10 CFR 2.740(e) regarding supplementation of responses states as follows:

> A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:
>
> (1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

> (2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of when (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. (emphasis added)

The only section of the supplementation regulations that might possibly be applicable is 2.640(e)(1)(ii) regarding identification of subject matter and substance of expert witness testimony, and there insofar as Applicant has alleged, wrongly as will be seen, that CBG expects to call Dr. Plotkin as an expert on the seismic contention and has withheld the substance of his testimony. Aside from this incorrect assertion, no other specific complaint is alleged by Applicant that is within the scope of the regulations.

Intervenor notes that Applicant's failure to denominate its "requests" as a motion for reconsideration of the Board's July 20, 1981, Order, something it has repeatedly also failed to do with respect to repeated recent requests that summary disposition be opened before the completion of discovery (which the Board has thrice previously ruled against), leaves Applicant open to the charge that it is trying to "slip one by" a new presiding officer, whom it may hope is not familiar with the record in this case. In any event, a motion for reconsideration should clearly be denominated as such: counsel for Applicant is obligated, under 10 CFR 2.730, to state with particularity the relief sought, which is not simply direction to supplement, but before that can even be considered, determination by the Board to reconsider its previous Order denying Applicant's previous request for directed supplementation.

B. The UCLA "Requests" Are Procedurally Deficient and Should Be Denied on Those Grounds Alone

In addition to its failure to indicate that portions of its current "requests" had been previously denied by the Board and thus constituted a motion for reconsideration, Applicant's "requests" violate the rules of practice for motion form generally and violate Board Orders directing the parties to meet and attempt to resolve such disputes and only filing such motions with the Board after these avenues have been exhausted. Furthermore, the "requests" raise substantial timeliness questions.

Every filing in which immediate affirmative relief is requested is expected to reference that fact explicitly by adverting to the relief sought and including the word motion. Duke Power Company (Cherokee Nuclear Station, Units 1,2, and 3), ALAB-457, 7 NRC 70,71 (1978). That decision makes clear that motions are to be so captioned. Applicant has repeatedly "thrown in" so-called "requests" in the midst of other pleadings, making it difficult for CBG to know whether a response is required and the Board to know whether Board action is mandated.

In the past, CBG has overlooked the procedural deficiencies in certain of Applicant's "requests" for Board action; however, these variances with required procedure have become so oft-repeated and are creating such substantial difficulties regarding clear indication whether response is required and Board action necessary that CBG now believes Applicant's current requests should be denied on procedural grounds alone as a prod to Applicant to begin following proper motion procedure.

Furthermore, Applicant's current "requests" are blatantly in violation of the Board Orders to exhaust attempts to resolve the disputes between the parties through discovery conferences prior to bringing any such motions to the Board. The matters now raised by Applicant have not been raised before with CBG; had they been, ready resolution appears likely and involvement of the Board would have been unnecessary. In its August 24,1981, Order, the Board was most explicit:

> The Board cannot understand why two parties in the same habitat have communicated as if they were on different planets. UCLA and CBG are directed to meet to consider agreement on any matter arising in dispute between them. No motions shall be filed with the Board until this avenue has been exhausted.

Yet the University has once again simply ignored a Board Order.

The University's previous request for supplementation was filed shortly after CBG had filed an extensive Motion to Compel. Once again, shortly after CBG files such a Motion, Applicant makes such a request, coupled with vague assertions of impropriety on CBG's part. Failure to have raised these matters with Intervenor previously, as directed by the Board, and raising the matters only now, when Applicant has had CBG's last set of answers since November 9, 1981, and when the last discovery conference (at which these issues were not raised by Applicant) occurred in early February, leave open the question whether Applicant has a genuine concern about adequacy of CBG's responses or is merely attempting to make it appear as though disputes about discovery are not all one-sided, revolving exclusively around adequacy of Applicant's responses.

Applicant, in its caption and introductory sentences, indicates its pleading is a memorandum advising the Board as to additional discovery matters as required by the Board Order of April 16. Yet the text "throws in" requests for Board action. CBG should not have to continually respond, and the Board repeatedly to act, on the basis of few-sentence, extremely broad "requests" not clearly indicated as motions. And when the Board directs parties to attempt to resolve disputes among themselves prior to bringing motions to the Board, the parties should obey.

C. Numerous Statements in the Memorandum are Misleading, Inaccurate, or False.

Applicant states at p. 1 and 2:

> University submits that CBG has not fulfilled its obligations with respect to University's previously submitted discovery requests. CBG has not supplemented any of its responses to University's interrogatories although certain of its responses suggested that supplementation would be forthcoming. University requests that the Board direct CBG to supplement its responses at this time or state that it has no supplementary information relevant to University's interrogatories.

The above assertion that CBG has failed to do what it promised, i.e. supplement its interrogatories, is extremely misleading. Intervenor is aware of no interrogatories promising supplementation (Applicant uses the "waffle" phrase "responses suggested"; suggested to whom?) except for those wherein supplementation is required by the rules as to seasonable identification of witnesses who will be called at hearing. This matter shall be discussed infra.

Applicant then states it will discuss "specific items", the first of which is found in paragraph 2. The paragraph is extremely misleading. It implies that CBG has not responded to UCLA's September 22 interrogatories which were essentially requests for supplementation of the April 20 interrogatories. This is patently false. Despite the Board's rulings that such supplementation was not required and the Board direction that interrogatories of the second set were to be restricted to follow-up interrogatories to specific answers to the first set, CBG provided extensive answers to the second set interrogatories in responses dated November 9, 1981, providing detailed supplementation of its May 20 responses, even though none was technically required.

Paragraph 3 makes the vastly broad, unsupported assertion that "In numerous instances CBG's responses have been unsatisfactory in failing to identify the factual and documentary support for its contentions." If this is to be considered a Motion to Compel, UCLA is obligated to be specific as to specific interrogatories as to which it feels unsatisfactory responses have been forthcoming. It gives only one "example", completely distorted. Applicant makes the vague assertion that CBG has made numerous (unidentified) statements that it intends to present studies or reports at hearing and has "engaged" a number of "experts" for that purpose. As an "example" of such statements supposedly supporting Applicant's assertion, Applicant quotes portions of CBG's answer to a September 22 interrogatory.

However, the quoted passage says nothing of the kind. The question posed by Applicant was when the Intervenor organization was expected to come to a conclusion as to the most credible accident scenario. Intervenor, in the full answer not quoted by Applicant, indicates the additional information needed for such a judgment, what Intervenor was attempting to do to reach such a judgment (eventhough it felt that burden was Applicant's), and even provided preliminary opinion of the matter of the most credible accident scenario (a rather irrelevant subject anyway, because the significant question is what is the maximum credible accident). Nowhere in the full text nor in the passage quoted by Applicant was it indicated that a written study or report was being prepared, nor that experts had been "engaged" to do such a study or report.

From this sole erroneous "example", Applicant goes on, to make a broad request:

> University is entitled to be informed at this time concerning the contents of any such analyses that have been conducted and the identity and qualifications of the individuals responsible for the analysis.
>
> (emphasis added)

As the Board stated in denying UCLA's previous Motion to Compel, "It is not a proper discovery request for one party to ask another party to simply 'tell all'. It is far too broad and CBG has no obligation to respond except to specific questions." The Board then further reiterated the requirements of specificity for discovery requests and motions to compel: "To impose an

obligation to disclose all new information would undermine the basic concept of discovery which provides for specific questions to elicit specific answers." Order July 20, 1981.

Applicant appears to attempt to impose a requirement to provide all modifications or advances in analysis of the issues in contentions that have been made since the previous answers were filed. UCLA does not assert that the previous answers were not fully responsive; merely, it wants to know all that we have come up with since then. Based on the one "example".

Motions to compel must be directed to specific interrogatories. UCLA's "request" thus can only properly be considered with regards the interrogatory answer cited, and that answer is not even alleged to have been unresponsively answered. What UCLA wants now is to know how our analysis has progressed. Such supplementation is far beyond that required by the regulations and would so delay the proceedings that hearings would never occur, because every time one set of interrogatories were supplemented, another would become dated.

CBG should comment on the assertion that it has "engaged" a number of experts to do studies. This is not true. Unlike the University and the Staff, CBG has no such funds to make such arrangements. We cannot, for example, engage Battelle Labs or Brookhaven to conduct a study on our behalf and prepare a written report for use at hearing. We cannot, in particular, pay anyone. We hope to convince certain experts to appear without compensation at hearing; if they agree, and if the time of hearing fits their schedule, and if we can come up with plane fare, and if their proposed testimony (when drafted) survives

internal scrutiny and peer review, then their testimony will, according to the rules of practice, be pre-filed for all parties to review. And when we get firm commitments from potential witnesses, we will seasonably supplement responses as to their identities and the area and substance of their testimony, as required by 10 CFR 2.740(e)(1)(ii).

However, because we do not have the financial resources of Staff and Applicant, we are not able to contract with an expert and have a commitment that they will testify at hearing, whenever that hearing may be. As of this date, we have no firm commitment to testify from any potential witness, although we have a great many inquiries outstanding. We find it particularly difficult to get such commitments in absence of even a rough date for hearing. And as noted in our pleadings regarding identification of potential witnesses on security, we cannot at this time make commitments for witnesses without some certainty as to the protective order conditions under which they must work.

CBG is aware of its responsibility to supplement responses regarding experts it will call at hearing. It has not evaded that responsibility; in fact, CBG has gone beyond its obligations to inform Applicant that it "suspects" it might call Dr. Plotkin, providing detailed description of qualification, even though no decision has been made on the matter and certainly no determination of which contentions he will address. The matter, the only potentially substantive issue raised by Applicant in its Memorandum, will be addressed infra.

D. Applicant Completely Misstates The Situation Regarding Dr. Plotkin

In paragraph 4, Applicant asserts that CBG has not been entirely candid in its response about Dr. Plotkin on November 9. The opposite is true.

Without being required to do so, CBG indicated that it suspected, as of that date, that Dr. Plotkin might be called as a witness in the proceedings and that tentative agreement to testify had been made, "pending determination of date of hearing and certain other uncertainties not yet resolved." CBG promised to supplement its answer when a firm decision was reached.

That answer was truthful then and remains truthful today. It goes beyond what was required. Dr. Plotkin still does not know whether he will be able to testify, and CBG is still unsure which, if any contention, it would call him as a witness regarding.

As support for Applicant's assertion that the answer was not responsive, Applicant cites testimony Dr. Plotkin provided in the San Onofre proceedings. Applicant totally mischaracterizes the testimony.

Applicant claims Dr. Plotkin testified at San Onofre that he had done a study at UCLA regarding earthquakes. The actual transcript indicates merely that Dr. Plotkin had made some calculations, which he stated were extremely preliminary, and that they would have to be refined considerably before they could be considered for use in the UCLA reactor proceeding. The attorney interrogating Dr. Plotkin referred to his work as a study, but Dr. Plotkin referred to it as calculations (which as shall be seen is far more accurate). When asked about the findings of the "study" or "calculations", Dr. Plotkin made

very clear that "they haven't been concluded", that it hasn't been published or released nor even formally peer-reviewed. He indicated that preliminary review of the analytic method had been performed by two members of the Los Angeles Federation of Scientists, and that the calculations were quite preliminary. All this was true then, remains true today (with the exception that additional people have provided input into the preliminary approach suggested by Dr. Plotkin and that several alternative approaches have now been suggested by colleagues.) The calculations remain, as Applicant admits they were when the testimony was given, tentative, and absolutely no determination has been made whether Dr. Plotkin will even be called on the earthquake matter. That is precisely what he did the preliminary calculations for--so that CBG's attorneys at the time could send the initial approach to other scientists for an assessment as to whether Plotkin's approach was worthy of following up. All of this was put on the back-burner because of delays in obtaining from Applicant and Staff responses to discovery requests containing information necessary for such a determination. A SIMPLE PHONE CALL FROM APPLICANT TO CBG WOULD HAVE DETERMINED THAT NO DECISION HAD BEEN MADE TO CALL PLOTKIN ON THE EARTHQUAKE CONTENTION AND THAT HIS PRELIMINARY CALCULATIONS WERE STILL PRELIMINARY.

Furthermore, the interrogatory answer cited by Applicant has nothing to do with these matters. The question reads:

> Respecting the report "The UCLA Reactor: Is It Safe?" submitted May 22, 1980 in this proceeding describe for "consultants" Irving Lyon and Sheldon Plotkin: the educational background of each with schools attended and

> degrees awarded; any experience or employment of each relevant to the issues in this proceeding and, in particular, any experience relevant to the issues in this proceeding and, in particular, any experience relevant to the qualifications of each to render opinions on the biological and/or environmental effects of radiation, any relevant publications or writings of each, identified by title, date of publications, and location of publications; and, as to each, whether Intervenor intends to qualify him as an expert on any issue in this proceeding--either in support of any written testimony to be offered or for oral testimony at hearing andthe substance of such testimony.

CBG gave a detailed answer to that lengthy question. Even though no decision had been made to call Dr. Plotkin as a witness, we indicated we might and indicated some of the factors that made the determination uncertain, factors which remain to this date. (We might note that Dr. Plotkin is to be out of the country a substantial part of the fall, making knowledge of date of hearing essential to his commitment.) Furthermore, the facts or opinions of possible witnesses for CBG must survive peer review before a determination to put them forward is made.

If Dr. Plotkin substantially revises his preliminary calculations (CBG would not consider them in satisfactory form at present), and if they survive peer review, and if CBG then decides to put Dr. Plotkin forward on that contention and if, given his travel schedule and our inability to pay, he agrees to testify thereto, CBG will, of course, supplement its answers. But there is nothing to supplement at present.

It should be added that drafts of "canned" testimony are not discoverable, even when the drafts are of testimony which only might be introduced at hearing. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-75-28, 1 NRC 513, 514 (1975).

In short, if a determination is made to utilize Dr. Plotkin as an expert witness on seismic matters, the parties will be so notified. But no such determination has been made.

CBG must add that there is a significant element of hypocrisy in Applicant's complaint that it hasn't been informed of whether Dr. Plotkin will testify on the seismic contention, a matter, as shown above, not yet determined. Applicant, in response to CBG's interrogatories as to what witnesses it will put forward and on what matters has provided absolutely no information. Applicant's answer at page 115-116 of its November 9, 1981, interrogatory responses states:

> Applicant at this time has not made a determination as to the experts or consultants it intends to use in this proceeding. Applicant expects that most of the issues in this relicensing action will be resolved by summary adjudication procedures and only after that stage of the proceedings will Applicant be able to decide what experts or consultants are needed for the issues that remain unresolved.

Applicant does not have the financial limitations that Intervenor has; its staff are paid to deal with the technical aspects of this proceeding and must be on call to testify, whenever the hearing is. Applicant can, unlike CBG, afford to contract with consultants. And Applicant, if it expects any success in summary disposition, must have made arrangements with experts for affidavits, something difficult for CBG to do for responses to summary disposition motions not yet filed.

And, unlike CBG, Applicant has the burden of proof and must put forward an affirmative case.

Furthermore, CBG's attempts to get information as to the educational and professional qualifications of certain named individuals Applicant has been relying on (e.g. the technical staff of the reactor) resulted in less than a sentence provided as to each. And Applicant has not supplemented its responses, so one must assume it still at this date has no consultants or experts for hearing, even with Applicant's far heavier burden at the proceeding and far greater resources.

Applicant says it is entitled to know the substance of any earthquake calculations conducted by Dr. Plotkin. But Applicant never asked any interrogatories thereto. It only asked on what subjects Dr. Plotkin will testify and the substance of such testimony; when and if it is determined that Dr. Plotkin will testify as to seismic matters, CBG will provide the supplementation as required by the rules.

E. Applicant's Concluding Paragraph is Specious and Fails to Comprehend NRC Practice

Applicant concludes by once again making a broad request, not tied to any specific interrogatory answer, "that CBG be directed to supplement its previously submitted responses" and that CBG be required to disclose all the "documentary support it intends to submit of its case." This is not merely an impermissible request to require, without specific interrogatories, CBG to "tell all," as the Board put in its July 20, 1981, Order denying UCLA's previous request along these lines, but a request to "tell all" again and again. It is way beyond the bounds of discovery practice and Motion to Compel requirements.

Applicant continues:

> If CBG intends to introduce technical studies or evaluation relevant to <u>any</u> of the issues contested in this proceeding it ought to be required to submit that information at this time for the consideration of the other parties. In the event that CBG seeks to introduce such information for the first time in response to motions for summary disposition or at any hearing, the parties will be forced to request additional time to consider and reply to the new information, thereby delaying the proceedings unnecessarily.

In addition to misunderstanding the requirements of specific interrogatories to elicit specific information in discovery, and the requirement that motions to compel relate to specific interrogatories allegedly not fully answered, and the prohibition against having to supplement answers responsively answered at the time, Applicant completely misunderstands summary disposition procedure and procedures for pre-filing of testimony.

Applicant says that if CBG introduces information obtained since it answered interrogatories in its responses to motions for summary disposition, Applicant will be forced to request additional time in order to reply to the new information. BUT THE RULES PROHIBIT RESPONSES TO SUMMARY DISPOSITION RESPONSES. No such request for additional time would be warranted, because no reply is permitted. And new affirmative information cannot, except under unusual circumstances, be introduced at hearing. It must be submitted to the parties in advance as pre-filed written testimony, thereby giving the parties an opportunity for review prior to hearing.

If Applicant is concerned about the length of time for review of pre-filed testimony prior to the actual hearing, it should propose a date for such pre-filing that gives it adequate time for trial preparation. But, of course, that

due date would also apply to Applicant's testimony, and it would also be prohibited from introducing affirmative evidence not pre-filed by that date. And if Applicant is worried about time for consideration of information that might be contained in CBG motions for summary disposition, as opposed to responses to other parties' motions, CBG would not be adverse to a reasonable extension in time for Applicant to respond to summary disposition motions, just as Applicant (and Staff) have indicated they are not opposed to such an extension for CBG due to the expected large number of such motions. These matters, CBG would suggest, are best discussed at the pre-hearing conference in June where such scheduling matters are on the agenda. But the relief sought by Applicant in its May 3 Memorandum is completely inappropriate and should be denied.

(In said Memorandum, Applicant makes an additional "request," that it, because it chose not to submit interrogatories on Contention XX at the time required, be permitted to now file such interrogatories. CBG would normally be opposed to such late-filing without good cause (the argument that Applicant expected Staff to win its summary disposition motion and therefore interrogatories wouldn't be necessary is specious). However, a year has passed since CBG filed its (unanswered) interrogatories on Contention XX and the City of Santa Monica has now noticed its intent to participate. CBG believes it would be appropriate for the matter of discovery on Contention XX to be discussed at the June pre-hearing, in addition to the scheduling of that discovery already placed on the agenda.

This would include whether CBG can refile interrogatories, how discovery on security against Staff will be conducted, the matter of discovery by the City, and the question of whether Applicant can late-file. CBG would be opposed to granting of Applicant permission to late-file in absence of consideration of these other matters.)

III. CONCLUSION

CBG would object to UCLA's request to late-file interrogatories as to Contention XX unless opportunity for CBG to re-file its interrogatories thereto were considered at the same time, which CBG suggests be done at the pre-hearing conference in June, along with other matters related to Contention XX discovery.

As to the remaining relief "requested" by Applicant in its May 3 Memorandum, CBG opposes as procedurally deficient and completely inappropriate. CBG, like all the parties to this proceeding, is under no obligation to supplement interrogatory answers complete when made, with certain narrow exceptions. Among those exceptions is that all parties--including Applicant, which has been talking for two years about amending its Application and still has neither done so nor identified any of its witnesses--have an obligation to seasonably supplement answers with theidentity of experts who are to testify at hearing and the subject matter and substance of their testimony. CBG has no such information to provide at present but will, when such determinations have been made, fulfill that obligation, and expects the other parties to do

likewise. Such action is required by the regulations and requires no Board action. However, the relief sought by Applicant to supplement all previous answers, goes far beyond that mandated by the regulations, has previously been rejected by the Board, and should be denied once again for the reasons detailed above. And finally, the Applicant's requests repeat a series of procedural deficiencies that have become a burden on the proceeding--a motion should be called a motion and a motion for reconsideration should so indicate, Board Orders to confer with opposing parties to resolve disputes prior to submission of motions should be obeyed, and when a Memorandum is filed stated to be in response to a Board order asking for a report, a report is what should be what is provided. For the above reasons, CBG respectfully urges that Applicant's "requests" be denied.

Respectfully submitted,

Daniel Hirsch

Daniel Hirsch
President
COMMITTEE TO BRIDGE THE GAP

dated at Ben Lomond, CA
May 18, 1982

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	Docket No. 50-142
(UCLA Research Reactor)	(Proposed Renewal of Facility License)

DECLARATION OF SERVICE

I hereby declare that copies of the attached: INTERVENOR'S RESPONSE TO CERTAIN "REQUESTS" CONTAINED IN APPLICANT'S "MEMORANDUM CONCERNING ADDITIONAL DISCOVERY MATTERS"

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: MAY 18, 1982.

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