

27.39 TERA

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD



IN THE MATTER OF:)
NUCLEAR ENGINEERING COMPANY, INC.)
(Sheffield, Illinois Low Level)
Radioactive Waste Disposal Site))

MOTION TO STRIKE AMERICAN NUCLEAR SOCIETY EXCEPTION TO
DECISION OF ATOMIC SAFETY AND LICENSING BOARD

Intervenor, the State of Illinois, by its Attorney,
WILLIAM J. SCOTT, Attorney General, pursuant to 10 C.F.R. §2.762(e)
moves to strike the exception to decision of the Atomic Safety and
Licensing Board (ASLB) filed by Intervenor, Chicago Section/
American Nuclear Society (CS/ANS) on May 21, 1980.

The exception is taken to a decision of the SDLB made
on May 3, 1979. As 10 C.F.R. §2.762(a) provides for appeals to be
taken within 10 days of a decision, the exception is clearly
untimely filed and cannot be considered by this Board. Florida
Power and Light Co. (St. Lucie Nuclear Power Plant, Unit 2),
ALAB-274, 1 NRC 497 (1978). Failure to file exceptions in a timely
manner amounts to a waiver of the exceptions. Even where only part
of a decision is appealed a party must file his exceptions without
waiting for the Licensing Board's disposition of the remainder
of the case. Commonwealth Edison Co. (Zion Station), ALAB-226,
8 AEC 381 (1974); Mississippi Power and Light Company (Grand Gulf
Station), ALAB-195, 7 AEC 455 (1974).

L-4-11A.2

CS/ANS alleges that its appeal is taken from the ASLB order of May 7, 1980, wherein that board stated that "the May 3, 1979 ruling granting Applicant's motion to withdraw its application to expand the Sheffield site was indeed final as of that date as far as this board was concerned ...". However CS/ANS states in its own petition that the exception is taken to the May 3, 1979 decision. And in fact that is the case. CS/ANS objects not to the ASLB's statement of finality, but to the substantive decision to allow NECO to withdraw part of its license application. CS/ANS cannot bootstrap its way into a timely appeal by citing the May 7, 1980 order. As stated in that order, the decision to allow NECO to withdraw part of its application "disposed of a major segment of the case", and therefore an appeal had to be filed within 10 days of service of that decision or be waived. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752 (1975).

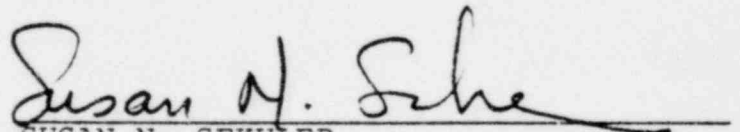
Even had the exception been timely filed, it would be inappropriate for this Board to consider. Appeals from rulings are normally allowed only if the appellant can establish that, in the final analysis, some discernible injury to it has been sustained as a consequence of the ruling. Northern States Power Company (Prairie Island Nuclear Generating Plant), ALAB-252, 8 AEC 1175, aff'd. CL1-75-1, 1 NRC 1 (1975). CS/ANS has not made this showing, nor can it. Whether or not the ASLB allowed withdrawal of NECO's application, neither the NRC nor any other

governmental body could force NECO, a private contractor to operate a new low level waste site not previously licensed. Therefore the ASLB action cannot be identified as the source of any injury to appellant.

If this Board does not strike the appellants exception much time, effort and money will be needlessly expended on briefing and arguing this untimely appeal. Such efforts will detract considerably from the NECO proceeding. There is a pre-hearing conference scheduled for June 26, 1980 at which issues to be dealt with in the NECO proceeding will be fully aired. CS/ANS will be a full participant in this and future hearings, and will have ample opportunity to make its positions known.

WHEREFORE Intervenor, the State of Illinois, prays this honorable Board to strike the exception.

Respectfully submitted,



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DATED: MAY 27, 1980

CERTIFICATION OF SERVICE

I, SUSAN N. SEKULER, hereby certify that I have served a copy of the foregoing Motion to Strike American Nuclear Society Exception to Decision of Atomic Safety and Licensing Board upon each of the following persons by deposit in the United States Mail, first class postage prepaid, this 27th day of May, 1980.

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