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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	)	(Proposed Renewal of
OF CALIFORNIA	)	License No. R-71)
	)	
(UCLA Research Reactor)	)	
	)	

CITY'S RESPONSE TO NRC STAFF MOTION FOR REVOCATION OF  
BOARD ORDER SUSPENDING CONSIDERATION OF STAFF'S  
MOTION FOR SUMMARY DISPOSITION OF CONTENTION XX

I.

INTRODUCTION

On May 13, 1982, NRC Staff filed its Motion for Revocation of Board Order Suspending Consideration of Staff's Motion for Summary Disposition of Contention XX. The City of Santa Monica (hereinafter "City"), an Interested Municipality in this proceeding, hereby responds in opposition to Staff's motion, primarily for the reason that the Motion for Summary Disposition to which same relates cannot and should not be

considered prior to the completion of discovery relevant to Contention XX.

## II.

### BACKGROUND

On May 22, 1980, Committee to Bridge the Gap (hereinafter "CBG") filed its Petition for Leave to Intervene in this proceeding, and thereafter, pursuant to Board invitation, supplemented its original petition with the contentions it sought to have litigated. One such contention, Contention XX, challenged the adequacy of Applicant's physical security plan and its implementation. By Order dated March 20, 1981, CBG's Contention XX was admitted, as amended, as properly being at issue before the Board. On April 13, 1981, Staff moved for summary disposition of Contention XX, alleging that no genuine issue of fact existed with respect thereto, in response to which the Board ruled that same was premature and should not be considered until after discovery had been completed (which at that time was anticipated to be July 30, 1981). The Board subsequently affirmed said ruling after granting Staff's motion for reconsideration of its order.

Discovery was not completed by July 30, 1981, as anticipated. After Contention XX was admitted by the Board, CBG served interrogatories upon UCLA inquiring about security matters. In response thereto, UCLA obtained a protective order from the Board on July 1, 1981, which provided, among other things, for suspension of the discovery schedule. On April 16, 1982, the Board ordered CBG to file its proposed

affidavit of nondisclosure and protective order, and to identify those individuals it wishes to have access to security information. Once the rules relevant to the safeguarding of sensitive information are in place, discovery on Contention XX, which has been delayed thus far, will presumably commence.

### III.

#### DISCUSSION

As grounds for its Motion, Staff asserts that discovery in this proceeding is near completion and that a ruling on the summary disposition motion could moot the issues raised by CBG concerning the qualification of witnesses and others and the protected access procedures. The City respectfully submits that neither argument has merit.

As set forth in Paragraph II above, the Board has specifically held that Contention XX, as admitted, is a proper issue in this proceeding, and in so doing has determined that CBG has made a sufficient showing of relevancy to warrant discovery with respect thereto. Notwithstanding such determination, Staff has, on two prior occasions, sought to restrict - indeed, eliminate altogether - CBG's discovery rights relevant to information concerning the UCLA physical security plan and Contention XX by having Contention XX removed from consideration through the summary disposition procedure. The Board has explicitly rejected Staff's attempts, holding that consideration of summary disposition motions should await completion of discovery.

The Board's reasoning regarding the timing of consideration of motions for summary disposition is sound. In order for summary disposition to be granted, the record must be adequate for the Board to decide the legal question presented by the motion, to wit, whether the record clearly demonstrates the absence of any genuine issue of material fact. An adequate record requires thorough development of the facts, and the discovery process has long been the essential tool by which same is accomplished. Discovery serves to identify the real points of dispute between the parties and the facts relevant to those issues, and to ascertain the issues about which there is no controversy. Until discovery has been completed, it is impossible to conclude, as a matter of law, that no material issue of fact exists.

The discovery schedule in the instant proceeding has been suspended for almost one year, and discovery with respect to Contention XX is only now about to commence. There has been no substantial development of facts pertaining to the security issue. The City submits that the present record provides a totally inadequate basis on which to assert, argue against or conclude that there is no material issue of fact with respect such Contention. The propriety of summary disposition cannot be fairly addressed until after Contention XX discovery has been completed.

The adequacy of the UCLA physical security plan and its implementation constitutes one of the foremost issues in this proceeding. Indeed, it is an issue of grave concern to

The City. The danger to the general public, and to the residents of Santa Monica in particular, should sabotage precipitate an accident or other incident resulting in the release into the air of radioactive material cannot be over emphasized. Given the serious threat to public health and safety which an inadequate security system poses, it is essential that all facts relevant to Contention XX be fully developed and that the Board carefully scrutinize Applicant's security plan and consider the allegations that same is inadequate in light of such facts. So crucial an issue as the adequacy of Applicant's security should not be decided prematurely on the basis of the present indefinite factual foundation. Rather, the issue should be fully explored, and a motion for summary disposition with respect thereto entertained only after all relevant facts are before the Board.

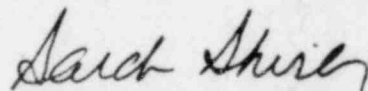
IV.

On the basis of the foregoing, the City urges the Board to reject Staff's attempt to remove the security issue from this case by thwarting at the outset efforts to develop all facts with respect thereto. Staff's Motion, which was deemed premature one year ago, is likewise premature today and should be denied.

DATED: May 28, 1982

Sincerely submitted,

ROBERT M. MYERS, City Attorney



BY: SARAH J. SHIRLEY

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	)	

DECLARATION OF SERVICE

I hereby declare that copies of the attached:  
CITY'S RESPONSE TO NRC STAFF MOTION FOR REVOCATION OF  
BOARD ORDER SUSPENDING CONSIDERATION OF STAFF'S MOTION  
FOR SUMMARY DISPOSITION OF CONTENTION XX

in the above-captioned proceeding have been served upon the  
service list attached hereto as Exhibit A by deposit in the  
United States mail, first class, postage prepaid, addressed  
as indicated, on this the 28th day of May, 1982.

Sarah Shirley  
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Deputy City Attorney

EXHIBIT "A"  
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