

DOCKETED
USNRC

UNITED STATES OF AMERICA '82 MAY 24 AIO:10
NUCLEAR REGULATORY COMMISSION

W&H

OFFICE OF SECRETARY
FOR NUCLEAR SAFETY

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 50-142
)	(Proposed Renewal of Facility
THE REGENTS OF THE UNIVERSITY)		License Number R-71
OF CALIFORNIA)	May 19, 1982
)	
<u>(UCLA Research Reactor</u>)	

UNIVERSITY'S RESPONSE TO NOTICE OF
INTENT TO PARTICIPATE

The City Attorney of the City of Santa Monica filed a notice of intent to participate in the above-entitled proceeding as an interested municipality pursuant to 10 C.F.R. Sec. 2.715(c). The notice was filed May 6, 1982. Attached to the notice was Santa Monica City Council Resolution Number 6388, which identifies the claimed interests and concerns of the City of Santa Monica (City) with respect to the relicensing of the UCLA research reactor.

University takes no position with regard to City's notice that it desires to participate as an "interested municipality". The University does submit, however, that the concerns expressed by City are unreasonable, based as they are on the unexamined representations that were made by CBG at the November City Council meeting when the resolution was passed.

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1 (The Santa Monica City Council did not invite University to
2 participate in its deliberations on its resolution; University
3 responded to the City Council's action in a letter from its
4 General Counsel dated December 29, 1981, a copy of which is
5 attached hereto as Exhibit "A".)

6
7 In addition to the above, University takes exception
8 to the statement on page 2 of City's Notice of Intent to
9 Participate that City, in addition to exercising the specific
10 rights to participation authorized by 10 C.F.R. Sec. 2.715(c),
11 intends "to participate in future discovery expecially [sic]
12 insofar as same relates to the UCLA emergency and security plans".

13
14 According to the Commission's general provisions
15 governing discovery it is only "parties" who may obtain discovery.
16 10 C.F.R. Sec. 2.740(a). Any person who wishes to proceed as a
17 party must file and have accepted by the Board a written petition
18 for leave to intervene. 10 C.F.R. Sec. 2.714(a)(1). City's
19 proposed participation is as a non-party under Section 2.715 and,
20 therefore, City is not entitled to obtain discovery during this
21 proceeding.

22
23 Dated: May 19, 1982.

24 DONALD L. REIDHAAR
25 GLENN R. WOODS
26 CHRISTINE HELWICK

27 By W H Cormier
28 William H. Cormier
UCLA Representative

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

COPY

EXHIBIT "A"



OFFICE OF THE GENERAL COUNSEL
590 University Hall
2200 University Avenue
Berkeley, California 94720
(415) 642-2822

Please Refer to
File No.

DOCKETED
USNFC

'82 MAY 24 AIO:10
WPA

OFFICE OF THE GENERAL COUNSEL
DOCKETED

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Romulus B. Portwood Karl E. Droese, Jr. David A. Dorinson Glenn R. Woods John F. Lundberg Gary Morrison James N. Odle	

April 8, 1982

Mr. Daniel Hirsch
Committee to Bridge the Gap
1637 Butler Avenue, Room 203
Los Angeles, California 90028

1637 Butler Avenue
Room 203
Los Angeles, California 90028

Re: Stipulation as to Release of Photographs

Dear Mr. Hirsch:

I was surprised on March 24 to receive your letter dated March 12 (postmarked March 20), enclosing a complete revision of the stipulation regarding the release of photographs in this matter under the guise of "some minor language modifications." Contrary to your statement that these "modifications" bring the stipulation closer to the actual agreement reached between the parties, what they do, in fact, is gut that agreement and replace it with something entirely different.

Specifically, it was agreed before the photographs were taken, and confirmed again at the conference you and I attended on February 9, that the photographs were to be released only upon the condition that you would limit their use and dissemination unless and until such time as you were successful in persuading the Board that the limitations imposed by the University were inappropriate. There was never any discussion along the lines of your redraft, that the conditions under which the photographs were to be released to you were temporary and subject to the University's obtaining a protective order to make them permanent.

Mr. Daniel Hirsch
April 8, 1982
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Specifically, I would call to your attention the following exchange which I had with your attorney, Dorothy Thompson, at the February 9 meeting concerning the release of photographs, which I have excerpted from our tapes of that meeting:

"Ms. Thompson: We are prepared to accept your conditions with the following provisos: that we have them in writing so that it is clearly understood between everybody as to exactly 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 would abide by whatever the Board says.

* * *

"Ms. Helwick: Then you will abide by the conditions unless and until the Board rules otherwise.

"Ms. Thompson: Absolutely."

To place the burden on the University at this late date to go to the Board with respect to the terms and conditions governing the release of photographs taken during your inspection is contrary to the discovery rules governing this procedure and all agreements that we had with you regarding the taking of those photographs in the first place. Accordingly, we cannot sign your redraft of the stipulation in this matter.

We are, however, willing to accept some language changes you have proposed from the original stipulation, which we have incorporated in the new stipulation enclosed. Specifically, the enclosed stipulation contains the following changes from the earlier version sent to you on February 18:

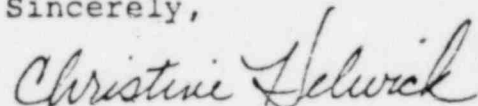
<u>Page</u>	<u>Line</u>	<u>Change</u>
2	21	Add the word "attorneys" after the word "officers."
3	10	Change "before the ASLB" to "as intervenor in the above-captioned proceeding."

Mr. Daniel Hirsch
April 8, 1982
Page 3

- | | | |
|---|----|---|
| 4 | 11 | Eliminate "together with the pleading to which it pertains". |
| 4 | 16 | Add "from the date of service of such document" after the word "days." |
| 5 | 6 | Add "the NRC or a court of competent jurisdiction" after "ASLB." |
| 5 | 10 | Add "and University" after "CBG"; and change "agrees" to "agree." |
| 5 | 11 | Add "the NRC or a court of competent jurisdiction" after "ASLB." |
| 5 | 12 | Add "and University" after "CBG." |
| 6 | 1 | Add a new item 6 as follows: "Subject to the conditions contained herein, University agrees to release the photographs to CBG within seven calendar days of the execution of this stipulation."; change the number of existing item 6 to 7. |

Again, I am enclosing a signed original stipulation and am hopeful that you will execute and return the same promptly, so that we can get on with the release of the photographs without further ado.

Sincerely,



Christine Helwick

Enc.

cc: Dorothy Thompson
✓ William Cormier

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3 UNITED STATES OF AMERICA
4 NUCLEAR REGULATORY COMMISSION

5 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

6 In the Matter of) Docket No. 50-142
7) (Proposed Renewal of
8 THE REGENTS OF THE UNIVERSITY) Facility License
9 OF CALIFORNIA) Number R-71)
(UCLA Research Reactor)) February 18, 1982
)

10 STIPULATION AS TO RELEASE OF PHOTOGRAPHS
11

12 On November 17, 1981, during a testing and
13 inspection tour of the UCLA Nuclear Energy Laboratory (NEL)
14 facility by the Committee to Bridge the Gap (CBG), the
15 University, in accordance with its prior agreement with CBG,
16 permitted CBG representatives to take approximately 215
17 photographs of the laboratory facility and its equipment.
18 Because of the University's concern that the release of a
19 large number of photographs of the NEL facility would risk
20 compromising the security of the facility, the University
21 permitted the photographing to occur only on condition that
22 the University would take custody of the undeveloped film at
23 the conclusion of the inspection and that the matter of
24 release of any or all of the undeveloped photographs would be
25 the subject of further discussions of the parties. As a
26 result of discussions which occurred principally on

1 February 9, 1982, CBG and the University have agreed to
2 stipulate as follows:
3

4 1. The University agrees to release to CBG the
5 color negatives for all but twenty-one (21) of the 215
6 photographs taken by CBG on November 17, 1981. The University
7 objects to release of the twenty-one (21) photographs on
8 security and relevancy grounds and those twenty-one (21)
9 photographs are in no way part of the subject matter of this
10 stipulation.
11

12 2. CBG agrees that the negatives of the 194
13 photographs which the University agrees to release and any
14 prints made from those negatives, or any duplicates,
15 reproductions, or copies of the prints or negatives (herein-
16 after, the "photographs") will be used only by CBG, its
17 officers, attorneys, and technical consultants, in the
18 preparation of evidence for the hearing in the above-captioned
19 proceeding, or in any motions or pleadings incident thereto,
20 and that CBG will exercise control over each and every one of
21 the photographs sufficient to insure that the photographs are
22 not viewed, examined, copied in any way, possessed or
23 otherwise used by any governmental agency other than the NRC,
24 any representatives of any of the various news media, or any
25 other persons not a party to this proceeding. CBG
26 acknowledges that all right, title, and interest in the

1 photographs rests in the University at all times and that the
2 University has granted CBG conditional use of the photographs
3 for the sole purpose of enabling CBG to fully present its case
4 before the Atomic Safety and Licensing Board ("ASLB") in the
5 pending proceeding and CBG's sole purpose in acquiring the
6 photographs is to be able to fully present its case as
7 intervenor in the above-captioned proceeding.
8

9 3. CBG agrees to return to the University each and
10 every such photograph (which includes all negatives, prints,
11 duplicates and reproductions) in its possession or control
12 within seven (7) days after the conclusion of the hearing in
13 this matter or within seven (7) days after receiving the
14 determination of the ASLB that the entire proceedings be
15 dismissed, notwithstanding that, at the conclusion of the
16 hearing or upon the determination that the proceedings be
17 dismissed matters may still be pending, decisions may not yet
18 be final, or appeals may be taken. Upon the return of the
19 photographs to the University, the University agrees to
20 safeguard the photographs and, subject to reasonable
21 conditions, to again make them available to CBG in the event
22 they are required for any evidentiary proceedings that occur
23 subsequent to the initial hearing in this matter.
24

25 4. CBG agrees that in the event that it uses any
26 or all of the photographs in support of any of its written

1 pleadings or testimony in this proceeding, none of the
2 photographs to be so used will be submitted as part of such
3 written pleadings or testimony but instead all such
4 photographs will be submitted in a separately captioned
5 document denominated "Photographic Exhibits Submitted in
6 Support of (title of pleading)", or some equivalent
7 description, which document will be referred to as the
8 "exhibits document." Each "exhibits document" will be served
9 only on the parties to the proceeding and the ASLB; as to all
10 other persons or entities, CBG agrees to exercise the control
11 over the photographs contained in each such "exhibits
12 document" required by paragraph 2 above, until the University
13 has had at least thirty (30) days from the date of service of
14 such document to determine whether to apply to exclude those
15 photographs from public disclosure. The thirty (30) day
16 waiting period shall also apply to service of any "exhibits
17 document" on the Chief of the Docketing and Service Section of
18 the NRC. In the event the University does make application to
19 exclude from public disclosure photographs contained in an
20 "exhibits document" within the thirty (30) days period, CBG
21 will continue to exercise the control required by paragraph 2,
22 above, until such application is finally determined by the NRC
23 or the ASLB and CBG agrees to exercise the same control
24 thereafter consistent with the determination of the NRC or the
25 ASLB.
26

1 5. University agrees that in executing this
2 stipulation CBG has not waived any rights it may have to apply
3 to the ASLB, the NRC or a court of competent jurisdiction, to
4 have any or all of the conditions of this stipulation removed
5 or to argue for public disclosure in the event that the
6 University seeks an exemption or order which would prevent
7 public disclosure of any or all of the photographs. CBG and
8 University agree to abide by each of the terms of this
9 stipulation unless and until the ASLB, the NRC or a court of
10 competent jurisdiction modifies or rescinds the term, in which
11 case CBG and University will continue to abide by all
12 remaining terms and will abide by the modified or rescinded
13 term as modified or rescinded.
14

15 6. Subject to the conditions contained herein,
16 University agrees to release the photographs to CBG within
17 seven (7) calendar days of the execution of this stipulation.

18 //

19 //

20 //

1 7. Both CBG and the University understand that in
2 the event that any term of this stipulation is breached by one
3 of the parties, application may be made by the other party to
4 the ASLB for appropriate orders or sanctions.
5

6 ACKNOWLEDGED AND ACCEPTED:
7

8 COMMITTEE TO BRIDGE THE GAP

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

9
10 _____
Daniel Hirsch, President

Christine Helwick
Christine Helwick, Attorney

11 _____
12 Date

April 8, 1982
Date

13
14 _____
Dorothy Thompson, Attorney

15 _____
16 Date
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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

'82 MAY 24 AIO:10
Docket No. 50-142
(Proposed Renewal of Facility
License Number R-71)

8 CERTIFICATE OF SERVICE

9 I hereby certify that copies of the attached: UNIVERSITY'S
10 RESPONSE TO NOTICE OF INTENT TO PARTICIPATE

11 in the above-captioned proceeding have been served on the
12 following by deposit in the United States mail, first class,
postage prepaid, addressed as indicated, on this date: May 20,
13 1982.

14 John H. Frye, III, Chairman
Administrative Judge
15 ATOMIC SAFETY AND LICENSING BOARD
U.S. Nuclear Regulatory Commission
16 Washington, D.C. 20555

Mr. Daniel Hirsch
Cte. to Bridge the Gap
1637 Butler Avenue, #203
Los Angeles, Calif. 90025

17 Dr. Emmeth A. Luebke
Administrative Judge
18 ATOMIC SAFETY AND LICENSING BOARD
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19 Washington, D.C. 20555

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W. H. Cormier
WILLIAM H. CORMIER
UCLA Representative

28 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA