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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 OL
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	)	(Proposed Renewal of Facility License No. R-71)
(UCLA Research Reactor)	)	

CITY'S MEMORANDUM AS TO CERTAIN MATTERS RELATING TO CLASS OF LICENSE, FINANCIAL QUALIFICATIONS, AND SABOTAGE, AS IDENTIFIED IN THE BOARD'S ORDER OF MARCH 23, 1983

In its Memorandum and Order of March 23, 1983, the Atomic Safety and Licensing Board directed the City of Santa Monica and the Committee to Bridge the Gap to file legal arguments in opposition to UCLA's and Staff's motions for summary disposition of Contentions II (class of license) and XVIII (financial qualifications), as well as any response to the Board's concerns about Contention XIX, ¶1 (related to consideration of sabotage consequences as part of hazards analyses). These reponses were to be served by April 1, 1983,

later extended to April 4 by the Board. The response of the City of Santa Monica to these matters is included herein.

I

CLASS OF LICENSE

The materials presented by CBG in its factual response to the Motions for summary disposition on this contention, in the City's opinion, demonstrate conclusively that the primary activity of the UCLA reactor is, in violation of the requirements for a Class 104 license, commercial. Far more than 50% of the reactor usage in recent years, by the University's own admissions, has been commercial. In fact, commercial usage has far exceeded educational usage. These facts, coming as they do from admissions against interest by the University, are incontrovertible. The primary controversy goes to the Applicant's accounting methods, by which 60% of the reactor usage is said to account for only 2% of the costs of owning and operating the facility, and the educational uses of the reactor, indicated to account for a very small fraction of reactor use, are charged with the remaining 98% of the costs. Such accounting, in addition to being at variance, as Mr. Baefsky indicates in his declaration, with accepted cost accounting methods, flies in the face of the intent of the regulations prohibiting research and educational reactors from being used to a substantial degree for commercial purposes.

UCLA's position is essentially that the actual use to which the reactor is put is irrelevant to the allocation of costs and thus to the class of license. UCLA claims that by simply declaring the reactor's purpose to be educational, all of the fixed costs of owning and operating the reactor can be assigned to the educational category, even if actual educational uses represent only a few hours a year. Such an interpretation contravenes the regulation, which makes clear that it is how a reactor is used that determines its class of license. See 10 CFR 50.22. If UCLA were to prevail in its assertion that the actual use to which a facility is put is irrelevant to the class of license to which it is entitled, nothing would prevent reactors currently classed as commercial from declaring that they, too, although used primarily for commercial activities, are entitled to a research license.

In summary, UCLA has used its reactor primarily for commercial purposes, as indicated in its own records. The costs of owning and operating the facility are properly attributable to the uses of the facility. As Mr. Baefsky has indicated, cost allocation should follow services rendered. Any other interpretation is both faulty accounting and an attempt to get around the clear language and intent of the regulations.

II

FINANCIAL QUALIFICATIONS

This issue, in the City's view, is properly a safety matter. The contention goes to the actual availability of funds to safely maintain and operate the UCLA reactor. CBG asserts that the University hasn't provided reasonable assurances that sufficient funds to safely operate the reactor will be available for the reactor facility. In support of this assertion it cites two strong sets of evidence--past lack of funds to safely maintain the facility, and the current financial crisis of the Applicant. To the former charge, the University admits it has deferred maintenance for financial reasons, but asserts no safety issue is raised because the reactor is inherently safe--i.e., no matter how little money is spent on the facility, the University appears to be asserting, no harm can occur to the public. This matter, of course, is squarely contested and is the subject of the summer evidentiary hearings. It appears to the City difficult for this aspect of the financial contention to be resolved prior to a determination of the safety contentions.

As to the second charge by CBG, that of a massive fiscal crisis currently facing the Applicant, the Applicant concedes that it is in the worst such crisis since the Depression, but again appears to argue that its actual financial condition should not be examined and rather its financial qualifications be summarily approved on the basis of its size alone. This

flies in the face of the requirement of an examination of the actual financial situation of the Applicant. If the Commission had intended that all universities, by virtue merely of their being universities, should be automatically considered financially qualified without true inquiry into their financial situation, then the regulations would so indicate. However, that is not the case; the regulations require actual inquiry into financial situation.

As Mr. Baefsky indicates in his declaration, the size of an institution is essentially irrelevant in determining financial qualifications. Operations are not funded from assets, and the magnitude of income must be examined against the magnitude of liabilities. As Mr. Baefsky states, the Applicant is large, and it is precisely its large size that has produced its current financial difficulties. The Applicant's obligations far surpass its revenues, which has necessitated extremely large cuts. The Applicant has not demonstrated that it has a reasonable plan to deal with these contingencies in relation to the proposed licensed activity. In fact, quite the contrary is true. The University has essentially told that Board that it cannot and will not provide assurances of appropriate funding for safe operation of the reactor because it has the blind faith that the reactor is safe irrespective of maintenance, repair, upgrading, personnel, or other items requiring allocation of funds. The Applicant has an affirmative duty to assure the Board that an appropriate level of funding will be provided for the safe

operation of the reactor; that assurance has not been provided.

In summary, the size of the Applicant is insufficient alone to determine financial qualifications for the proposed nuclear activity. Actual inquiry into financial situation is required by the regulations. Inquiry performed to date indicates (1) failure in the past to provide sufficient funds for safe operation, (2) current fiscal crisis, indicating even greater likelihood of insufficient finances actually available for reactor safety, and (3) no assurances provided by the Applicant of appropriate funding for the proposed activity because of Applicant's blind faith that the reactor is absolutely safe no matter how little funding is devoted to its upkeep. Applicant has not met its burden to demonstrate reasonable assurances in the financial area, a matter that is at root a safety issue.

III

SABOTAGE SHOULD BE CONSIDERED AS ONE OF THE HAZARDS SCENARIOS

The Board is charged, under 10 CFR 50.40, with making the ultimate determination whether grant of the proposed license will be inimical to the common defense and security or to the health and safety of the public. To this end, the Board must examine credible initiating events for various hazards scenarios, review features that could limit the occurrence or consequences of such scenarios, and judge the

site criteria to determine the acceptability of consequences from these hazards scenarios should they occur.

Contention XIX, dealing with hazards scenarios inadequately analyzed by the Applicant (and which, in connection with certain other safety contentions, it is alleged would produce unacceptable consequences given the particular site characteristics for this facility) was admitted two years ago. Among the hazards scenaros deemed to be inadequately analyzed was the consequence of sabotage.

Part 73 contains precautions that must be taken to reduce the probability of sabotage. For research reactors such as UCLA's, the applicable requirement is 73.40(a), which says that each licensee "shall provide physical protection against radiological sabotage" and that that protection shall be according to a security plan which must be approved by the NRC. There are no specific regulations detailing how 73.40(a) is to be met, i.e., how adequate physical protection against sabotage shall be provided for a research reactor such as UCLA's. That is determined on a case-by-case basis by the NRC; in the UCLA case, it must be determined on a site-specific basis by the Atomic Safety and Licensing Board.

To determine what measures are necessary to reduce the risk to the public to an acceptable level for potential acts of sabotage, a determination of what those risks are must first be made. The Staff argues in this case that no protection against sabotage is required, resting this argument in part on the unsupported assertion that the worst possible sabotage will produce acceptable consequences, consequences

less severe than those it has hypothesized as the worst possible from accident scenarios such as earthquake. If potential consequences are truly zero, then zero protective measures are indeed necessary. But if the potential consequences are significant, as the City believes them to be, it follows that significant protective measures are necessary to reduce the risk to an acceptable level. And because of the highly unfavorable site characteristics, it may not be possible to reduce such risks to an acceptable level.

This issue must be reached in order for the Board to reach the ultimate issues mandated by 10 CFR 50.40. Is the reactor, as contended by Staff, inherently safe against unacceptable consequences of sabotage because of its basic design, or, as CBG contends, is it vulnerable to unacceptable consequences, consequences made more unacceptable by both its design and its siting?

Sabotage was properly admitted as one of the hazards scenarios to be considered in contention XIX two years ago; the arguments now being considered were considered and rejected by the Board at that time; and no events have occurred since then to justify reconsidering that previous decision.

The City's interests would be damaged were the Board to now determine that the claims of inherent protection against risks from sabotage will not be subject to scrutiny. The City cannot adequately protect its citizens if the Staff and UCLA claim no protection against sabotage is necessary because the maximum possible consequences of sabotage are acceptable, and

if the Board determines that sabotage consequences cannot be considered. If the Board rules that Staff and Applicant are wrong and that protection against sabotage is indeed required, as CBG and the City assert, under 10 CFR 73.40, how can the Board determine whether a proposed plan is sufficient to meet the general requirement of 73.40(a) of reducing risk to an acceptable level if the site-specific risks of sabotage are nowhere addressed? How can the City of Santa Monica tell its residents they are safe from potential hazards associated with the nearby UCLA reactor if a very realistic hazard scenario is excluded from consideration?

CONCLUSION

The City respectfully submits that the actual use of the UCLA reactor is central to a determination of its proper class of license and that the Applicant's own records indicate that the Applicant must either alter its primarily commercial use of the reactor or alter its class of license. The City additionally submits that actual inquiry into the financial situation of the Applicant is required under the regulations, and that consideration merely of the Applicant's size is insufficient to determine financial qualifications, particularly in light of Applicant's past history of failing to devote the funds necessary for safe operation, and its current financial crisis. The City believes this to be a safety issue.

Finally, the City believes that the Board cannot make its ultimate determination of safety, and the City cannot adequately protect the interests of its residents, if the consequences of sabotage are excluded from the consideration of various hazards scenarios included in Contention XIX and the related safety contentions.

Respectfully submitted,

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DECLARATION OF SERVICE

I hereby declare that copies of the attached: CITY'S MEMORANDUM AS TO CERTAIN MATTERS RELATING TO CLASS OF LICENSE, FINANCIAL QUALIFICATIONS, AND SABOTAGE, AS IDENTIFIED IN THE BOARD'S ORDER OF MARCH 23, 1983 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 4th day of April, 1983.

Lynn G. Naliboff

LYNN G. NALIBOFF
Deputy City Attorney