

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

OBJECTIONS OF NRC STAFF TO REQUESTS FOR
ADMISSIONS, INTERROGATORIES AND REQUESTS FOR
THE PRODUCTION OF DOCUMENTS OF THE NUCLEAR ENGINEERING CO.

I. INTRODUCTION

Pursuant to 10 C.F.R. 2.740(b), and the Licensing Board's "Prehearing Conference Order Setting Time for Discovery" of September 9, 1980, the NRC Staff objects to and seeks a protective order to provide that it need not answer certain of the Nuclear Engineering Company's [NECO's] October 10, 1980 requests for admissions, and interrogatories and requests for documents premised on the requests for admissions. The Staff shall deal with each request to which it objects individually, after setting out the relevant law dealing with requests for admissions.

II. LEGAL PRINCIPLES

10 C.F.R. 2.742 governing "Admissions," provides in material part:

- (a) . . . at any time after his answer has been filed, a party may file a written request for the admission of the genuineness and authenticity of any relevant

document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact

- (b) Each requested admission shall be deemed made unless . . . the party to whom the request is directed serves on the requesting party either (1) a sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them, or (2) written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part. Answers on matters to which such objections are made may be deferred until the objections are determined

The NRC Rule of Practice was patterned on Rule 36 of the Federal Rules of Civil Procedure prior to its being amended on March 30, 1970, and it is appropriate to look at cases and authorities interpreting the Federal Rule as it then existed to find the proper application of Commission Rule 2.742. See Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-196, 7 AEC 457, 460 (1974).^{1/}

Although the Commission Rules governing discovery were broadened in 1972 in part to mirror the 1972 changes in the Federal Rules of Civil Procedure (37 Fed. Reg. 15134, July 28, 1972), the Commission did not adopt the substantial

^{1/}Rule 36 provided in pertinent part before 1970 (28 U.S.C., 1964 ed.):

- (a) Request for Admission. After commencement of an action a party may serve upon any other party a written request for the admission . . . of the truth of any relevant matters of fact set forth in the request Each of the matters of which an admission is requested shall be deemed admitted unless . . . the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper

changes made in the Federal Rule 36 which broadened the use of admissions.^{2/}

The procedural rules of the Commission continue to require that a request for an admission be on "the truth of any specified relevant matter of fact," and that such requests for admissions may be denied when "the matters involved are . . . irrelevant."

As indicated in Moore's Federal Practice, Vol. 4a, §36.04[1], the purpose of Rule 36 in 1970 on which 10 C.F.R. 2.742 is patterned, was not to serve as a substitute for trial, but to serve as a means of establishing essentially uncontroverted facts. Several corollaries evolved from this purpose. Chief among them were:

1. A request for an admission under Rule 36 must be relevant.
2. The request must deal with factual matters.
3. The request could not involve essentially questions of law.
4. The request could not deal with opinion.
5. The request had to be simple enough to be denied or admitted without qualification.
6. The information on which a response is sought had to be reasonably available to the resposdee.

^{2/}As pertinent, Rule 36(a) now provides (28 U.S.C., 1970 ed.):

- (a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request

The cases under Rule 36, as it existed at the beginning of 1970, recognized that the purpose of requests for admissions under that Rule was to expedite trial by obtaining agreement on essentially undisputed relevant facts. Burns v. Phillips, 50 F.R.D. 188 (N.D. Ga. 1970). Thus a request for admissions could not be used to discover facts that could lead to the discovery of relevant evidence (as is permissible under other Rules of discovery), but could be used solely to reach agreement on facts which were themselves relevant. United States v. Watchmakers of Switzerland Information Center, Inc., 25 F.R.D. 203, 204 (S.D.N.Y. 1960); Waider v. Chicago, R.I.&P.R. Co., 10 F.R.D. 376, 378 (S.D. Iowa 1950); Rice v. United Air Lines, 10 F.R.D. 161, 162 (N.D. Ohio 1950). The request must only seek the admission of generally undisputed matters of fact, and not ask for admissions on conclusions of law or as to mixed questions of law and fact. In Driver v. Gindy Manufacturing Corp., 24 F.R.D. 473, 475 (E.D. Pa. 1959), the court stated:

Although there is a split in authorities as to whether a party may be required to admit or deny facts which are not within his knowledge, it is well established that Rule 36 can be employed only in respect to questions of fact and then only when the facts are not in dispute. If a real dispute as to the facts does exist, Rule 36 may not be used. The Rule cannot be employed as a substitute for discovery or for the eliciting of evidence at trial. See Demmert v. Demmert, D.C.D. Alaska 1953, 115 F. Supp. 430; Alaska Credit Bureau of Juneau v. Stevenson, 1954, 15 F.R.D. 409, 14 Alaska 531; In re Reinauer Oil Transport Inc., D.C.D. Mass. 1956, 19 F.R.D. 5; People of State of California v. The Jules Fribourg, D.C.N.D. Cal. 1955, 19 F.R.D. 432. See also 4 Moore, Par. 36.02. Many of the Requests for Admission by Burroughs, such as No. 18, are Requests for Admission not only of disputed facts but also require conclusions of mixed fact and law. Burroughs' Requests for Admission constitute a misuse of Rule 36. Valid and invalid requests are so intermingled that the court will not attempt to sort the good from the bad. [Footnote omitted.]

See also Fidelity Trust Co. v. Village of Stickney, 129 F.2d 506, 511 (7th Cir. 1942). Similarly, requests for admissions cannot deal with matters of opinion or matters that cannot be admitted or denied without explanation. Kasar v. Miller Printing Machine Co., 36 F.R.D. 200, 203 (N.D. Pa. 1964); Waider v. Chicago, R.I. & R. Co., *supra*; Reinauer Oil Transport Co. v. Boston Fuel Transportation, Inc., 19 F.R.D. 5 (D. Mass. 1956). Thus, to the extent NECO seeks admissions under 10 C.F.R. 2.742 on the matters of questioned relevancy, on mixed questions of law and fact, on opinions or on matters which cannot be admitted without explanation, its request for admissions must be disallowed.

Further, past Commission or Staff actions on other licenses or as to other licensees are not relevant to the issues of whether NECO may unilaterally terminate its license, and appropriate conditions, if any, to be imposed upon the termination of NECO's license. In Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, 227 (1946), the Court emphasized that regulatory agencies may embark on new courses and regulate its licensees in ways that have not been tried before. See also NLRB v. Weingarten, Inc., 420 U.S. 251, 265-266 (1975). It is further noted that non-controverted determinations have no stare decisis effect. Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 981 n. 4 (1975); see also Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant Units 1 & 2), ALAB-592, 11 NRC 744 (1980). Therefore, as we shall detail, many of the requests for admissions have no relevance to this procedure either in a factual or a legal context.

III. OBJECTIONABLE REQUESTS FOR ADMISSIONS,
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Request 1(a) provides:

Request for Admission: Since the Commission first began to issue licenses pursuant to 10 C.F.R. Parts 30, 40 and 70, it has issued hundreds and thousands of materials licenses including waste disposal licenses, which were subsequently terminated by their respective licensees without any affirmative action by the Commission.

This request is objected to on the basis of the aforesaid authority, for each of the following reasons:

- (a) It is not relevant. The purported fact that thousands of material waste disposal licenses were terminated with or without Commission action is not relevant to whether such action should be taken here, or instances where such action might have been taken.
- (b) It involves mixed questions of law and fact involving interpretations of what "affirmative action by the Commission" means and where it does and does not exist.
- (c) For similar reasons this request impermissibly asks for opinion on these matters.
- (d) The request cannot be admitted or denied without qualification as the terms "terminated" and "affirmative action by the Commission" must be explained.

Request 1(b) provides:

Interrogatory: Please give the NRC's best estimate in round figures as to the number of licenses so terminated. Further, specify the number of such licenses terminated from 1966 through March 8, 1979, and the number of such licenses terminated thereafter.

As Request 1(b) is predicated on request 1(a), Request 1(b) for the reasons given in answer to Request 1(a) cannot be answered.

Request 1(c) provides:

Document Request: Please provide a copy of all documents which discuss or relate to any NRC policy (whether proposed, previously in force or presently in force) or action governing the termination of licenses issued under 10 C.F.R. Parts 30, 40 or 70.

A broadside request to the Staff for "all documents which discuss or relate" to a matter is not proper and should be denied. See Illinois Power Co. (Clinton Nuclear Station, Units 1 & 2), ALAB-340, 4 NRC 27, 34 (1976). In essence, compliance would require the review of each paper in the files of the Commission to ascertain whether it discusses or relates to any NRC policy or action governing materials license termination. Such requests are not permissible and should be denied.

Request 2(a), 2(b) and 2(c) provide:

Request for Admission: With respect to the waste disposal licenses to which Request for Admission No. 1 refers, the NRC did not make a final inspection of the licensee prior to termination of the licenses.

Interrogatory: Please specify each instance, if any, in which such a final inspection was made.

Document Request: Please provide a copy of each such final inspection report.

As these requests are all premised on Request 1, these requests are also improper as they are not relevant, ask for opinion, and cannot be affirmed or denied without explanation and qualification.

Request for Admission 3(a) provides:

Request for Admission: None of the site closure conditions which the NRC presently seeks to impose on NECO with respect to its low-level radioactive waste disposal site at Sheffield have been imposed upon any other waste disposal materials licensee.

On the basis of the aforesaid authority, this request is objected to for each of the following reasons:

- (a) It calls for opinion in judging whether conditions imposed or not imposed are the same or similar.
- (b) It could not be affirmed or denied without explanation of how conditions imposed on other licensees relate to NECO's situation.
- (c) It is not clearly relevant. Commission actions or nonactions in regard to other licensees are not clearly relevant to, or probative of, what actions should be taken in regard to NECO. Moreover, it does not appear relevant because it is not shown that the sites of various waste disposal facilities are similar to the subject site.

Requests 3(b) and 3(c) provide:

Interrogatory: Please specify each instance and the pertinent dates in which any such site closure condition(s) was (were) imposed by the NRC. In particular, please describe in detail the closure conditions and final inspection requirements for the following waste disposal materials licensees: (1) Nuclear Fuel Services, West Valley, New York; (2) The Boeing Company; (3) Industrial Waste Disposal Corporation; (4) Nuclear Advisors, Inc.; (5) Long Island Nuclear; and Commonwealth of Kentucky, Maxey Flats, Kentucky.

Please provide a copy of the final inspection report, if any, for any licensee specified in answer to Interrogatory 3(b) as well as the five companies and the Commonwealth listed therein.

As the answer to these requests depend on the answer to request 3(a) which need not be admitted or denied under pertinent authority, they too need not be answered. Objection is taken to these requests.

Request for Admission 4(a) provides:

Request for Admission: Prior to issuing the waste disposal license for the Sheffield site, the NRC received a binding commitment on the part of the State of Illinois to assume long-term custodial responsibilities for the low-level radioactive waste disposal site at Sheffield following the withdrawal by NECO from the facility site.

On the basis of the aforecited authority this request is objected to for each of the following reasons:

- (a) It is irrelevant. The obligations of the State of Illinois, be they separate or co-terminus with the obligations of NECO, do

not and could not effect NECO's obligations as licensee of the Sheffield site.

- (b) It calls for a conclusion of law on Illinois' obligations.
- (c) It cannot be affirmed or denied without qualification describing such terms as "commitment" and "long-term custodial responsibilities."

Request 4(b) provides

Interrogatory: Please specify each respect, if any, in which the previous commitment by the State of Illinois does not so bind it, and identify the statute, regulation or other authority relieving the State of its obligations in whole or in part. Further, specify all instances, if any, in which the Commission has taken the position that a State has been relieved of its obligations in whole or in part under an agreement and commitment to provide long-term custodial maintenance at a low-level waste disposal site.

As, by its terms, this request refers to request 4(a), it too need not be answered. It is objected to.

Request 4(c) provides:

Document request: Please provide a copy of all documents relating to any instance, if any, in which the NRC has deemed a State to be relieved of such an agreement and commitment in whole or in part. Also, please provide a copy of any document reflecting the binding commitment on the part of the State of Illinois with regard to the Sheffield facility. Further, please provide a copy of all documents which contain an interpretation by the NRC of 10 C.F.R. §20.302 or which otherwise interpret the custodial responsibilities of a State for long-term care and maintenance of a low-level waste disposal site.

These matters are not relevant to this proceeding, and hence the documents requested need not be supplied. See Allied Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977). This proceeding involves the duties and responsibilities of NECO, and not State of Illinois or any other State. Further, in asking for "all documents relating to any instance" and "all documents which contain an interpretation" the request is over-broad and should be denied for that reason also. See Illinois Power Co., *supra*.

Request for Admission 5(a) provides:

Request for Admission: The Commission has never invoked 10 C.F.R. §§30.37(b), 40.43(b) or 70.33(b), or Section 9(b) of the Administrative Procedure Act with regard to the renewal of any other license under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011, except in the instant proceeding, so as to attempt to extend the effective date of a license against the will of a licensee desiring to terminate the license.

This request for admission is objected to on the basis of the aforecited authorities, for each of the following reasons:

- (a) It presents questions of law in determining whether the cited regulations and statute were invoked and effect of the action.
- (b) For similar reasons, it asks for opinion.
- (c) It could not necessarily be admitted or denied without qualification.
- (d) It is not clearly relevant. The action of the Commission in regard to other licensees is not necessarily relevant to the responsibilities and duties of NECO.

Requests 5(b) and 5(c) provide:

Interrogatory: Please specify each instance, if any, in which the Commission has taken such a position.

Document Request: Please provide a copy of any document evidencing the position of the NRC in any such instance, or otherwise discussing 10 C.F.R. §§30.37(b), 40.43(b) or 70.33(b), or Section 9(b) of the Administrative Procedure Act, insofar as they pertain to the renewal of licenses under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq.

As these requests are dependent on an answer to Request 5(a) which need not be given, they too are objected to and should be stricken.

Request for Admission 6(a) provides:

Request for Admission: The Commission has never interpreted or applied 10 C.F.R. §2.107 with regard to renewal applications under 10 C.F.R. Parts 30, 40 and 70, except in the instant proceeding, so as to attempt to condition the withdrawal of an application for a materials license upon the performance of acts by the licensee relating to prior activities under its license.

On the basis of the aforesaid authorities, this Request for Admission is objected to for each of the following reasons:

- (a) It calls for a legal opinion as to how a regulation was interpreted or applied.
- (b) By its terms, it could not be admitted or denied without explanation on actions taken in regard to other licensees surrendering their licenses.

- (c) It is not clearly relevant. Actions in regard to other licensees are not the subject of this proceeding, and this proceeding should not be expanded to involve the proper actions in regard to other licenses.

Requests 6(b) and 6(c) provide:

Interrogatory: Please specify each instance, if any, in which the Commission has taken such a position.

Document Request: Please provide a copy of any document evidencing the position of the NRC in any such instance, or otherwise discussing the application of 10 C.F.R. §2.107 to the terms and conditions for the withdrawal of an application for a license issued pursuant to 10 C.F.R. Parts 30, 40 or 70.

As these requests are premised on an answer to Request for Admission 6(a), which is improper, they are objected to, and should be stricken.

Request for Admission 7(a) provides:

Request for Admission: The requirements of 10 C.F.R. §§30.34(e), 40.41(e) and 70.32(b) have never been invoked by the Commission to attempt to preclude a licensee from surrendering its license in whole or in part.

On the basis of the aforesaid authorities this request is objected to for each of the following reasons:

- (a) It calls for a conclusion of law on the requirements of the regulation and whether these regulations were invoked.

- (b) It calls for an opinion on similar matters and on the effect of the action.
- (c) It could not by its terms be admitted or denied without explanation as to what was done in regard to other licensees.
- (d) It is irrelevant to the issues before this Board which involve NECO, and not other licensees in other circumstances.

Requests 7(b) and 7(c) provide:

Interrogatory: Please specify each instance, if any, in which the Commission has taken such a position.

Document Request: Please provide a copy of any document evidencing the position of the NRC in any such instance, or otherwise discussing the application of 10 C.F.R. §§30.34, 40.41(c) or 70.32(b) with regard to the surrender by a materials licensee by its license in whole or in part, or the voluntary cessation of any activities previously conducted by the licensee under its license. Further, please provide a copy of any document which discusses the interpretation or application of 10 C.F.R. 50.33(f) with respect to licenses or licensees under 10 C.F.R. Parts 30, 40 and 70.

By their terms, these requests depend on an answer to Request for Admission 7(a). Since Request 7(a) need not be answered, objection is taken to these requests which are premised on that request.

Request for Admission 8(a) provides:

Request for Admission: Prior to the effective date of 10 C.F.R. §§30.34(f), 40.41(f) and 70.32(h), the NRC has not required that notice be given by a materials licensee with respect to the voluntary termination of a materials license and the cessation of activities thereunder.

This Request for Admission is objected to, on the basis of the aforesaid authorities, for each of the following reasons:

- (a) It calls for a conclusion of law in regard to what was "required," what is a "voluntary termination" and what is a "cessation of activities [under a license]."
- (b) It cannot be admitted or denied without explanation as to what was done on the termination of other licenses.
- (c) It calls for opinion.
- (d) It is not clearly relevant. Actions in regard to other licensees are not necessarily relevant to the duties and responsibilities of NECO in regard to the waste at Sheffield.

Request 8(b) provides:

Interrogatory: Please specify each instance, if any, in which the NRC has required prior notice from a licensee desiring to surrender its material license, and state whether a final inspection was conducted.

The specification of "each instance," like the call for "all documents," is improper in interrogatories. See Illinois Power Co., supra. It would require an examination of thousands of licensing files.

Request 8(c) provides:

Document Request: Please provide a copy of any document evidencing the position of the NRC in any such instance, including the final inspection report, or otherwise discussing the interpretation or application of 10 C.F.R. §§30.34(f), 40.41(f) and 70.32(h) to licensees subject to their provisions.

Evidence regarding actions in regard to other licensees is irrelevant. The proceeding should not be so expanded. See Allied-General Nuclear Services, supra. The request is objected to.

Request for Admission 9(a) provides:

Request for Admission: It is the NRC's position that the State of Illinois cannot repudiate or unilaterally alter the terms of its agreement with NECO or its commitment to the NRC under 10 C.F.R. §20.302(b) to provide long-term maintenance for the low-level waste disposal site at Sheffield upon the withdrawal by NECO from the facility site.

This Request for Admissions is objected to on the basis of the aforesaid authorities, for each of the following reasons:

- (a) It calls for an opinion of law on an agreement and on obligations under a regulation.
- (b) It is not relevant to what duties and responsibilities NECO might have. This proceeding involves NECO's duties, not the State of Illinois'.
- (c) This request could not be affirmed or denied without explanation or qualification.

Request 9(b) provides:

Interrogatory: Please specify in detail each circumstance, if any, which might relieve or has relieved the State of Illinois from its obligation.

This open ended request to "specify in each detail each circumstance," like an open ended request for all documents is overbroad and improper. See Illinois Power Co., supra. Further, it calls for an opinion of law. It is improper and should be stricken.

Request 9(c) provides:

Document Request: Please provide a copy of any document upon which the NRC relies to contend that the State of Illinois is or might be relieved from the aforesated agreement or commitment, or which in any respect reflects such a position taken by either the NRC or the State of Illinois or any officer or agency thereof. Further, please provide a copy of any documents received from or furnished to any State officer or agency which discuss the responsibilities of a State under 10 C.F.R. Parts 30, 40 and 70 with respect to long-term, custodial maintenance of a low-level radioactive waste disposal site.

This request is irrelevant. The issues in this proceeding do not involve the State of Illinois' responsibilities, but NECO's.

Request for Admission 10(a) provides:

Request for Admission: The NRC has never attempted to invoke prior to March 8, 1979, any provision of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq., or the NRC regulations so as to attempt to impose substantive additional conditions beyond those in the license regarding the assumption of custody of a low-level radioactive waste disposal site upon a licensee.

This Request for Admission is objected to on the basis of aforesaid authority, for each of the following reasons:

- (a) It calls for a conclusion of law in regard to requirements of statute and regulation.

- (b) It calls for opinions on the same matters.
- (c) It could not be affirmed or denied without explanations and definitions of such terms as "substantive additional conditions," "invoke," "impose" and "custody."

Requests 10(b) and 10(c) provide:

Interrogatory: Please specify each instance, if any, in which the Commission has taken such a position. Further, please state the basis for such a requirement as to NECO and/or other licensees.

Document Request: Please provide a copy of all documents evidencing such position by the NRC, or otherwise discussing the interpretation or application of any such provisions to licensees under 10 C.F.R. Parts 30, 40 and 70. Further, please provide a copy of any document discussing or pertaining to proposed amendments to the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 or any NRC regulations with respect to the responsibilities of NRC licensees and/or State custodial authorities for the decommissioning and long-term maintenance of low-level radioactive waste disposal sites.

As these requests are dependent on an answer to Request for Admission 10(a), they too are objected to. Further Request 10(b) in asking that the NRC "specify each instance" where a position was taken and Request 10(c) in asking for "all documents" are a derogation of precedent against such open ended discovery requests. Illinois Power Co., supra.

Request 11(c) asks in part for all documents which discuss the possession of material as a basis of exercise of authority. To the extent the request is open ended, the Staff objects. A search for all such documents anywhere in

the records of the Commission would be unduly burdensome. All such documents are not filed so they may be readily retrieved in answer to that request.

Request for Admission 12(a) provides:

Request for Admission: As established by inspections conducted by the Commission, there was no radioactive material at the Sheffield site subject to licensing pursuant to 10 C.F.R. Parts 30, 40 and 70, excluding consideration of waste disposal of by burial in the soil and calibration sources for survey instruments. (It is noted that an inspection report refers to a smear taken on a building wall reflecting 125 DPM/100 CM².)

This Request for Admission is objected to on the basis of the aforementioned authority, for each of the following reasons:

- (a) It calls for a legal conclusion as to the meaning of "waste disposed of by burial" among other matters.
- (b) It cannot be answered without qualification as terms must be defined, and explanations must be given.

Request for Admission 13(a) provides:

Request for Admission: The actions taken by the Commonwealth of Kentucky and the State of New York for the termination of activities, without specific closure conditions, such as now proposed by the Staff, at the Maxey Flats and West Valley low-level radioactive waste disposal sites, respectively, were compatible with the Commission's program for the regulation of such material pursuant to Section 274(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2021(d).

On the basis of the aforesaid authorities this Request for Admissions is objected to, for each of the following reasons:

- (a) The actions of Kentucky and New York are not relevant to NECO's duties and responsibilities at the Sheffield site.
- (b) It calls for a conclusion of law, on among other matters, on what is "compatible" with the Atomic Energy Act.
- (c) It calls for opinions on those states' actions and their compatibility with NRC programs.
- (d) No answer could be given with explanation and qualification involving details of state programs, and the peculiarities of the sites.

Requests 13(b) and 13(c) provide:

Interrogatory: Please describe in detail each respect, if any, in which such closure conditions were not "compatible with the Commission's program for the regulation of such materials," pursuant to Section 274(d) of the Atomic Energy Act of 1954. Please describe any steps taken to terminate or suspend the Commission's agreements with the Commonwealth of Kentucky or the State of New York.

Document Request: Please provide a copy of all documents discussing any such closure conditions incompatible with the Commission's program for the regulation of such materials.

These requests are immaterial. This proceeding does not involve the propriety of the actions of those States, or the propriety of the Commission's actions in regard to those States. These requests are objected to.

Request for Admission 14(a) provides:

Request for Admission: It is the position of the Commission that wastes from licensed operations and from license-exempt operations at Oak Ridge, the National Reactor Testing Station, Idaho, and other sites are not "possessed" by the United States or any other legal entity within the meaning of the Atomic Energy Act of 1954, as amended.

On the basis of the aforesaid authorities this request is objected to for each of the following reasons:

- (a) It involves a question of law involving what matters are "possessed" under the Atomic Energy Act, and who might possess them.
- (b) It calls for an opinion on the same matters.
- (c) No answer could be given without qualification and an explanation of the program at those sites.
- (d) It is not relevant to this proceeding whether or not wastes at these other licensed or license-exempt operations are "possessed."

Requests 14(b) and 14(c) provide:

Interrogatory: Please describe each instance, if any, in which the NRC has taken any position to the contrary.

Document Request: Please provide a copy of all documents which reflect any instance in which the NRC has taken a position to the contrary.

These requests involving Oak Ridge and the National Reactor Testing Station are irrelevant to this proceeding. They seek to inject issues far beyond those involved here, and should be stricken. See Allied-General Nuclear Services, supra. Further, in asking for "each instance" and "all documents" involving a multiplicity of situations, the requests are overbroad. Illinois Power Co., supra.

Request for Admission 15(a) provides:

Request for Admission: It is the position of the Commission that wastes from licensed operations and from license-exempt operations disposed of by burial in the soil at West Valley, New York, Barnwell, South Carolina, Maxey Flats, Kentucky, and other sites are not "possessed" by the United States, the respective States, or any other legal entity within the meaning of the Atomic Energy Act.

This Request for Admission is objected to on the basis of the aforementioned authorities, for each of the following reasons:

- (a) The request involves questions of law related to the meaning of "possessed" under the Atomic Energy Act and "disposed of by burial."
- (b) The request asks for opinions on these matters.
- (c) The request cannot be admitted or denied without qualification or explanation and a definition of the terms therein.

- (d) It is irrelevant. Whether wastes from licensed or license-exempt operations controlled by others in other circumstances are "possessed" by the United States or others, is not relevant to NECO's duties and responsibilities at Sheffield.

Requests 15(b) and 15(c) provide:

Interrogatory: Please describe each instance, if any, in which the NRC has taken any position to the contrary.

Document Request: Please provide a copy of all documents which reflect any instance in which the NRC has taken a position to the contrary.

These requests are objected to as they are premised on Request 15(a), and so cannot be answered. Further, in their own right, they are irrelevant and over-broad in asking for "each instance" and "all documents."

Request for Admission 16(a) provides:

Request for Admission: It is the position of the Commission that wastes from licensed operations and from license-exempt operations disposed of by burial at sea by the United States, including the Department of Health, Education and Welfare (National Institutes of Health), and by the Department of Defense (Military Sea Transport Service), are not "possessed" by the United States or any other legal entity within the meaning of the Atomic Energy Act.

This Request for Admission is objected to on the basis of the aforementioned authorities for each of the following reasons:

- (1) It is irrelevant. This proceeding does not involve "burial at sea" of any waste. It involves only NECO's operations at its site in the mid-west, and NECO's duties and responsibilities at that site.

- (2) It calls for conclusions of law on what may be "possessed" under the Atomic Energy Act and the meaning of "disposed."
- (3) It calls for opinions.
- (4) It cannot be admitted or denied without qualification or explanation of among other matters the meaning of the terms "disposed" and "possessed."

Requests 16(b) and 16(c) provide:

Interrogatory: Please describe each instance, if any, in which the NRC has taken any position to the contrary.

Document Request: Please provide a copy of all documents which reflect any instance in which the NRC has taken a position to the contrary.

As these requests are premised on Request 16(a), they too are objected to. Further, in their own right, they are irrelevant and overbroad in asking for "all documents" and "each instance" in which an NRC position, has been taken.

Requests 17(a), 17(b) and 17(c) provide:

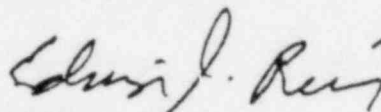
Request for Admission: It is the position of the Commission that wastes from licensed operations and from license-exempt operations disposed of by burial at sea by American Mail Line, Allied Crossroads Nuclear Corp., California Salvage Company, New England Tank Cleaning Company, Nuclear Engineering Company, and the Walker Trucking Company, are not "possessed" by the United States or any other legal entity within the meaning of the Atomic Energy Act of 1954, as amended.

Interrogatory: Please describe each instance, if any, in which the NRC has taken any position to the contrary.

Document Request: Please provide a copy of all documents which reflect any instance in which the NRC has taken a position to the contrary.

The NRC Staff objects to these requests for each of the reasons it gave for its objections to Requests 16(a), 16(b), and 16(c).

Respectfully submitted,



Edwin J. Reis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of October, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
NUCLEAR ENGINEERING COMPANY, INC.) Docket No. 27-39
(Sneffield, Illinois Low-Level)
Radioactive Waste Disposal Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of "OBJECTIONS OF NRC STAFF TO REQUESTS FOR ADMISSIONS, INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS OF THE NUCLEAR ENGINEERING CO." in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 23rd day of October, 1980:

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Atomic Safety and Licensing
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Washington, D. C. 20555

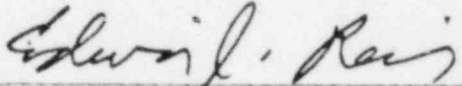
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