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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
GENERAL ELECTRIC COMPANY)
(GE Morris Operation Spent Fuel
Storage Facility)

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Docket No. 70-1308
(Renewal of SNM-1265)

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MAR 19 1981

NRC STAFF ANSWER TO INTERVENOR
THE STATE OF ILLINOIS' MOTION
FOR LEAVE FOR ADDITIONAL DISCOVERY

On December 8, 1980, the Atomic Safety and Licensing Board (hereafter "the Board") issued an "Order Granting Stay of Proceeding" (Order). The Board's Order responded to the request of Intervenor the State of Illinois for a stay of further proceedings until 30 days after the effective date of new 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation".^{1/} In its Order, the Board stated that since Part 72 is now the controlling regulation in this license renewal proceeding, "it appears appropriate that additional time be granted for filing of amended contentions, replies thereto, and any further discovery which might be appropriate under the new Part 72". Order at 2. In its Order, the Board also adopted a schedule to control future proceedings, which was subsequently amended by the Board in "Order Ruling on Motion to Amend" (February 19, 1981). As amended, the schedule

^{1/} 10 CFR Part 72 became effective on December 12, 1980, 45 Fed. Reg. 78623 (November 26, 1980).

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established March 19, 1981 as the date "upon which the parties shall file motions for additional discovery."^{2/} Order Ruling on Motion to Amend, supra at 2.

On February 25, 1981, Intervenor the State of Illinois (hereafter "Intervenor" or "Illinois") filed "Motion for Leave for Additional Discovery" (hereafter "Illinois' Motion"). In its Motion, Illinois states that it "moves pursuant to the Board Order entered December 8, 1980, that the Board grant it leave to file additional discovery herein". Illinois' Motion, supra, at 1. In support of its motion, Illinois reiterates its support of the Staff Motion to Amend Board Schedule, supra, and states that "since the Board has not yet ruled on that motion as of this date, Illinois must request leave to file additional discovery".^{3/} Id., at 1. In addition:

3. Illinois asks that it be allowed to file discovery pursuant to 10 CFR § 2.740 et seq. on issues raised by any modified or additional contentions admitted herein.

4. Illinois also seeks leave to file additional discovery on the original contentions admitted herein in light of the promulgation of 10 CFR Part 72. This is necessary due to the Applicant's previous refusal to allow discovery concerning 10 CFR Part 72. For example, in the deposition of David M. Dawson on September 12, 1980, counsel for Applicant stated:

^{2/} The Board's Order Ruling on Motion to Amend was issued in response to the "NRC Staff Motion to Amend Board Schedule of December 8, 1980," dated February 2, 1981 (hereafter "Staff's Motion to Amend Board Schedule").

^{3/} It appears that Illinois' Motion was filed before it had received the February 19, 1981, Order Ruling on Motion to Amend, supra, which established March 19, 1981 as the date for filing of motions for additional discovery. Under the original schedule, such motions were to be filed by February 26, 1981.

"I guess I will advise the witness not to answer any questions about proposed Part 72 Regulations unless you can explain to me somehow why we should consider proposed regulations in this proceeding, when the Board has already directed that we shouldn't." [pp. 70-71]

Thus, Illinois submits that the parties should be allowed additional discovery on the original contentions in light of 10 CFR Part 72.

5. Illinois requests that after its ruling on the admission of any modified or additional contentions and after consultation with the parties herein, the Board set a schedule for additional discovery herein.

As stated below, the Staff opposes Illinois' Motion to the extent that it seeks leave to file additional discovery requests after March 19, 1981, the date established for filing such requests by the Board in its Order Ruling on Motion to Amend, supra. In addition, the Staff opposes the request in Illinois' Motion for leave to file additional discovery requests related to the original contentions. The Staff has no objection to Illinois' request that the Board set a schedule for additional discovery, to the extent that such a schedule would establish the time period or date for responding to the additional discovery requests which are to be filed by March 19, 1981.

STAFF POSITION

The NRC Staff believes that Illinois' Motion indicates a misunderstanding on Illinois' part regarding the Board's Order of December 8, 1980, as amended, granting additional time for filing additional contentions and additional discovery. It is not evident that in the Board's Order Ruling on Motion to Amend, supra, establishing March 19, 1981 as the date for filing additional discovery, the Board intended that motions for leave

to file additional discovery were to be filed by that date, with the actual discovery requests to be filed by some future date. To the contrary, it appears reasonable to conclude that the additional discovery requests were to be filed by March 19, 1981, and not, as Illinois suggests in paragraphs 3. and 5. of its Motion, that a schedule would subsequently be adopted for filing the actual discovery requests. Thus, to the extent that in Illinois' Motion, Illinois seeks leave to file additional discovery requests after March 19, 1981, such motion should be denied. The Staff would not oppose, however, Illinois' request in paragraphs 3. and 5. of its Motion, that the Board adopt a schedule for additional discovery, to the extent that such schedule would establish the date or time period for responding to the additional discovery requests to be filed on March 19, 1981.

The Staff believes that there are no grounds for granting the relief sought by Illinois in paragraph 4. Illinois seeks leave to file additional discovery "on the original contentions admitted herein in light of the promulgation of 10 CFR Part 72". Illinois' Motion, supra, at 2. In this regard, the Staff notes that in the Board's Order of December 8, 1980, the Board provided additional time for filing additional contentions in light of the promulgation of 10 CFR Part 72. Illinois has filed such additional contentions.^{3/} It is the Staff's opinion that any additional discovery requests are to relate to such additional contentions only and not to the previously admitted contentions. In the Staff's view, any of the issues

^{3/} See "Additional Contentions of The State of Illinois," February 25, 1981.

which the parties seek to raise in view of the promulgation of new Part 72 are to be covered by such additional contentions or by modification of the original contentions. In requesting "leave to file additional discovery on the original contentions... in light of the promulgation of 10 CFR Part 72" (Illinois' Motion, supra, at 1), Illinois is essentially seeking to expand the scope of the previously admitted contentions to encompass issues related to the promulgation of 10 CFR Part 72. Illinois had the opportunity to propose modifications of the original contentions in light of the promulgation of 10 CFR Part 72, but Illinois did not do so. There is no basis for granting a discovery request which would expand the scope of the previously admitted contentions. Accordingly, the Staff opposes Illinois' request for "leave to file additional discovery on the original contentions... in light of the promulgation of 10 CFR Part 72." (Illinois' Motion at 2).

CONCLUSION

Based on the foregoing, it is the Staff's position that the request of Illinois in paragraph 4. of Illinois' Motion for leave to file additional discovery on the previously admitted contentions should be denied. To the extent that Illinois requests in paragraphs 3 and 5. of its motion that additional time beyond March 19, 1981 be provided for filing additional discovery requests, such motion should also be denied. The Staff has no objection to Illinois' request in paragraphs 3. and 5. of its Motion that the Board set a schedule for additional discovery, to the extent that such a schedule would establish the time period or date for

responding to the additional discovery requests to be filed by March 19, 1981.

Respectfully submitted,

Marjorie Ulman Rothschild

Marjorie Ulman Rothschild
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 17th day of March, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO INTERVENOR THE STATE OF ILLINOIS' MOTION FOR LEAVE FOR ADDITIONAL DISCOVERY" 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, or, as indicated by a double asterisk, via Postal Express, this 17th day of March, 1981:

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