

816
1 JOHN H. BAY
2 DOROTHY THOMPSON
3 NUCLEAR LAW CENTER
4 6300 Wilshire Blvd., Suite 1200
5 Los Angeles, CA 90048
6 Telephone: (415) 393-9234
7 (213) 653-3973

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8 Attorneys for Intervenor
9 (Contention XX)
10 COMMITTEE TO BRIDGE THE GAP

11 UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

12 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

13 In the Matter of)
14)
15 THE REGENTS OF THE UNIVERSITY) Doc. No. 50-142 OL
16 OF CALIFORNIA)
17) Proposed Renewal of Facility
18 (UCLA Research Reactor)) License No. R-71
19)
20)

21 COMMITTEE TO BRIDGE THE GAP'S MOTION FOR
22 RECONSIDERATION AND CLARIFICATION OF PORTIONS OF
23 APRIL 20, 1984 PRE-HEARING CONFERENCE ORDER

24 Committee to Bridge the Gap ("CBG") hereby moves the Atomic
25 Safety and Licensing Board panel ("Board") to reconsider, and seeks
26 clarification of, certain portions of its April 20, 1984 Pre-Hearing
27 Conference Order ("Order") as set forth below.

28 I.

CONTENTION XX, FAIRLY READ, INCLUDES
RESPONSE PROCEDURES AND FORCES

During the pre-hearing conference, CBG argued that the
alarm systems and response forces and procedures were covered by
Contention XX. (See, in camera, Tr. 3525-30.) On page eight of its
Order, the Board rules that the adequacy of the alarm system is
included in Contention XX. The Board ruling does not include any
mention of response procedures and forces; however, in its rulings on

1 UCLA's requested expurgation and deletions, it sustains the expur-
2 gation of information dealing with response procedures and forces,
3 thereby appearing to implicitly rule that response procedures are not
4 part of Contention XX. CBG seeks clarification of this ruling and,
5 to the extent that the Board has removed response procedures and
6 forces from consideration under Contention XX, seeks reconsider-
7 ation.

8 In the same manner as the adequacy of the alarm systems, the
9 adequacy of response procedures and forces is central to an evaluation
10 of UCLA's security system. Again, as with the alarm systems, while
11 not specifically enumerated, CBG's allegation that the response
12 procedures and forces are inadequate is clearly contemplated by the
13 Contention. Indeed, Contention XX, Paragraph 3(a), impliedly deals
14 with response procedures and forces. Further, at the time Contention
15 XX was drafted, CBG had not, of course, had access to the security plan
16 which would have enabled it to be more specific. In short, the Board's
17 rationale in including the alarm system is completely applicable to
18 response forces and procedures. In the Board's words, "the thrust of
19 the contention, taken as a whole is to question the adequacy of the
20 measures to protect against theft and sabotage." Clearly, the
21 response procedures and forces are a substantial portion of those
22 measures.

23 Mr. Carlson's comments at page 3542 of the in camera
24 transcript illustrate the problem. As Carlson notes, in the event of
25 sabotage, the act will be accomplished quickly and, if the response
26 is not rapid, the damage will be done. Response procedures adequate
27 for theft detection may not be adequate for sabotage. Thus, without
28

1 consideration of the manner in which UCLA would respond to violation
2 of the alarm system and other breaches of the facility's security, an
3 analysis of the adequacy of the security system is virtually mean-
4 ingless. Therefore, CBG asks the Board to specifically rule that the
5 adequacy of the response procedures and forces are raised by the
6 Contention.

7 II.

8 MR. RICHARD ROGGE IS QUALIFIED AS A SECURITY
9 EXPERT AND SHOULD BE ALLOWED ACCESS TO PROTECTED INFORMATION

10 On page six of its Order, the Board rules that Mr. Rogge is
11 qualified as an expert to evaluate the physical security of the UCLA
12 facility. However, the Board then goes on to deny Mr. Rogge access
13 to restricted information for the reason that they believe his
14 expertise overlaps with that of Mr. Cornwell and that access to the
15 plan should be restricted so as to eliminate cumulative reviews. This
16 conclusion dramatically extends the principles set forth in ALAB-410
17 to an unnecessary extreme and is unwarranted by the facts of this
18 case.

19 Mr. Rogge is a security expert. No question has been
20 raised, nor could such a question be raised, regarding his veracity
21 or ability to abide by the protective order. Indeed Mr. Rogge
22 maintains a Department of Defense Type A consultant security clear-
23 ance. His experience is complementary, not cumulative, to Mr.
24 Cornwell's. Mr. Rogge, Mr. Cornwell and Dr. Plotkin were proferred
25 as a team of security experts to conduct a collaborative review of the
26 physical security of this facility. As was demonstrated on voir dire,
27 each is a security expert, yet their backgrounds and experiences are

1 Besides being a general security expert, Mr. Rogge has
2 unparelleled experience with security at government and public fa-
3 cilities. This experience is uniquely applicable to this case given
4 the location of the reactor and the consequent necessity of having and
5 maintaining a security system which is effective yet compatible with
6 the institutional realities of a university campus. This govern-
7 mental and public facility background not only gives him unique
8 ability to accurately assess the strengths and weaknesses of the UCLA
9 reactor security system, but it will be invaluable to the Board in
10 determining what types of security measures are realistic and appro-
11 priate for UCLA.

12 Mr. Rogge is also particularly expert in evaluating the
13 administration of security systems, i.e., what is the reality behind
14 a plan which calls for "routine checking of the alarm systems."
15 Again, this expertise is critical to an evaluation of security at the
16 UCLA facility. Being a large bureaucratic educational institution
17 where security considerations are the exception, not the norm, the
18 administrative systems and procedures for implementing the security
19 plan are the central elements of an effective security system. Thus,
20 Mr. Rogge's expertise in this area is significant and important to an
21 adequate review of UCLA's security system.

22 CBG's preparation and presentation of its case is severely
23 prejudiced and the quality of the record will be impaired by the
24 Board's refusal to allow Mr. Rogge access to the secured information.
25 As a legal matter, the Board has set an extremely high standard for
26 qualification of experts to review protected information, which stan-
27 dard far exceeds anything even suggested by ALAB-410 and other appeals
28 board decisions and is without legal basis. As a practical matter,

1 there is no justification for barring Mr. Rogge from reviewing the
2 protected information. He is qualified, he presents absolutely no
3 additional security risk, and he brings unique qualifications to the
4 Board's security review of the UCLA facility. Permitting him access
5 to the protected information works no prejudice to the security of the
6 facility nor the other parties, while not permitting him access is
7 extremely prejudicial to CBG.

8 The Board's ruling on Mr. Rogge is also offensive to CBG's
9 rights as a party litigant. The Board, by finding that Mr. Rogge, Mr.
10 Cornwell and Dr. Plotkin are each qualified, then taking it upon
11 itself to single out Mr. Rogge as being cumulative, is tantamount to
12 its dictating both the tactical and substantive manner in which CBG
13 must prepare and put forth its case. The Board is choosing our
14 witnesses. There is absolutely no legal basis for such Board
15 interference with a party's preparation of its case.

16 As suggested in ALAB-410, the Board has determined that the
17 security plan and related documents are relevant to Contention XX; it
18 has made the release of the plan and other documents subject to a
19 protective order; and it has determined that Messrs. Plotkin, Rogge
20 and Cornwell are qualified to review the information. Indeed, it has
21 even expurgated the "gory details" from the plan and inspection
22 reports. There is no legal or factual basis for extending its ruling
23 to eliminate Mr. Rogge. The ruling is erroneous and should be recon-
24 sidered.

25 III.

26 OBJECTIONS TO EXPURGATIONS

27 CBG objects to the manner in which the Board has proceeded
28 in reaching its rulings on UCLA's objections to the release of certain

1 portions of the security plan and security inspection reports. At the
2 pre-hearing conference, CBG's lead counsel was given approximately
3 ten minutes to review over 75 pages of security plan and security
4 inspection reports, which plan and reports were already expurgated.
5 CBG's attorneys have been given no other opportunity to review the
6 expurgated versions of the plan and inspection reports, let alone to
7 see the unexpurgated documents. By proceeding in this manner, the
8 Board has denied CBG an opportunity to fairly litigate these rulings.

9 Notwithstanding the fact that CBG has been denied an
10 opportunity to adequately review the expurgation requests, it seeks
11 reconsideration of and makes objections to the following specific
12 rulings:

13 Page 10, Paragraph 2, (Circumvention of Alarms): The Board
14 has ruled that the adequacy of the alarm is under consideration in
15 Contention XX. It is, thus, inappropriate to uphold expurgations of
16 items dealing with circumvention of the alarm systems. It is an
17 absurd waste of time to place our experts in a position of identify-
18 ing possible circumventions of the system only to have UCLA claim that
19 they are already aware of such circumventions and they have taken
20 measures to protect against them. This is not a game of hide and seek,
21 nor is it a test of the expertise of CBG's witnesses, it is discovery
22 calculated to aid CBG in the preparation of its case and to provide
23 this Board with an adequate and serious review of the security of the
24 UCLA facility. No purpose is served, and much prejudice is oc-
25 casioned, by upholding these expurgations.

26 Page 10, Paragraph 3 (Accessibility of Irradiated Fuel):
27 Although CBG has not reviewed the expurgated information, "informa-
28 tion related to the accessibility of irradiated fuel" can only mean

1 access to the fuel in the reactor since such is the only irradiated
2 fuel at the facility. Access to the irradiated fuel is the central
3 consideration in the security of this facility. UCLA has already gone
4 on record to state that the reactor, itself, is the primary security
5 barrier. Thus, Security Plan items 5 and 6 should not be expurgated.

6 Page 10, Paragraph 5 (Police Resources and Response Times):

7 As argued above, the response procedures and forces are central to the
8 security of this facility and should be subject to review under
9 Contention XX.

10 IV.

11 10 C.F.R. § 73.60 DOES NOT PROVIDE
12 AN UPPER LIMIT TO SABOTAGE PROTECTION

13 On Page 12 of its Order the Board states that 10 C.F.R. §
14 73.40(b), (c) and (d) and § 73.60 provide an upper limit to the range
15 of sabotage protection measures that UCLA may be required to under-
16 take. This conclusion is erroneous, sets a standard which is not
17 countenanced under the regulatory scheme, and should be reconsidered.

18 10 C.F.R. §§ 73.67 and 73.60 pertain to the physical
19 protection of SNM from theft or diversion. Section 73.60 was adopted
20 as, and is, a regulation designed to provide theft protection, not
21 sabotage protection. This is evident from the fact that the trigger-
22 ing factor in 73.60 is the amount of fuel that could potentially be
23 diverted, not some measure relevant to sabotage, such as levels of
24 fuel irradiation or potential consequences. It is further evident
25 from the fact that the 100 rem exemption is included in 73.60, an
26 exemption that makes sense only from a theft or diversion prevention
27 point of view. Finally, the very language of 73.60 speaks in terms
28 of theft or diversion, not sabotage. Thus, the Board is citing a theft

1 and diversion section as providing an upper limit for sabotage protec-
2 tion. This is like comparing apples and oranges.

3 It is true, that certain theft or diversion measures will
4 provide some protection against sabotage. Thus, compliance with
5 73.60 may provide a measure of sabotage protection just as compliance
6 with 73.67 may provide some measure of sabotage protection. However,
7 to take this fact and create an upper limit for sabotage protection
8 measures out of a theft and diversion regulation is clearly erroneous.

9 As the Board has recognized in its earlier rulings, it must
10 make a site-specific determination of the adequacy of the physical
11 security at the UCLA facility. As a factual matter, the Board's
12 ultimate conclusion may or may not be that compliance with a given
13 theft and diversion section provides adequate sabotage protection.
14 There is no basis, however, for converting this possible factual
15 conclusion into a legal standard.

16 V.

17 OTHER PROCEDURAL MATTERS

18 On page 15 of the Board Order, a schedule of proceedings is
19 set forth culminating in a hearing on Contention XX. CBG seeks
20 clarification of that schedule in that there are no provisions for the
21 pre-filing of testimony or for the identification of Staff and UCLA
22 witnesses or opportunities for CBG to conduct discovery of Staff and
23 UCLA cases.

24 VI.

25 CONCLUSION

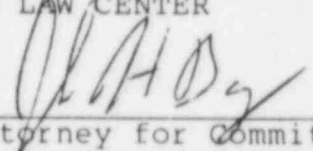
26 On the basis of the foregoing, CBG seeks reconsideration of
27

1 the specified portions or the Board's April 20, 1984 Pre-Hearing
2 Conference Order and clarification of other specified portions
3 thereof.

4 DATED: April 25, 1984

5 Respectfully submitted,

6 JOHN H. BAY
7 DOROTHY H. THOMPSON
8 NUCLEAR LAW CENTER

9 By 
10 Lead Attorney for Committee to
11 Bridge the Gap on Contention XX
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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 OL
OF CALIFORNIA)	(Proposed Renewal of Facility
(UCLA Research Reactor))	License)
_____)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached COMMITTEE TO BRIDGE THE GAP'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF PORTIONS OF APRIL 20, 1984 PRE-HEARING CONFERENCE ORDER, 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 26, 1984

John H. Frye, III, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dr. Glen O. Bright
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chief, Docketing & Service Section (3)
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 P. 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

Lin Naliboff
Deputy City Attorney
Office of the City Attorney
City Hall, 1685 Main Street
Santa Monica, CA 90401

Committee to Bridge the Gap
1637 Butler Avenue, Suite 203
Los Angeles, CA 90025

Daniel Hirsch
P.O. Box 1186
Ben Lomond, CA 95005

Dorothy Thompson
Nuclear Law Center
6300 Wilshire Blvd., Suite 1200
Los Angeles, CA 90048



JOHN H. BAY
Counsel for Intervenor
COMMITTEE TO BRIDGE THE GAP