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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

90 DEC 17 P4:30

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge
Peter B. Bloch

OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

In the Matter of)	Docket Nos. 70-00270
)	30-02278-MLA
THE CURATORS OF)	
THE UNIVERSITY OF MISSOURI)	RE: TRUMP-S Project
)	
(Byproduct License)	
No. 24-00513-32;)	ASLEP No. 90-613-02-MLA
Special Nuclear Materials)	
License No. SNM-247))	

LICENSEE'S RESPONSE TO
"INTERVENORS' MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE TO LICENSEE'S WRITTEN PRESENTATION"

On December 13, 1990, Intervenor's counsel reached the undersigned counsel for Licensee (who was away from his office), indicated that Intervenor's needed more time to file their response to the Licensee's Written Presentation, and asked if Licensee would agree. When Licensee's counsel asked how lengthy an extension was sought and on what basis, Intervenor's counsel said seven days and identified the four bases specified in paragraphs 2-5 of the subsequently filed "Intervenor's Motion for Extension of Time to File Response to Licensee's Written Presentation" (the "Extension Motion"). Licensee's counsel advised him that Licensee opposed the extension because the stated bases did not justify an extension. Licensee's counsel suggested that Intervenor's file a written motion, stating Licensee's opposition. Under the circumstances, it is not clear

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to Licensee's counsel why, in addition to filing a written motion by telecopy on the same day, Intervenor's counsel proceeded to discuss the matter with the Presiding Officer by telephone resulting in an oral grant of the requested extension by the Presiding Officer before Licensee could respond to the written motion.

The Extension Motion indicates that the Presiding Officer stated that the Licensee may move for reconsideration of the granted extension.

For the reasons briefly stated below, Licensee continues to believe that Intervenor's have not provided sufficient justification for the requested extension and that it was requested in untimely fashion a scant two business days prior to the required filing date for Intervenor's rebuttal. Nevertheless, under these particular circumstances, including the immediacy of the original filing date (December 17), Licensee has decided not to request reconsideration of the Presiding Officer's oral grant. However, Licensee will strenuously oppose any additional extension (should one be requested) for the stated reasons.

Intervenor's first argue that they "cannot know exactly what points require a response," since the Presiding Officer has not ruled on their motion to strike. This basis is untenable. Unless and until a Presiding Officer rules otherwise, a party must either assume that an opponent's filing is valid or take the risk of not responding to what it considers to be invalid. A

party cannot create a self-imposed delay in meeting a required filing date simply by filing a motion to strike. Otherwise a party could simply wait until the eve of a filing date to file a motion to strike and then plead excusable delay in not filing a pleading (and even repeat the process thereafter). Moreover, if Intervenors believed they required an expedited decision by the Presiding Officer in order to prepare their rebuttal, they should have requested such expedition in their motion to strike.

Intervenors did not do so. Licensee filed its response to the motion on December 6, four days before its due date. The lack of any early ruling on such motion to strike is due entirely to Intervenors' own actions, and they should not be able to rely on their own dereliction. This is particularly true in light of the frivolous nature of the motion to strike, as explained in Licensee's response of December 6.

Intervenors then refer to their receipt of an incomplete version of Regulatory Guide 10.5 from the NRC Staff. That document was mailed to Intervenors by the NRC Staff on November 14. The Table of Contents (page iii) reflects that the document has at least 23 pages. Intervenors did not request a complete copy from the NRC Staff until December 11. If that document was important to Intervenors' rebuttal, there was no justification for waiting until a few days before the rebuttal was due to request a copy from the NRC Staff. Again, Intervenors cannot rely upon a self-inflicted delay in order to justify an extension in a filing date.

Next, Intervenor's refer to a "controversy" with Licensee over production of a translation of a portion of the Seehars article, and enclose a copy of a contemporaneous (December 13) letter to Licensee's counsel on this subject. Intervenor's letter of December 13 contains many statements and assertions (e.g., the alleged existence of a "serious question" concerning when Dr. Morris had available a copy of the article and of a "substantial dispute" about the validity of the use of the article) which are simply irrelevant to the question of whether Intervenor's have a basis for requesting a delay in the filing of their rebuttal. 1/ As specified in the Scheduling Order (November 21, 1990) submitted by the parties jointly and issued by the Presiding Officer at their request, Licensee had agreed to provide upon request by Intervenor's, "a copy of an authority referenced by Licensee or its witnesses not available in a reputable scientific library or a Federal Depository Library" (emphasis added). By letter of November 23, 1990, Intervenor's counsel requested a copy of the three "documents" referenced in Licensee's Exhibit 3, at page 7, lines 11-12, which were "an abstract and the referenced part of the Seehars article, including an English translation," that Dr. Morris had "before

1/ Intervenor's may decide to argue these collateral matters in their pleadings, as they have in the past, rather than focusing on substance. Whether or not those arguments are relevant or material to the substantive matters to be determined by the Presiding Officer, they should not be permitted to cloud the requirement to meet filing deadlines for pleadings.

May 30." Licensee provided to Intervenors the six pages that constitute the "abstract and the referenced part of the Seehars article" that Dr. Morris referred to at lines 11-12 of page 7 of Exhibit 3. Licensee has refused, however, to provide the English translation. As Licensee has explained twice to Intervenors, the English translation is a working translation prepared by Dr. Morris and his staff; it is not a "referenced" document and it is not an "authority." Accordingly, Licensee's position is that the translation is not a document of the type it has agreed to provide to Intervenors. Since discovery is not permitted, Licensee has no other obligation to provide such work product to Intervenors, who are free to produce their own translation. Since this matter obviously will not be resolved between the parties, to avoid any further argument, Licensee respectfully suggests that the Presiding Officer rule that the working translation prepared by Licensee does not constitute a "referenced" document or an "authority" and that the Licensee is not obligated to provide it to the Intervenors.

Finally, Intervenors argue that since Licensee filed an extensive written presentation including many affidavits, Intervenors have "simply been unable to prepare their response to all these matters." Intervenors were fully aware of the "extensiveness" of Licensee's presentation and of the number of affidavits when they sought and negotiated with Licensee an agreed-upon period of 20 business days, rather than the previously ordered five business days, to respond to Licensee's

presentation. Licensee would not have initially agreed to such extension, if it had been aware that Intervenor could simply decide subsequently that they still did not have enough time and request an extension on that basis. Having initially obtained an extension agreed upon in good faith by Licensee, it was Intervenor's obligation to prepare their rebuttal within the allotted time.

Not only does the additional 7-day extension continue, for another week, the existing cloud cast on Licensee's activities under the licenses, but changes in schedule affect the planning of Licensee and its counsel, who were relying upon receiving Intervenor's rebuttal on December 18.

For all of the above reasons, the Presiding Officer should reject any further request for extensions by Intervenor.

Respectfully submitted,



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Date: December 14, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge
Peter B. Bloch

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Special Nuclear Materials)	
License No. SNM-247))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to 'Intervenors' Motion For Extension of Time to File Response to Licensee's Written Presentation" were served upon the following persons by deposit in the United States mail, postage prepaid and properly addressed on the date shown below:

The Honorable Peter B. Bloch */
Administrative Judge
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

The Honorable Gustave A. Linenberger, Jr.
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Secretary
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Attn: Chief, Docketing & Service Section
(Original plus two copies)

*/ Will also be telecopied on December 17, 1990.

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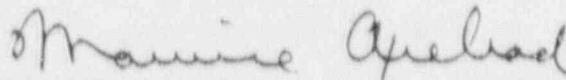
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Dated this 14th day of December, 1990.



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