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DUPLICATE ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DUPLICATE
USNRC

ATOMIC SAFETY AND LICENSING BOARD 90 DEC 27 P3:48

Before Administrative Judge
Peter B. Bloch

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

ASLEP No. 90-613-02-MLA

LICENSEE'S MOTION FOR
PARTIAL RECONSIDERATION OF "MEMORANDUM AND ORDER
(PENDING MOTIONS, INCLUDING THOSE
RELATED TO POSSESSION OF ²⁴¹PU"

On December 19, 1990, the Presiding Officer issued a Memorandum and Order ruling on a number of pending motions. Memorandum and Order (Pending Motions, Including Those Related to Possession of ²⁴¹Pu), LBP-90-45. At page 9, the Presiding Officer stated: "(Intervenors may, however, have a right of rebuttal if new information is submitted in Licensee's last filing.)" (Emphasis added)

For the reasons set forth below, Licensee respectfully requests that the Presiding Officer modify the foregoing sentence to make clear that, under Subpart L, there is no "right of rebuttal," and that Intervenors will be able to respond to Licensee's "last filing" (presumably referring to Licensee's response due 20 business days after receipt of Intervenors' rebuttal being filed on December 24) only if the Presiding Officer submits written questions addressed to Intervenors or if

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the Presiding Officer, at his discretion, authorizes filing of additional rebuttal upon a showing of good cause.

Subpart L does not provide a "right of rebuttal" nor explicitly provide for the filing of rebuttal presentations. In fact, after a party has filed its written presentation, § 2.1233(d) authorizes the submittal of additional evidence by a party only "in response to a written question" or "as the presiding officer, in his or her discretion, permits."

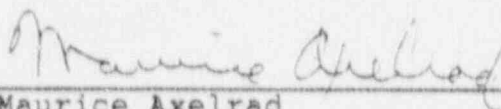
The first time that the question of rebuttal arose in this proceeding was during the conference call of June 27, 1990. Licensee expressed the position that Subpart L does not provide for rebuttal and that the Presiding Officer should decide, after the parties' presentations are received, whether rebuttal is needed, whether written questions should be asked, or whether any additional steps are needed. Tr. 20-21, 40. At first, the Presiding Officer agreed that there should not be an automatic rebuttal phase, and that he would make a decision after reading the filed materials. Tr. 41. However, he later decided, at his discretion, to authorize and schedule in advance the filing of rebuttal to the initial written presentations, agreeing that the party with the burden of proof (Licensee) would have the right to come last. Tr. 42-45.

The schedule, as adopted by the Presiding Officer (and subsequently modified several times), does not provide for any further rebuttals after Licensee responds to Intervenors' rebuttal to Licensee's initial written presentation. It is the Presiding Officer's responsibility to assure himself that he has

an adequate record upon which to base his decision on the merits. As Licensee has previously stated, its position is that the most effective manner of resolving any lingering concern that the Presiding Officer may have, after receiving the written presentations and rebuttals, would be to have the parties respond to written questions as contemplated by § 2.1233. See Licensee's Written Presentation at 85 (Nov. 14, 1990).

Licensee does not dispute the Presiding Officer's authority to allow rebuttals to be filed, at his discretion, upon a showing of good cause. But Licensee believes that, in the spirit of Subpart L, one round of rebuttal is more than adequate except under the most compelling circumstances, ^{1/} and whether those exist can only be determined by the Presiding Officer on an individual basis after he has read the rebuttal presentations that are being filed.

Respectfully submitted,



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Date: December 26, 1990

^{1/} As the Presiding Officer has stated: "Even good things can be overdone." LBP-90-45 at 22 n.26.