



contained financial information<sup>1/</sup> and that with regard to NRC Interrogatory 8(b) that U.S. Ecology is not required to produce settlement documents. For the reasons set forth below the Staff opposes the instant motion.

## II. DISCUSSION

### A. The Board's Ruling Regarding NRC Staff Document Request Number 2 Is Correct and Supported by the Prehearing Conference Record.

With regard to the NRC Staff Request 2,<sup>2/</sup> the Licensee presents a very strained interpretation of the record of the prehearing conference in an attempt to show that the precise ruling of the Board was in error. The Licensee attempts to argue by reference to several words

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1/ Motion at 5. The type of documents containing such financial information that U.S. Ecology, Inc. wants to protect are those they assert are "confidential and proprietary." In fact, the Licensee withheld documents it said contained financial or other privileged information during our discovery search of Licensee's documents at the Sheffield site conducted March 24, 1981. As more fully discussed below, specific NRC regulations provide for protection of such documents provided there has been an appropriate showing made consistent with the Commission's regulation regarding withholding such information. See 10 C.F.R. §§ 2.740 and 2.790.

2/ Document Request No. 2 provides:

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.

taken out of context that NRC Staff counsel (Motion at 3)<sup>3/</sup> did not have any interest in "numerical figures." A fair reading of the transcript makes clear that this is simply not true. When read in context, Staff counsel's reference to "numerical figures" was to indicate no interest in the figures themselves but that such figures may indicate something

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<sup>3/</sup> The reference was Tr. 197 to the words ". . . I'm not interested in the numerical figures . . ." when read in context make it clear that Staff counsel Mr. Reis was indicating that the Staff is not interested in the numbers themselves but rather what such figures might show about the condition of site. The excerpt below demonstrates this point:

CHAIRMAN GOODHOPE: All right. What about 2?

MR. REIS: Mr. Chairman, can we go back to 1? I am not sure whether Mr. Conner and U.S. Ecology is going to turn over, for instance, all preceding documents in the corporation relating to No. F, for instance, requesting suspension of further proceedings on the application. Certainly they have labeled that business judgment in their answer, but I'm not interested in the numerical figures, but that might show things about the condition of the site, the sand lenses that they might know exist or don't exist under the site, or whether they do exist or don't.

CHAIRMAN GOODHOPE: I'm assuming that you're going to get that letter.

MR. REIS: Not only the letter, but all documents that relate to it, because that is what I says. It says "all matters which relate to," and the letter we have, that's a letter that was sent to us. We have that letter, but we want the preceding documents upon which the determination was made to send that letter, and that's what we're looking for, and that's why we have --

about the condition of the site. That the Staff is seeking information about the condition of the site is further reflected by the response of Mr. Reis to the Chairman's question asking Mr. Reis what the Staff is "looking for" with regard to Document Request number 2 (at Tr. 208 and 209):

MR. REIS: Information that they might have told Teledyne as to what the obligations are when Teledyne acquired NECO, that they might have told Teledyne and ongoing as to what the obligations are, the conditions of the site; why they told Teledyne they were sending back their license. This all leads to discoverable evidence, and what conditions --

CHAIRMAN GOODHOPE: Proving what?

MR. REIS: They might have said there was a likelihood of fissures in trench and unpty-ump. Possibly. I don't know. And therefore we ought to send back our license and see if we can get rid of this obligation here. It would be better from a corporate point of view in the future.

CHAIRMAN GOODHOPE: Suppose this happened. What would that prove?

MR. REIS: It would be admissions as to the condition of the site. It would point as to what conditions should be put on the site, as to what they think the responsibilities are to the site, and what they think their obligations are to materials buried in the site. It would be relevant to each of those matters.

Certainly it is not overbroad. It just asks within the corporation, within them and their parent. It does not go beyond and ask for information to anybody who might have said anything to the world. It is limited to a specific area where we think there may be relevant material on the particular issues that we are litigating in this proceeding.

These excerpts make clear that the Staff is seeking any discoverable information, including financial information that concerns the condition of the Sheffield site or concern the need for conditions in the event of termination of the license.

Following the arguments of the parties with regard to the Staff's Document Request number 2 the Board stated (Tr. 213):<sup>4/</sup>

Allright you look and see if you have any such documents or documentation, and come back and let us know what you are going to do with it.

This ruling is 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."<sup>5/</sup> Furthermore, this ruling 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 position."<sup>6/</sup> Furthermore, it is consistent with language of the Commission's discovery rule, 10 C.F.R. § 2.740, which provides, in part, that discovery may be had if the

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<sup>4/</sup> This statement by the Chairman relates not just to technical information as argued by the Licensee, at 4, but to all the information related to the condition of the site requested by the Staff.

<sup>5/</sup> Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1033, 1040 (1978).

<sup>6/</sup> 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).

information sought appears to be "reasonably calculated to lead to the discovery of admissible evidence."

A further attempt to confuse the issue regarding what information is and is not discoverable is the Licensee's reference to the Board's statement that it was not "going into NECO's financial stability."<sup>7/</sup> The matter of discovery of financial information to show the condition of the site or possibly lead to other discoverable evidence regarding the condition of the site and ultimately assist the NRC Staff make its case to demonstrate what might be appropriate conditions for license termination is an entirely different issue than that raised by Illinois in seeking documents for purposes of proving that the Licensee may not be capable of carrying out possible decommissioning requirements.<sup>8/</sup> Accordingly, the Licensee's argument has no merit.

B. The Licensee Has Not Made the Requisite Showing to Support a Claim for a Protective Order Based on Proprietary or Confidential Information

Another effort to hinder the Staff's discovery request is the general assertion that any documents exchanged between Licensee and Teledyne, Inc. containing financial information would be confidential and proprietary.<sup>9/</sup> The Commission's law is clear that one asserting entitlement to a protective order based on a theory of information asserted to be proprietary or confidential must demonstrate, inter alia, that the information in question is of a type customarily held in confidence by its originator; that there is a rational basis for having

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<sup>7/</sup> Motion at 5.

<sup>8/</sup> Motion at 5.

<sup>9/</sup> Motion at 5 and 8.

customarily so treated the information; and that the information has, in fact, been kept in confidence and is not to be found in public sources.<sup>10/</sup> This has not been done by the Licensee for any document. Accordingly, this argument is without merit.

C. The Licensee Has Not Identified Any Information Sought by NRC Staff Request 8b That Relates to the Settlement of Issues in this Proceeding

With regard to NRC Request 8b, the Licensee asserts privilege based on settlement negotiations, relying on 10 C.F.R. § 2.759.<sup>11/</sup> First, there has been no indication that there are any documents that relate to settlement of issues in this proceeding.

Even if the Licensee is able to identify any documents, discussions or communications with the State of Illinois, other state, or private entity which concern settlement or negotiation, to assert any privilege the Licensee must demonstrate that such settlement and

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<sup>10/</sup> Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 27 (1979).

<sup>11/</sup> NRC Staff Document Request number 8 provides:

8.a. Provide all documents which relate in any 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.

8b. 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.

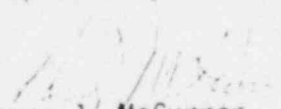


negotiation information relates to the issues identified in this proceeding.<sup>12/</sup>

III. CONCLUSION

For the foregoing reasons the NRC Staff opposes the instant Motion.

Respectfully submitted,

  
Henry J. McGurren  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 30th day of March, 1981.

<sup>12/</sup> The language of 10 C.F.R. § 2.759 as well as the Statement of Consideration make clear that the Commission's recognition of public interest in fair and reasonable settlements concerns the settlement and negotiation of the proceeding before this Board on "particular issues" in the proceeding before this Board and not issues that may be or may have been litigated by the parties in other proceeding. See Statement of Consideration (37 Fed. Reg. 15127, July 28, 1972).



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
U.S. ECOLOGY, INC. ) Docket No. 27-39  
(Sheffield, Illinois Low-Level )  
Radioactive Waste Disposal Site) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LICENSEE'S MOTION DATED MARCH 10, 1981, REGARDING THE BOARD'S RULING TO NRC STAFF DOCUMENT REQUESTS" 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 by deposit in the Nuclear Regulatory Commission internal mail system, this 30th day of March, 1981:

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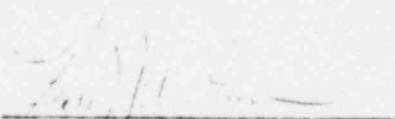
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