

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ADJUDICATORY
CONSENT CALENDAR ITEM

May 4, 1979

SECY-A-79-42

For: The Commissioners

From: Leonard Bickwit, Jr.
General Counsel

Subject: NUCLEAR ENGINEERING COMPANY, INC.
(Sheffield, Illinois Low-Level Radioactive
Disposal Site) License No. 13-10042-01;
SHOW CAUSE ORDER.

Purpose: To obtain Commission approval of a Memo-
randum and Order sustaining the immediate
effectiveness of a Staff Order to Show
Cause under 10 CFR 2.202 and a Notice of
Hearing on that Order.

Discussion: On March 20, 1979, the Director, NMSS
issued an immediately effective order to
licensee, Nuclear Engineering Company,
Inc. (NECO), to show cause why it should
not resume its responsibilities for the
Sheffield, Illinois low-level waste dis-
posal site.^{1/} The basis of the Director's
action lay in NECO's unilateral announce-
ment of termination of its license and
abandonment of the Sheffield site on
March 8, 1979.

On March 22, 1979, NECO moved the Com-
mission to take emergency action^{2/} to
(1) stay the immediate effectiveness of
the order because it failed to allege an
immediate health hazard, (2) rescind the

^{1/} The events leading up to the issuance of the order were
outlined in our March 29, memo to you on this subject.

^{2/} The request for emergency action was based on NECO's
desire to have the Order considered at the March 27,
proceeding before the Licensing Board considering the
withdrawal of NECO's license renewal application. This
date could not be met because both the State of Illinois
and the NRC staff informed us they needed time to respond.

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order because it cited no authority preventing NECO from surrendering its license, and (3) refer the matter to the Licensing Board considering NECO's motion to withdraw its license renewal application. Both the NRC Staff and the State of Illinois opposed NECO's motion to stay the immediate effectiveness of the order, and to rescind it, but concurred in the referral of the issues in the order to the existing Licensing Board.

On March 23, 1979, NECO answered the Director's order by (1) admitting it had unilaterally terminated its license, (2) asserting that inspection of the Sheffield site revealed no condition posing an immediate threat to public health and safety, (3) denying its license termination violated any provision of its license, the Atomic Energy Act, or the Commission's rules and regulations, (4) denying any further responsibility for the Sheffield site, and (5) demanding a hearing.

10 CFR 2.202(c) provides that, in the event a licensee demands a hearing regarding an order to show cause, "the Commission will issue an order designating the time and place of hearing." Attachment A is a draft Notice of Hearing for the Secretary to issue on your behalf. That notice directs the existing Licensing Board to consider whether NECO may unilaterally terminate License No. 13-10042-01 for activities at Sheffield.

That portion of NECO's motion which asks that the Director's immediately effective order be rescinded, however, should be decided now by the Commission. The participants have briefed the issue of the order's immediate effectiveness, and the Commission is in a position to assess

it on the basis of the "abuse of discretion" criteria against which Directors' decisions on show cause orders are regularly evaluated 3/ Moreover, because the "immediate effectiveness" now imposes health and safety requirements on NECO, we do not recommend referring consideration of this matter to a Licensing Board which will require time to schedule a hearing.

Attachment B is a draft Memorandum and Order sustaining the immediate effectiveness of the Director's order and refusing to rescind it. In our view, analysis of the situation in terms of the "abuse of discretion" criteria shows that the Director acted well within his discretion. Immediate action was clearly required to assure the prevention of adverse impacts on public health and safety which could result from NECO's abandonment of the Sheffield site. Immediate effectiveness of the Director's order was also supported by NECO's willful termination of all license obligations. 10 CFR 2.202(f). Preservation of an orderly licensing process required the Director to respond immediately to NECO's unilateral action. The details of our evaluation are set out in the attached Memorandum and Order.

Recommendation: Authorize the Secretary to issue Attachments A and B.

Leonard Bickwit, Jr.
Leonard Bickwit, Jr.
General Counsel

Attachments:
A. Notice of Hearing
B. Memorandum and Order

3/ Consolidated Edison Company of New York, (Indiant Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175 (1975).

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, May 16, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 10, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of May 21, 1979. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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