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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING BOARD

Andrew C. Goodhope, Chairman
Dr. Linda W. Little
Dr. Forrest J. Remick

In the Matter of)
)
NUCLEAR ENGINEERING COMPANY, INC.)
)
(Sheffield, Illinois Low-Level)
Radioactive Waste Disposal Site))

Docket No. 27-39

ORDER RULING ON NUCLEAR ENGINEERING
COMPANY'S (NECO) MOTION FOR RECONSIDERATION
OR CERTIFICATION TO THE COMMISSION

(May 7, 1980)

The Applicant (NECO) bases its motion, dated December 13, 1979, for reconsideration or certification upon a statement this board made in an order (December 3, 1979) denying a motion by an intervenor, Chicago Section of the American Nuclear Society (Chicago Section) to compel the NRC Staff to file a Draft Environmental Impact Statement (DEIS) and to study reasonable alternatives to suspending operations by NECO at its Sheffield, Illinois low-level radioactive waste disposal site.

The Applicant states that this board materially prejudged the central issue before the Commission when it stated in its

ruling on the Chicago Section's motion as follows:

This Board denied NECO's motion to withdraw its application for renewal of its license and to dismiss the proceeding. Thus, NECO is still in possession of its existing license on the 20 acre site until it is decided under what conditions, if any, the license should be terminated.

The Applicant, however, immediately shifts to other grounds and argues that

"... the Commission has no jurisdiction over any activities at Sheffield because there is no 'possession' of radioactive material which has been disposed of by burial in accordance with the terms of the previous license. The NRC has no other basis for asserting the right to prevent NECO from terminating its license at Sheffield. The holding by this Board, if it was intended as such, without the hearing and without providing NECO the other rights to which it is entitled pursuant to the Atomic Energy Act, the Administrative Procedure Act, and the Commission's regulations, deprives NECO of due process of law."

A substantial difference exists in this board's opinion as to whether NECO possesses a license or possesses radioactive material. Whether NECO possesses radioactive material is an issue, raised by Applicant, upon which this board will do its best to grant NECO all of its legal rights.

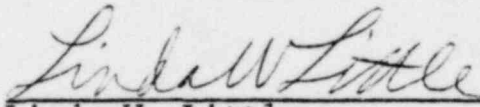
In its last Memorandum and Order, the Commission specifically stated that this board was to "consider whether NECO could unilaterally terminate its license for activities at Sheffield without affirmative action by the Commission." Commission Memorandum and Order dated January 22, 1980. Applicant's reasoning appears


to be the same as it used when it claimed that the Commission itself had prejudged the issues pending before this board when it issued its Memorandum and Order of June 6, 1979. The Commission rejected this argument in its January 22, 1980 Memorandum and Order.

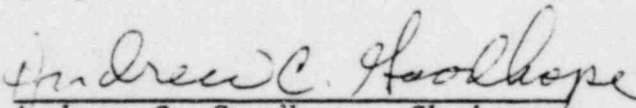
This board also rejects this argument since it has not prejudged any issue which may be before it. Consequently, Applicant's motion for reconsideration is denied.

Since the Commission's rules provide in 10 CFR § 2.730(f) that a decision may be referred to the Commission only when a "prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense", and no such finding can be made in this matter, the board denies NECO's motion for certification to the Commission. As pointed out above, the issue before this board, as framed by the Commission, is whether NECO can unilaterally terminate its license without affirmative action by the Commission, and this board declines to certify this question back to the Commission.

THE ATOMIC SAFETY AND
LICENSING BOARD


Linda W. Little


Forrest J. Remick


Andrew C. Goodhope, Chairman

Bethesda, Maryland

May 7, 1980