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December 14, 1983
(corrected 12/27/83)

5 UNITED STATES OF AMERICA
6 NUCLEAR REGULATORY COMMISSION

7 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

8 In the Matter of
9 THE REGENTS OF THE UNIVERSITY
10 OF CALIFORNIA
11 (UCLA Research Reactor)

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

12 MOTION FOR CURTAILMENT OF ACTIVITIES (I)
13 No Sabotage Protection Plan

14 The Atomic Safety and Licensing Board, in Memoranda and
15 Orders of May 11, 1983, and October 24, 1983, has disposed of a major
16 issue in this case.

17 Contention XX alleges, inter alia, that Applicant's security
18 plan fails to provide adequate protection against sabotage.

19 The Applicant, admitting that its security plan "is not
20 designed to provide protection against sabotage," ^{1/} has argued (with Staff)
21 that the regulations do not require such a plan. The matter has been the
22 subject of argument and briefs for three years.

23 The Board, in its May 11, 1983 Memorandum and Order, disposed
24 of the matter in ruling on summary disposition of Contention XX.
25 That ruling, which was reconsidered by the Board at Staff and Applicant's
26 request, and re-affirmed on October 24, determined that, UCLA's assertions
27 notwithstanding, it is required to have an approved plan that provides
28 protection against radiological sabotage.

1/ University's Response in Support of NRC Staff Petition for Reconsideration
of the Licensing Board's Memorandum and Order Ruling on Staff's Motion for
Summary Disposition, August 25, 1983, p. 3.

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1 Thus, nearly four years after submission of the Application
2 by UCLA, a major issue has been resolved: CBG contending that the
3 security plan is inadequate to protect against sabotage; UCLA admitting
4 its plan isn't designed to protect against sabotage, but asserting it
5 isn't required to; and the Board ruling it is so required under the
6 applicable regulation, 10 CFR 73.40(a).
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9 Discussion

10 UCLA's application is a combined request for two licenses:
11 a Part 50 license to operate a utilization facility and a Part 70 license
12 to possess Special Nuclear Material.^{2/} 10 CFR 50.34(c) requires that,
13 for an application to be sufficient, it must include a security plan
14 which "shall demonstrate how the applicant plans to comply with the requirements
15 of Part 73". Part 73 contains the requirements that applicants
16 and licensees must meet in order to possess Special Nuclear Material (SNM).
17

18 Nearly four years ago UCLA submitted a combined Part 50 and
19 Part 73 application. Its physical security plan was submitted after
20 the deadline for the timely renewal application provisions.^{3/} CBG, when
21 granted Intervenor status, contended that the plan was insufficient in
22 regards sabotage protection, beginning a long process of addressing UCLA's
23 assertion that the plan need not provide sabotage protection at all.

24 ^{2/} See Application, p. 5

25 ^{3/} the plan was initially submitted by letter dated March 10, 1980,
26 amended several times thereafter; the license expired March 30; timely
27 renewal provisions require submission at least thirty days prior to expiration.
28

1 As stated in Applicant's August 25, 1983, pleading on the
2 matter:

3 University wishes to note that its security plan,
4 which is not designed to provide protection against
5 sabotage, has been approved by the Commission's
6 safeguards branch; and that the low-power university
7 research reactor licensees have never been required to
adopt security plans designed to protect against sabotage.

8 (emphasis added)

9
10 The Board has ruled that the fact that it is Staff's position that
11 UCLA's plan, without sabotage provisions, is adequate and that sabotage
12 protection is not required is, of course, not dispositive.

13 In a contested proceeding it is up to the Board to make that
14 determination, which the Board has done in this case, ruling against
15 Staff and Applicant. Summary disposition on the matter has been determined.

16 An Applicant must demonstrate compliance with the Commission's
17 regulations in order to obtain a license (see, for example, 10 CFR 50.40).
18 Those regulations, the Board has ruled, include 73.40 protection against
19 sabotage, contrary to Applicant's assertions. In the absence of a plan
20 designed to provide 73.40 sabotage protection, license to possess or
21 utilize Special Nuclear Materials is impermissible. The import of the
22 Board's summary disposition ruling is to effectively deny that portion
23 of the application that requests authority to possess special nuclear
24 material in the absence of a security plan designed to protect it from
25 sabotage.

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The Practical Effect

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5 UCLA's Part 70 and Part 50 possession and utilization requests
6 being impermissible without the requisite sabotage protection plan,
7 possession and utilization authority lapses (even assuming the timely
8 renewal provisions had been met, which they were not.) UCLA cannot
9 possess SNM without a license; it cannot possess a license with a negative
10 determination on its proposed renewal; it cannot be granted a license,
11 the Board has now ruled, without a security plan designed to protect
12 against sabotage. UCLA cannot be granted--and therefore no longer has--
13 the authority to possess or utilize special nuclear material.

14 Utilization therefore must immediately be curtailed, and
15 immediate preparations made for expeditious off-shipment because possession
16 authorization no longer exists.

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19 Respectfully submitted,

20 *Daniel Hirsch*
21 Daniel Hirsch

22 dated at Ben Lomond, CA
23 this 14th day of December, 1983
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