

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of	)	Docket No. 50-367
	)	
NORTHERN INDIANA PUBLIC SERVICE	)	(Construction Permit
COMPANY	)	Extension)
	)	
(Bailly Generating Station,	)	April 10, 1981
Nuclear-1)	)	
	)	

NORTHERN INDIANA PUBLIC SERVICE  
COMPANY'S FIRST SET OF INTERROGATORIES TO  
GEORGE AND ANNA GRABOWSKI

Northern Indiana Public Service Company (NIPSCO) hereby serves its First Set of Interrogatories to George and Anna Grabowski, pursuant to 10 C.F.R. § 2.740b. Each interrogatory is to be answered fully in writing, under oath or affirmation, and include all pertinent information known to George or Anna Grabowski as well as any pertinent information known to their agents, advisors, or counsel, if any. Each answer should clearly indicate the interrogatory to which it is intended to be responsive.

Under NRC regulations (10 C.F.R. § 2.740(e)) parties are required to supplement responses to interrogatories under certain circumstances when new and/or different information becomes available.

"Documents" means all written or recorded material of any kind or character known to George or Anna Grabowski or in the possession, custody, or control of either, including, without limitation, letters, correspondence, telegrams, memoranda, notes,

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records, minutes, contracts, agreements, records or notations of telephone or personal conversations or conferences, inter-office communications, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, articles, treatises, teletype messages, invoices, tape recordings, and work-sheets.

When used with respect to a document, "identify" means, without limitation, to state its date, the type of document (e.g., letter, memorandum, telegram, chart, photograph, sound reproduction, etc.), the author and addressees, the present location and the custodian, and a description of its contents.

When used with respect to a person, "identify" means, without limitation, to state his or her name, address, occupation, and professional qualifications.

If George and Anna Grabowski cannot answer any portion of any of the Interrogatories in full, after exercising due diligence to do so, so state, and answer to the extent possible, specifying the inability to answer the remainder and stating when you expect to be able to answer the unanswered portions.

#### NIPSCO'S INTERROGATORIES

- I. With respect to your contention about dewatering in connection with construction of the Bailly plant (Second Supplement, p. 7):
  1. Do you contend that the dewatering which has been conducted since 1974 has effected the Lakeshore?
  2. If yes, please identify and describe in detail the specific effects which dewatering has caused.

3. Please identify and describe in detail the specific effects which you contend dewatering during an extended period of construction will have on the National Lakeshore.
4. Please specify the geographic area within which the effects identified in the answer to Interrogatory I.3. will occur.
5. How long after construction resumes will each of the effects identified in the answer to Interrogatory I.3. appear?
6. Will each effect be permanent or temporary?
7. How will those effects injure you?
8. For what purpose or purposes do you use the National Lakeshore?
9. How many times did you use the Lakeshore in 1980? In 1979?
10. How many times do you expect to use it in 1981?
11. Please specify where within the Lakeshore you went on each visit in 1979 and 1980 and what you did at each location.
12. Please describe all studies, investigations and analyses which you have conducted within the Lakeshore or elsewhere, in order to assess the effects of dewatering on the Lakeshore.

13. Please describe all studies, investigations, and analyses upon which you rely in support of your assertion that dewatering during an extended period of construction will affect the National Lakeshore.
14. Please specify when you first visited the National Lakeshore.

II. With respect to your contentions about the lack of "good cause" for NIPSCO's requested extension (Supplement to Petition, paragraphs numbered 1., 2., and 3. on pp. 5-6):

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1. Do you contend that NIPSCO could have continued construction while the stay entered by the Court of Appeals was in effect?
2. If yes, please state the bases for that position.
3. Please identify the bases for your contention that the stay of construction is not a "good cause" for the extension.
4. Do you contend that installation of the slurry wall should not have taken place?
5. If yes, please state the bases for that position.
6. Please identify the bases for your contention that the piles review is not a "good cause" for the extension.
7. Please identify the bases for your contention that installation of the slurry wall is not a "good cause" for the extension.
8. Please explain your understanding of the meaning of the term "good cause."

III. With regard to each contention proposed by you and admitted for litigation in this proceeding by the Atomic Safety and Licensing Board in its Order Following Special Prehearing Conference dated August 7, 1980, or Order Supplementing Order Following Special Prehearing Conference dated August 25, 1980:

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1. Identify each person whom you expect to call as an expert witness in respect of such contention.
2. State the subject matter on which the expert witness is expected to testify.
3. State the substance of the facts and opinions to which the expert witness is expected to testify and summarize the ground for each opinion.
4. Identify all documents relied upon or examined by the expert witness in answering subparagraph III.3. above.
5. Identify all documents not identified in answering subparagraph III.4. above which the expert witness expects to put into evidence or to rely upon in support of his or her testimony in this proceeding.

IV. With respect to each contention proposed by you and admitted for litigation in this proceeding:

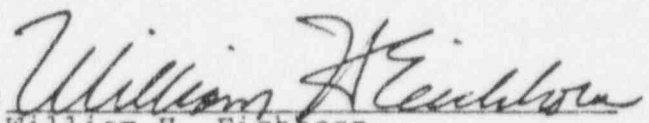
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1. Identify any person having knowledge of the facts relating to such contention (other than the expert witnesses identified in response to Interrogatory III).  
  
This question is limited to those persons whom you expect to call as witnesses other than expert witnesses in this proceeding, or with whom you have consulted or expect to consult in connection with this proceeding.

2. For each person who has been consulted, state when he or she was consulted and summarize the substance of any facts or opinions communicated by such person to you relating to the subject matter of any contention.
  3. If you expect to call any person identified in response to Interrogatory IV.1. above to testify, state the substance of his or her testimony, summarize the basis for any opinions contained in such testimony, and identify all documents which will be introduced as evidence or relied upon by such person in support of such testimony.
- V. Identify all documents which you expect to introduce in evidence or use for cross-examination purposes in this proceeding, other than those identified in the responses to the previous Interrogatories.
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Respectfully submitted,

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Depositions and Written Interrogatories; Discovery; Admission;  
Evidence

[§ 5237]

Sec. 2.740. General provisions governing discovery.—(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written interrogatories (§ 2.740a); written interrogatories (§ 2.740b); production of documents or things or permission to enter upon land or other property, for inspection and other purposes (§ 2.741); and requests for admission (§ 2.742).

(b) *Scope of discovery.* Unless otherwise limited by order of the presiding officer in accordance with this section, the scope of discovery is as follows:

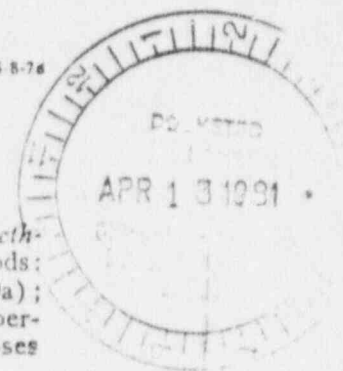
(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery shall begin only after the prehearing conference provided for in § 2.751a and shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, no discovery shall be had after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer upon good cause shown. 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.

(2) *Trial preparation materials.* A party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (1) of this paragraph and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(c) *Protective order.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the presiding officer; (6) that, subject to the provisions of §§ 2.744 and 2.790, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a pro-

§ 5237 10 CFR § 2.740

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protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(d) *Sequence and timing of discovery.* Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.

(f) *Motion to compel discovery.* (1) If a deponent or party upon whom a request for production of documents or answers to interrogatories is served fails to respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the deposing party or the party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request for an order compelling a response or inspection in accordance with the request. The motion shall set forth the nature of the questions or the request, the response or objection of the party upon whom the request was served, and arguments in support of the motion. For purposes of this paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer or respond. Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section.

(2) In ruling on a motion made pursuant to this section, the presiding officer may make such a protective order as he is authorized to make on a motion made pursuant to paragraph (c) of this section.

(3) This section does not preclude an independent request for issuance of a subpoena directed to a person not a party for production of documents and things. This section does not apply to requests for the testimony or interrogatories of the regulatory staff pursuant to § 2.720(h)(2) or production of NRC documents pursuant to § 2.744 or § 2.790, except for paragraphs (c) and (e) of this section.

[Sec. 2.740 added July 21, 1972, effective August 28, 1972 (37 F. R. 15133); amended April 26, 1978, effective May 26, 1978 (43 F. R. 17802).]



## [§ 5238]

Sec. 2.740a. Depositions upon oral examination and upon written interrogatories.—(a) Any party desiring to take the testimony of any party or other person by deposition on oral examination or written interrogatories shall, without leave of the Commission or the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or, if the name is not known, a general description sufficient to identify him or the class or group to which he belongs; the matters upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

[(b) Revoked.]

(c) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission.

(d) The deponent shall be sworn or shall affirm before any questions are put to him. Examination and cross-examination shall proceed as at a hearing. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The officer shall not decide on the competency, materiality, or relevancy of evidence but shall record the evidence subject to objection. Objections on questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless he is ill or cannot be found or refuses to sign. The officer shall certify the deposition or if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly forward the deposition by registered mail to the Commission.

(f) Where the deposition is to be taken on written interrogatories, the party taking the deposition shall serve a copy of the interrogatories, showing each interrogatory separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within ten (10) days after service, any other party may serve cross-interrogatories. The interrogatories, cross-interrogatories, and answers shall be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition on oral examination.

(g) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

(h) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(i) The witness may be accompanied, represented, and advised by legal counsel.

(j) The provisions of paragraphs (a) through (i) of this section are not applicable to NRC personnel. Testimony of NRC personnel by oral examination and written interrogatories addressed to NRC personnel are subject to the provisions of § 2.720(h).

[Sec. 2.740a, previously Sec. 2.740, as redesignated and amended July 21, 1972, effective August 28, 1972 (37 F. R. 15133); prior to redesignation Sec. 2.740 was amended December 21, 1970, effective December 23, 1970 (35 F. R. 19500); amended April 26, 1978, effective May 26, 1978 (43 F. R. 17802).]

[§ 5239]

**Sec. 2.740b. Interrogatories to parties.**—(a) Any party may serve upon any other party (other than the staff)<sup>1</sup> written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be filed with the Secretary of the Commission and shall be served on the presiding officer and upon all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections by the attorney making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 14 days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow. Answers may be used in the same manner as depositions (see § 2.740a(g)).

[Sec. 2.740b as added July 21, 1972, effective August 28, 1972 (37 F. R. 15134); amended effective March 3, 1975 (40 F. R. 8777).]

[§ 5240]

**Sec. 2.741. Production of documents and things and entry upon land for inspection and other purposes.**—(a) *Request for discovery.* Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are within the scope of § 2.740 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 2.740.

(b) *Service.* The request may be served on any party without leave of the Commission or the presiding officer. Except as otherwise provided in § 2.740, the request may be served after the proceeding is set for hearing.

(c) *Contents.* The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category.

<sup>1</sup> Interrogatories addressed to the staff are subject to § 2.720(h)(2)(ii).

with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) *Response.* The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(e) *NRC records and documents.* The provisions of paragraphs (a) through (d) of this section do not apply to the production for inspection and copying or photographing of NRC records or documents. Production of such records or documents is subject to the provisions of §§ 2.744 and 2.790.

[Sec. 2.741 as amended December 21, 1970, effective December 23, 1970 (35 F. R. 19500); July 21, 1972, effective August 28, 1972 (37 F. R. 15134).]

[§ 5241]

Sec. 2.742. *Admissions.*—(a) Apart from any admissions made during or as a result of a prehearing conference, 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. A copy of the document shall be delivered with the request unless a copy has already been furnished.

(b) Each requested admission shall be deemed made unless, within a time designated by the presiding officer or the Commission, and not less than ten (10) days after service of the request or such further time as may be allowed on motion, 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. If written objections are made to only a part of a request, the remainder of the request shall be answered within the time designated.

(c) Admissions obtained pursuant to the procedure in this section may be used in evidence to the same extent and subject to the same objections as other admissions.

[Sec. 2.742 as amended July 21, 1972, effective August 28, 1972 (37 F. R. 15134).]

[§ 5242]

Sec. 2.743. *Evidence.*—(a) *General.* Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts.

(b) *Written testimony.* The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on each other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The

presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony shall be incorporated in the transcript of the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit. This paragraph does not apply to proceedings under Subpart B for modification, suspension, or revocation of a license.

(c) *Admissibility.* Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(d) *Objections.* An objection to evidence shall briefly state the grounds of objection. The transcript shall include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on the record.

(e) *Offer of proof.* An offer of proof made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony shall consist of a statement of the substance of the proffered evidence. If the excluded evidence is written, a copy shall be marked for identification. Rejected exhibits, adequately marked for identification, shall be retained in the record.

(f) *Exhibits.* A written exhibit will not be received in evidence unless the original and two copies are offered and a copy furnished to each party, or the parties have previously been furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(g) *Proceedings involving applications.* In any proceeding involving an application, there shall be offered in evidence by the staff any report submitted by the ACRS in the proceeding in compliance with section 182b. of the Act, any safety evaluation prepared by the staff and any Detailed Statement on environmental considerations prepared by the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, or his designee in the proceeding pursuant to Part 51 of this chapter.

(h) *Official record.* An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(i) *Official notice.* (1) The Commission or the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body. Each fact officially noticed under this subparagraph shall be specified in the record with sufficient particularity to advise the parties of the matters which have been noticed or brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact.

(2) If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by exceptions to an initial decision or a petition for reconsideration of a final decision clearly and concisely setting forth the information relied upon to show the contrary.



[Sec. 2.743 as amended September 4, 1963, effective September 17, 1963 (28 F. R. 10151); March 3, 1966, effective April 11, 1966 (31 F. R. 4339); July 21, 1972, effective August 28, 1972 (37 F. R. 15134); amended July 18, 1974, effective August 19, 1974 (39 F. R. 26279); amended April 26, 1978, effective May 26, 1978 (43 F. R. 17802).]

[§ 5243]

Sec. 2.744. Production of NRC records and documents.—(a) A request for the production of an NRC record or document not available pursuant to § 2.790 by a party to an initial licensing proceeding may be served on the Executive Director for Operations without leave of the Commission or the presiding officer. The request shall set forth the records or documents requested, either by individual item or by category, and shall describe each item or category with reasonable particularity and shall state why that record or document is relevant to the proceeding.

(b) If the Executive Director for Operations objects to producing a requested record or document on the ground that (1) it is not relevant or (2) it is exempted from disclosure under § 2.790 and the disclosure is not necessary to a proper decision in the proceeding or the document or the information therein is reasonably obtainable from another source, he shall so advise the requesting party.

(c) If the Executive Director for Operations objects to producing a record or document, the requesting party may apply to the presiding officer, in writing, to compel production of that record or document. The application shall set forth the relevancy of the record or document to the issues in the proceeding. The application shall be processed as a motion in accordance with § 2.730(a) through (d). The record or document covered by the application shall be produced for the "in camera" inspection of the presiding officer, exclusively, if requested by the presiding officer and only to the extent necessary to determine—

- (1) The relevancy of that record or document;
- (2) Whether the document is exempt from disclosure under § 2.790;
- (3) Whether the disclosure is necessary to a proper decision in the proceeding;
- (4) Whether the document or the information therein is reasonably obtainable from another source.

(d) Upon a determination by the presiding officer that the requesting party has demonstrated the relevancy of the record or document and that its production is not exempt from disclosure under § 2.790 or that, if exempt, its disclosure is necessary to a proper decision in the proceeding, and the document or the information therein is not reasonably obtainable from another source, he shall order the Executive Director for Operations to produce the document.

(e) [Deleted.]

(f) A ruling by the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commission for the production of a record or document will specify the time, place, and manner of production.

(g) No request pursuant to this section shall be made or entertained before the matters in controversy have been identified by the Commission or the presiding officer, or after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer for good cause shown.



(h) The provisions of § 2.740(c) and (c) shall apply to production of NRC records and documents pursuant to this section.

[Sec. 2.744 as added December 21, 1970, effective December 23, 1970 (35 F. R. 19500); as amended July 21, 1972, effective August 28, 1972 (37 F. R. 15135); amended January 17, 1975, effective February 18, 1975 (40 F. R. 2974); amended effective March 3, 1975 (40 F. R. 8777).]

### Summary Disposition on Pleadings

#### [§ 5244]

Sec. 2.749. Authority of presiding officer to dispose of certain issues on the pleadings.—(a) Any party to a proceeding may, at least forty-five (45) days before the time fixed for the hearing, move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. There shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. There shall be annexed to any answer opposing the motion a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The presiding officer shall permit the opposing party an opportunity to respond in writing to new facts and arguments presented in any supporting statements which were not presented in the papers of the moving party. Any such response shall be served within such time limits as the presiding officer may establish and shall address only the new facts and arguments presented in the supporting statement. No further supporting statements or responses thereto shall be entertained.

(b) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

(c) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the presiding officer may refuse the application for summary decision or may order a continuance to permit affidavits to be obtained or make such other order as is appropriate and a determination to that effect shall be made a matter of record.

(d) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on

[The next page is 7149-3.]