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October 31, 1990

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The Honorable Peter B. Bloch  
Administrative Law Judge  
Atomic Safety and Licensing Board  
United States Nuclear Regulatory Commission  
Washington, D. C. 20555

Re: TRUMP-S Hearings  
Nos. 70-00270 and 30-02278-MLA

Dear Judge Bloch:

This letter responds to Mr. Axelrad's letter to you of October 30.

Temporary Stay

Mr. Axelrad is apparently requesting that you set aside the Temporary Stay issued on October 20. Without benefit of expert help, I have tried to figure out what his arguments are, and I would like respectfully to put the following points before your attention. I am sure that if I have misunderstood some of the technical points, you will recognize that fact and not be misled by my response.

1. As I understand it, the licensee now admits that it has plutonium 241 on hand, an isotope for which it has no license. Paragraph 8, page 4, of Morris' affidavit.

The licensee, as nearly as I can understand these technical tables (I admit that my understanding of them is limited, but I am sure you will understand them) appears to be admitting that the 10 grams of its plutonium represent either 1.71 curies or 1.94 curies. Pages 6 and 7 of the Morris affidavit.

Mr. Axelrad attempts to down-play these facts by stating that these are "trace contaminants" (page 2). If I understand these papers correctly, this effort to belittle the plutonium 241 is betrayed by the fact that the curie content of the plutonium appears to be admittedly two and one-half times the curie quantity licensed.

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Mr. Axelrad's submission makes much of the fact (which he claims to be a fact) that the curie content of the Licensee's plutonium is less than 2 curies (although he apparently admits that it is perilously close to that quantity). That is not relevant to the question whether the licensee has plutonium which it is not licensed to have, because it has no license for more than .71 curies, or for plutonium 241. Whether or not the licensee has more than 2 curies will be relevant with respect to compliance with other regulations, but not to whether the licensee fully disclosed the isotopic and curie content in its application, and whether it is licensed to hold what it holds.

2. Mr. Axelrad has submitted an affidavit of Erman Call which states that Mr. Ottinger's affidavit is inaccurate. Intervenors will present affidavits of two witnesses to confirm Mr. Ottinger's testimony. The matter should be resolved in a formal hearing, with cross-examination.

3. Mr. Axelrad contends that there is an emergency plan to fight a fire. However, he relies on an old emergency plan directed toward the reactor, which has never been reviewed by the Staff to determine its sufficiency with respect to these unsealed transuranics. The licensee does not claim to have prepared any emergency fire plan directed toward these new unsealed transuranics, although the licensee has now furnished four new SOP's dated three days after Intervenors filed their written presentation. In fact, the licensee contends that it does not have, and does not want to have, any explicit procedure spelling out how a fire involving radioactive materials, particularly transuranics, would be fought, or what a fire fighter should do. Paragraph 51, page 15, Meyer Affidavit. Their "plan," as nearly as I can determine from reading this affidavit, is simply that the fire department would go to the scene of the fire, and the University personnel would then tell them (for the first time, if Intervenors have not intervened in these proceedings) what radioactive isotopes were present, and everybody would try to figure out what to do about it (¶ 53, p.16, Meyer Affidavit). Intervenors respectfully submit that this is not the kind of plan needed to protect the public safety. It should be recalled that, of 20,000 materials licenses, this is one of the 18 most hazardous ever issued.

4. Mr. Axelrad attempts to escape from the constraints of 10 CFR § 30.32(i) by pointing out (p. 3, n. 2) that this regulation did not become effective until two days after the Part 30 license was issued. However, it is fundamental hornbook law that whether or not a license is to be issued is to be determined by the law and regulations in effect at the time of the hearing, or the determination, not at the time of filing the petition, or the initial issuance of an amendment which is the subject of a pending hearing. Indeed, even if the regulation were to go into effect while this case is on appeal in the Court of Appeals, "a change in law will be given effect while a case is on direct review." *Linkletter v. Wallace*, 381 U.S. 618, 627 (1965). That Section 30.32 governs here is implicitly acknowledged by the affidavit of the Staff of July 26, 1990, respecting the applicability of this regulation.

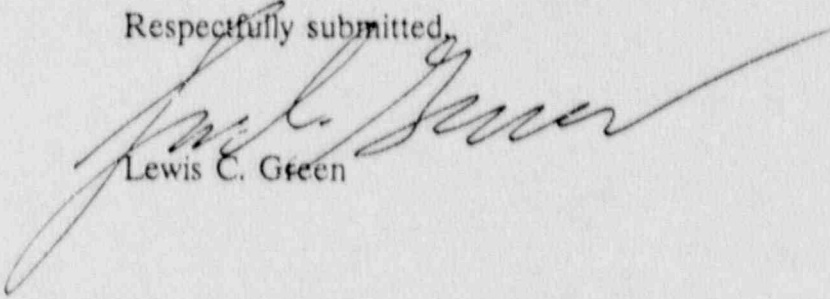
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5. As the Temporary Stay Order states, the stay was based upon a likelihood of success in multiple respects. Indeed, the Presiding Officer pointed out (p. 10) that there are "additional grounds for likely success that I have not discussed." The licensee has now addressed only some of the grounds for the stay, and has not successfully addressed them. With the Licensee's admission that it possesses plutonium 241 in quantities which bring it right up to the 2 curie threshold, far in excess of the licensed curies of plutonium 239 and 240 (no plutonium 241 is licensed), the grounds for the Temporary Stay are strengthened, rather than weakened. Indeed, Mr. Axelrad's letter would call for issuance of a stay, if none had been issued. The Temporary Stay should remain in effect.

#### Permanent Stay

As anticipated, the papers filed by the licensee are far too technical for the undersigned attorney to cope with. They are being transmitted by overnight mail to independent expert consultants. They will be reviewed by those consultants, who will be able to give counsel an estimate of the time that will be needed to respond, by telephone on Friday, November 2. Intervenors request an opportunity to respond, and, if it is agreeable to the Presiding Officer, will report to the Presiding Officer by telephone on November 2 how much time they think will be needed, and request that amount of time then.

Respectfully submitted,



Lewis C. Green

LCG:ggl

CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 31<sup>st</sup> day of October 1990, by ~~United States Express Mail~~, <sup>FAX</sup> postage prepaid, to:

The Honorable Peter B. Bloch  
Administrative Law Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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The Honorable Gustave A. Linenberger, Jr.  
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