

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of:)
)
NUCLEAR ENGINEERING COMPANY, INC.) DOCKET NO. 27 - 39
(Sheffield, Illinois Low Level)
Radioactive Waste Disposal Site))

STATE OF ILLINOIS RESPONSE TO NECO MOTION FOR
RECONSIDERATION OF THE COMMISSION'S NOTICE OF
HEARING AND MEMORANDUM AND ORDER OF JUNE 6, 1979

The Nuclear Regulatory Commission on June 6, 1979 issued a Memorandum and Order and Notice of Hearing, which in essence consolidated all the issues before the NRC regarding the above captioned matter and set them before the Atomic Safety and Licensing Board which had been convened to officiate over the original license renewal application made by NECO. Included among the issues to be heard by the Board were those springing from an Order to Show Cause issued by the Director, NMSS, on March 20, 1979, and from NECO's March 8, 1979 Notice of its termination of its license for all activities at the Sheffield site.

On June 18, 1979 NECO filed a motion for Reconsideration and Clarification of the Board's June 6, 1979 Order. NECO alleged that the Commission "prejudged or decided the legal issues" it assigned the ASLB to consider. However NECO produced no evidence to sustain its allegation.

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NECO has made no allegation that the Commission's ruling was erroneous nor has NECO adduced any new fact which would change the Commission's determination. Essentially NECO reiterated the same arguments they have previously put forth prior to the June 6, 1979 Order. As no new facts or theories have been asserted the motion for reconsideration should be denied. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2) ALAB 356, 4 NRC 525 (1976).

NECO argues that the Commission reached its decision without sufficient knowledge of the underlying circumstances of the case and without specific information regarding the actual condition of the Sheffield site (NECO MOTION at 11-13). In fact, it is apparent from the June 6, 1979 Memorandum and Order that the Commission had access to and correctly relied on ample factual findings in making its decision. In particular, the Commission cited the findings of NRC inspections of March 9, 1979 and March 16, 1979. (Commission Memo and Order at 8). That NECO is displeased with the inspection findings does not remove them as a source of information upon which the Commission could rely in making a judgment. Lack of factual basis cannot be sustained as grounds for reconsideration.

The Commission reviewed the Director's issuance of the Order to Show Cause in light of the authority contained in 10 CFR

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2.202(f). It found that the "Director acted well within his discretion in issuing an immediately effective show cause order" (Commission Memo and Order at 8).

NECO's fearful interpretation of the Commission's Order does not convert the Order to hold a hearing into a decision on the merits. The Order and Notice of Hearing make clear the Commission's intent that the ASLB hear all factual issues regarding the Order to Show Cause and NECO's attempt to terminate its license. NECO's assertions are further contradicted by the appointment of an appeal board and the Commission's statement on p. 8 of the Order:

Of course, at this time we make no determination on the merits of the issues in the show cause proceeding. If the decision on any of those issues should come before us for review, we will at that time reach our conclusions on the basis of the record before us.

WHEREFORE the State of Illinois moves that the motion for Reconsideration be denied and that the ASLB be instructed to set a date for a prehearing conference forthwith.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "STATE OF ILLINOIS RESPONSE TO NECO MOTION FOR RECONSIDERATION OF THE COMMISSION'S NOTICE OF HEARING AND MEMORANDUM AND ORDER OF JUNE 6, 1979 dated July 3, 1979 in the captioned matter, have been served upon the following by deposit in the United States Mail, this 3rd day of July, 1979.

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