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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge
Peter B. Bloch

OFFICE OF SECRETARY
DOCKETING & SERVICE

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 MOTION TO STRIKE
PORTIONS OF INTERVENORS' REBUTTAL

On December 24, 1990 Intervenor's filed Intervenor's Response to Licensee's Written Presentation ("Intervenor's Rebuttal"), including the Declaration of TRUMP-S Review Panel (Int. Exh. 20) and the Declaration of Donald W. Wallace (Int. Exh. 21).

Subpart L does not provide for the filing of rebuttals. Such filing is permitted only at the discretion of the Presiding Officer.

In this proceeding, the Presiding Officer has authorized the filing of rebuttal by the Intervenor's but has specified that such rebuttal is to be limited to responding to new information contained in the Licensee's initial written presentation. See transcript of June 27, 1990, conference call at 35, 40, 44. Moreover, it is axiomatic that such rebuttal must

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be limited in content to material that is relevant to the areas of concern that have been admitted in this proceeding.

Licensee respectfully requests that, for the reasons set forth below, several portions of Intervenors' Rebuttal be stricken because they do not conform to the foregoing basic requirements. ^{1/}

Intervenors' Response to NRC Staff's Filing

Licensee requests that the Presiding Officer strike (1) the portion of Intervenors' Rebuttal beginning at page 11, line 10 ("The Staff has filed ...") to and including page 13, line 21, and (2) paragraph 4 at page 24.

In those portions of their filing, Intervenors comment on and respond to the NRC Staff's filing of December 5, 1990. Intervenors are not responding to anything that was contained in Licensee's written presentation. Whatever concerns Intervenors may have with the NRC Staff's filing -- or with the NRC Staff's regulatory practices -- they should have expressed them in whatever filing may have been appropriate in a suitable forum.

^{1/} The fact that Licensee is not asking that other portions of Intervenors' Rebuttal be stricken should not be viewed as conceding that the remainder of Intervenors' filing constitutes proper rebuttal. Licensee believes that additional portions of Intervenors' Rebuttal fail to meet the requirements identified above, are irrelevant or immaterial, or improperly contain restatements of previous arguments. However, Licensee is moving to strike only the most egregiously deficient portions of Intervenors' filing in order to minimize the burden that such motions impose on the parties and Presiding Officer. Licensee may point out in its response to Intervenors' Rebuttal the deficiencies in other portions of Intervenors' filing.

In any event, such concerns do not constitute an appropriate part of the rebuttal authorized by the Presiding Officer in this proceeding and should be stricken. 2/

Intervenors' Filing Regarding "Decommissioning Plan"

Licensee requests that the Presiding Officer strike section I.10 of Intervenors' Rebuttal (the portion beginning at the last line of page 16 and continuing up to and including page 22, line 3).

In section I.10, Intervenors argue that Licensee's applications are deficient because they do not contain a decommissioning funding plan or certification of financial assurance for decommissioning and that the subsequently filed certification of financial assurance does not satisfy regulatory requirements.

Section I.10 should be stricken because it does not relate to any admitted area of concern. In LBP-90-45 (at 12-13, 21) the Presiding Officer denied Intervenors' motion to admit a

2/ Moreover, as is made clear in the balance of Section I.3 of Intervenors' Rebuttal (pages 9-14), Intervenors are seeking to raise once again the question of whether the license application was deficient for not identifying Pu-241 and Am-241 and associated curie content. The Presiding Officer ruled on that question in the Memorandum and Order (Pending Motions, Including Those Related to Possession of ²⁴¹Pu), LBP-90-45 at 14-17 (Dec. 19, 1990), in granting Licensee's Motion for Partial Reconsideration of LBP-90-38. Intervenors' filing, therefor, is not proper rebuttal, but an attempt indirectly to obtain reconsideration of a ruling made on a previous motion for reconsideration. Such attempts were forb'dden by the Presiding Officer. LBP-90-45 at 22.

new area of concern relating to financial assurance of decommissioning.

The Presiding Officer noted that such denial did not govern any ruling he may be called upon to make if the Intervenor's choose to submit in their rebuttal argument or evidence regarding relevance of this subject to an already-admitted area of concern. However, section I.10 does not contain any argument or evidence relating to relevance of financial assurance for decommissioning to other admitted areas of concern. Instead, it simply presents additional argument relating to the alleged inadequacy of the applications with regard to financial assurance for decommissioning as if Intervenor's proposed new area of concern had been admitted rather than denied. Accordingly, it should be stricken.

Intervenor's cannot pretend that the arguments in § 61 of Intervenor's Exhibit 20 (which Licensee separately moves to strike below) constitute a showing of relevance justifying litigating in this proceeding whether Licensee has subsequently satisfied the requirements of §§ 30.35(c) and 70.25(c) relating to financial assurance for decommissioning. Licensee's filings show the adequacy of fire protection measures for the Alpha Laboratory and for stored waste materials. Such measures will be in existence throughout the period of the subject license amendments, and compliance therewith can be assured through NRC's enforcement program. The adequacy of such fire protection measures under the subject license amendments (which is the scope

of the admitted area of concern) is not affected by when and how the facility will be decommissioned. As argued below, Intervenor's cannot litigate in this proceeding whether at some future time Licensee will seek to unduly prolong storage of materials or will fail to comply with any storage or decommissioning requirements made applicable to such hypothetical prolonged period. In any event, they cannot use such arguments as a pretext for litigating the adequacy of a showing of financial assurance which was neither required to be part of the subject license amendment applications nor to be considered in issuing the subject license amendments.

Intervenor's Filing Regarding Risk After
Licensed Period

Licensee requests that the Presiding Officer strike ¶ 61 (p. 18) of Intervenor's Exhibit 20.

In ¶ 61, Intervenor's argue that the "period of vulnerability" to risk of fire will extend beyond the years of TRUMP-S work already planned because there is allegedly no place in the country where DOE can take mixed waste and because there is no hard and fast commitment for funding decommissioning.

Such arguments do not relate to any admitted area of concern, nor could they. Intervenor's area of concern relating to risk of fire is limited to the conduct of the TRUMP-S experiments and storage during the period of the subject license amendments. Only the subject amendments authorizing the TRUMP-S experiments can be at issue in this proceeding. Since the

subject license applications did not request authorization for prolonged storage for "ten or fifteen or even twenty years beyond the several years of TRUMP-S work already planned" (Int. Exh. 20 at ¶ 61) nor authorization for decommissioning or prolonged storage pending decommissioning, such periods of time were not part of the amendment applications nor were they authorized, and they cannot be litigated in this proceeding. If, at some future time, Licensee were to request additional authorizations of this type, the concerns expressed by Intervenors could be raised at that time.

Intervenors' Filing on Common Defense and Security

Licensee requests that Presiding Officer strike the paragraph on "Concern No. 6: Common Defense and Security" appearing at page 46 of Intervenors' Rebuttal.

The Presiding Officer denied Concern No. 6 in ruling on Intervenors' proposed areas of concern. ^{3/} Memorandum and Order (Admitting Parties and "Areas of Concern"; Deferring Action on a Stay), LBP-90-18, 31 NRC 559, 569-70 (June 15, 1990). At page 53 of their initial written presentation (Oct. 15, 1990) Intervenors requested reconsideration of such denial and Licensee opposed such request in its response of October 30, 1990.

^{3/} The Presiding Officer also denied a similar area of concern proposed by the Individual Intervenors. Memorandum and Order (Admitting Parties and Deferring Action on a Stay) slip op. at 5-7 (Aug. 28, 1990).

At page 82 of Licensee's written presentation (Nov. 14, 1990), Licensee states the fact that the concern has not been admitted and refers to its October 30, 1990 response.

Intervenors simply ignore that Concern No. 6 is not an admitted area of concern. The foregoing paragraph on page 46 of Intervenors' Rebuttal should be stricken because it does not relate to any admitted concern and because it does not respond to any new information in Licensee's written presentation.

Timing of Ruling

Since Licensee is filing this motion to strike by express mail on January 3, 1991, Intervenors' response will be due to be submitted by January 15, 1991. 4/

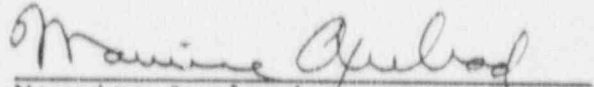
Licensee's response to Intervenors' Rebuttal is due on January 28, 1991. 5/ If the Presiding Officer decides to deny any portion of the foregoing motion to strike, Licensee would appreciate either (1) being informed of such ruling by January 18, 1991 (January 21, 1991 is a legal holiday), so that it has sufficient time to respond to the portion of Intervenors' Rebuttal that was not stricken, or (2) if such ruling is not issued by January 18, 1991, being granted five business days

4/ The Presiding Officer may wish to request that Intervenors file their response by express mail.

5/ Intervenors and Licensee have agreed that, for purposes of calculating response time, December 27, 1990 should be deemed the date that Licensee received Intervenors' Rebuttal. The Presiding Officer concurred during a telephone conference call on December 28, 1990.

after the issuance of such ruling to file a response to the portion of intervenors' rebuttal that was not stricken.

Respectfully submitted,


Maurice Axelrad

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Date: January 3, 1991

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion to Strike Portions of Intervenor's Rebuttal" were served upon the following persons by the following methods:

(a) By Express Mail:

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(b) By deposit in the United States mail, postage prepaid and properly addressed:

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Washington, D.C. 20555

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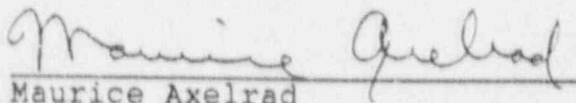
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Dated this 3rd day of January, 1991.


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