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December 24, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '90 DEC 24 11:56

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge
Peter B. Bloch

SERVED DEC 24 1990

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

MEMORANDUM AND ORDER
(Telephone Conference)

DATE AND TIME OF CALL: 12/20/90 ABOUT 3:20 PM

Among Peter B. Bloch, Administrative Judge; Maurice Axelrad, counsel for University of Missouri; Ernest Green, Intervenor.

Bloch: Both parties may record this call mechanically. The conference is being called at Mr. Green's request to request clarification of LBP-90-45. I will take notes and will prepare a summary of the call. We will proceed by having Mr. Green request clarification of one particular

I prepared these notes as presiding officer. They have been revised pursuant to Licensee's letter of December 21, 1990 and Intervenor's responsive letter of the same date, stating that Intervenor has no objections to Licensee's suggestions.

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area of the decision; then, Mr. Axelrad may respond before I respond or reserve decision.

Mr. Axelrad: This does not seem appropriate. It is a lawyer's function to review and interpret orders and to take actions based up that interpretation to protect his client's interests. I am concerned about having to express "off-the-cuff" reactions to Mr. Green's requests for clarifications and having the Presiding Officer express "off-the-cuff" reactions, with neither of us being sure of exactly what Mr. Green has in mind filing. (I assured Mr. Axelrad I would be cautious.)

Green: Generally my concern is I must file my rebuttal soon and decide what I should eliminate from the rebuttal I have been preparing as a result of the Order.

Bloch: You could make an offer of proof.

Green: I do not think I need to file affidavits that are now irrelevant. An offer of proof is less than that. Therefore, I feel I should not file extensive affidavits and argument about matters already ruled on, for example on compliance with emergency planning regulations that have been determined not to apply and on whether dose calculations comply with regulatory requirements that also have been found not to apply.

Axelrad: My understanding is that it would not be appropriate for Intervenors to file evidence on those subjects. Motions for reconsideration would be possible.

Certain of the decisions were on the motion for summary disposition and could be subject to a motion for reconsideration despite the judges ruling that he would not accept motions for reconsideration on decisions concerning motions for reconsideration. If a motion for reconsideration were granted, I am sure the presiding officer would permit appropriate time for filing of evidence on such a point.

Bloch: It is my ruling that you need not file evidence on anything I have ruled on already and made irrelevant. You may, where I have not already decided on a motion for reconsideration already, move for reconsideration. If I should grant that motion, I would make appropriate provisions for filing evidence at that time. Does that help?

Green: That helps me a great deal. Another minor point: in previous orders you have often allowed 10 days for reconsideration. What time should be allowed.

Axelrad: The provision in the regulations on motions for reconsideration is on final determinations. That has been applied to Memoranda and Order by analogy.

Bloch: I apply the provision on final determinations by analogy to intermediate determinations; thus, there such motions may be filed ten days from the date of issuance.

Green: One other aspect: this decision has thrown our preparations into quite an uproar. We have had people preparing affidavits about comportment with regulations on

dosage and emergency planning. I do not think the presiding officer has struck any area of concern, eliminating it from the proceeding.

(Bloch: that is correct.)

Green: I would dearly love to get this behind me as quickly as possible but I am skeptical that is possible. I am inclined to request an additional week.

Axelrad: Whether they relied on the regulations in their preparations or whether they properly looked at the merits of the emergency plan is strictly up to them. They had months to do that before they filed their written presentation initially and there has been an additional week already. Licensee has been prepared to file its surrebuttal for a while. We do not want our project to continue under a cloud. We object to any further extension.

(Bloch: Is Friday the date for filing? Green & Axelrad: No, Monday.)

Bloch: I would require Intervenors to file on time and permit intervenors to include an offer of proof for particular areas indicating [1] what would be shown in an additional week and [2] why my order disrupted preparation is such a way as to require additional time for response.

Axelrad: That would not meet our needs. It may just lead to another unwarranted extension. It would encourage Intervenors to defer preparing something they could file by

Monday in the hope they would be able to obtain another week.

Green: That would not meet our needs either, as we do not have our documents in finished enough form for that purpose and are discontinuing our previous work rather than pursuing it. It just would not help.

Bloch: Then, Mr. Green, you do not need to use the provision I am making but you will be permitted to do so. Remember to file on time and to meet the two criteria I have set forth if you wish to show cause for a further one week extension in a specific area.

Green: That won't help but I appreciate the spirit with which it was offered.

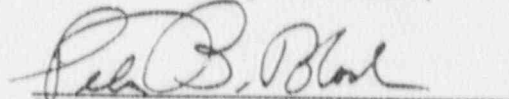
Bloch: Then there does not appear to be anything else.

Green: That is correct.

Green & Axelrad: Thank you judge.

Bloch: Have a good evening. [Disconnect.]

Respectfully ORDERED,


Peter B. Bloch
Presiding Officer

Bethesda, Maryland

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

THE UNIVERSITY OF MISSOURI

Docket No. (s) 70-270/30-2278-MLA

(Special Nuclear Materials Lic. 247
Byproduct Mat. Lic. 24-00513-32)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing M&O RE TELEPHONE CONFERENCE 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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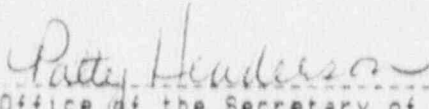
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Docket No. (s)70-270/30-2278-MLA
M&O RE TELEPHONE CONFERENCE

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A. Bert Davis
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Dated at Rockville, Md. this
24 day of December 1990


Office of the Secretary of the Commission