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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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BRANCH

Before Administrative Judge
Peter B. Bloch

SERVED OCT 30 1990

In the Matter of
THE CURATORS OF
THE UNIVERSITY OF MISSOURI

Docket Nos. 70-00270
30-02278-MLA

RE: TRUMP-S Project

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

ASLBP No. 90-613-02-MLA

MEMORANDUM

Memorandum of Conference Call of October 19, 1990

[This memorandum is consistent with my recollection, assisted by a memorandum submitted by counsel for Licensee, by comments of Intervenors, and by a reply by Licensee.]

At 10:05 a.m. on October 19, 1990, a conference call was placed by the Presiding Officer with Mr. Lewis Green and Mr. Maurice Axelrad. The Presiding Officer explained that the purpose of the call was to inform the parties that he would be away from his office during the week of October 22, 1990. He wanted to ascertain whether the parties planned to file any pleadings that would require him to take materials with him or whether the parties wanted to raise any matters.

Mr. Green suggested that the conference call be transcribed. The Presiding Officer stated that this was not

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possible without 12 hours advanced notice. Mr. Axelrad pointed out that long-standing NRC practice permitted conference calls to be held without being transcribed as long as any actions taken during the conference are subsequently recorded in writing. The Presiding Officer decided to proceed with the conference call and requested Mr. Axelrad to provide a summary of the results to him and to Mr. Green by 3:00 p.m. of October 19.

Mr. Axelrad noted that Intervenors had filed their direct case and a request for a stay by first class mail on October 15, 1990. These documents were received by mail at the University on October 17 and at Mr. Axelrad's office on October 18. Under the Presiding Officer's previous scheduling order the Licensee's response to the direct case was due 10 business days after receipt of the direct case (i.e., on November 14), but the response to the request for a stay was due earlier, i.e., within 10 days. (The precise due date for the response to the request for a stay is discussed below.)

Mr. Axelrad pointed out that since Intervenors' request for a stay apparently incorporated their entire direct case, a full and complete response to the request for a stay would require Licensee to present its entire direct case within 10 days. He argued that in view of the voluminous direct case filed by Intervenors, it would not be possible for Licensee to prepare and file its complete direct case in 10 days, and

that it would be grossly unfair to Licensee and lead to an inadequate record to require Licensee to respond within 10 days. Accordingly, he requested that the time for Licensee's response to the request for a stay be extended to the same date that its direct case is due. He noted that when the Presiding Officer previously denied Licensee's anticipatory request for an extension, he had stated that when an actual request for a stay was received: "After reviewing all the circumstances of a stay request, I will be in a better position to adjust deadlines in the interest of fairness, impartiality and the avoidance of delay." See Memorandum and Order (Schedule for Renewal of Stay Motion and for Basic Case) 3-4 (Sep. 4, 1990).

Mr. Green objected to Mr. Axelrad's request. He argued, to the contrary, that in view of the showings made in Intervenor's filings, the conduct of the TRUMP-S experiments should be stayed immediately.

The Presiding Officer inquired whether TRUMP-S experiments would be held during the period November 14. Mr. Axelrad responded that Phase I-A experiments had been completed, and that Phase I-B experiments were expected to begin within the next few days and to continue through November 14.

The Presiding Officer then expressed immediate concerns that he had with respect to Licensee's activities upon

reviewing the Intervenor's pleadings. As a result of the ensuing discussion, he order that:

1. The due date for Licensee's response to the request for a stay was extended to November 14, 1990 except for the two following matters:

- a. Licensee will respond to Intervenor's allegation that the plutonium possessed by Licensee exceeded 2 curies and that Licensee possessed plutonium in excess of the amount authorized by the subject license amendment; and
- b. Licensee will respond to Intervenor's allegation that the Columbia Fire Department would not fight a fire at the Alpha Laboratory involving radioactive materials, and Licensee will describe the arrangements with the Columbia Fire Department that provide assurance of an adequate response to a fire relating to the TRUMP-S experiments.

2. Licensee will call NRC Region III and/or NRC counsel on October 19, 1990 to inform the NRC Staff of Intervenor's allegations that Licensee possesses plutonium in excess of the amount authorized by the subject license amendment.

The Presiding Officer asked whether the Staff had been informed that the amendment authorizing possession of 25 curies of americium exceeded the amount of americium referenced in § 30.32(i). Mr. Axelrad stated that the Licensee had mentioned this and the applicability of the MURR Emergency Plan to the TRUMP-S work to Region III personnel upon receiving the Staff's affidavit. He also stated that the Licensee can demonstrate that it can satisfy both of the alternative requirements of § 30.32(i), i.e., an acceptable emergency plan or an acceptable evaluation of maximum dose.

The Presiding Officer asked Mr. Green whether there were any other matters in the request for a stay that he deemed to be of equivalent importance to the two identified by the Presiding Officer and would warrant response within 10 days. Mr. Green stated that all aspects of the request for a stay and direct case were important and should be responded to within 10 days. The Presiding Officer decided not to expand the foregoing order.

Mr. Axelrad mentioned an ambiguity regarding whether the due date for the response to the request for a stay was October 30 or October 31. At Mr. Green's suggestion, the Presiding Officer decided that the due date was the earlier of the two dates: October 30.

Mr. Green noted that in all likelihood Intervenors would want permission to respond to any new information in Licensee's response to the request for a stay. It was

agreed that Licensee would file its response by overnight mail on October 30, and that the Presiding Officer would place a conference call at 3:00 p.m. (Eastern time) on November 1¹ to consider any request by Intervenors for authority to file such a response. Mr. Green also noted that five days would almost surely prove insufficient for preparation of rebuttal, after Licensee files its direct case, and that he would probably be requesting additional time at that point. The Presiding Officer noted that rebuttal could be addressed only to new material that could not have reasonably been anticipated when Intervenors filed their written case.

Mr. Green suggested that Licensee make available to intervenors a copy of any documents referenced in Licensee's responses that are not readily available. Mr. Axelrad agreed to provide any such document upon request by Intervenors, and Mr. Green similarly agreed that he would provide

¹Subsequent to this conference call, the Presiding Officer issued LBP-90-35, in which a temporary stay was granted. The Presiding Officer had not decided to issue such a stay at the time of the scheduling conference. Had he been considering such a possibility at the time of this conference call, Licensee would have been asked to comment.

The issuance of such a temporary stay may change the proper order of scheduling in the interest of fairness and efficiency because of the need to permit Licensee to move to dissolve the temporary stay at as early a time as it may choose. Hence, the determination to have a November 1 conference call is no longer relevant to the new circumstances of the case. Scheduling will be arranged in light of the needs of the parties and the complexity of the issues to be decided.

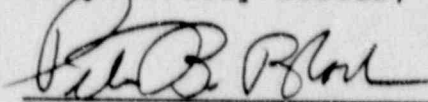
to Licensee upon request any documents referenced in Interveners' filings that are not readily available.

The Presiding Officer stated that if Licensee disagreed with Interveners' interpretations of the Seehars and Schwendiman articles, he would request that the Interveners provide him with copies of the articles or the portions thereof relied upon by the Interveners. Mr. Axelrad agreed that if Licensee disagreed with those interpretations it would so inform Interveners and the Presiding Officer within 10 days, which Licensee understands to mean in its response to the request for a stay.

The Presiding Officer noted that it would be useful if the parties' pleadings referenced specific pages in a cited document, rather than referencing the entire document. It was agreed that if the Presiding Officer desires more specific references from any party, he would request such information and inform the other party that a request had been made and of the reference that is provided.

There being no other matters raised by the parties or the Presiding Officer, the conference call was ended.

Respectfully ISSUED,



Peter B. Bloch
Presiding Officer

Bethesda, Maryland

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 (MEMO OF CONF CALL...) 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.

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Administrative Judge
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Docket No. (s)70-270/30-227B-MLA
LB MEMO (MEMO OF CONF CALL...)

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A. Bert Davis
Regional Administrator
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Dated at Rockville, Md. this
30 day of October 1990

Patty Henderson

Office of the Secretary of the Commission