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RELATED CORRESPONDENCE

June 21, 1994  
DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'94 JUN 22 P3:25

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
 )  
ONCOLOGY SERVICES CORPORATION ) Docket No. 030-31765-EA  
 )  
(Byproduct Material ) EA No. 93-006  
License No. 37-28540-01 )

NRC STAFF'S APPLICATION FOR THE ISSUANCE OF SUBPOENAS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.720(a) of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) requests that the Atomic Safety and Licensing Board (Board), designated in the above-captioned proceeding, issue subpoenas, attached hereto, requiring certain individuals, named below, to attend and give testimony at depositions.

BACKGROUND

On April 25, 1994, the Staff filed notices of depositions for Robbie Ackerson, Rudy Balko, James E. Bauer, and Sharon Rickett. The Staff noticed these depositions for June 1 - 3, 1994, at a mutually convenient location. The Licensee's counsel informed the Staff's counsel that the individuals noticed for depositions would not be available until the latter part of June. The postponement of the depositions was due, in part, to the unavailability of the Licensee's counsel. Letter to Marian L. Zabler, Office of the General Counsel, U.S. Nuclear Regulatory Commission from Marcy L. Colkitt, General

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Counsel, Oncology Services Corporation, dated May 12, 1994, attached hereto as Attachment 1. In order to accommodate the Licensee's counsel, the Staff agreed to depose the individuals later in June. The Licensee's counsel, however, did not identify any specific dates in the latter part of June on which the named individuals would be available. On May 17, 1994, therefore, the Staff's counsel filed notices of depositions for the above named individuals for June 21 - 23, 1994. Letter to Marcy L. Colkitt, General Counsel, Oncology Services Corporation from Marian L. Zabler, Office of the General Counsel, U.S. Nuclear Regulatory Commission, dated May 17, 1994. A copy of this letter was sent to the Board. The Licensee's counsel informed the Staff's counsel, through a telephone conversation, that the named individuals would be made available for deposition on the dates specified in the notices of depositions.

The Licensee's counsel, however, cancelled the scheduled depositions. By letter of June 8, 1994, the Licensee's counsel informed the Staff's counsel that, "due to scheduling problems" the depositions would have to be postponed until possibly the second or third week of July. Letter to Marian L. Zabler, Office of the General Counsel, U.S. Nuclear Regulatory Commission from Marcy L. Colkitt, General Counsel, Oncology Services Corporation, dated June 8, 1994, attached hereto as Attachment 2. On June 17, 1994, through a telephone call, the Staff's counsel requested that the Licensee's counsel provide specific dates in the second or third week of July in which the four individuals would be available for deposition. At the time of the filing of the Staff's Application, the Licensee's counsel has not provided specific dates for the second or third week of July.

DISCUSSION

The Staff requests the Board to issue subpoenas for Robbie Ackerson, Rudy Balko, James E. Bauer, and Sharon Rickett in order to ensure the Staff's ability to depose these individuals on the dates specified and before the discovery deadline on August 1, 1994. In light of the inability of the Licensee's counsel to provide firm dates for the taking of these depositions and the postponement of previously scheduled depositions, the Staff is concerned that any depositions scheduled for the second or third week of July again will be canceled by the Licensee's counsel. Since the Chairman of the Licensing Board has indicated he would not be available during the last two weeks of July, if the Licensee's counsel does cancel the depositions scheduled for the second or third week of July, the Staff would have no redress before the Board. Therefore, issuance of subpoenas is necessary to ensure the Staff will be able to take the depositions of the four individuals and otherwise have the opportunity for meaningful discovery before the discovery deadline or move for appropriate sanctions should the named persons or the Licensee refuse to comply with the subpoenas.

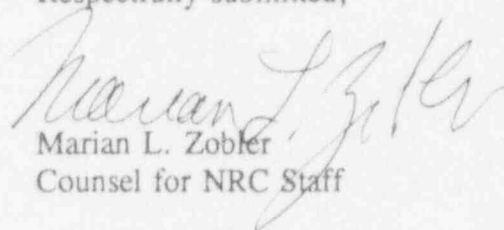
The relevance of the testimony of the named individuals is clear. These individuals were the primary participants in the incident at the Indiana Regional Cancer Center on November 16, 1992. The Licensee has indicated that it intends to call these individuals as witnesses in this proceeding. "Response of Oncology Services Corporation to NRC Staff's First Set of Interrogatories and Requests for Production of Documents and Request for Admissions," dated June 10, 1994. The issuance of these subpoenas will assure that

the Staff is able to depose these key witnesses. The Board should, therefore, grant the Staff's request.

CONCLUSION

For the above stated reasons, the Staff requests the issuance of the attached subpoenas to the above named individuals.

Respectfully submitted,

  
Marian L. Zabler  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 21th day of June, 1994

**ONCOLOGY SERVICES CORPORATION**

2171 Sandy Drive • State College, PA • 16803

814-238-0375 • Fax: 814-238-8069

(412) 463-3570

May 12, 1994

VIA TELECOPY: 301-504-3725

Marian L. Zabler, Esquire  
U.S. Nuclear Regulatory Commission  
Office of General Counsel  
Washington, D.C. 20555

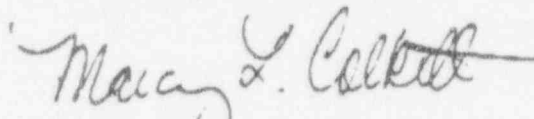
Re: OSC

Dear Marian:

This letter shall confirm that the three depositions scheduled for next week are hereby canceled and will be rescheduled. As I further told you during our call today, I do not anticipate that the individuals at the Indiana Center which you want to depose will be available for depositions until the latter part of June. This is in part due to my schedule.

Further, we both agreed that the discovery responsive to the Board's May 10, 1994 Order will respectively be due on June 10, 1994. A couple of days prior to June 10, please advise me of the documents you will be producing so we can make arrangements for their production. If you have any questions, please contact me.

Very truly yours,



Marcy L. Colkitt

General Counsel

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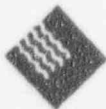
MLC/sjg

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# ONCOLOGY SERVICES CORPORATION

2171 Sandy Drive • State College, PA • 16803

814-238-0375 • Fax: 814-238-8069



(412) 463-3570

June 8, 1994

VIA TELECOPY: 301-504-3725

Marian L. Zobler, Esquire  
U.S. Nuclear Regulatory Commission  
Office of General Counsel  
Washington, D.C. 20555

Re: Depositions

Dear Marian:

Unfortunately, due to scheduling problems, the depositions currently scheduled for June 21-23 are going to have to be postponed. Further, I was notified yesterday that my attendance will be required at a court hearing in Pittsburgh, PA all day June 22 and probably the 23rd. If you would propose some dates during the second or third weeks of July, I will verify availability. Those depositions will take place in Indiana, PA.

Very truly yours,

Marcy L. Colkitt

General Counsel

MLC/sjg

C:\WP51\NRC\ZOBLRM08

# United States of America

## NUCLEAR REGULATORY COMMISSION

In the matter of:

ONCOLOGY SERVICES CORPORATION

(Byproduct Material License No. 37-23540-01)

TO: Robbie Ackerson  
RD1, Box 316-A  
Creekside, PA 15732

DOCKET NO. 030-31765-E1

EA No. 93-006

Business Address:  
Indiana Regional Cancer Center  
877 Hospital Road  
Indiana, Pennsylvania 15701

YOU ARE HEREBY COMMANDED to appear ...to testify at the taking.....  
of a deposition in the above-captioned proceeding.....  
in the city of ..Indiana, Pennsylvania.....  
on the.....12th.....day of.....July.....19..94.....at.....9:00.....0'clock A. M.

in the above entitled action and bring with you the document(s) or object(s) described  
in the attached schedule.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY \_\_\_\_\_

G. Paul Bollwerk, III, Chairman  
\_\_\_\_\_

ATTORNEY FOR NRC Staff

Marian L. Zabler

TELEPHONE (301) 504-1572

.....19.....

### 10 C.F.R. 2.720 (f)

On motion made promptly, and in any event  
at or before the time specified in the subpoena  
for compliance by the person to whom the sub-  
poena is directed, and on notice to the party at  
whose instance the subpoena was issued, the

presiding officer or, if he is unavailable, the  
Commission may (1) quash or modify the sub-  
poena if it is unreasonable or requires evidence  
not relevant to any matter in issue, or (2) con-  
dition denial of the motion on just and reasonable  
terms.

# United States of America

## NUCLEAR REGULATORY COMMISSION

In the matter of:

ONCOLOGY SERVICES CORPORATION  
(Byproduct Material License No. 37-23540-01)

TO: Rudy Balko  
RD1, Box 246-A  
South Fork, PA 15956

DOCKET NO. 030-31765-EA  
EA No. 93-006

Business Address:  
Indiana Regional Cancer Center  
877 Hospital Road  
Indiana, Pennsylvania 15701

YOU ARE HEREBY COMMANDED to appear to testify at the taking  
of a deposition in the above-captioned proceeding  
in the city of Indiana, Pennsylvania  
on the 13th day of July, 19 94 at 9:00 o'clock A.M.

in the above entitled action and bring with you the document(s) or object(s) described  
in the attached schedule.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY \_\_\_\_\_

G. Paul Bollwerk, III, Chairman

ATTORNEY FOR NRC Staff

Marian L. Zabler

TELEPHONE (301) 504-1572

....., 19.....

### 10 C.F.R. 2.720 (f)

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Commission may (1) quash or modify the sub-  
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not relevant to any matter in issue, or (2) con-  
dition denial of the motion on just and reasonable  
terms.



# United States of America

## NUCLEAR REGULATORY COMMISSION

In the matter of:

ONCOLOGY SERVICES CORPORATION  
(Byproduct Material License No. 37-23540-01)

TO: James E. Bauer  
599 Chestnut Street  
Indiana, PA 15701

DOCKET NO. 030-31765-EA  
EA No. 93-006

Business Address:  
Indiana Regional Cancer Center  
877 Hospital Road  
Indiana, Pennsylvania 15701

YOU ARE HEREBY COMMANDED to appear to testify at the taking  
of a deposition in the above-captioned proceeding  
in the city of Indiana, Pennsylvania  
on the 14th day of July, 1994 at 9:00 o'clock A.M.

in the above entitled action and bring with you the document(s) or object(s) described  
in the attached schedule.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY \_\_\_\_\_  
G. Paul Bollwerk, III, Chairman

ATTORNEY FOR NRC Staff

Marian L. Zabler

TELEPHONE (301) 504-1572

....., 19.....

### 10 C.F.R. 2.720 (f)

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the

presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

# United States of America

## NUCLEAR REGULATORY COMMISSION

In the matter of:

ONCOLOGY SERVICES CORPORATION

(Byproduct Material License No. 37-23540-01)

TO: Sharon Ann Rickett  
1618 Oliver Avenue  
Johnstown, PA 15909

DOCKET NO. 030-31765-EA

EA No. 93-006

Business Address:  
Indiana Regional Cancer Center  
877 Hospital Road  
Indiana, Pennsylvania 15701

YOU ARE HEREBY COMMANDED to appear ...to testify at the taking.....  
of a deposition in the above-captioned proceeding.....  
in the city of Indiana, Pennsylvania.....  
on the 12th.....day of July.....1994.....at 2:00.....0'clock P.M.

in the above entitled action and bring with you the document(s) or object(s) described  
in the attached schedule.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY \_\_\_\_\_

G. Paul Bollwerk, III, Chairman

ATTORNEY FOR NRC Staff

Marian L. Zabler

TELEPHONE (301) 504-1572

....., 19.....

### 10 C.F.R. 2.720 (f)

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the

presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'94 JUN 22 P3:26

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
)  
ONCOLOGY SERVICES CORPORATION ) Docket No. 030-31765-EA  
)  
(Byproduct Material ) EA No. 93-006  
License No. 37-28540-01) )  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S APPLICATION FOR THE ISSUANCE OF SUBPOENAS" in the above-captioned proceeding have been served on the following by facsimile transmission, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 21st day of June 1994:

G. Paul Bollwerk, III, Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Kerry A. Kearney, Esq.  
Joseph R. Rodkey, Jr., Esq.  
Joseph W. Klein, Esq.  
Counsel for Oncology Services Corp.  
Reed Smith Shaw & McClay  
Mellon Square  
435 Sixth Avenue  
Pittsburgh, PA 15219-1886

Dr. Charles N. Kelber\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Peter S. Lam\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

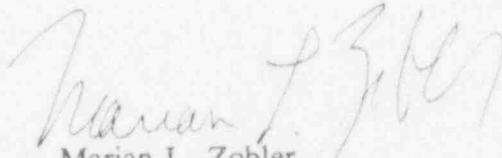
Marcy L. Colkitt, Esq.  
General Counsel  
Oncology Services Corp.  
P.O. Box 607  
Indiana, PA 15701-0607

Adjudicatory File (2)\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary (2)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attn: Docketing and Service Section

Office of Commission Appellate  
Adjudication (1)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Board  
Panel (1)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

  
Marian L. Zobler  
Counsel for NRC Staff