

COMMITTEE TO BRIDGE THE GAP
1637 Butler Avenue, Suite 203
Los Angeles, CA 90025
(408) 336-5381

4/14/83

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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 OF CALIFORNIA)	(Proposed Renewal of
)	Facility License)
(UCLA Research Reactor))	
_____)	

MOTION FOR RECONSIDERATION OF CERTAIN HEARING SCHEDULING MATTERS
CONTAINED IN THE BOARD'S ORDER OF April 7, 1983

I. Introduction

On April 7, 1983, CBG submitted a pleading which, inter alia, objected to certain preliminary views expressed by the Board in its March 23 Order regarding the Board's asserted lack of authority to set a date for prefiling of Staff testimony. CBG also informed the Board that it appeared, if the Board continued to intend CBG to present its case after that of Staff and Applicant (a matter subject to certain objections), current witness availability indicated a July 25 starting date for hearing would be necessary, and requested that the Board, before final determination of starting date, notify CBG and provide an opportunity for update regarding witness availability.

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Unfortunately, CBG's pleading crossed in the mail with the Board's Order of the same date which, inter alia, set a July 18 starting date for hearing and made final its preliminary determination that it lacked the authority to set dates for prefiling of testimony.

CBG hereby respectfully requests reconsideration of the latter determination and indicates that it will contact its witnesses to determine if their schedules can be rearranged to fit presentation of their case with a July 18 starting date and the assumption of CBG going after Applicant and Staff. CBG indicates it will notify the Board whether such rearrangement is possible when it submits its witness list April 20, and if such rearrangement is not possible, that it will request the starting date be set as July 25.

II. Discussion

CBG, through misuse of summary disposition procedures by Staff and Applicant, was forced to file what amounts to its prefiled testimony on January 12, 1983, over six months before the start of the inherent safety evidentiary hearings. Both UCLA and Staff have indicated they are revising their case to attempt to rebut the material included in CBG's January 12 declarations. In fact, after initial indication that a May ^{early} or June hearing was OK, Staff insisted it must be granted an extension to have more time to prepare its response to CBG's case. Despite strenuous objections by CBG, the hearing was therefore postponed from May to late July, to accomodate Staff desire for additional time to prepare what amounts to rebuttal to CBG's case. (The Board has indicated such rebuttal

must be included in the Staff and Applicant direct testimony.)

In addition to requesting, and receiving, additional time to respond to CBG's case, Staff requested that it not have to prefile its testimony until a few weeks before the hearing. CBG strongly objected, indicating this would severely damage its ability to cross-examine and rebut and substantially reduce the evidentiary record upon which the Board must make its decision. CBG noted that the Staff's proposed schedule would permit the Staff over five months (January 12 to June 15) to prepare its rebuttal to CBG's testimony whereas CBG would have only a few weeks to prepare rebuttal (and cross-examination) of Staff's testimony.^{1/} The Board submitted the following comments, prior to receipt of the Staff and UCLA responses to CBG's motion for an earlier date for prefiling:

First, we are in general agreement with CBG and Santa Monica that they should have ample time to evaluate Staff's and UCLA's testimony in advance of hearing. However, insofar as the filing of Staff's testimony is concerned, we have only a limited ability to set deadlines. See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978).

^{1/} Staff, in its April 4 pleading, asserts that it needs eight weeks to prepare its response to CBG's case. Yet, as indicated above, it will have had twenty-two weeks to do so. Furthermore, as shown in the attachment to the CBG pleading of April 7, Staff had already begun work with its consultants in preparing that rebuttal within a few weeks of CBG's Jan. 12 declarations. There is no escaping the fact that Staff wants 22 weeks for itself but only about 4 for CBG.

CBG, in its April 7 pleading, expressed concern about the Board expressing preliminary views on the subject, indicating that the Offshore Power case cited in no way restricts licensing board's powers to set deadlines for submission of prefiled testimony (powers given under 10 CFR 2.718 and 2.711), but in fact deals only with Boards' authority to set deadlines for filing of Staff environmental statements, and that, in fact, the Appeal Board had ruled that Boards had even that authority under certain circumstances. CBG also indicated that several of its witnesses would be unavailable to prepare rebuttal testimony during the month prior to hearing.

However, on the same day, the Board issued an Order finalizing its preliminary views, stating, "While we also believe that this date [for prefiling testimony] should be as early as possible, we lack the authority to require the Staff to meet an earlier date." The Board cited once again Offshore Power.

As the Board's Order and CBG's objection to the same argument contained in the preliminary comments in the prior Order crossed in the mail, the Board was unable to consider CBG's comments in reaching that decision. CBG respectfully requests the Board reconsider its decision, in light of CBG's discussion of what Offshore Power's precedent implies regarding basic scheduling such as testimony filing after SERs and environmental statements have been served, and the other comments contained in CBG's April 7 pleading.

CBG also wishes to record for the record its objection to the Board issuing the preliminary statement that it did on the matter prior to receiving the responses to the motion. The Board put itself in the position of advancing for the Staff an objection the Staff itself had not yet advanced, and of indicating its agreement with that position should Staff indeed advance it thereafter. Staff, of course, took the suggestion. CBG has indicated in previous pleadings its concern that such actions go beyond ruling on objections raised by parties to suggesting for parties arguments or motions not put forth by the parties themselves.

Hearing Starting Date

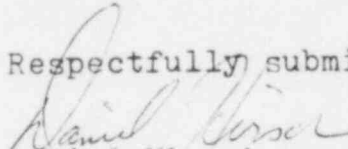
It had been CBG's understanding that the starting date for hearing was dependent upon determination of order of presentation, because, at least for CBG's witnesses, they were not available for the entire three-week period. It had been CBG's understanding that parties should keep the Board informed of availability changes in a timely fashion, and that the Board would notify the parties prior to making the final determination of when to start the hearing so that last-minute input could be provided. CBG's request for such a procedure, at least, crossed in the mails with the Board's Order.

As indicated in the introduction, CBG will check with its witnesses in the next few days and see if their schedules can be rearranged to permit, on the assumption that the Board's determination of CBG last continues to hold true, the July 18 starting date. CBG will notify the Board on the 20th when it provides witness lists. If the schedules cannot be rearranged, the 25th as starting date may be necessary. CBG will notify the Board as soon as possible, in its April 20 witness list at the latest.

Conclusion

CBG respectfully requests reconsideration of the July 15 prefiling deadline, according to the argument put forth in CBG's April 7 pleading. Should May 15 not be granted as that deadline, CBG requests opportunity to request other relief that may in some part alleviate some of the major problems created by such short review time. CBG will notify the Board shortly, after consultation with its witnesses, whether consideration of the July 25 starting date, as indicated in CBG's pleading of April 7, will be necessary.

Respectfully submitted,


Daniel Hirsch

dated at Ben Lomond, CA

this 14th day of April, 1983

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Facility License)

DECLARATION OF SERVICE

I hereby declare that copies of the attached: MOTION FOR RECONSIDERATION
OF CERTAIN HEARING SCHEDULING MATTERS and MOTION TO STRIKE

in the above-captioned proceeding have been served on the following by
deposit in the United States mail, first class, postage prepaid, addressed
as indicated, on this date: April 14, 1983.

John H. Frye, III, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission

Dr. Emmeth A. Luebke
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chief, Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
attention: Ms. Colleen Woodhead

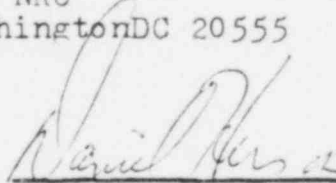
William H. Cormier
Office of Administrative Vice Chancellor
University of California
405 Hilgard Avenue
Los Angeles, California 90024

Christine Helwick
Glenn R. Woods
Office of General Counsel
590 University Hall
2200 University Avenue
Berkeley, CA 94720

Mr. John Bay
3755 Divisadero #203
San Francisco, CA 94123

Lynn Naliboff
Deputy City Attorney
City Hall
1685 Main Street
Santa Monica, CA 90401

Carol Kagon
Licensing Board Panel
US NRC
Washington DC 20555


Daniel Hirsch
President
COMMITTEE TO BRIDGE THE GAP

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