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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	)	Docket No. 50-142
OF CALIFORNIA	)	(Proposed Renewal of Facility
	)	License Number R-71)
(UCLA Research Reactor)	)	
	)	July 12, 1982

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UNIVERSITY'S PROPOSED PROTECTIVE ORDER AND  
AFFIDAVIT OF NON-DISCLOSURE FOR DISCOVERY  
OF PHYSICAL SECURITY INFORMATION

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THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA

## I. INTRODUCTION

As directed by the Board, Intervenor Committee to Bridge the Gap (CBG) submitted in a pleading filed April 23, 1982, the proposed protective order and affidavit of non-disclosure for the discovery of physical security information. The pleading was accompanied by a motion for deferral of identification of proposed witnesses.<sup>1/</sup>

The Board in its Order of April 28, 1982, directed University and Staff to respond to the motion for deferral but suspended the date for University and Staff to respond to the proposed protective order and affidavit. At the June 29 and 30, 1982 Prehearing Conference the Board directed University to submit its proposed protective order and affidavit of non-disclosure by July 12, 1982.

Appended here are University's proposed protective order and affidavit of non-disclosure which are modeled after the amended protective order and affidavit of non-disclosure

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<sup>1/</sup> "Intervenor's Memorandum in Support of Proposed Protective Order Relative to Physical Security Plan Information; and Certain Related Requests" and "Intervenor's Motion for Deferral of Identification of Proposed Counsel, Representatives, and Witnesses as to the Physical Security Matter," both bearing an incorrect service date which was subsequently corrected by CBG to April 23, 1982.

approved by the Atomic Safety and Licensing Appeal Board (Appeal Board) in the Diablo Canyon proceeding.<sup>2/</sup> The discussion which follows points out the differences between the University versions and the versions submitted by CBG April 23, 1982. CBG's versions depart significantly from those approved by the Appeal Board. CBG has suggested as justification for such departure that the amount of security information at University's facility may be expected to be considerably less than that present at commercial power facilities. But certainly University is entitled to the same protection of its security information provided to other licensees notwithstanding that there may be much less of such information in existence for University's facility. University submits that the Board's best course would be to adopt University's versions which are in most respects identical to the versions already approved by the Appeal Board.

## II. DISCUSSION

### A. Protective Order

Except for substituting the names of the parties and deleting an unnecessary footnote, University's proposed protective order is identical to the amended protective order

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<sup>2/</sup> Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, at 14-17.

version approved by the Appeal Board in the Diablo Canyon proceeding. Because of the definitions used by CBG, CBG's version is fundamentally different.

University's proposed protective order, consistent with the Appeal Board's version, refers throughout to the obligations of the qualified "counsel and experts" of CBG and the City of Santa Monica. In contrast, CBG's proposed order refers throughout to "authorized persons" which are defined in CBG's affidavit to include all Board and Appeal Board Members, Commissioners and their staffs, and any ". . . person who, acting on behalf of any party to the proceeding . . . has executed a copy of this Affidavit" (CBG's Affidavit of Non-Disclosure, paragraph 1. (b)(2)). The practical problems of attempting to apply any such protective order against NRC Staff and licensee employees was discussed at the recent prehearing conference. It is only to be noted further here the peculiar result that the Board Members themselves are to be held subject to CBG's protective order. Moreover, under CBG's protective order, the Board retains no control over the number of CBG or City authorized persons (anyone willing to execute an affidavit on behalf of a party), and the requirement that CBG and City witnesses be qualified has been dropped. This is a matter of particular concern since in the past there has been a problem knowing who CBG's representatives are and which CBG attorneys (or "stand-ins" for attorneys) are acting with respect to which issues.

Additionally, without explaining its reasons, CBG has

omitted the requirement that counsel and experts keep a record of all documents containing protected information (the requirement appears as paragraph 4 in University and Appeal Board versions). Also without explanation, CBG has included four paragraphs in its version (paragraphs 6, 7, 8, and 9) which do not appear in Appeal Board or University versions. Paragraph 6 is unnecessary. Paragraph 7 is unclear but in any case unnecessary. Paragraph 8 is unwarranted in seeking to impose certain of CBG's discovery and litigation costs on University and in other respects unnecessary. Paragraph 9 is unnecessary and unwarranted to the extent that it seeks to circumvent certain of the steps that must be complied with before discovery of physical security matters can be permitted.

B. Affidavit of Non-Disclosure

Except for some substantive changes that have been made in paragraphs 4 and 5 and certain minor editorial changes made elsewhere, University's affidavit of non-disclosure is identical to the amended (the ALAB-600) version approved by the Appeal Board.

Paragraphs 4 and 5 were modified to accommodate CBG's interest (as expressed in its proposed affidavit) in being able to perform needed secretarial work and prepare any pleadings related to the security contention at its own offices or the offices of its attorneys rather than at some location on the UCLA campus, even though it might require working with "protected information". Of course this same accommodation will apply to the City of Santa Monica. University's version does retain the Appeal Board requirement that University documents containing protected information be reviewed and used at the location to

be designated at the facility. However, as to CBG's notes or other data or pleadings containing protected information CBG will be able to work with such materials at the office it designates. University will expect that all CBG witnesses and counsel will agree on a single location to work with such materials. CBG will also be able to prepare and mail any security-related pleadings from its own office location.

In all other respects University has retained the provisions approved by the Appeal Board in the Diablo Canyon proceeding and, in particular, the representation which each affiant is to make that he or she will not corroborate the accuracy or inaccuracy of information obtained outside the proceeding by using protected information gained during the hearing process (University's paragraph 8(b)).

### III. CONCLUSION

University requests that its proposed protective order and affidavit of non-disclosure be adopted by the Board for use in this proceeding in the event that discovery of protected information becomes necessary to resolve material issues in dispute. Although it may be assumed that the amount of physical security information relative to University's facility is considerably less than that which may be in existence at the facilities of other licensees, University

is entitled to the same degree of protection for what security information it possesses as is the licensee of any other facility.

Dated: July 12, 1982.

DONALD L. REIDHAAR  
GLENN R. WOODS  
CHRISTINE HELWICK

By W H Cormier  
William H. Cormier  
UCLA Representative

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
John H. Frye, III, Chairman  
Dr. Emmeth A. Luebke  
Dr. Oscar H. Paris

In the Matter of )  
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THE REGENTS OF THE UNIVERSITY )  
OF CALIFORNIA )  
 )  
(UCLA Research Reactor) )  
\_\_\_\_\_ )

Docket No. 50-142  
(Proposed Renewal of Facility  
License Number R-71)

PROTECTIVE ORDER ON SECURITY PLAN INFORMATION

Counsel and witnesses for Intervenor Committee to Bridge the Gap (Intervenor) and for the City of Santa Monica (City) who have executed an affidavit of Non-Disclosure in the form attached, shall be permitted access to "protected information", as that term is used in the Affidavit of Non-Disclosure upon the following conditions:

1. Only Intervenor's and City's counsel and experts who have been qualified in accordance with the requirements of the Atomic Safety and Licensing Appeal Board decision in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), and subsequent orders in that proceeding may have access to protected information on a "need to know" basis.

2. Counsel and experts who receive any protected information (including transcripts of in camera hearings, filed testimony or any other document that reveals protected information) shall maintain its confidentiality as required by the annexed Affidavit of Non-Disclosure, the terms of which are hereby incorporated into this protective order.

3. Counsel and experts who receive any protected information shall use it solely for the purpose of participation in matters directly pertaining to this security plan hearing and any further proceedings in this case directly involving security matters, and for no other purposes.

4. Counsel and experts shall keep a record of all documents containing protected information in their possession and shall account for and deliver that information to the Commission official designated by this Board in accordance with the Affidavit of Non-Disclosure that they have executed.

5. In addition to the requirements specified in the Affidavit of Non-Disclosure, all papers filed in this proceeding (including testimony) that contain any protected information shall be segregated and:

(a) served on lead counsel and the members of this Board only;

(b) served in a heavy, opaque inner envelope bearing the name of the addressee and the statement "PRIVATE. TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked.

6. Counsel, experts or any other individual who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

It is so ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

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Emmeth A. Luebke  
ADMINISTRATIVE JUDGE

---

Oscar H. Paris  
ADMINISTRATIVE JUDGE

---

John H. Frye, III, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

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1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
John H. Frye, III, Chairman  
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AFFIDAVIT OF NON-DISCLOSURE

I, \_\_\_\_\_, being duly  
sworn, state:

1. As used in this Affidavit of Non-Disclosure,

(a) "Protected information" is (1) any form of the physical security plan for the licensee's UCLA research reactor facility; or (2) any information obtained by virtue of these proceedings which is not otherwise matter of public record and which deals with or describes features of licensee's physical security system or details of licensee's physical security plan.

(b) An "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Board ("Board"), has executed a copy of this affidavit; or (3) a person employed by The Regents of the University of California, the licensee, and authorized by it in accordance with Commission regulations to have access to protected information.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else.

3. I will not reproduce any protected information by any means without the Board's express approval or direction. So long as I possess protected information, I shall continue to take these precautions until further order of the Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

(a) My review and use of any of licensee's documents or reproductions of documents which contain protected information will be made at facilities on the UCLA campus to be made available by The Regents of the University of California.

(b) My use of other forms of protected information including any data or notes or pleadings prepared by me which contain protected information will be made at the office of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

(c) I will keep and safeguard all such materials in my possession in a safe or locked filing cabinet to be located at all times at the location designated in (b) above.

5. Any necessary typing or reproduction services or other secretarial work connected with the preparation of papers containing protected information will be performed at the location designated in (b) above by myself or by a secretary or other individual under my supervision who has executed an affidavit of non-disclosure like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Board, the licensee and the NRC staff together with an appropriate resume of the person's background and experience, before I reveal any protected information to any such person.

6. I shall use protected information only for the purpose of preparation for this proceeding or any further proceedings in this case dealing with security plan issues, and for no other purpose.

7. I shall keep a record of all protected information in my possession, including any copies of that information made by or for me. At the conclusion of this proceeding, I shall account to the Board or to a Commission employee designated by that Board for all the papers or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding, I shall deliver those papers and materials to the Board (or to a Commission employee designated by the Board), together with all notes and data which contain protected information for safekeeping during the lifetime of the plant.

8. I make this agreement with the following understandings:  
(a) I do not waive any objections that any other person may have to executing an affidavit such as this one; (b) I will not corroborate

the accuracy or inaccuracy of information obtained outside this proceeding by using protected information gained through the hearing process.

(Signed) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

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 )

7 (UCLA Research Reactor) )  
8

Docket No. 50-142  
(Proposed Renewal of Facility  
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9 CERTIFICATE OF SERVICE

10 I hereby certify that copies of the attached: UNIVERSITY'S  
11 PROPOSED PROTECTIVE ORDER AND AFFIDAVIT OF NON-DISCLOSURE FOR  
12 DISCOVERY OF PHYSICAL SECURITY INFORMATION  
13 in the above-captioned proceeding have been served on the  
14 following by deposit in the United States mail, first class,  
15 postage prepaid, addressed as indicated, on this date: July 12, 1982

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

21 Dr. Emmeth A. Luebke  
22 Administrative Judge  
23 ATOMIC SAFETY AND LICENSING BOARD  
24 U.S. Nuclear Regulatory Commission  
25 Washington, D.C. 20555

26 Dr. Oscar H. Paris  
27 Administrative Judge  
28 ATOMIC SAFETY AND LICENSING BOARD  
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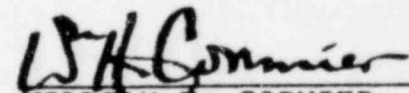
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