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CITY OF SANTA MONICA

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 IN SUPPORT OF MOTION OF COMMITTEE TO BRIDGE  
THE GAP FOR SUMMARY DISMISSAL OF MOTIONS FOR SUMMARY  
DISPOSITION SUBMITTED BY STAFF AND APPLICANT

I.

INTRODUCTION

On September 1, 1982, NRC Staff filed its Motion for Summary Disposition, by which it seeks to summarily dispose of essentially all matters in contention in this proceeding (excepting Emergency Planning and Adequacy of the Security System). Thereafter, on September 3, 1982, Applicant filed a similar, although separate, motion, by which it too seeks to eliminate through the summary disposition procedure virtually all of the issues drawn into controversy herein. Committee to Bridge the Gap ("CBG") filed its Motion to

Summarily Dismiss the aforementioned summary disposition motions on September 20, 1982. The City hereby respectfully submits its response in support of the Motion of CBG for summary dismissal. The filing by Staff and Applicant of summary disposition motions on essentially all matters in contention is in flagrant disregard of the Board's explicit statements regarding the use of summary disposition procedures made at the most recent pre-hearing conference. Moreover, if the motions for summary disposition are allowed to stand, the City will be forced to divert substantial resources from preparation for hearing in order to properly respond thereto. A delay in the commencement of the hearing would most certainly result. The Board should exercise its powers under 10 C.F.R. 2.749(a) and summarily dismiss the motions.

## II.

### DISCUSSION

The Application for Relicensing at issue herein has been pending now for more than two years. At the Board's initiative, efforts have been made to finally bring the Application to hearing; the parties have voluntarily waived certain discovery rights, and other actions have been directed by the Board to facilitate a speedy resolution of this controversy. The hearing has been tentatively scheduled for December or January. Now, shortly before hearing, Staff and Applicant have each moved for summary disposition of virtually all of the very detailed matters at issue in this proceeding.

At the prehearing conference held June 29 and 30, 1982, the Board advised the parties in considerable detail concerning its view of the proper use of the summary disposition procedure in a proceeding such as the one pending. In its Motion, CBG has set forth certain of the Board's more explicit comments with respect thereto. The Board expressed concern that an extended summary disposition procedure would substantially delay the hearing, and clearly indicated its desire that summary disposition motions be used in a judicious, conservative manner. As previously stated, both Staff and Applicant have chosen to disregard the Board's directives.

The City's rights pursuant to 10 C.F.R. 2.715(c) come into full play only at hearing, at which time the opportunity for cross-examination becomes available; as the Board has commented, one cannot cross-examine an affidavit. To protect its interests in a full exploration at hearing of the subjects that concern it the City would be forced to divert significant resources to respond to the motions, many if not all of which are clearly frivolous.

Furthermore, the City submits that the motions of Staff and Applicant are being used primarily as a delaying tactic, cognizable under Rule 56(g), Federal Rules of Civil Procedure as motions for summary judgment presented in bad faith or solely for the purpose of delay. The City clearly would need substantial additional time in order to respond to those motions on which it desires an opportunity to protect its interests by insuring that the matter will go to hearing.

Finally, the motions filed by Staff and Applicant appear to constitute an attempt to impermissably shift the burden of proof

away from the Applicant, upon whom it rests pursuant to 10 C.F.R. 2.732. "A summary judgment is neither a method of avoiding the necessity of proving one's case, nor a clever procedural gambit whereby a claimant can shift to his adversary his burden of proof on one or more issues." United States v. Dibble, 429 F.2d 598, 601 (9th. Cir. 1970), cited with favor in the matter of Cleveland Electric Illuminating Company et al, Perry Nuclear Power Plant, Units 1 and 2, ALAB-443, 6 NRC 741, 753 (1977).

The motions by Staff and Applicant as to each and every subject in dispute, filed contrary to the Board's directive and shortly before a December or January hearing date, appear to the City to be such a procedural gambit, aimed at burden-shifting, delay and diversion of the already limited resources of other parties. 10 C.F.R. 2.749(a) clearly states that:

The Board may dismiss summarily motions filed shortly before the hearing commences or during the hearing if the other parties or the board would be required to divert substantial resources from the hearing in order to respond adequately to the motion.

Pursuant to the above cited regulatory provision and for the reasons set forth hereinabove, the City agrees with CBG that the motions should be summarily dismissed. Misuse of the summary disposition procedure should not be tolerated.

Should the Board decline summary dismissal at this time, the City supports the alternative remedies put forward by CBG. Many of the motions in and of themselves appear to be significantly

deficient; identification of those deficiencies and a ruling thereon by the Board would significantly narrow the matters requiring affirmative counter-responses. A pre-hearing conference, at which oral preliminary responses could be made, also seems an effective method for limiting the areas more appropriate for summary disposition consideration and thereby expediting matters. An initial response to the "central theme" identified by Applicant and, to some extent, by Staff, might also be a useful partial remedy.

Finally, the City concurs with CBG that if the relief requested is not forthcoming, a six month extension would be in order. The motions touch upon virtually every aspect of the very detailed subjects at issue. The City will be represented by new counsel beginning October 6, 1982, who will require time to familiarize him or herself with the case. Thus, an extension of several months would be necessary.

### III.

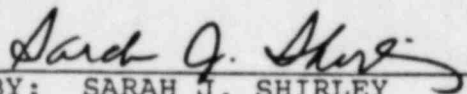
#### CONCLUSION

On the basis of the foregoing, the City respectfully requests that the Board summarily dismiss the motions for summary disposition heretofore filed by Staff and Applicant, or, in the alternative, that the Board adopt one of the alternative remedies put forward by CBG in order to shorten the delay and lessen the diversion of resources that would necessarily result if each aspect of the summary disposition motions were considered. In the event no relief is forthcoming, the City requests a six month extension

of time within which to prepare and submit its response to  
said motions.

DATED: October 6, 1982

Respectfully submitted,  
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BY: SARAH J. SHIRLEY