

11431

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge
Peter B. Bloch

DUCKETED
USNRC

'91 FEB 15 P3:56

OFFICE OF SECRETARY
DUCKETING & SERVICE
BRANCH

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 PORTIONS OF LICENSEE'S
RESPONSE TO INTERVENORS' REBUTTAL,
AND ACCOMPANYING AFFIDAVITS

Come now Intervenors and move to strike the following portions of Licensee's Response to Intervenors' Rebuttal and accompanying affidavits.

1. All portions, if any, which the Presiding Officer may determine do not constitute new facts or arguments, upon the ground that repeating what has been said before is improper sur-rebuttal.
2. All references in Exhibit 16 (Langhorst), specifically including without limitation Paragraph 24, Attachment 1, and Figure A, and in the Licensee's attorney's Response, specifically including without limitation Page 46, to a standard of 1 rem for permissible concentrations, upon the ground that the 1 rem standard,

9102200279 910215
PDR ADOCK 07000270
C PDR

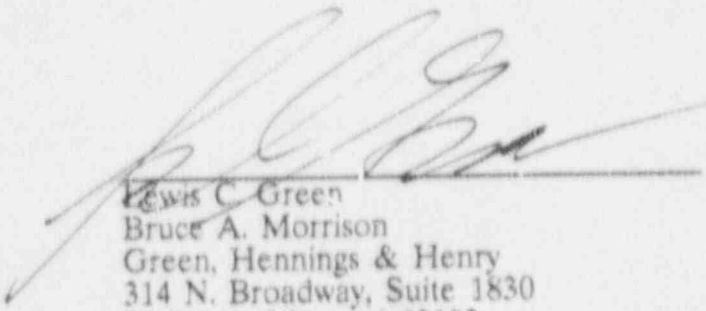
3903

to the extent that it is applicable in NRC proceedings at all, exists only in the regulations which the Presiding Officer has already ruled are not applicable to this proceeding, namely §§ 30.32(i) and 70.22(i), and Intervenors were advised not to file affidavits and arguments demonstrating the Licensee's failure to comply with those regulations. If these references to a 1 rem concentration are not stricken, then Intervenors are surely entitled to reply to them.

3. Paragraphs 5 and 11 of Exhibit 18 (Eschen), upon the ground that these paragraphs merely restate what Mr. Eschen has stated before.

4. All references to a recent report of the National Cancer Institute, including those at page 30 of Exhibit 17 (Morris) and at page 51 of the attorney's Response, upon the ground that it is irrelevant and immaterial, and is misrepresented by the Licensee. The so-called "study," which is really not a study but a survey of death certificates, itself reports that: "The survey, based as it was on existing mortality and incidence data, suffers from a number of weaknesses: for most of the facilities, only mortality, not incidence, data were available; data were not available for areas smaller than entire counties; and the causes of death were obtained from death certificates and are, therefore, of variable quality." As Dr. Boice, chief of the National Cancer Institute's Radiation Epidemiology Branch, warned, the size of the counties may be too large to detect risks present only in limited areas around the plants. The impact of these, and other, weaknesses of this survey is strikingly illustrated by the result: these numbers would indicate that one is less likely to experience leukemia if one lives in a county with a nuclear power plant than if one lives somewhere else! The admitted "weaknesses" (or follies) of this survey destroy any possibility that it could be relevant to any issue in this litigation. However, if these references are not stricken, Intervenors are entitled

to an opportunity to reply to them.



Lewis C. Green
Bruce A. Morrison
Green, Hennings & Henry
314 N. Broadway, Suite 1830
St. Louis, Missouri 63102
(314) 231-4181
Attorneys for Intervenors

CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 12th day
of February, 1991, by United ^{Rural Service} ~~States~~ Express mail, postage
prepaid, to:

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

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

Maurice Axelrad, Esq.
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, DC 20036

Director
Research Reactor Facility
Research Park
University of Missouri
Columbia, Missouri 65211

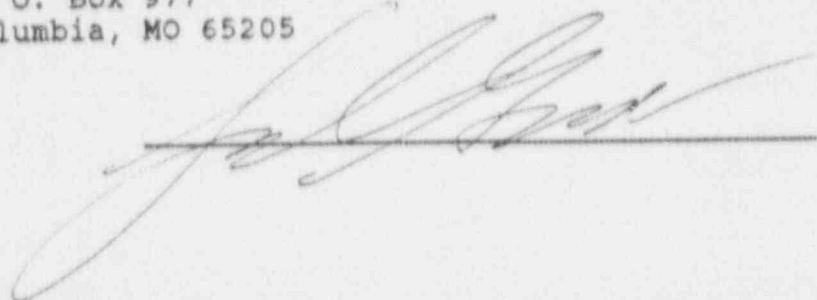
and by first class mail, postage prepaid, to:

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch
(original plus two copies)

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ms. Betty H. Wilson
Market Square Office Building
P. O. Box 977
Columbia, MO 65205



OFFICE OF SERVICE
DOCKETING & SERVICE
BRANCH

91 FEB 15 P 3:56

U.S. NUCLEAR
REGULATORY
COMMISSION