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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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NRC MOTION FOR AN ORDER COMPELLING NUCLEAR ENGINEERING COMPANY TO RESPOND TO CERTAIN INTERROGATORIES AND REQUESTS FOR DOCUMENTS

I. INTRODUCTION AND BACKGROUND

On October 10, 1980 the NRC Staff (Staff) filed its first set of interrogatories and requests for production of documents to Nuclear Engineering Co., Inc. ("NECO"). On October 20, 1980 NECO filed its objections to certain Staff interrogatories and requests for production of documents. On October 31, 1980, NECO answered certain Staff interrogatories and requests for production of documents. In the Staff's view, as is more fully discussed below, the bases stated for NECO's objections are either inappropriate or insufficient and certain Staff requests were not answered or the answers were not responsive.

The specific interrogatories and requests for documents that the Staff seeks an order compelling responsive answers and the bases for the Staff's request are set forth below. See 10 C.F.R. §2.740(f).

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II. LEGAL PRINCIPLES

10 C.F.R. §2.740(b)(1) governing discovery in general provides in material part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This rule has been recognized in NRC practice to be consistent with the modern administrative and legal practice which allows that pretrial discovery be ". . . liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing."^{1/} Furthermore, this allows fulfillment of the purpose of discovery which is ". . . to enable each party prior to hearing to become aware of the positions of each adversary party on the various issues in controversy, and the information available to adversary parties to support those positions."^{2/} As the rule provides, discovery may be had if the information sought appears to be "reasonably calculated to lead to the discovery of admissible evidence."

^{1/} Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

^{2/} Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc., (Susquehanna Steam Electric Stations, Units 1 and 2), Memorandum and Order on Scheduling and Discovery Motions (August 24, 1979), at 5-6 (Unpublished), affirmed, ALAB-613, 12 NRC _____ (September 23, 1980, pp. 4-8, 24, 30).

"Broad brush" or general objections to discovery requests are not proper. Each objection to a request for documents or interrogatory must be detailed, and particularly relate the objection to the discovery request. As the Appeal Board stated in Susquehanna in September of this year:

. . . Challenges to interrogatories must be:

specific enough so that the [tribunal] can understand in what way the interrogatories are claimed to be objectionable. General objections, such as the objection that the interrogatories will require the party to conduct research and compile data, or that they are unreasonably burdensome, oppressive, or vexatious, or that they seek information that is as easily available to the interrogating as to the interrogated party, or that they would cause annoyance, expense, and oppression to the objecting party without serving any purpose relevant to the action, or that they are duplicative of material already discovered through depositions, or that they are irrelevant and immaterial, or that they call for opinions and conclusions, are insufficient.^{7/}

^{7/} 4A Moore's Federal Practice (1980 ed.) Para. 33.27 (at pp. 33-151 and 33-152) (citations omitted); and see 10 C.F.R. §2.740b(b); Pilgrim, supra, LBP-75-30, 1 NRC at 583 ff. ^{3/}

Finally, as is detailed below, the Staff views each of its requests as "relevant to the subject matter involved in the proceeding" and not as argued in some

^{3/} Susquehanna, ALAB-613, supra at 7.

instances by NECO unduly burdensome.^{4/}

III. BASES FOR STAFF'S REQUEST FOR ORDER
COMPELLING RESPONSIVE ANSWERS TO SPECIFIC INTERROGATORIES
AND REQUESTS FOR DOCUMENTS

A. NECO Objection 1 to Staff Document Requests 1(b)-(l), (n), (p), (r), (u), (x) - (aa) and Interrogatories 10 and 11 and, in part, Document Request 3(d) and Interrogatories 2, 3(a) - (c), 8, 9 and 12(b).

NECO objects to the above requests (objection numbered 1, page 1) on the basis that the information requested is already in the possession of the NRC Staff, that its files are open to the NRC, that collection of such documents would be burdensome, that response to the interrogatories would require NECO to perform inspection and analysis, and finally that such requests require NECO to do the Staff's trial preparation.

The Staff submits that each of the above reasons with respect to the Staff's requests for documents is merely an attempt to obfuscate the very purpose of discovery--to enable the Staff to prepare for the hearing.^{5/} Each of the Staff's requests are simple and specific. Only NECO knows whether or not the Staff already has all of the documents and information related to each specific request. This "broad brush" objection to discovery and the interrogatories is not proper.^{6/} An order should be issued compelling response to these requests and the interrogatories.

^{4/}10 C.F.R. §2.740(b)(1) and see Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-185, 7 AEC 240, 243 (1974).

^{5/}Susquehanna, LBP Memorandum and Order (unpublished), n. 2, supra, ALAB-613, supra at p. 30.

^{6/}Susquehanna, ALAB-613, supra at 7.

B. NECO Objection 2 Based on Attorney Work Product and Attorney-Client Privileges

NECO objects (objection number 2, p. 3) to all material insofar as it might be subject to a claim of attorney-client privilege or attorney work product privilege. No such claim of privilege may be made without identifying the documents to which the claim is made, the basis for the claim, and establishing that the documents were prepared for litigation. Thus, this objection must be rejected. See Porter County Chapter of the Izaak Walton League v. U.S.A.E.C., 380 F.Supp. 630, 637 (N.D. Ind. 1974); Coastal Corporation v. Duncan, 86 F.R.D. 514, 520-522 (D. Del. 1980).

C. NECO Objection 3 to Document Requests 1(a), (b), (e) - (j), (aa), 2 and Interrogatories 5, 6, and 7

NECO objects to the above requests (objection numbered 3, page 3) on the ground that they are irrelevant. This argument is entirely based upon NECO's assumption, which is not true, that its legal responsibility is tied solely to the question of "possession" of source, by-product or special nuclear material at the Sheffield site. As the Board is aware, it is the Staff's view that NECO has "responsibility" for such materials whether or not it has "possession" of such materials. Discovery may be had for information leading to the discovery of admissible evidence.

10 C.F.R. §2.740(b)(1).

The Staff addresses below the question of relevance of each of these requests objected to by NECO.

Request 1a: Documents regarding the acquisition by NECO in 1968 of California Nuclear, Inc.

These documents are relevant because they might show the obligations or responsibilities NECO assumed or intended to assume when it acquired the Sheffield site from California Nuclear, Inc. in 1968, and relate to the issues of whether the license may be terminated, and what conditions may be attached on that termination.

Request 1b: Documents regarding the transfer in 1968 of California Nuclear's license concerning the Sheffield low-level radioactive waste disposal site.

These documents are relevant for the same reason stated above regarding Request 1a.

Request 1e: Documents regarding NECO's application in 1968 to expand the AEC licensed burial site to the adjacent 168 acres.

These documents are relevant because they might reveal facts or information about the licensed site within the knowledge of NECO that relate to matters of public health and safety, whether the license may be terminated, and ultimately lead to development of conditions necessary for termination by NECO of its license.

Request 1f: Documents regarding the letter from James N. Neel to William J. Dircks dated December 27, 1978, requesting suspension of further proceedings on its application for license renewal and site expansion.

These documents are relevant in that they may reveal facts and information about the bases of NECO's decision not to expand the site and possibly seek termination of the license. Such facts may bear on the public health and safety, whether the license may be terminated, and ultimately the development of specific conditions for any license termination.

Request 1g: Documents regarding NECO's December 27, 1978 motion to the Licensing Board to suspend further proceedings on its application.

These documents are relevant for the reasons stated above regarding Request 1f.

Request 1h: Documents regarding NECO's March 8, 1979 "Notice to Atomic Safety and Licensing Board of Withdrawal of Application and Termination of Licensing for Activities at Sheffield."

These documents are relevant for the reasons stated above regarding Request 1f.

Request 1i: Documents regarding the letter from Troy B. Conner to William J. Dircks of March 8, 1979 that NECO was (1) withdrawing its pending application to renew its license and expand the Sheffield site and (2) terminating its license for all activities at Sheffield.

These documents are relevant for the reasons stated above regarding Request 1f.

Request 1j: Documents regarding the March 23, 1979 "Answer of Nuclear Engineering Company, Inc., to Order to Show Cause and Demand for Hearing."

These documents are relevant for the reason that they may reveal background information relevant to the issue of termination of the Sheffield site.

Request 1aa: "All other "documents" which relate to this proceeding in any way, either directly or indirectly."

This is simply a request for all documents relevant to the proceeding that have not otherwise been requested.

Request 2: Provide all documents described in request 1(a-y) above between NECO and Teledyne, Inc., and to, from, or between Teledyne and NECO, and between or among any agent, attorney, contractor, officer, or director of NECO and any such agent, attorney, contractor, officer, or director of Teledyne.

These documents are relevant for the reasons that they may lead to specific facts and information regarding (a) any obligations NECO believes it has regarding the Sheffield site, (b) whether NECO "possesses" the source, byproduct or special nuclear material at the Sheffield site and (c) the condition of the site and need for specific conditions necessary for termination of NECO's license.

Interrogatories 5, 6 and 7:

5. "List" the names of any individuals employed by NECO in the past or present, or other agents or consultants of and for NECO or Teledyne who took the position at any time, or argued at any time, that NECO should not have either withdrawn its pending application(s) before the NRC in 1978-1979 or sought to terminate its license for all activities at Sheffield.
6. Explain in detail the basis for the statement in NECO's December 27, 1978 letter from James N. Neel to William J. Dircks that NECO requested suspension of further proceedings on its application for license renewal and expansion "until such time as the NRC has established definite criteria to govern Staff review of low-level waste disposal sites."

7. With respect to the March 8, 1979 letter from Troy B. Conner to William J. Dircks, NECO advised the NRC that it was withdrawing its pending application and that it was terminating its NRC license for activities at Sheffield.
 - a. Explain in detail any basis NECO had for such action other than its position that it did not possess source, byproduct, or special nuclear material at Sheffield.
 - b. Did NECO consider whether such action may have an adverse impact on the public health and safety or the environment?
 - c. Explain any such considerations enumerated in (b).
 - d. Whom did NECO expect would maintain the site after March 8, 1979 to prevent an adverse impact to the public health and safety and the environment?

These interrogatories are relevant in that they seek facts and information regarding (a) any obligations NECO believes it may have regarding the Sheffield site, (b) whether NECO "possesses" the source, byproduct or special nuclear material at the Sheffield site, and (c) the condition of the Sheffield site and the need for specific conditions necessary for termination of NECO's license.

D. NECO Objection 4 to Document Request 1(o)

NECO objects to the above request (objection 4, page 4) on the basis that it is irrelevant. NECO argues that it relates to current activities at the site concerning monitoring.

Request 1(o) provides for production of documents regarding all well monitoring data compiled by NECO taken from wells at the facility or within an area or distance of one mile from the facility boundaries. Data should include results of chemical and radiological analyses done on samples taken.

These documents are relevant for the reason that it may lead to specific facts or information regarding (a) whether the source, by-product or special nuclear material at the Sheffield site is properly buried, (b) the general condition of the site, (c) whether license termination is appropriate, and (d) the need for specific conditions necessary for the termination of NECO's license.

E. NECO Objection 5 to Interrogatories 3(a) - (c) and Request for Documents 3(d)

NECO objects to the above interrogatories and request for documents (objection 5, page 5) on the ground that such interrogatories and request are burdensome and not limited to persons with knowledge pertaining to the health and safety issues in the proceeding.

These interrogatories request provide:

- a. "List" all consultants, contractors, expert, special employees, agents, firms, advisors, who have performed any assignment, task, contract, or any other work for NECO, Teledyne, Inc., any of NECO's officers and employees, any attorney or law firm acting for or on behalf of NECO which assignment, task, contract, or work relates to this proceeding or the Sheffield site, or the proposed expanded site in any way.
- b. Provide the address, telephone number, and all persons involved in the matter. Designate the key or lead person responsible if more than one individual is named.
- c. Explain in detail the assignment or tasks performed or requested to be performed.
- d. Provide copies of all "documents" which relate to 3(a)-(c).

The Staff believes that these interrogatories may lead to facts or information regarding the condition of the site and whether specific conditions may be needed for termination of NECO's license. The reasons given by NECO as bases for objecting to these interrogatories, that certain people may not have knowledge related to the safety aspects to be considered in this proceeding, is not an appropriate basis to preclude a response to the request. The purpose of the request is to find if such persons do have information relevant to the issues in this proceeding. The Staff furthermore believes that the instant request is not unduly burdensome. The Staff is only asking for the names of those individuals whose work relates to this proceeding or the Sheffield site or its expansion.

F. NECO Objection 6 to Interrogatory and Document Request Number 8

NECO objects to the above request (objection 6, page 5) to the extent that such discussions between NECO and other agencies are not relevant to the three issues in this proceeding and to the extent that some of the discussions may be privileged due to possible settlement of any litigation.

Request 8 provides:

- a. Provide all documents which relate in any way to actions to be taken by or for NECO before NECO may "quit," decommission, or stabilize the site, including but not limited to environmental monitoring, site security, gradation and stabilization of site surface, and site buffer zone.
- b. Explain in detail any discussions or communications NECO has had which relate to 8(a) with the State of Illinois or any other state or private entity.

The Staff believes that this request calls for information which is relevant to the condition of the site and the necessity for conditions for termination of the license. Further, this request may provide information regarding who has responsibility for any source, by-product or special nuclear material at the Sheffield site. If any information called for by this request necessitates evocation of a privilege such information should be identified.

G. NECO Objection 7 to Interrogatories 9(a) - (b), 11(a) - (b) and 13

NECO objects to the above interrogatories (objection 7, page 6) on the bases that they seek information not related to NECO's lease of the Sheffield site from the State of Illinois and the three issues designated by the Board in this proceeding.

These interrogatories provide:

- 9a. Explain in detail the current status of any relationship NECO or Teledyne has with the State of Illinois, or any of its agencies or agents, which relate to the Sheffield site including the status of the lease between NECO and the state, and the status of all litigation.
 - b. Describe in detail all actions NECO has taken or has attempted to take which relate to transfer of site responsibility to the State of Illinois, any agency of the State of Illinois, or any other governmental or private entity. (You may exclude the instant litigation and the NRC).
- 11(10)a. Explain in detail any action, complaint, or request for action by NECO taken or made at the request of, or by Order of, the State of Illinois Department of Public Health pursuant to or under the "Radioactive Materials License" and amendments thereto issued to NECO.
- b. Explain in detail NECO's action or response to any item in 11(a).
13. "List" the Teledyne, Inc., officers or employees whose duties or responsibilities include knowledge or review of NECO's activities at the NRC/AEC licensed Sheffield site.

These interrogatories are relevant since they call for or might lead to information dealing with the responsibilities of NECO, the condition of the site, assurance of the public health and safety, and the issues of whether the license may be terminated, and what conditions are necessary on termination of the license. NECO's dealings and actions with the State of Illinois, the Illinois Department of Public Health, and its parent corporation, Teledyne, can all lead to information relevant to the issues in this proceeding.

H. Response to Interrogatory No. 3

NECO's response to this interrogatory (which appears in NECO answer to Intervenor, State of Illinois Interrogatories 27-29 at pages 5-8) indicates that the list of employees is only partial. NECO has failed to indicate what criteria was used and application of such a criteria to develop such list.^{7/} The Staff believes that a complete list of such employees is required unless NECO can specify the particular kind or types of employees that because of their work or assignments should not be identified. There is little doubt that such individuals may have within their knowledge facts or information which relate to the condition of the Sheffield site and the issue of any specific conditions that would be required for the termination of the license for that site. In sum NECO's answer is not fully responsive to the Staff's interrogatory.

^{7/} In its objections to the Staff Interrogatories 3a-c, NECO indicated that the Staff's request was "overly broad insofar as these interrogatories and document requests are not limited to persons with knowledge pertaining to the health and safety issues in this proceeding" (objection 5 at page 5).

I. Response to Interrogatory 12a

This interrogatory asks NECO to provide a list of witnesses it may call in this proceeding and provide a summary of the testimony each such witness is expected to offer. NECO has made no attempt to respond to or object to this interrogatory.

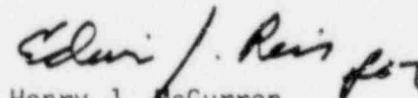
J. Response to Requests for Documents 1m, q, s, t, v and w

These requests which all relate to the condition of the Sheffield site and the need for conditions on any termination of the license, were not responded to or objected to by NECO.

IV. RELIEF SOUGHT

Based on the foregoing, the Staff respectfully requests an order compelling NECO to provide full and direct responses to interrogatories and requests for documents numbered 1a-aa, 2, 3a-d, 5, 6, 7a-d, 8a and b, 9a and b, 10, 11, 11a and b, 12a and b, and 13.

Respectfully submitted,


Henry J. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 14th day of November, 1980.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket No. 27-39

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC MOTION FOR AN ORDER COMPELLING NUCLEAR ENGINEERING COMPANY TO RESPOND TO CERTAIN INTERROGATORIES AND REQUESTS FOR DOCUMENTS" 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 14th day of November, 1980:

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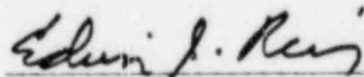
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