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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION NOV 29 P5:04  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
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BRANCH

Before Administrative Judge  
Peter B. Bioch

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

INTERVENORS' MOTION TO STRIKE IRRELEVANT  
AND UNRELIABLE MATTERS

Come now Intervenors, pursuant to 10 CFR § 2.1233(e), and move to strike the portions of Licensee's Written Presentation, and various affidavits, specified below, upon the grounds that they are either irrelevant to the issues in this proceeding, or contain unreliable hearsay, or both.

As irrelevant, Intervenors move to strike the following:

From Licensee's Written Presentation, the following:

- Pages 21-22, run-over paragraph
- Section F.1, pages 37-48
- Section F.1.a
- Section F.1.e
- Section F.1.f

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Page 68, second full paragraph

Page 75, lines 9-16

All exhibits cited in those portions of the Written Presentation, including without limitation Exhibits 1, 2, 3, 4, 5, 6, 9, 10, and the affidavit of Walter Meyer dated October 29, 1990.

These affidavits and arguments relate to matters which were required to be a part of the application; to be reviewed by the Staff before the license amendments were issued; to be available to the public for inspection so that interested persons could determine whether they desire to request a hearing on them; to be available to Intervenors from the beginning so that they could be addressed by Intervenors in developing their direct case and written presentation, and in pressing a motion for stay. To slip them into the case now frustrates the entire process of public notice and public participation. The Staff has had no opportunity to review them. Other members of the public have had no opportunity to request a hearing. Even Intervenors will have no effective opportunity to litigate them. Intervenors' first opportunity to challenge the adequacy of the licensee's proposal will come on rebuttal; after the Licensee responds, Intervenors will have no opportunity to reply.

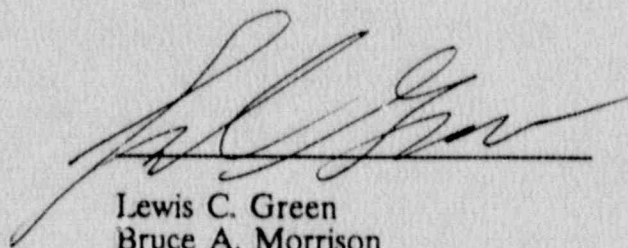
The Licensee has commenced the groundwork for presenting an argument that these matters can properly be brought forth at this stage, as amendments to the application. See Licensee's Response to Intervenors' Motion for Reconsideration . . . and Emergency Order . . . Part I, November 21, 1990, at page 9. This argument is without merit, for two reasons.

First, there has been no motion for leave to file an amended application. "Evidence" does not "modify a license application." It must be recalled that the

application, whether or not amended, is a formal document. The amendment to the license explicitly asserts that the authority granted by the amendment is limited by the terms and conditions set forth in the application. In order to find out what authority the Licensee has been given, and under what conditions, one must read the application. If all these affidavits and arguments "modify" the application, how can anybody in the future determine what conditions or restrictions have been imposed on the Licensee?

Second, if and when the Licensee moves for leave to amend its application, the Intervenors will probably oppose the motion, on various grounds. Amending the application in the middle of the litigation destroys the framework for enforcing the Atomic Energy Act. The propriety of such an amendment can be litigated at that time. There being no such motion now, the question is not ripe for decision.

As unreliable hearsay, Intervenors move to strike so much of Exhibit 7 as purports to report what Mr. Steppen said, and all references to NUREG 1140. Mr. Steppen is the independent expert retained by the Licensee, and should be able to speak for himself. NUREG 1140 is obviously hearsay. There is no sponsor presenting it, who can be cross-examined about the assumptions made, the conclusions drawn, or other matters.



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CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 26<sup>th</sup> day of November 1990, by United States Express Mail, postage prepaid, to:

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