

'84 JUL 25 A11:41

July 20, 1984

DS 03

I. INTRODUCTION

On July 3, CBG filed a response¹ to University's request to withdraw its license renewal application. CBG does not object to the withdrawal request provided that the Board in accepting the withdrawal imposes certain conditions and takes care of certain procedural matters. Among the conditions which CBG seeks to impose are the following: that University ship from its facility all of its special nuclear material by January 1, 1985; that University submit a plan for dismantlement of the reactor by January 1, 1985; that the reactor be dismantled; that CBG be kept informed in the matter of the UCLA reactor by continued service of staff-applicant correspondence and maintenance of the local public document room until such time as dismantlement is complete; that until the year 2000 University provide notice to CBG of any intended change in licensing status of the reactor; that CBG be given an opportunity to copy for its records the reactor security plan and other security documents comprising the security file for the UCLA reactor; and that University be required to preserve and permit copying of essentially all other documents related to the reactor facility until final dismantlement of the reactor occurs. As discussed below, University opposes the imposition of these conditions.

II. BACKGROUND

University submitted an application to renew the operating license of its UCLA research reactor in February, 1980. Notice of the proposed renewal of the license and the opportunity for hearing was

¹ "Committee to Bridge the Gap's Response to University's Request to Withdraw its Application for License Renewal" (Response).

published in the Federal Register in April, 1980. CBG petitioned to intervene in May, 1980. The Licensing Board accepted CBG as a party to the proceeding in September, 1980, and, by March, 1981, twenty contentions had been admitted for litigation. A period of extensive discovery followed. Summary disposition was granted on one issue (the financial qualifications of the University), but denied or deferred on the remaining issues. Evidentiary hearings were held on the class of license issue in May, 1983, and on the "inherent safety" issue in July, August and October, 1983. With the exception of its ruling on the adequacy of the financial qualifications of the University, the Board did not issue any decisions on factual issues in contention.

On June 14, 1984, University informed the Commission of its intention to withdraw the application and requested that the Board suspend the proceedings for the purpose of considering University's request to withdraw. In orders issued June 18 and June 22, 1984, the Board suspended the proceedings pending consideration of the withdrawal request. Staff and CBG both responded to the withdrawal request. On June 22, 1984, CBG submitted a petition to the Commission to require immediate removal of the fuel from the UCLA facility. That petition is still pending.

III. DISCUSSION

A. Applicable Legal Standards

The NRC Staff has reviewed the regulations and Appeal Board decisions pertinent to the withdrawal of a license application and

termination of a license.² Staff points out that University must retain a valid license pending completion of the license termination procedures. Accordingly, Staff concludes that the withdrawal of the application for license renewal can be granted on condition that University apply for termination of license pursuant to 10 C.F.R. §50.82 and comply with the procedures necessary to obtain an order terminating the license. Staff Response, at 8. Staff also concludes that the Board should vacate its ruling on Contention XVIII (financial qualifications) and dismiss the adjudicatory proceeding without prejudice. Staff Response, at 9-10. University concurs in Staff's application of the relevant legal standards to University's request to withdraw its license renewal application.

B. Additional Conditions Being Proposed by CBG

In its Response, CBG proposes a number of conditions to be imposed on University in "consideration of the Board's acceptance of the withdrawal request". In general, CBG's proposed conditions pertain to the license termination procedures of 10 C.F.R. §50.82 and not to the proceeding to consider University's application to renew the UCLA reactor operating license. However, CBG has not established, nor could it establish, any right to participate in the license termination process. As justification for its proposed conditions CBG relies

² "NRC Staff Response to the Request by the University of California to Withdraw the Application for Renewal of the License for the UCLA Research Reactor", dated July 2, 1984 (Staff's Response). Staff refers to the standards established by the Appeal Board in Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967 (1981) and Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125 (1981).

principally on the Black Fox and Bailly cases.³ CBG's reliance on these cases is misplaced. Black Fox and Bailly both involved decisions by licensing boards granting withdrawal of construction permit applications on condition that the site be restored. As noted by Staff, restoration of the site was an appropriate condition to be imposed by the boards in the circumstances of those cases because the site improvements were made under limited work authorizations (LWA's) which the boards had granted during the construction permit proceeding. Staff Response, at 4, citing, inter alia, Black Fox. The circumstances of the instant proceeding are entirely different. This Board has not authorized UCLA to take actions affecting the environment which now it might properly be asked to consider reversing.

The first specific condition which CBG proposes is that the reactor remain out of operation. University is not opposed to this condition but the condition is unnecessary. As University has reported to the Board, the UCLA staff has rendered the UCLA reactor permanently inoperable by severing the control blade shafts to the reactor.

The third condition proposed by CBG is that University is to ship all SNM off the UCLA site by January 1, 1985. The removal of fuel from the UCLA facility site is part of the decommissioning process. CBG cites Black Fox and Bailly in support of this condition but, as discussed above, these cases are inapposite. University has committed

³ Public Service Company of Oklahoma et al. (Black Fox Station, Units 1 and 2), LBP-83-10, 17 NRC 410 (1983); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), LBP-82-37, 15 NRC 1139 (1982).

to shipping its nuclear fuel as soon as reasonably practicable consistent with its obligations as licensee. In view of this commitment the setting of a specific date is unnecessary. It is also imprudent since it would serve to define for potential adversaries the "window" within which the fuel is to be shipped. In any case, University could not commit to shipping its fuel by January 1, 1985, and CBG has not provided any reasons for setting such a date.

Considered together, the second and fourth conditions proposed by CBG are that the reactor be dismantled; that a plan for dismantlement be submitted by January 1, 1985; that University produce progress reports periodically to be sent to Staff and CBG; and that Staff thereafter provide written reviews of these reports to University and CBG. CBG also cites Black Fox and Bailly in support of these conditions. But again these cases provide no such support. University is proceeding to decommission its reactor and terminate its license pursuant to Section 50.82 of the Commission's Rules of Practice. CBG has no right to seek to interpose itself in this process by asking this Board to impose conditions pertaining to the license termination procedures. Moreover, University cannot commit to submitting its plan by January 1, 1985. The UCLA staff plans to dismantle the reactor core and to remove and dispose of the exterior plumbing and metallic components of the core. Once the fuel and the core components of the reactor are removed, the staff intends to conduct a detailed radiation survey to evaluate various options related to further dismantlement of the facility. The manner and timing of any further dismantlement that may be needed (for example, of the concrete shielding) can only be

determined after the radiation survey is conducted. The imposition of conditions related to University's decommissioning plans is unreasonable and unwarranted.

The fifth condition which CBG seeks to impose is that Staff and University continue to serve staff/applicant correspondence on CBG until dismantlement is complete and notify CBG of any intended changes in licensing status until the year 2000. CBG relies here on the Stanislaus case⁴ but has failed to properly disclose the circumstances of that case which has little relevance to this proceeding. In Stanislaus, the construction permit applicant Pacific Gas and Electric Co. (PG & E) moved to withdraw its application pending its challenge in federal court to California's nuclear safeguards laws that prohibited the construction of new nuclear plants until a determination had been made by a State commission that proper means exist for the disposal of high-level nuclear waste. Stanislaus, 17 NRC at 47. PG & E planned to reinstate its application and go forward with the project when conditions so permitted and, accordingly, it proposed a method for the preservation of discovery documents as a condition of its withdrawal of the application. Over intervenors' objections the Licensing Board granted PG & E's request to withdraw, without prejudice, and adjudicated the parties' disagreements over the most suitable method of preserving documents. Id., at 50, 52, and 55. It is worth noting that the document preservation order finally adopted by the Licensing Board in the Stanislaus case included a provision that the parties' obligation to

⁴ Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45 (1983).

retain documents would terminate upon Applicant's report that it had eliminated the project from its future plans. Id., at 57 (¶ 3.3). University has eliminated its reactor project from its future plans. Under the circumstances in this proceeding, the Stanislaus document preservation order has no relevance.

In addition to the five sets of conditions discussed above, CBG requests that the Board "wrap-up" certain procedural matters. CBG first requests that the Board dissolve the protective orders of June 17, 1982 and January 18, 1984 (revised April 20, 1984 and again on June 1, 1984). In effect, CBG requests that the Board vacate these orders to be effective on the date the SNM has departed the UCLA reactor site. These protective orders were promulgated to give CBG a conditional right of access to certain security-related information in order that CBG could litigate certain of its contentions in the license renewal proceeding. But for the adjudicatory proceeding CBG would have had no right to take the photographs which are the subject matter of the 1982 order, nor would it have had any right to access to the "protected information" that is the subject of the 1984 order. Both orders provided that CBG would give up the information it received pursuant to the orders when the adjudicatory proceeding terminated. CBG should be required to comply with these terms of the protective orders when the Board dismisses the proceeding.

CBG apparently assumes that once the fuel is removed from the facility University will no longer have an interest in protecting information about the physical security system at the facility. CBG is

mistaken. University has invested considerable resources in its physical security system and intends to maintain that security system even after the SNM has been removed from the facility. Throughout the period of decommissioning and until a final termination order issues, University will be required to maintain physical security at the facility to prevent inadvertent exposure of personnel to any residual radiation. Aside from its responsibilities as licensee during decommissioning, University may decide to use the facility as a secure-storage area in order to benefit from its investment in a security. The Board should recognize University's legitimate and continuing interest in protecting security information for its facility.

The regulations cited by CBG do not support the remedy which CBG seeks. Section 2.744 is not applicable. It is concerned with requests for protected information made during the course of adjudicatory proceedings. CBG's request is being made after the adjudicatory proceeding has terminated. CBG can no longer assert any legitimate right or interest in information concerning the physical security system at the UCLA facility respecting which it now seeks unrestricted access. Section 2.790 establishes administrative procedures applicable to the disclosure and withholding of final NRC records and documents. It is not directly applicable to documents disclosed subject to protective orders during adjudicatory proceedings. Section 73.21 imposes certain affirmative duties on licensees and others to protect "safeguards information". CBG asserts that under this section the Board has an affirmative duty to remove information from the protected category when the original justification vanishes. Whatever the merits of that argument, the original justification for protecting

information related to the physical security of the UCLA facility has not vanished.

CBG also wants an order preserving, until the reactor is finally dismantled and disposed of, all documents in UCLA's "security file" and all documents listed on "Attachment 1" to its Response which includes essentially all documents related to reactor operations. Further, CBG wants an opportunity to copy all these documents "for its records" before the documents are destroyed by the University. Basically, what CBG is requesting is that its discovery rights continue even after the adjudicatory proceeding is dismissed. CBG can provide no justification for such an extraordinary extension of the rules of discovery. The Stanislaus case is inapposite.

The last conditions proposed by CBG purportedly concern the parties' legal rights after the proceeding is dismissed. CBG requests that the Board's order specify that any rights that exist or accrue to CBG will devolve upon CBG at any future address or upon its designated successor. This condition is unnecessary. University is unaware of any rights that could properly accrue to CBG by virtue of the Board's order dismissing this proceeding other than those that are already specified in the Commission's Rules of Practice. Finally, CBG urges the Board to "follow the Bailly model" and order that the conditions to be imposed be considered as an obligation assumed by University in consideration of the Board's accepting the withdrawal at this time. This condition is likewise unnecessary. University's obligations as a licensee with

respect to any order which the Board may issue are defined in the Commission's Rules of Practice and the case law.

IV. CONCLUSION

For the reasons above, University respectfully requests that the Board reject the conditions proposed by CBG and instead grant University's request to withdraw its license renewal application on the conditions proposed by Staff only.

Dated: July 20, 1984.

DONALD L. REIDHAAR
GLENN R. WOODS
CHRISTINE HELWICK

By William H. Cormier
WILLIAM H. CORMIER
Representing UCLA

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 Number R-71) JUL 20 1984 11:43

DOCKETED
USNRC
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached: UNIVERSITY'S REPLY TO
CBG'S RESPONSE TO UNIVERSITY'S REQUEST TO WITHDRAW THE APPLICATION.

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: July 20, 1984.

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

Counsel for the NRC Staff
OFFICE OF THE EXECUTIVE LEGAL DIRECTOR
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Ms. Colleen P. Woodhead

Chief, Docketing and Service Section (3)
OFFICE OF THE SECRETARY
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

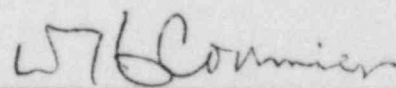
Mr. Daniel Hirsch
Cte. to Bridge the Gap
1637 Butler Avenue, #203
Los Angeles, CA 90025

Mr. John H. Bay, Esq.
Chickering & Gregory
Three Embarcadero Center
Suite 2300
San Francisco, CA 94111

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


WILLIAM H. CORMIER
Representing UCLA

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA