

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

MAR 17 1977

BEFORE THE COMMISSION

In the Matter of  
U.S. NUCLEAR INC.  
(Export of Special Nuclear  
Material to the Republic of  
South Africa)

}  
} License No. XSNM-690,  
} Amendment 2  
}

NRC STAFF MOTION FOR PROTECTIVE ORDER  
THAT ANSWERS TO INTERROGATORIES  
ARE NOT REQUIRED

Industrial Devel. &  
Regulations II South  
Africa Vol. 1  
Box 31  
Acc. 431-94-001 (Job 209)  
NRC

1. The NRC Staff is in receipt of 74 interrogatories served upon it and five other federal departments and agencies by Congressman Diggs, et. al. ("Petitioners") on 4 March 1977. For the reasons set forth below, the Staff requests that the Commission issue an order that answers to the interrogatories are not required at the present time. <sup>1/</sup>

2. By petition dated 2 July 1976, petitioners requested that they be granted leave to intervene and that a hearing be held in the above captioned matter. The NRC Staff, by Answer dated 23 July 1976, offered its view that petitioners lacked standing to invoke a statutory hearing right under the Atomic Energy Act of 1954, as amended. This petition is still pending before the Commission.

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<sup>1/</sup> Applicant U.S. Nuclear filed a "Motion to the Commission for Ruling on its Obligation to Reply to Petitioners' Interrogatories" on 9 March 1977. The instant Staff motion serves, in effect, as a response by the Staff to this motion.

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3. Neither the Atomic Energy Act of 1954, nor the Administrative Procedure Act grants any statutory right to compel discovery by written interrogatories. The only Commission regulations which grant such a right are sections 2.720(h)(2)(ii) and 2.740b of 10 CFR Part 2, "Rules of Practice." Both regulations by their terms grant the right to discovery by written interrogatories or otherwise, only to parties to licensing proceedings conducted under 10 CFR Part 2, subpart G. See BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Wisconsin Electric Power Co. et al. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928 (1974). Petitioners are not presently parties in any such licensing proceeding.
4. Further, even if a proceeding under 10 CFR Part 2, subpart G had been initiated, interrogatories can only be served by parties on other parties.
5. Petitioners have chosen to seek answers to written questions by use of the Commission's compulsory process, and the Staff has limited its response to the issue of the use of the Commission's compulsory process in the present circumstances. The Commission's rules do not grant different discovery rights to petitioners or parties who are members of Congress.
6. Even if, following consideration of the petitioners 2 July 1976 petition for intervention and hearing, some form of public proceeding in this licensing matter were directed by the Commission, whether, and

if so, to what extent discovery would be allowed must await the Commission decision on the petition. In the event that some form of interrogatories is permitted, the present interrogatories could be resubmitted, or the Commission could choose to have the questions addressed in some other fashion to the extent appropriate.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Martin G. Malsch", written over a horizontal line.

Martin G. Malsch  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 17th day of March, 1977.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR PROTECTIVE ORDER THAT ANSWERS TO INTERROGATORIES ARE NOT REQUIRED" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or air mail, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 17th day of March, 1977.

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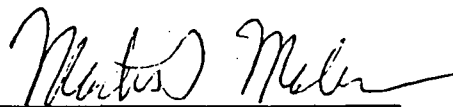
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