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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)	)	April 29, 1983
	)	

UNIVERSITY'S RESPONSE TO THE BOARD'S  
APRIL 14, 1983 ORDER CONCERNING CONTENTION XVII

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## I. INTRODUCTION

In its April 14 1983 Memorandum and Order (Concerning Contention XVII) (the "Order") the Board directed UCLA "to explain in detail its legal position with respect to the CBG motion; particular attention should be given to UCLA's legal objections to a grant of the motion." The motion in question is CBG's motion for summary disposition of Contention XVII (the "Motion").<sup>1/</sup> The Board's Order was prompted by University's response<sup>2/</sup> to CBG's March 15th response<sup>3/</sup> for an immediate ruling on Contention XVII. In its response University opposed the granting of (partial) summary disposition in favor of CBG's Contention XVII, but agreed to stipulate to CBG's proposed statement of facts on two conditions.<sup>4/</sup> The Board viewed one of University's conditions as inconsistent with the stipulation.

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<sup>1/</sup>Filed together on September 7, 1982 with CBG's Motion for Summary Disposition on Contention XIII.

<sup>2/</sup>"University's Response to CBG's Request for Partial Summary Disposition of Contention XVII," dated March 30, 1983 (the "Response").

<sup>3/</sup>CBG's "Request for Immediate Ruling" was made in its March 15, 1983 letter to the Board (the "Request").

<sup>4/</sup>University opposed the granting of summary disposition as untimely. As explained herein, University imposed its two conditions solely on account of certain language contained in CBG's Request which purported to declare the effect to be given to the parties' stipulation.

However, as University will demonstrate, its position on this matter is consistent. University's counsel had remarked on this matter at the last prehearing conference (Tr. 955), and had thought its position was understood because the remark went unquestioned and unchallenged. Accordingly, in its Response, University remarked only briefly on the reasons for placing conditions on its stipulation. University recognizes now that it could have avoided the present confusion by providing a fuller explanation in its Response. That explanation is provided herein.

## II. DISCUSSION

In its March 15 Request reporting agreement with University on the language of the Statements of fact to which the parties had agreed to stipulate, CBG stated:

"Thus, none of the material facts affixed to CBG's motion as to Contention XVII on the seismic matter are now disputed by any party. The seismicity of the site, the ability of a major earthquake to damage the reactor fuel and release fission products to the environment, and ensuing consequences of at least 10 Rem to the thyroid to members of the public are admitted by all parties. The only remaining dispute for hearing on this matter is how much greater than 10 Rem to the thyroid those doses might be."  
(Emphasis in the last sentence has been added.)

The effect of the stipulation being asserted by CBG in the last sentence above is unwarranted and is specifically rejected by University. CBG's logic is flawed; its conclusion is a trick as University reveals below.

CBG's "statement of material facts" which it would have the parties stipulate to contains seven statements (numbers 10, 11, 12, 13, 14, 15, 17 as they appear in the attachment to CBG's Request) that assert events that could possibly occur. In the order intended the events are: A "major earthquake" could collapse the reactor building, which could crush the reactor core or, alternatively, earthquake induced "lateral accelerations" could crush the reactor core, which could result in mechanical damage to the fuel, which could result in the escape of fission products, which could be accompanied by flooding of the reactor room as the result of an earthquake-induced dam failure, which could result in fission product releases in the flood water, which could result in doses in unrestricted areas of at least 10 Rem to the thyroid.

From that string of meaningless speculations, CBG purports to extract from University an admission that the only issue for hearing is how much greater than 10 Rem to the thyroid the seismic accident doses will be. That is pure sophistry. CBG's statements are not assertions about what events are to be considered credible, but simply what events are deemed possible. As a result they cannot be strung together to fashion predictions about dose estimates and risk to the public.

More specifically, with respect to CBG's statement No. 10, University does not dispute that "a major earthquake" could collapse

the building and crush the reactor core; that is, that there is some major earthquake, say a Richter Scale 12 earthquake, that we might all agree would cause the damage described. But such an earthquake is not a credible occurrence for the UCLA area. University has no idea what "major earthquake" CBG had in mind, but University could not reasonably dispute the assertion, and hence did not, because CBG could always describe some major earthquake that could cause the damage.

With reference to this string of statements, and particularly No. 10, the Board stated in its Order:

"These facts all concern the possible effect of a major earthquake on the building housing the reactor and on the reactor itself. They do not specifically incorporate references to other facts (which UCLA does not dispute) which set out the capability of faults in the vicinity and the probability of the occurrence of an earthquake on those faults. The capabilities range from 6.7 to 7.5, which are clearly major earthquakes." (Order at 2.)

University respectfully submits that the Board has missed University's point. The question is not whether a magnitude 6.7 to 7.5 (Richter Scale) earthquake is "major." CBG specifically did not describe a "6.7 to 7.5" earthquake as the assumed initiating event. CBG did not assert that an earthquake deemed credible for the UCLA site would cause the exact chain of events required to produce its hypothetical 10 Rem to the thyroid dose to the public. Had CBG made any such assertion it would have been vigorously disputed by the University.

The issue is not primarily whether the building can be damaged. Rather, it is what manner of nearly total and instantaneous building collapse would be required to crush the reactor, which is basically a twelve-foot cube of graphite and reinforced concrete. University has never conceded that such an event was credible, notwithstanding that the Staff study assumed such an event for the purpose of performing a seismic analysis and both University and Staff intend to rely on that analysis to demonstrate that further seismic studies of the UCLA facility are not warranted.<sup>5/</sup>

The fact that University intends to rely on the Staff analysis to demonstrate that the reactor is safe from seismic events carries no implication that University regards the assumed conditions of the analysis as credible for UCLA's facility. Indeed, it is because certain of the assumed conditions are non-credible that the analysis is considered so highly conservative. University reserves the right to support the conservatism of the analysis by demonstrating that certain of its assumptions are non-credible. CBG's string of statements concern a chain of events that are non-credible; University gives away nothing by conceding

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<sup>5/</sup>University's position as stated in Section 8 of Appendix III of the Application; in particular, at page III/8-4: "when considering the credibility of any core crushing scenario, it should be recognized that the reactor is a dense concrete and graphite structure. The thick short spans of reinforced concrete blocks have enormous compressive strength relative to any conventional building structure. It is by no means certain that the reactor core would be crushed in the event of the collapse of the reactor building."



that each of the non-specific statements correctly states a mere possibility. As CBG has drafted these statements they are immaterial to its Contention XVII and any other issue to be considered in this proceeding. Moreover, they are not logically related to CBG's other statements of facts submitted with CBG's Motion, which are properly concerned with events deemed credible. CBG cannot establish that the seismicity of the region will lead to endangerment of the public as a consequence of earthquake-induced fission product releases at the UCLA facility because CBG has not asserted, much less demonstrated, the credibility of the specific chain of events required to produce such releases. The assertion in CBG's Request, set out at the beginning of this section, that CBG had established just that, should be specifically rejected by the Board.

It remains for University to explain the apparent inconsistency pointed out in the Board's Order in its statement: "The second condition seems to say that UCLA will stipulate that the building could fall down in a major earthquake, but it won't." Order at 3. Modified slightly, the "inconsistency" disappears: "UCLA will stipulate that the building could fall down in some major earthquake, but no earthquake deemed credible for the UCLA site will collapse the building with such force that the reactor core is crushed in such a manner that significant fission products are released at such time as floodwaters inundate the facility with such a capacity that the public is endangered." In short, while possible, the proposed chain of events is non-credible. There is nothing inconsistent about University's position.

Finally, consider the relevant portion of CBG's  
Contention XVII:

"The UCLA reactor should not be licensed because the physical location and site characteristics of this reactor unacceptably endanger the public health and safety . . . Specifically:

1. The reactor is located on one of the most seismically active regions of the country.
3. The reactor sustained significant damage in the 1971 earthquake.
4. The existence of three floors of classrooms and offices, supported on columns, directly above the reactor structure creates a significant danger of collapse through the reactor building roof and onto the reactor itself in the event of an earthquake . . .

(Emphasis added.)

The contention is concerned with the risk of harm to the public. That implies a consideration not only of the consequences of some event but also the probability or likelihood that that particular event, or any causally related chain of events, will occur. The consequences and likelihood\* are the two necessary (material) matters that must be addressed, and satisfactorily, if CBG is to prevail on its motion. University notes that although it has the burden of proof at hearing, CBG has the burden of proof on its motion. Moreover, CBG must demonstrate the absence of any genuine issue of material fact and the record is viewed in the light most favorable to University.



CBG's Motion describes what it calls the "maximum credible earthquake possible (sic) at the site." Motion at 1. However, CBG fails to relate that earthquake, whatever its magnitude, to the chain of events that is supposed to result in the fission product release. Most of CBG's asserted "material facts not in dispute" are taken from Staff and University safety analyses. CBG has taken the conservative assessments and conclusions in these analyses and attempted to transform them into Staff and University admissions of the minimum consequences to be expected from credible events. CBG has done this to avoid having to make its own demonstration that credible seismic events could result in fission product releases. A demonstration it could not make. CBG has not met its burden.

CBG's Contention XVII contains no litigable claim or allegation that can be summarily disposed on the basis of the statement of facts to which the parties are willing to stipulate. Moreover, CBG does not argue for partial summary disposition on any specific allegation. Subpart 1 of the Contention is a general statement of common fact that is readily conceded by all the parties and does not present a claim litigable in this proceeding. Subpart 2 was not addressed in CBG's statement of material facts. Subpart 3, with its assertion of a situation creating a significant danger of collapse, implies a consideration of risk, which is nowhere addressed in CBG's assertions of mere possibilities. Accordingly, CBG's Motion must be denied.

### III. CONCLUSION

For the reasons above, University respectfully requests that the Board deny both CBG's Request and its Motion. University respectfully submits that the Board should not grant a (partial) summary disposition the effect of which is only to result in a stipulation of facts among the parties and not the disposition of any actual, litigable claim or allegation. University remains prepared to stipulate to the statement of facts appended to CBG's March 15 Request on the conditions specified in University's Response of March 30, as further explained herein above. Alternatively, University will agree to stipulate without conditions provided the Board explicitly rejects CBG's baseless assertion that "the only remaining dispute for hearing on this matter is how much greater than 10 Rem to the thyroid those doses might be." Finally, University submits that no further pleadings on this particular matter are necessary.

Dated: April 29, 1983.

DONALD L. REIDHAAR  
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Representative UCLA

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached: UNIVERSITY'S  
RESPONSE TO THE BOARD'S APRIL 14, 1983 ORDER CONCERNING  
CONTENTION XVII

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 29, 1983.

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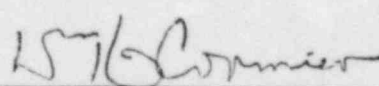
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