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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judge
Peter B. Bloch

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 FOR ORDER ADMITTING AREA OF CONCERN
RESPECTING FINANCIAL ASSURANCE OF DECOMMISSIONING

Intervenors move for an order admitting to this proceeding an additional area of concern, as set forth below, for the reasons set forth below.

THE FACTS

When the request for hearing was originally filed in this proceeding, the Licensee had filed no financial assurance of decommissioning. That document was apparently due on July 27, 1990. 10 CFR §§ 30.32(h), 70.22(h).

At some later date a document purporting to fulfill that requirement was submitted to the Staff by the Licensee, without notice to the Intervenors, who assumed that the Licensee had failed to meet its deadline. Eventually a copy was furnished to Intervenors as an attachment to a paper filed in this proceeding by

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Licensee. Response of Licensee to "Petitions for leave to intervene; requests for Stay," August 20, 1990. The document was accompanied by a copy of an amendment to one of the licenses involved in this proceeding, of which amendment Intervenors had been given no notice, and a statement that a similar amendment for the other license should be available shortly.

Intervenors promptly filed a request for hearing on those amendments, on September 17, 1990, a copy of which request was furnished to the Presiding Officer in this proceeding. Intervenors never received an acknowledgement of that Request, or any order assigning an Administrative Law Judge to hear it. On November 7, 1990, Intervenors wrote a letter to the Office of the Secretary and to the Chief Administrative Law Judge requesting an explanation of this inaction. Intervenors received no response to that letter.

On November 14, 1990, the amendments were rescinded. Intervenors were notified of this rescission by letter dated November 16, 1990, from counsel for the Staff.

The certificate of financial assurance is a part of the file in this case, having been attached to papers filed by the Licensee on August 20, 1990.

Area of Concern

The financial assurance furnished the NRC by the Licensee is chimerical, void, unlawful, and unconstitutional. In short, it is a sham. The University is presenting its financial assurance as a State licensee, pursuant to 10 CFR §§ 30.35(f)(4) and 70.25(f)(4), which require assurance that funds will be obtained when necessary. But the University has merely asserted that necessary funds "will be requested and obtained." Requested from whom? Obtained from whom? The University has no power of taxation to back up this assurance. As far as

Intervenors can determine, the University has no fund from which it can extract these amounts when they are needed. Presumably that is why the University will have to "request" the funds. But from whom? The University has no lawful power to assure that it will "obtain" the funds from the Missouri General Assembly. The General Assembly, itself, could not even lawfully commit this liability for some year in the future. Article III, § 37, Missouri constitution.

It must be remembered that the University, and the General Assembly, are operating under the constraints of a very tight budget. That is why the University has undertaken Rockwell's job for the Japanese. A cavalier promise that funds "will be requested and obtained," made by one who has no power or authority to make good the promise, does not constitute financial assurance.

If Intervenors are correct, when the time comes to decommission or decontaminate the hot lab, there will be no funds for that purpose, and the facility will constitute a radioactive threat to Intervenors, their members, and the entire community of Columbia, Missouri, for an indefinite period. A delay in decommissioning, especially one caused by a shortage of funds, will increase the danger of accident or fire, and the risk of migration of contaminants, and prolong those risks. The very reasons why the financial assurance is required are the reasons why a chimerical assurance is a serious concern to Intervenors.

Timeliness

This motion is being filed promptly upon learning of the possible need for it. The motion was not considered appropriate earlier for two reasons.

1. Intervenors have believed, and still believe, that the sufficiency of the sham financial assurance is already a part of this proceeding, for the reasons set forth in Intervenors' motion for reconsideration of Memorandum and Order of

October 15, 1990 (October 25, 1990), at pages 2 and 3; Intervenors' answer to Licensee's motion to strike Part 10 of Intervenors' Written Presentation (November 17, 1990). However, the Memorandum and Order of November 9, 1990, on Intervenors' motion for reconsideration of Memorandum and Order of October 15, 1990, indicates a likelihood that the Presiding Officer may rule to the contrary, notwithstanding the arguments presented by Intervenors.

2. In any event, until the amendments were rescinded on November 14, 1990, Intervenors were assured a hearing in a separate proceeding on this issue. The rescission apparently snatches that opportunity away from Intervenors.

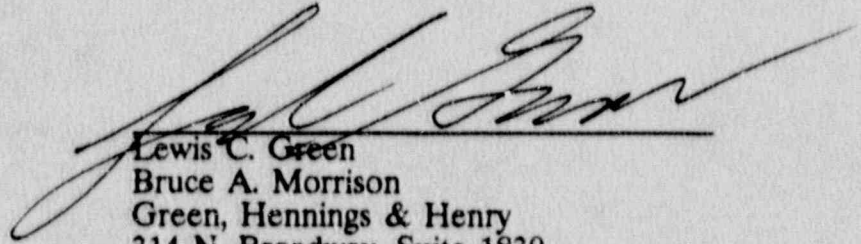
The standards of 10 CFR § 1205(k) are fully met. It was surely excusable for petitioners not to list this concern as a separate concern in this proceeding until now. Intervenors had every reason to believe that they would be afforded a hearing on this concern in each of two proceedings.

There is no undue prejudice to the Licensee. At least since September 17, 1990, the Licensee has known of Intervenors' determination to pursue this area of concern. It is a reasonable inference that the Licensee suspected, even before it filed its certificate of financial assurance, that Intervenors would challenge it; that would go some way to explain the secrecy with which the financial assurance was filed. Licensee has lost no opportunity to locate or develop evidence to support this sham assurance; this is a question of law.

On the contrary, the public interest would be jettisoned if the Licensee and the Staff were permitted to escape review of this clearly unconstitutional sham certificate, by playing a shell game, holding out an amendment for a hearing, then snatching it away. Until now, Intervenors had no cause to file this motion.

CONCLUSION

This motion should not be necessary, as pointed out above. However, if the Presiding Officer should rule that this concern is not encompassed within the concerns already admitted, this area of concern should now be admitted.

A large, stylized handwritten signature in black ink, appearing to read 'Lewis C. Green', is written over a horizontal line.

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CERTIFICATE OF SERVICE

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

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Washington, DC 20555

The Honorable Gustave A. Linenberger, Jr.
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and by first class mail, postage prepaid, to:

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