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LOCKE, L.D.
November 9, 1990

UNITED STATES OF AMERICA, 80 NOV -9 P2:18
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judge
Peter B. Bloch

SERVED NOV -9 1990

In the Matter of

THE CURATOPS OF
THE UNIVERSITY OF MISSOURI

(Byproduct License
No. 24-00513-32;
Special Nuclear Materials
License No. SNM-247)

Docket Nos. 70-00270
30-02278-MLA

RE: TRUMP-S Project

ASLBP No. 90-613-02-MLA

MEMORANDUM AND ORDER
(Motion for Reconsideration)

On October 25, 1990, Intervenors filed a "Motion for Reconsideration of Memorandum and Order of October 15, 1990 [LBP-90-34] (Motion for Order Concerning Documents)." Licensee filed its "Response" on November 5, 1990.

I. Environmental Assessment

Intervenors assert that I prematurely decided an issue concerning whether or not an environmental assessment needs to be prepared pursuant to NRC rules. Motion at 2. Because Intervenors do not contest the validity of the substantive ruling (that Licensee had no responsibility to file in this proceeding the Department of Energy's Environmental Assessment), Licensee does not object to this portion of Intervenors' motion. Response at 2. Accordingly, the discussion

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in LBP-90-34 of NRC regulations governing environmental assessments is vacated and shall not be cited as authority.

II. Relevance of Licensee's Financial Assurance Statement

Intervenors state that Licensee has an obligation to disclose its financial assurance statement to the presiding officer because it is relevant "to the amendment" [emphasis added]. Motion at 2. Licensee opposes this assertion because the financial assurance statement is not relevant "to any of the admitted areas of concern." Response at 3.

There is a direct disagreement concerning the standard I should apply to my determination. The authority with which to resolve this question is the McGuire case, which I cited in LBP-90-34, as follows:

In McGuire, the Board criticized the failure of the applicant and the staff to have advised the Licensing Board promptly of certain modifications which the applicant had made in its quality assurance organization. Even though the adequacy of that organization was a contested issue in the proceeding, the modifications (which had occurred prior to the rendition of the initial decision) had not come to the attention of either the Licensing Board or ourselves until evidence was later received at a hearing on remand. We admonished the Bar that, "[i]n all future proceedings, parties must inform the presiding board and other parties of new information which is relevant and material to the matters being adjudicated",¹ adding that otherwise "reasoned decision-making would suffer. Indeed, the adjudication could become meaningless, for adjudicatory boards would be passing upon evidence which would not accurately reflect existing facts". ALAB-143, 6 AEC at 625-26.

¹Emphasis added for the first time in this Memorandum.

I conclude that the McGuire rule requires the disclosure of information relevant to the matters being adjudicated. In a Subpart L proceeding, the matters being adjudicated are the admitted areas of concern. Although Intervenor's allege that their Area of Concern Number One includes all matters relating to the assurance of the public safety, the admitted concern related only to the adequacy of fire procedures. LBP-90-18, 31 NRC 559 (1990) at 568.² Hence, matters of financial responsibility do not appear to relate to any admitted area of concern and are therefore not required to be disclosed pursuant to the McGuire rule.³ Additionally, references to this issue in Intervenor's Written

²I also have reviewed "Reply Memorandum of Petitioners in Support of Request for Hearing and Stay Pending Hearing," Jun. 12, 1990 at 9-10, and I find no support for Intervenor's current assertion about the breadth of this concern, which related to "handling and experimenting with these highly dangerous materials" and not to decommissioning.

³New concerns may be filed with the presiding officer pursuant to 10 CFR § 2.1205(k). However, no such petition has been filed by Intervenor's concerning financial assurance for decommissioning. This area of concern was presented by Individual Intervenor's and was not admitted; and no party sought reconsideration in a timely fashion. Memorandum and Order, August 28, 1990 (unpublished) at 5.

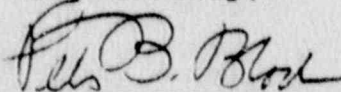
I have asked for briefs concerning whether it is appropriate to adjudicate a regulation that governs applications for a license and that becomes effective during this proceeding. However, existing licensees apparently do not need to amend their license with respect to the new financial assurance regulations. 10 CFR §§ 30.35(c)(2), 70.25(c)(2).

Presentation, at pp. 25-27, shall be struck as irrelevant to any admitted areas of concern.⁴

There is, in my opinion, some ambiguity about whether Licensee might be required to comply with the McGuire rule if it became aware of a serious licensing deficiency which could become the subject of a late-filed area of concern. Such a deficiency is within the area of adjudication in the sense that it is subject to a motion for admission of a new area of concern that Licensee might reasonably believe would affect the outcome of the proceeding. That ambiguity does not govern here, however, as Licensee believes its financial assurance statement is adequate and there is no reason to include every filing of Licensee within the McGuire rule -- just because an intervenor might object to that filing.

IT IS SO ORDERED.

Respectfully,



Peter B. Bloch
Presiding Officer

Bethesda, Maryland

⁴This ruling is tentative, as Intervenors have not responded to this motion of Licensee, which was included in its Response at 6-7. It shall stand unless Intervenors respond; in which case, their reasons will be given full consideration and a de novo ruling will be issued.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

THE UNIVERSITY OF MISSOURI

(Special Nuclear Materials Lic. 247
Byproduct Mat. Lic. 24-00513-32)

Docket No.(s) 70-270/30-2278-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO, AND ORDER DATED 11/9 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Gustavo A. Linenberger, Jr.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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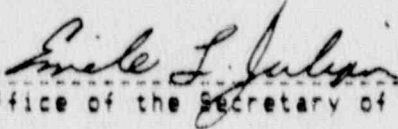
Mark Haim, Director
Mid-Missouri Nuclear Weapons Freeze,
Inc.
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Columbia, MO 65201

Docket No. (s)70-270/30-227B-MLA
LB MEMO. AND ORDER DATED 11/9

Robert L. Blake, Jr., M.D.
Physicians for Social Responsibility/
Mid-Missouri Chapter
M-22B UMC Health Sciences Center, MD U.
Columbia, MO 65212

A. Bert Davis
Regional Administrator
U.S. Nuclear Regulatory Commission
Region III
799 Roosevelt Road
Glen Ellyn, IL 60137

Dated at Rockville, Md. this
9 day of November 1990


Office of the Secretary of the Commission