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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman  
Dr. Walter H. Jordan  
Dr. Jerry R. Kline

SERVED OCT 31 1990

In the Matter of  
  
ST. MARY MEDICAL CENTER--  
HOBART  
  
ST. MARY MEDICAL CENTER--  
GARY  
  
(Order Suspending  
Brachytherapy Activities  
and Modifying License)

Docket No. 030-31379-OM

Docket No. 030-01615-OM

ASLBP No. 90-612-04-OM

EA No. 90-071

October 31, 1990

MEMORANDUM AND ORDER  
(Motion to Strike Certain Documents)

On September 28, 1990, all parties to this proceeding submitted to this Licensing Board a document titled "Parties' Joint Status Report on Settlement Negotiations." The report was filed in response to our request, made at the time we granted an extension of time to the parties to October 1, 1990 to complete ongoing settlement negotiations, to detail the matters remaining in controversy and the reasons why settlement had not yet been agreed upon (assuming that were the case). As a result of that report and a further request of the parties for additional time to

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complete settlement negotiations, we granted an extension to December 3, 1990 for the parties to complete settlement negotiations or (if not successful) to file an additional report with explanations. See Memorandum and Order (Further Deferral of Filing Dates), dated October 3, 1990 (unpublished).

The September 28, 1990 report consisted of a brief descriptive statement together with an enclosed letter dated September 21, 1990, from the NRC Region III Administrator to counsel for the Licensees. The Administrator's letter contained two enclosures, the second of which (hereinafter, "Enclosure 2") was a group of background "License Documents" relating to a September 18, 1990 meeting between the parties and bearing upon the one remaining open item in the ongoing settlement negotiations, the selection of an independent auditor. Among other matters, "Enclosure 2" included certain letters from counsel for the Licensees to counsel for the Intervenor (Dr. Koppolu P. Sarma).

On October 11, 1990, the Intervenor, through counsel, filed a letter (which we are treating as a motion) requesting that the "Enclosure 2" documents be "stricken from the record" and disregarded by us. The Intervenor claims that the "Enclosure 2" documents are "patently prejudicial to Dr. Sarma." By responses dated October 22, 1990 and October 24, 1990, respectively, the Licensees and NRC Staff each oppose this request.

We are denying the Intervenor's request for three separate reasons. First, prior to our receipt of the motion, we had already granted the relief on behalf of which "Enclosure 2" was submitted. The Intervenor favored such relief. As a practical matter, therefore, the motion is in effect moot.

Second, however, "Enclosure 2" was manifestly pertinent to the joint motion for an extension of time to complete settlement negotiations. It clearly sets forth the details of settlement negotiations, which we had requested if settlement had not been reached, and therefore is responsive to our outstanding orders. We agree with the NRC Staff that "Enclosure 2" represents a publicly available agency record. That being so, absent any prior attempt by the Intervenor to limit the release by the Staff of those documents (for example, as provided by the procedures and standards spelled out in 10 C.F.R. § 2.790),<sup>1</sup> the Staff would be obligated under long-standing Commission precedent to provide the Board and parties with the information set forth in those documents. See Duke Power Co. (William B. McGuire Nuclear Power Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973); Tennessee Valley Authority (Browns Ferry Nuclear

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<sup>1</sup>We see no basis for the Intervenor's claim that he was prevented in some manner from seeking to limit the public release of "Enclosure 2".

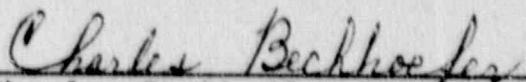
Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1388 and 1394 (1982).

Finally, we do not regard "Enclosure 2" as including information prejudicial to Dr. Sarma, as claimed by the Intervenor. Rather, it appears to us to set forth cogent reasons why settlement negotiations had not as yet been concluded. Beyond that, should the settlement negotiations not be successful, "Enclosure 2" will likely assist us in establishing the boundaries of any hearing which may have to be held. For that reason, "Enclosure 2" is likely to be useful to all parties (and not prejudicial to any of them) if a hearing proves to be necessary.

For all of the above reasons, the Intervenor's motion to strike "Enclosure 2" from the record of this proceeding is hereby denied.<sup>2</sup>

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland  
October 31, 1990

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<sup>2</sup>The Intervenor's reference to "admission into evidence" is misplaced. Although documents such as "Enclosure 2" have been included in the docket file of this proceeding, no material has yet been admitted into evidence. See 10 C.F.R. § 2.743.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

ST. MARY MEDICAL CENTER - HOBART  
AND GARY  
(Byproduct Material License Nos.  
13-0347-03 and 13-03459-02)

Docket No.(s) 30-31379/1615-0M

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M. & D. RE MOTION TO STRIKE 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.

Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles Bechhoefer, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Walter H. Jordan  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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U.S. Nuclear Regulatory Commission  
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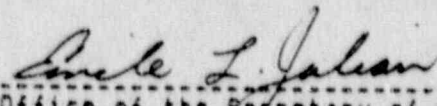
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A. Bert Davis  
Regional Administrator, Region III  
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Glen Ellyn, IL 60137

Dated at Rockville, Md. this  
31 day of October 1990

  
Office of the Secretary of the Commission