

DOCKETED
USNRC

*83 MAY -2 110:53

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 CBG'S
APRIL 14, 1983 MOTION TO STRIKE

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK
590 University Hall
2200 University Avenue
Berkeley, California 94720
Telephone: (415) 642-2822

Attorneys for Applicant

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

DS03

I. INTRODUCTION

On April 14, 1983 CBG filed a motion^{1/} to strike certain portions of University's response^{2/} to CBG's request for an expedited ruling on Contention XIII.^{3/} In its Motion, CBG claims that University's response is "not responsive to the motion before the Board, which deals with when the issues involved with Contention XIII should be considered." Motion at 1.

University opposes the Motion. The Motion is based largely on CBG deliberate misrepresentations. Moreover, it is obvious to University that the Motion has been brought in an attempt to prevent the Board from finally resolving an important jurisdictional question that is central not only to Contention XIII, but also to the "inherent-safety" issues which are scheduled to be heard this summer.

^{1/} "Motion to Strike Certain Portion of Staff's and Applicant's April 4 Responses to CBG's Request for an Expedited Ruling on Contention XIII" (the "Motion").

^{2/} "University's Response to CBG's Request for an Expedited Ruling on Contention XIII," dated April 1, 1983 with a service date of April 4, 1983 ("University's Response").

^{3/} "CBG Motion for Expedited Ruling on its September 7, 1982, Motion for Partial Summary Disposition of Contention XIII, and the Setting of a May Hearing Date for any Remaining Issues as to Contention XIII" ("March 15 Motion").

II. DISCUSSION

CBG provides four "reasons" why University's Response should be struck: (1) it is not responsive to the motion before the Board; (2) it amounts to a motion without following proper motion format; (3) it is essentially a new motion for summary disposition, the deadline for which has long since past; and (4) the matter is raises has already been resolved by the Board at the prehearing conference. Motion at 2. These claims are baseless.

In the first place, CBG deliberately misrepresents its March 15 Motion. CBG characterizes its Motion as one solely concerned with the "simple matter of when the summary disposition motions on Contention XIII should be ruled upon and when the remaining issues should go to evidentiary hearing." Motion at 4. In fact, the only discussion of when things should happen in CBG's nine-page pleading appears in a single paragraph at the top of page 6.

CBG's Motion is actually a re-argument why its summary disposition should be granted thinly-disguised as a request for an immediate ruling. CBG restates all of its original summary disposition claims and discusses once again the exhibits and witness declarations introduced before. CBG even introduces new claims

and arguments purportedly based on the "February 7, 1983 Matos letter" (Motion at 4), the plain meaning of which CBG distorts. CBG couples its new arguments with a request for an immediate ruling which, if granted, would have had the effect of denying responses from the other parties to CBG's "new information." CBG's March 15 Motion was an abuse of the Commission's flexible pleading practice. The instant Motion, with its deliberate mischaracterization of the earlier motion, compounds the abuse.

In the second place, CBG's assertion that University's Response is actually a new motion for summary disposition, one not in proper motion format, is false and frivolous.^{3/} University was not requesting affirmative relief. Indeed, University understood the Board to have already resolved the issue to the extent that the Board directed that the high-enrichment fuel (HEU) safety issue was to be considered with the other "inherent safety" issues at the July hearing. Prehearing Conference Memorandum and Order, March 23, 1983, at 12; see also the Chairman's discussion at the prehearing conference, Tr. 893-95.

^{3/} University takes the occasion to note that a complaint about proper motion format coming from CBG is more than a little ironic. University experiences considerable frustration in responding to various of CBG's pleadings denominated "motions" but which lack clear, succinct statements of "the motion" or the specific relief requested. One need look no further than CBG's March 15 Motion and the instant Motion for examples. Surely, after nearly three years of this proceeding, CBG can be expected to clearly set forth the requested relief in its motions.

University's Response merely raised the same jurisdictional question that the parties had discussed at the prehearing conference. CBG's Motion sought to raise essentially the same arguments (albeit based on "new information") and University made the same response. Questions of the jurisdiction of a tribunal to grant the requested relief can always be raised "defensively"; in fact, judicial prudence dictates that such matters be raised and resolved at the earliest possible time. Except for the Board's bifurcated response procedure, a procedure adopted for the convenience of CBG, University's legal response to CBG's summary disposition motion would have been made much earlier in this proceeding. It certainly would have raised the matter of jurisdiction.

In the third place, CBG's claim that the jurisdictional matter should have been raised in University's motion for summary disposition on the same contention is without merit. Arguments advanced or not advanced in University's motion are relevant to the disposition of that motion only. It is simply silly for CBG to suggest that University was required to present arguments in University's motion that would be responsive to arguments raised in a CBG pleading that had not yet been filed. More to the point, at the time of filing its summary disposition motion University was unaware of the arguments to be later advanced by CBG, that Commission policy required that the University convert to the use of low-enrichment fuel (LEU).

Finally, CBG makes the erroneous assertion that the jurisdictional question raised in University's Response was rejected by the Board at the February 23, 1983 prehearing conference. For that proposition CBG cites a brief exchange between the Chairman and University's counsel that took place at the prehearing conference in the context of a longer discussion concerned with the appropriateness of considering HEU-safety issues as part of the "inherent-safety" hearing. Tr. 881-897. What University understood the Board to say on that occasion was that it was the Board's responsibility to determine whether the use of HEU at the UCLA facility was safe or not. Since University stated that as a practical matter it could not at the present time consider conversion to LEU the Board decided not to consider that alternative. In particular, the Board did not assert jurisdiction to order UCLA to convert to the use of LEU.

Regarding the review of the HEU license, University expressly recognizes the Board's responsibility to investigate safety issues raised by the use of HEU. Explaining its jurisdictional concerns in response to CBG's Motion University stated:

"Although the Board can refuse to grant the license request if it determines that use of the fuel requested poses an unacceptable risk to the public safety, the University respectfully submits that it is outside the Board's authority to require the license to apply for a license it does not seek."
(University's Response at 2.)

CBG's suggestion that University asserts "that the Board doesn't have the authority or jurisdiction to consider denying the HEU license" (Motion at 7a), is deliberate misrepresentation.

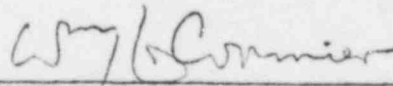
The "Argument" that appears in the last five pages of CBG's Motion is unseemly and offensive; it cannot pass for reasoned argument and therefore requires no response.

III. CONCLUSION

University respectfully requests that the Board deny CBG's motion to strike and rule on the jurisdictional question raised by University (and Staff). The matter is of some urgency since the safety analyses which are the subject of the upcoming "inherent-safety" hearing are based on an Argonaut reactor using HEU. University specifically requests that the Board not entertain any further responses on this issue.

Dated: April 29, 1983.

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK

By 
WILLIAM H. CORMIER
Representing UCLA

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 Facility
OF CALIFORNIA)	License Number R-71)
)	
(UCLA Research Reactor))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached: UNIVERSITY'S
RESPONSE TO CBG'S APRIL 14, 1983 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 29, 1983.

John H. Frye, III, Chairman*
Administrative Judge
ATOMIC SAFETY AND LICENSING BOARD
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Emmeth A. Luebke*
Administrative Judge
ATOMIC SAFETY AND LICENSING BOARD
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright*
Administrative Judge
ATOMIC SAFETY AND LICENSING BOARD
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ms. Carole F. Kagan, Esq.*
ATOMIC SAFETY AND LICENSING BOARD
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Counsel for the NRC Staff*
OFFICE OF THE EXECUTIVE LEGAL DIRECTOR
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Daniel Hirsch
Cte. to Bridge the Gap
1637 Butler Avenue, #203
Los Angeles, CA 90025

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


Mr. Daniel Hirsch
Box 1186
Ben Lomond, CA 95005

Nuclear Law Center
c/o Dorothy Thompson
6300 Wilshire Blvd., #1200
Los Angeles, CA 90048

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

Chief, Docketing and Service Section
OFFICE OF THE SECRETARY
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Express mailed April, 29, 1983


WILLIAM H. CORMIER
UCLA Representative

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA