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January 16, 1984

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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 )  
OF CALIFORNIA )

(UCLA Research Reactor) )

Docket No. 50-142

(Proposed Renewal  
of Facility License)

CBG'S REPLY TO STAFF AND APPLICANT DECEMBER 30 PLEADINGS  
AS TO CONTENTION II

I. Introduction

In its Memorandum and Order of November 30, 1983,  
the Board directed the parties to address a narrow legal question  
it raised as to the applicability of Section 31(a)(4) of the  
Atomic Energy Act to Contention II in this proceeding.

By responses dated December 30, all parties responded.  
The Board's November 30 Order provided the parties an opportunity  
to respond to the submissions of each other. CBG's reply  
follows.

II. Discussion

The pleadings by Staff and Applicant are in many respects  
almost identical, almost to repeating of phrases or sentences.  
Both indicate briefly that they believe Dr. Kalil's business  
operated out of the UCLA reactor facility to be ("arguably,"  
as the Staff repeatedly conditioned its assertions) within

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1 the confines of Section 31(a)(4), but both indicated that the  
2 Contention should be dismissed "on other grounds," and then  
3 proceeded to re-argue those other grounds, previously  
4 thoroughly argued in motions for summary disposition, which  
5 were denied, and motions for reconsideration, which remain  
6 pending.

7 CBG objects to the failure of both Staff and UCLA to  
8 comply with the Board's directive in briefing the narrow issue  
9 raised and once again raising extraneous matters outside the  
10 scope of the matters the Board asked to be explored. It is  
11 unfair to constantly have to re-argue matters previously  
12 decided by the Board and previously briefed. To require  
13 old issues that have been resolved repeatedly to be  
14 relitigated thwarts due process and unnecessarily elongates  
15 and delays a proceeding too much delayed already. The Staff  
16 and Applicant pleadings should have addressed the Board  
17 question and refrained from attempting to relitigate  
18 summary disposition. In particular, UCLA's twelve page  
19 pleading contains but a few paragraphs at best pertaining  
20 to the Board's question.

21 As to the points raised by the parties on the matter  
22 requested to be briefed by the Board, the following comments  
23 are in order. Staff writes that Dr. Kalil's activities  
24 are "arguably" within Section 31(a)(4) because his business  
25 "provides information for a wide range of entities for  
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1 various purposes." Research is narrowly defined in Section 11  
2 of the act; providing information is so broad as to be far  
3 outside the scope of the definition. A school nutritionist  
4 provides information, as does a shoe salesman, as does an  
5 X-ray laboratory, yet none are research. Dr. Kalil, by his  
6 own admission at hearing, does no research, except on the very  
7 rare occasions when he takes out his thesis and works on it.  
8 His 60 hours a week at the Nuclear Energy Lab are spent running  
9 a business, providing assaying services. Perhaps R & D  
10 was going on years ago when he was a graduate student and  
11 developing his equipment and preparing his thesis, but no longer.  
12 He now simply runs a business, providing the same ore assaying  
13 service over and over again.

14 Mr. Cormier argues that the service he provides is  
15 unique. Were that true, it would still be irrelevant to the  
16 question whether the service is research; but the record at  
17 hearing clearly indicates it is not true. Dr. Kalil indicated  
18 he had several competitors; and other evidence of record indicated  
19 GA Technologies provides the same services commercially, at  
20 a considerably higher price. The fact that Kalil's clients  
21 may be considered to be involved in research--although most  
22 are not--is irrelevant to the issue of whether he is doing  
23 research, which he said he was not. He said all he is doing  
24 is running a business, and the fact that his clients might use  
25 his service for research, and others for commercial mining,  
26 does not make his activity research. He is merely providing  
27 a lab service, the way a film developing lab does. The fact  
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1 that a film developing lab may do work for government agencies,  
2 universities, or taco salespeople does not, as accountant Baefsky  
3 testified, make the person who sells the film developing services  
4 a university or a researcher, but remains a commercial film lab.

5 UCLA argues that Dr. Kalil's activities are "socially  
6 useful enterprise." But that, of course, has nothing to do  
7 with whether it is research. Food growers are also engaged in  
8 a socially useful enterprise, but they are not researchers.

9 The rest of UCLA's pleading raises extraneous matters.  
10 Applicant once again asserts that university reactors are  
11 explicitly exempted from having to have Class 103 licenses,  
12 whereas the legislative history and the regulatory history both  
13 clearly indicate the explicit intent of Congress and the Commission  
14 that university reactors substantially used for the activities  
15 to which the UCLA reactor is put (the examples given in the  
16 history are university reactors used substantially for sale  
17 of neutron radiography services or sale of radioisotopes on a  
18 commercial basis, the former being a direct parallel to the  
19 neutron activation services provided to and by Kalil) must  
20 be licensed under Class 103. UCLA further argues that  
21 imposing conditions on its license or requiring licensing under  
22 section 103 "serves no Commission purpose and results in no  
23 public benefit." However, the issue is what the law and  
24 regulations require, and whether UCLA is using the license  
25 for the public purposes for which it had requested the license.  
26 The Contention squarely asserts that it is not--the licensed  
27 purpose represents a very small fraction of actual use,  
28 prohibited by the regulations and the Act.



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3 Staff, in its assertion that the contention should be  
4 dismissed on grounds other than those the Board requested it  
5 brief, makes an interesting argument. Staff claims that even  
6 if Kalil's Uranium West Company were genuinely involved in  
7 research, which is "arguable" at best, it would not be dispositive  
8 of the contention, because it would be Uranium West, not  
9 the licensee, who would be involved in the research activity.  
10 This is surprisingly similar to the argument CBG has been  
11 putting forward on this subject: the fact that UCLA sells  
12 irradiation services (for a fee five times larger than the  
13 amount it claims it costs to provide the service) to Uranium  
14 West, who might sell its services to a university which is  
15 doing research, makes neither Dr. Kalil, who is once removed  
16 from the genuine research activity, nor UCLA, the licensee,  
17 who is twice removed, as engaged in research.

18 There was undisputed testimony and documentary evidence  
19 produced at hearing that the UCLA reactor is no longer used  
20 for research, that its sole purpose is classroom instruction,  
21 and that those instructional uses constitute one to two  
22 hours per week of reactor operations, a minor fraction of  
23 the reactor use. Further, that the use of the reactor by  
24 Uranium West represents many times the use for instruction.  
25 The fact that customers of UCLA's customer may be involved  
26 in research, or that their customers might be does not make  
27 the licensee, as required, engaged primarily in research.  
28 (e.g. UCLA selling irradiation services for a fee to Uranium  
West, who might sell its services to Phillips Petroleum, who  
might sell its services to the NURE program of DOE, in no way

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2 makes UCLA's use of the reactor primarily for sale of irradiation  
3 services to the Uranium West Company research. In this we  
4 agree with Staff.

5       However, Staff then goes on to argue that the Contention  
6 should be dismissed on other grounds, those being what UCLA's  
7 "purpose" is in having the reactor, even if its actual use is  
8 different. The fact that the primary user of the reactor is  
9 not the licensee but a private ore-assaying company does not  
10 resolve the problem of whether UCLA is entitled to the license  
11 or not, but makes the matter worse. 10CFR 50.80 prohibits transfer of  
12 a license, or any rights thereunder, directly or indirectly,  
13 to any person without direct Commission consent. To argue that  
14 compliance with the prohibitions on substantial commercial use  
15 of a 104 license is not required of UCLA because the person  
16 who is doing the primary commercial activity is not the licensee  
17 would be to impermissibly transfer, at least indirectly,  
18 the license to a party to which the Commission has not granted  
19 it and for purposes which the Commission has not authorized.

20       In fact, that is precisely what the Contention is about.  
21 The Commission gave a Class 104 license to UCLA for the requested  
22 purposes of research and instruction. Research is now non-existent  
23 and instruction a couple of hours a week. The rights to the  
24 licensee have largely been transferred, without Commission  
25 approval, to Uranium West Company. UCLA and Staff argue that  
26 UCLA's purpose in having the reactor hasn't become commercial,  
27 despite the profit from the irradiation sales when measured  
28 against what UCLA claims it costs to provide, because it is

1 Uranium West that is using the license for commercial purposes,  
2 not UCLA. It is, of course, not purpose but activity that  
3 matters, and it is precisely because the primary utilization  
4 of the facility has transferred to a private company not the  
5 licensee that the entire subject is an issue.  
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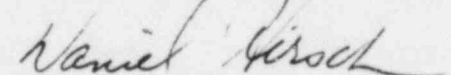
### 7 8 III. Conclusion

9 The requested license is by the Regents of the University  
10 of California for instructional and research purposes (the latter  
11 at the MS and PhD levels). The actual use of the license  
12 has largely been discontinued by the Regents and transferred  
13 to a private company not the licensee, Uranium West Company.  
14 That company, by admission of its owner, is a private firm  
15 engaged primarily in assaying ore samples and not in any research.  
16 The firm provides a lab service for a fee, a service available  
17 elsewhere.

18 The law and regulation make sense; failing to enforce  
19 them does not make sense. A university that requests a research  
20 and education licensee to operate a reactor should use the  
21 rights bestowed by grant of that class of license primarily  
22 for those purposes. UCLA has long since ceased using the  
23 reactor in the fashion for which the license was granted, and  
24 has transferred most of its rights under that license to a  
25 private company engaged in a commercial enterprise. As Staff  
26 describes it, the licensee "rents" its reactor to this firm  
27 for use in its business. That firm uses the reactor more than  
28 the licensee does, something prohibited by regulation and statute.

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2 The regulation and statute should be enforced. If UCLA no  
3 longer needs or uses the reactor for the purposes mandated  
4 by the conditions of the kind of license it requests and the  
5 primary such utilization is activity of the sort expressly  
6 required to not be substantial for university reactors to retain  
7 a 104 license (as in the example given in the legislative history  
8 of neutron radiography for a fee), then it is not permitted  
9 to receive the class of license to which it is no longer  
10 entitled. If the primary utilization of the facility is by  
11 a private firm other than the licensee, then an impermissible  
12 transfer of rights under the license has taken place.

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14 Respectfully submitted,

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16 Daniel Hirsch

17 dated January 16, 1984,  
18 at Ben Lomond, CA  
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NUCLEAR REGULATORY COMMISSION

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THE REGENTS OF THE UNIVERSITY  
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Facility License)

DECLARATION OF SERVICE

I hereby declare that copies of the attached: CBG'S REPLY TO STAFF AND  
APPLICANT DECEMBER 30 PLEADINGS AS TO CONTENTION II

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: January 16, 1984.

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COMMITTEE TO BRIDGE THE GAP

\* via express mail