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February 24, 1997

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Administrative Judge
Presiding Officer
Atomic Safety and
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U.S. Nuclear Regulatory
Commission (NRC)
Washington, D.C. 20555

Dr. Charles N. Kelber
Administrative Judge
Special Assistant
Atomic Safety and
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U.S. Nuclear Regulatory
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Washington, D.C. 20555

OFFICE OF SECRETARY
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In the Matter of
Moab, Utah Facility, License SUA-917
(Request for Extension of Site Reclamation Plan Milestone)
Docket No. 40-3453-MLA
ASLB No. 97-723-02-MLA

Dear Administrative Judges:

Presented below is a first response to Presiding Officer's Memorandum and Order (Initial Order) dated February 13, 1997.

The undersigned shall first respond to the Initial Order's suggestion that certain special factual circumstances be laid out for the Presiding Officer's consideration.

Beyond the matters of fact and law presented below, the undersigned will also address his 10 C.F.R. 2.1215 obligations.

The Initial Order of February 12, 1997 indicates that the undersigned should address in detail the special factual circumstances or issues involved in this proceeding that support the use of the formal procedures set forth in 10 C.F.R. Part 2, Subpart G which is entitled "Rules of General Applicability".

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Title 10, Chapter 1, Part 2, Code of Federal Regulations (10 C.F.R. Part 2) is entitled "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" and contains both Subpart G and Subpart L which is entitled " Informal Ajudications in Materials and Operator Licensing Proceedings".

10 C.F.R. 2.1201 (found within Subpart L of Part 2) is entitled "Scope of subpart", and states, in pertinent part, that the general rules of Subpart L govern procedure in any adjudication initiated by a request for a hearing in a proceeding for a licensee initiated amendment of a Part 40 source materials license.

10 C.F.R. 2.1239, entitled "Consideration of Commission rules and regulations in informal adjudications", states, in pertinent part, that any regulation of the Commission issued in its program for the licensing and regulation of source material may not be challenged in any adjudication subject to Subpart L except where a waiver has been granted or an exception made for the particular proceeding. The sole ground for a request for a waiver or exception must be that special circumstances exist so that the application of the regulation to the subject matter of the proceeding would not serve the purposes for which the regulation was adopted. In the absense of a prima facie showing of special circumstances, the presiding officer may not further consider the matter.

The record of this proceeding contains no information which would indicate that the December 20, 1996 Application being considered in this proceeding is a licensee initiated amendment request. Further, there is no information presented that License SUA-917 Condition 55 (Amendment 21), as amended (Amendments 25, 26, and 27) is presently, or has ever been brought forward by a licensee initiated amendment.

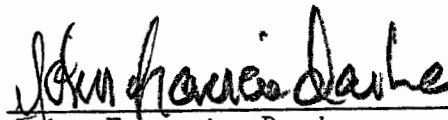
Special circumstances (supra) have not been claimed. The record of this proceeding contains no information which would indicate that the waiver or exception allowed by 10 C.F.R. 2.1239 has been forthcoming.

If the above matters of fact and law presented as special factual circumstances do not adequately support the use of the formal hearing procedures set forth in 10 C.F.R. Part 2, Subpart G, the undersigned would be pleased to supplement this submittal promptly upon the re-establishment of the NRC Local Public Document Room at Moab, Grand County, Utah.

10 C.F.R. 2.1215, entitled "Appearance and practice", states, in pertinent part, that a person may appear in an adjudication under Subpart L for one's own behalf.

The undersigned would respectfully request to appear pro se.

Affirmant



John Francis Darke
Member of Public

At Moab, Grand County, Utah

Monday, February 24, 1997

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In the Matter of

Moab, Utah Facility
License SUA-917

Docket No. 40-3453-²⁷ME-3 A11:13

(Request for License Amendment)

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CERTIFICATE OF SERVICE

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Secretary
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Attention: Chief,
Docketing and Service Branch

I hereby certify that copies of the foregoing First Response have been served on the above persons by U.S. mail, first class, in accordance with the requirements of 10 C.F.R. 2.1203 (c) and 2.701 (b) and 2.1203 (e).

Dated at Moab, Utah this
24 day of February 1997



John Francis Darke