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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judge
Peter B. Bloch

In the Matter of)
THE CURATORS 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

LICENSEE'S RESPONSE TO
 "INTERVENORS' MOTION FOR RECONSIDERATION OF
 MEMORANDUM AND ORDER OF OCTOBER 15, 1990
 (MOTION FOR ORDER CONCERNING DOCUMENTS)" AND
LICENSEE'S RELATED MOTION TO STRIKE

In Intervenor's Motion for Reconsideration of Memorandum and Order of October 15, 1990 (Motion for Order Concerning Documents) ("Motion for Reconsideration") (undated; served by express mail on October 25, 1990), Intervenor move that the Presiding Officer reconsider two aspects of the Memorandum and Order he issued on October 15, 1990 (the "October 15 Order"). Intervenor do not ask that the Presiding Officer reconsider the decisions reached in the October 15 Order as to the parties' obligations relating to notification of new relevant and material information, but that he withdraw two conclusions expressed in his Order.

One of these aspects also involves a portion of the Written Presentation of Arguments of Intervenor and Individual

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Intervenors ("Intervenors' Written Presentation") (undated; served on October 15, 1990) as to which Licensee was planning to file a motion to strike. In order to avoid redundant pleadings, Licensee has included such motion to strike in this pleading.

First, Intervenors ask that the Presiding Officer withdraw the conclusion "that Licensee correctly interprets the regulations as exempting TRUMP-S from the requirement for an environmental assessment" Motion for Reconsideration at 1-2. Intervenors note that this question is one of the admitted areas of concern and urge that the Presiding Officer not reach a conclusion prior to the submittal of all presentations by all parties. Licensee is convinced that the conclusion is valid, and that the Presiding Officer will continue to be convinced of its validity after he reviews all of the presentations. However, since the Intervenors do not request any reconsideration of the accompanying substantive ruling in the Order, Licensee has no objection to the Presiding Officer's withdrawal of the quoted conclusion from this particular order. 1/

Second, Intervenors request that the Presiding Officer also withdraw his conclusion that Intervenors "have not shown the relevance of [the financial assurance statement and statement of intent] to any admitted area of concern or to the two challenged amendments." Id. at 2-3.

1/ The ruling that the DOE study is irrelevant to the admitted concern remains valid for the reasons stated in Licensee's Response to "Intervenors' Motion for Order . . .," at 6-8 (Oct. 8, 1990).

Licensee opposes the withdrawal of such conclusion because the Presiding Officer's conclusion is both correct and timely.

Notwithstanding Intervenor's argument, it is clear that the financial assurance statement (presented by Licensee through a submittal to the NRC dated June 15, 1990) is not related to any of the admitted areas of concern.

Intervenor's argue that the financial assurance statement is relevant "to the safety concerns of the Intervenor, particularly area of concern No. 1" *Id.* at 3. However, in admitting Concern No. 1, the Presiding Officer described it as follows:

1. Area of Concern Number One

Petitioners have obtained a one page "Fire Procedure," dated March 22, 1990. They were concerned about the adequacy of fire procedures for TRUMP-S before they obtained this procedure. They are more concerned now. This concern about fire procedures is germane to a proceeding concerning authorization to possess nuclear materials in unsealed sources. This area of concern is admitted.

Memorandum and Order (Admitting Parties and "Areas of Concern;" Deferring Action on a Stay), LBP-90-18, slip op. at 14 (June 15, 1990).

Nothing in such description even hints at the possibility that it encompassed decommissioning or the funding therefor. Moreover, in the applications and license amendments here at issue Licensee neither requested nor received authorization for decommissioning or funding therefor. Concern

No. 1, as written, and the portions of Intervenor's pleadings upon which it was based obviously dealt with the adequacy of fire procedures during the time that TRUMP-S experiments were being carried on, not at some future time when the facilities might lie idle or be in the process of decommissioning, and they certainly did not deal with the prospective funding for decommissioning.

Intervenor's try to avoid the restrictive parameters of Concern No. 1 by broad allusions to Intervenor's "safety concerns." But it is only the admitted concerns that define the evidence that Intervenor's can present, not its broad allusions to "safety concerns." Under Intervenor's approach they would be free to present in this proceeding any evidence that they believed related to safety, regardless of whether it was encompassed within the admitted concerns. That is not the hearing scheme contemplated by Subpart L. Intervenor's failed to raise a concern relating to funding for decommissioning, and cannot make believe it was encompassed by a wholly unrelated concern.

That funding for decommissioning is not within the scope of the admitted concerns is additionally evidenced by the fact that, even though the Individual Intervenor's adopted all of the concerns previously admitted in this proceeding, they still sought to add a new concern relating to funding for decommissioning. Petitions for Leave to Intervene; Requests for Stay at 4 (undated; served on Aug. 6, 1990). The Presiding Officer decided that this area of concern would not be accepted.

Memorandum and Order (Admitting Parties and Deferring Action on a Stay) at 5 (Aug. 28, 1990). Clearly he did not rule that such area of concern was encompassed by previously admitted concerns; and no party sought reconsideration of his ruling denying the admission of such concern.

The Presiding Officer pointed out that the Individual Intervenors could, after studying materials filed by Licensee, refile this area of concern by showing that they have met the criteria for late-filing of concerns. *Id.* at 5, fn.1. The same opportunity was available to Intervenors, but they have chosen not to use it. They cannot seek to achieve the same objective indirectly by interpreting an existing concern beyond its admitted scope.

Licensee has difficulty understanding Intervenors' additional argument that Licensee's financial assurance statement is "relevant" to the challenged amendments. Motion for Reconsideration at 2. Even if Intervenors' argument regarding relevance were valid, however, Intervenors could not prevail. 2/ It is not sufficient that information be "relevant" to the amendments, it has to be relevant to an

2/ Nevertheless, it should be noted that Intervenors' argument is wrong, because, among other things, they cite the incorrect portion of the regulations. Since Licensee held licenses issued before July 27, 1990, its financial assurance statement was not required as part of its application, but was required to be submitted by July 27, 1990. See § 30.35(c)(2) and § 70.25(c)(2). Licensee may have contributed to the confusion by incorrectly citing the regulations in its June 15, 1990 submittal, but such error was not significant.

admitted area of concern; and, as shown above, the financial assurance statement is not. Moreover, as previously explained by Licensee, the subject of financial assurance for decommissioning could not be a proper part of this proceeding. See Response of Licensee to "Petitions for Leave to Intervene; Request for Stay" at 14-16 (Aug. 20, 1990). Since compliance with §§ 30.35, 40.36 and 70.25 was not a subject that had to be evaluated by the NRC in issuing the subject license amendments, 3/ any alleged deficiency in Licensee's later submittal would have to be considered as an enforcement or compliance matter, not in this amendment proceeding.

On the basis of their apparent assumption that funding for decommissioning is encompassed by an admitted concern, and notwithstanding the fact that the Presiding Officer explicitly denied the admission of such a concern, Intervenors (on behalf of themselves and Individual Intervenors) attempt to present argumentation on this subject as part of the Intervenors' Written Presentation at pages 25-27. Since, for the reasons discussed above, this subject is not within the scope of the admitted concerns, 4/ Licensee respectfully moves, pursuant to

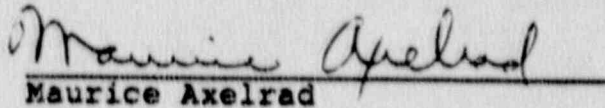
3/ Intervenors admit that "The regulations permit filing by July 27, 1990." Intervenors' Written Presentation at 25.

4/ It should be noted that Intervenors' arguments in the Intervenors' Written Presentation are also mistaken. For example, their argument at page 25 that a certification of financial assurance, as opposed to "full-scale decommissioning plans," would fail to satisfy regulatory requirements is based on a citation to inapplicable

(continued...)

§ 2.1233(e), that the Presiding Officer strike as irrelevant and immaterial the portion of Intervenor's Written Presentation appearing at pages 25-27 and entitled "10. There is no decommissioning plan."

Respectfully submitted,


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Date: November 5, 1990

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regulations (§§ 30.35(a) and 70.25(a)). As noted above, since Licensee received its licenses before July 27, 1990, the applicable regulations are §§ 30.35(c)(2) and 70.25(c)(2), which authorize Licensee's filing. As another example, Intervenor's refer to the table in the figure in § 30.35(d), as if Licensee had utilized that amount in its financial assurance statement. Intervenor's Written Presentation at 25-26. Instead, as explicitly stated in its June 15, 1990 submittal, Licensee had acknowledged that it was authorized to possess materials exceeding 10^5 times the applicable quantities in Appendix C to 10 CFR Part 20; and had used the dollar amounts for those quantities specified in Exhibits 2-1, 2-2 and 2-3 of the NRC Draft Regulatory Guide Task DG-3002 (which has since been issued as Regulatory Guide 3.66 (Task DG-3002) "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72" (June, 1990)). Thus, Licensee's submittal fully satisfied NRC regulations and guidance.