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January 6, 1984

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

(UCLA Research Reactor)

Docket No. 50-142 OL
(Proposed Renewal of
Facility License)

MEMORANDUM CLARIFYING CONTENTION XX PARAGRAPHS 1, 2, and 3

I. Introduction

In its Memorandum and Order of December 23, 1983, the Atomic Safety and Licensing Board announced plans for release of a suitable protective order to govern discovery on Contention XX, scheduled a conference call for January 23 to consider discovery ground rules, deferred further consideration of Staff's Motion for Summary Disposition on Contention XX^{1/}, and directed CBG to clarify its December 13 Memorandum as to Status of Contention XX by indicating which portions of paragraphs 1, 2, and 3 of Contention XX bear on the issues of UCLA's compliance with 10 CFR 73.40(a) and 73.67. Said clarification follows.

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1/ As indicated in the Memorandum and Order at page 1, the Staff's April 13, 1981 motion has been ruled premature and responses have been deferred pending completion of discovery. Discovery, in turn, was contingent upon a suitable nondisclosure agreement, which the Board has now indicated it will issue. A portion of the Staff motion, which did not require discovery of sensitive information, was considered by the Board. In its December 23 Order, the Board defers further consideration of that motion pending receipt of certain Staff explanations regarding its affiants. CBG thus herein responds not to Staff's summary disposition assertions as to whether material disputes exist, but merely clarifies, at the Board's request, its views as to the status of Con. XX

Background

To answer the Board's question requires a brief review of the development of Contention XX, which *began* over three years ago.

When it intervened in this proceeding in 1980, in addition to its accident and Argon-41 concerns, CBG alleged deficient security precautions. Whereas it had been provided access to the rest of the Application and could thereby formulate contentions on inadequacies therein based on review thereof, this was not the case with the security plan which was withheld from public disclosure. Such plans are, however, discoverable in NRC licensing proceedings, under suitable protections, if a threshold showing is made by an Intervenor that there is a basis for a security concern. CBG thus submitted its security contention, providing several pages of bases therefor, which were summarized in the subparagraphs of the Contention. The Board, in its March 20, 1981, Order, ruled that there was sufficient basis for concern about the facility's, admitted the contention and opened discovery thereon, with summary disposition deferred until completion of discovery. Discovery has been suspended pending implementation of a discovery procedure, and thus the contention's status is essentially that of March 21, 1981--awaiting the commencement of discovery.

There have been, however, two developments since March of 1981, and it is the effect--if any--of these developments on the bases of Contention XX that the Board wishes CBG to address.

One development is that the Board has squarely rejected the arguments of Staff and Applicant that sabotage protection is not required. As CBG's contention always alleged that such protection was required, the Board's agreement thereon in no way alters the contention or its subparts.

1 The other development concerned UCLA's belated reduction in
2 its inventory of Highly Enriched Uranium, and in its request for license
3 authorization for said HEU. The Application filed in 1980 requested
4 9400 grams of 93% enriched HEU. CBG, in Contention XIII, contended that
5 was too much, and in Contention XX, that security precautions to protect
6 against theft of the HEU were inadequate. CBG contended that UCLA failed
7 to meet the theft security requirements of 10 CFR 73.67, which UCLA claims
8 it does meet. In addition, CBG asserted that that UCLA had on site a
9 quantity of SNM in excess of the formula quantity specified in 10 CFR 73.60;
10 UCLA admitted it did not have security measures required by 10 CFR 73.60,
11 but claimed it possessed less than a formula quantity of SNM. The Board
12 thus, seeing that UCLA admitted not having 73.60 precautions, saw a possibility
13 of resolving the dispute as to whether they possessed a formula quantity
14 without necessity of access to sensitive information and that resolution
15 of that issue might affect the scope of subsequent discovery. CBG was
16 thus directed to engage in discovery on the matter of the fuel inventory
17 (and radiation level, as UCLA claimed an exemption on that basis).
18 As discovery on that matter was beginning, UCLA reduced its inventory to
19 what it claimed was just below 5 kg, with a year spent thereafter trying
20 to determine from conflicting records and regulation interpretations
21 whether UCLA had indeed finally--after ten years of possession of SNM in
22 excess of 5 kilograms--gotten just below that level. The Board first
23 ruled UCLA had not gotten below that level, resolving that portion of the
24 contention that alleged noncompliance with 73.60 in CBG's favor, later
25 reversing itself and ruling that UCLA is finally no longer required to
26 meet 73.60. That matter is still under review, with UCLA and Staff to file
27 certain affidavits thereon.
28

1 Thus, UCLA was in violation of 73.60 when the contention was
2 written. It may no longer be subject to 73.60. The Board has ruled it is
3 subject to 73.67 and 73.40(a) and wishes to know CBG's view what, if any
4 effect, not being subject to 73.60 would have on the subparagraphs of
5 Contention XX.

6 The answer to that question requires a brief review of how
7 the phrase "pursuant to 10 CFR 73.60 and 73.67" got into the Contention
8 to begin with. CBG did not place that language in the Contention as written;
9 the code citations were placed there by the Board in its March 20, 1981
10 Order. CBG had contended that the security at the facility was inadequate
11 to protect against sabotage and theft of the weapons-grade materials.
12 At the prehearing conference of February 5, 1981, Staff and UCLA argued
13 that UCLA was not required to protect against sabotage at all and not
14 required to have measures to prevent theft--merely be able to detect and
15 report theft. CBG argued that sabotage protection was required and
16 more than the ability to know that theft had occurred was required by
17 the regulations. (Both points have been confirmed by the Board; in its
18 October 24, 1983, Order, the Board states, for example, "We are not prepared
19 to draw the conclusion that theft is permissible under the rules so long
20 as one knows it has occurred.")

21 At the prehearing conference discussing admission of the contention,
22 it was charged that CBG was attempting to go beyond the requirements of
23 73.67 in its theft protection assertions, and that 73.67 was the only
24 regulation that applied because UCLA assertedly (though incorrectly asserted)
25 had less than a formula quantity. CBG argued that UCLA did not even comply
26 with 73.67, but that in addition it did have a formula quantity on site.
27 The Board, in its prehearing conference order of March 20, 1981, in summarizing
28 these arguments, stated as follows (p. 12):

1 At the prehearing conference CBG said, "We contend
2 that even under 73.67...that the Applicant doesn't even meet
3 those provisions, and have listed a number of instances where
4 we see those deficiencies. We contend further, however, that
5 73.60 also applies in this case..." Tr. 391

6 The Board has decided to admit Contention XX modified
7 by the insertion of "pursuant to 10 CFR 73.60 and 73.67" between
8 the words "it possess," and "thus indicating" in the contention.
9 Tr. 359

(emphasis in original)

10 It is suggested that that prehearing conference transcript be reviewed
11 (359-398) for further clarification of the context in which the applicability
12 of 73.60 as a separate issue arose. CBG at that time--and now--viewed the
13 bases of the contention contained in the subparagraphs as applicable to
14 the sabotage protection requirements and to the theft protection requirements
15 of 73.67. UCLA contended they only applied to 73.60, to which CBG responded
16 that they did not, that .67 required far more than the theft-reporting
17 requirement UCLA claimed was all that was required, but that at any rate
18 UCLA was then subject to 73.60 anyway. In other words, CBG said UCLA's
19 claims were wrong for two independent reasons--(1) sabotage and 73.67
20 requirements mandated the measures we detailed, and (2) 73.60 was also applicable.
21 If it is finally determined that 73.60 is no longer applicable because UCLA
22 has finally gotten below 5000 grams, the first of the two independent reasons
23 remains. Furthermore, as CBG noted in its December 13, 1983, Memorandum,
24 there is little practical difference between 73.67 and 73.60, except a
25 minor difference as to searches, that difference covered by the requirements
26 necessary to protect against sabotage at this facility. As quoted in that
27 Memorandum, Counsel for Staff said at the June 29, 1982, prehearing
28 conference,

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2 "As a matter of fact, I would like to point out
3 that 73.60 is not different from 73.67 except in the matter
4 of searches. There is no significant difference between
5 the regulations, but there is that difference."

(emphasis added) TR 514

6 In summary, the contention was not written on the basis that
7 73.60 applied. It was written on the basis that UCLA, as stated from the
8 beginning, did not even meet 73.67. Since UCLA admitted they didn't meet
9 73.60, and since CBG had information demonstrating more than a formula
10 quantity on site requiring 73.60 requirements be met in addition to the
11 73.67 standards that were already not met, the Board added "73.60 and 73.67"
12 to the contention. Removing the reference to 73.60--if UCLA has indeed
13 finally gotten below 5000 grams--in CBG's view makes no alteration in
14 the contention, as it had contended all along .67 was not being met.
15 The effect--or lack thereof--on each of the subparagraphs forming the
16 basis for the contention of inadequate theft and sabotage protection is
17 discussed below.

18
19 III. Paragraphs 1, 2, and 3

20
21 Paragraph 1

22 This paragraph asserts that the facility has areas containing
23 either vital equipment and/or special nuclear materials, which should
24 be protected against sabotage and/or theft and to which access should
25 be adequately controlled. Subparts a through e must be protected against
26 acts of sabotage; subparts a and d must, in addition, be protected against
27 theft of SNM. (Staff disagrees with subparts c and e as not containing vital
28 equipment; this is a factual dispute to which CBG is not to respond until
discovery is completed and unless summary disposition is reopened, and is

1 a matter which CBG would prefer to respond to in a non-public format, as
2 it would require identifying precisely what can be sabotaged and how,
3 matters best not detailed publicly.)

4
5 Paragraph 2

6 This paragraph ^{asserts} that there are areas adjacent to the Paragraph
7 1 areas containing vital equipment or special nuclear material, and that
8 these adjacent areas are insufficiently isolated and secured to prevent them
9 from being used as penetration points or staging areas for penetration
10 of the Paragraph 1 areas. Staff seems to believe CBG is asserting that
11 these areas contain nuclear material or vital equipment, which is not the
12 case, but that they are adjacent areas improperly lighted and otherwise secured
13 so as to prevent unauthorized ^{access} to the areas which must be protected against
14 sabotage or theft. In other words, on one side of a wall is the area that
15 needs to be protected, on the other side are areas providing easy access to
16 the areas to which access should not be possible without authorization.
17 The best example is the access court used for truck loading and unloading.
18 CBG pointed to the Board on its tour of the facility problems with the
19 single door separating that access court from the reactor. To protect
20 the SNM and vital equipment on the inside of that door requires protecting
21 the outside of that door, and CBG alleges that is not being adequately done.

22 Paragraph 2's subparts a through f all provide means of unauthorized
23 access into the Paragraph 1 areas to which access is supposed to be adequately
24 controlled. Subparts a through f all provide such means of unauthorized
25 entry into areas which need to be protected for sabotage reasons; they each
26 likewise provide means of arranging entry into areas that should be protected
27 from theft. Again, the specific weaknesses in the security of these areas
28 and precisely how a thief or saboteur would take advantage of those weaknesses
must await a more protected setting and completion of discovery. (It should
also be noted that some of the Paragraph 1 areas can be used for unauthorized
entry into other Paragraph 1 areas.)

Paragraph 3

Paragraph 3 provides certain bases for the concern that security measures for protecting areas against sabotage or theft are inadequate. Subparts a,b,c,d, and e all are valid with regards measures necessary to adequately comply with 73.40(a) sabotage protection requirements. In addition, it is CBG's view that subparts a,b,c,d, and e all involve failure to comply with 73.67 theft protection requirements.

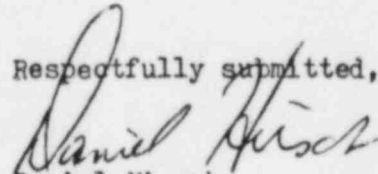
IV. Conclusion

The Board has specifically deferred CBG's responding to the substance of the factual and legal arguments advanced by Staff as to why protecting certain areas against theft or sabotage should not be required, or why security inadequacies as identified in Paragraph 2 and 3 need not, in Staff's view, be remedied. Detailed argument why sabotage of certain equipment, or sloppiness with certain keys, or problems with securing of specific doors, is not to occur until such sensitive information can be fully protected and CBG has had discovery on the security plan and related information.

The Board has asked CBG its view of which subparts of its contention apply to 73.67 and 73.40(a) theft and sabotage protection requirements. As there is little difference in practical terms between 73.67 and 73.60, and as sabotage protection requires other security measures beyond those for theft protection, the effect of reducing HEU quantities to below formula levels, if true, does not affect any part of the Contention, whose subpart bases were always based on grounds independent of 10 CFR 73.60. UCLA must protect against sabotage as per 73.40(a) and theft as per 73.67, and CBG alleges, and has always alleged, that it fails to adequately do so. The contention and its subparts remain awaiting early resolution of the disputes--which have not been addressed herein--and early determination of whether the

1
2 security plan is adequate to protect against the consequences of theft of
3 kilogram quantities of highly enriched uranium and the radiological sabotage
4 of a reactor containing enough fission products to contaminate out 75 kilometers
5 of Los Angeles, given the particular characteristics of this facility and
6 the environment in which it resides. A case-by-case judgment must be made,
7 based on these and other factors, whether UCLA complies with the regulations--
8 the contention clearly alleges it does not.

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10 Respectfully submitted,

11 
12 Daniel Hirsch

13 dated at Ben Lomond, CA

14 this 6th day of January, 1984
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(Proposed Renewal of
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DECLARATION OF SERVICE

I hereby declare that copies of the attached: Memorandum Clarifying
Contention XX Paragraphs 1, 2, 3

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 6, 1984.

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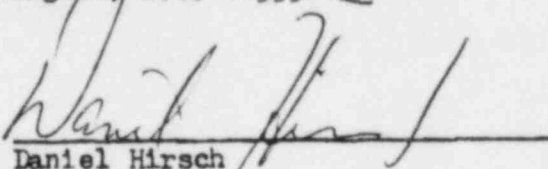
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Daniel Hirsch
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