

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of )  
 )  
PORTLAND GENERAL ELECTRIC COMPANY, et al. ) Docket No. 50-344  
 )  
(Trojan Nuclear Plant) ) (Control Building)

ORDER VACATING HEARING ON STAFF'S MOTION TO  
POSTPONE HEARING; DENYING INTERVENORS MOTION FOR  
CHANGE OF VENUE; GRANTING MOTION OF STATE OF OREGON AND  
INTERVENORS FOR EXTENSION OF TIME TO RESPOND TO LICENSEE'S MOTION FOR  
SUMMARY DISPOSITION OF SPECIFIED CONTENTIONS; AND VACATING  
COMMENCEMENT OF EVIDENTIARY HEARING AND HEARING SCHEDULE  

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(September 18, 1979)

The NRC Staff on September 6, 1979, filed a motion to suspend the hearing in this proceeding. The commencement of the evidentiary hearing on October 10, 1979 was keyed to the completion by the Staff of its Safety Evaluation Report (SER) by September 7. The SER allegedly could not be completed on that date because there remained a number of unresolved questions between the Staff and the Licensee, which the latter's recent written responses to prior Staff questions did not satisfactorily resolve. The Staff proposed sending weekly reports to the Board and the parties regarding the resolution of open items and completion of the SER, but no date was set for the issuance of the SER.

The Board sua sponte set the Staff's postponement motion for hearing on September 20, 1979, at the NRC Hearing Room in Bethesda, Maryland. In its Order dated September 12 and served telegraphically on that date, the Board questioned whether the present record justified the open-ended suspension of the hearing schedule. Accordingly, the Staff and the Licensee were requested to produce knowledgeable witnesses at the hearing on the Staff's motion for postponement, who could testify concerning repeated delays in the schedule and could make firm commitments regarding unresolved questions.

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The Intervenor's objected to holding a hearing on the Staff's postponement motion in the Washington, D. C. area, by their motion for change of venue for the scheduled hearing on motion, dated September 13 and received on September 17, 1979. The State of Oregon referred to the Staff's motion for postponement of issuance of the SER in its motion for an extension of time in which to respond to the Licensee's prior motion for summary disposition of specified contentions.

The Intervenor's by their motion have objected to holding a hearing on the Staff's postponement motion in Bethesda, Maryland. They have also asserted that the Board ignored the provisions of 10 CFR, Part 2, Appendix A, I(b) which provides in part that "[a]djourned sessions of hearings may be held in the Washington, D. C. area if all parties so stipulate."

The Staff's motion and supporting affidavit to postpone the evidentiary hearing because of its asserted inability to file the SER on the scheduled date (September 7) triggered the Board's action. Our motion practice is governed by the provisions of 10 CFR §2.730. Within 10 days after the service of a written motion (15 days for the Staff), a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party has no right to reply, except as permitted by the presiding officer (§2.730(c)). No oral argument will be heard on a motion unless the presiding officer directs otherwise (§2.730(d)).

The Staff's postponement motion was set for oral argument because the Board believed that it would be helpful to explore the reasons for repeated postponements of the issuance of the SER, and hence of the commencement of the Phase II evidentiary hearing. In a previous motion for postponement (May 21, 1979), the

Staff identified a number of matters of high priority which prevented its expert witnesses from completing the Trojan SER.<sup>1/</sup> The Board asked for the production of knowledgeable witnesses at the motion hearing in order to update the progress of work on the SER and to evaluate the priority assigned by the Staff to the Trojan design modification questions.

Although such oral argument and hearing on the Staff's motion would be useful and would provide more rather than less information to the interested public, it is not essential for the Board's ruling on the Staff's motion. In the interest of conservation of resources of this Board and the Appeal Board, as well as the parties, we do not consider it necessary to hold a hearing on such a motion in Portland, Oregon, as requested by the Intervenors. Whatever factual information may be required for future scheduling purposes can be supplied by such "affidavits or other evidence" as the parties may deem appropriate (10 CFR §2.730(b), (c) and (d)). We do not consider that the Intervenors' citation of Appendix A, I(b) is apt because that section refers to "adjourned sessions of hearings," which are quite different from discretionary oral arguments or testimony related to motions. However, the resolution of that issue involving the interpretation of rules of practice and Appendix A is not worth the time and expense involved. Accordingly, the hearing and oral argument on the Staff's postponement motion now scheduled for September 20, 1979, is hereby rescinded.

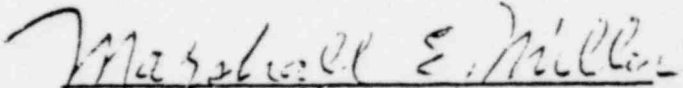
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<sup>1/</sup>The accident at Three Mile Island, the shutdown of five facilities because of analytical errors in pipe stress analysis codes, a May 3, 1979 incident at the Oyster Creek facility, and certain unresolved generic safety questions of very high priority (Motion for Postponement dated May 21, 1979, pp. 2-5).

It is quite apparent that until the SER is actually issued by the Staff and served on the parties, there can be no termination of discovery, filing of prefiled testimony, motions for summary disposition, nor scheduling or commencement of the evidentiary hearing on Phase II. Therefore, all prior Orders relating to schedules or commencement of evidentiary hearing are hereby rescinded. The motion of the State of Oregon for an extension of time in which to respond to the Licensee's motion for summary disposition of specified contentions, concurred in by the Intervenors, is granted, and time is extended to 14 days following service of the SER and completion of discovery among the parties.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Marshall E. Miller, Chairman

Dated at Bethesda, Maryland  
this 18th day of September 1979.

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