

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of)
MAINE YANKEE ATOMIC POWER COMPANY) (To Increase and Modify
(Maine Yankee Atomic Power Station),) Spent Fuel Pool Capacity
Applicant.) and Systems; Compaction)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF INTERVENOR'S OPPOSITION
TO APPLICANT'S MOTION TO POSTPONE THE
SPECIAL PREHEARING CONFERENCE

Preliminary Statement of Relevant Procedural History

This proceeding was begun by Applicant in a filing on September 18, 1979, subsequent notice being made in the Federal Register, and a Petition for Leave to Intervene timely filed by Intervenor on November 23, 1979. Thereupon this Board was duly constituted and appointed and Specific Contentions were scheduled as due from Intervenor on or before January 28, 1980. By motion filed and served January 16, 1980, Intervenor moved for an enlargement of time¹ to prepare said Specific Contentions, which same was granted in a conference call on or about January 25, 1980, over Applicant's vigorous objections. Intervenor then timely filed and served said Specific Contentions on April 28, 1980, responses thereto being due May 12, 1980. Applicant then moved for a thirty-day enlargement of time to file its responses, asserting current conflicting demands upon Counsel; crediting and respecting said assertions, Intervenor did not oppose said motion. Applicant filed and served its responses on June 11, 1980, together with a motion to postpone the holding of the Special Prehearing Conference

¹Intervenor was joined in said Motion by the State of Maine.

herein, against which pursuit of delay this Opposition is filed.

A r g u m e n t

In its motion to postpone, Applicant freely and almost immediately admits: "It would now normally be in order to schedule a special pre-hearing conference." Applicant then relates several paragraphs assertedly supportive of its request for a three-months' delay herein.

As developed further below, said assertions not only fail to satisfy the requisite standards which Applicant must meet to gain a delay of these proceedings, but they also cast doubt upon Applicant's good faith in its pursuit of the instant motion.

Part 2 of the Commission's Rules and Regulations clearly favors the timely and expeditious management of contested proceedings, especially in the preliminary stages. Such purpose accommodates not only the rights and interests of the parties to a proceeding, but also the public interest as well.

In matters of scheduling, the paramount consideration is the public interest. The public interest is usually (best) served by as rapid a decision as is possible consistent with everyone's opportunity to be heard. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ² ALAB-277, 1 NRC 539 (1975).

Applicant's motion not only ignores said "paramount . . . interest", but even shows a willingness to disserve it.

Further and more particularly, Applicant's motion altogether fails to satisfy the standards which must be met to gain a postponement. 10 CFR §2.730(b) states in pertinent part: "(A) motion . . . shall state with particularity the grounds . . . and shall be accompanied by any affidavits or other evidence relied on . . .". Additionally of course, the burden here is clearly upon the moving party under 10 CFR §2.732;

²Quoted from USNRC Staff Practice and Procedure Digest, at 3.

and last, delay can be allowed only for good cause shown, under 10 CFR §2.711.³

Now let us compare Applicant's assertions to the statutory requirements: Applicant first notes that it is "giving serious consideration to alternate proposals which might expand the onsite storage capacity possibly as long as plant life; in addition, various supplements to the current proposal are being considered." (Applicant's Motion at 1-2; emphasis added.) Simply put, one would have to look far to find a greater concentration of vague, conditional, qualified — and thus insufficient — language, and such pleading clearly fails to meet the standard of particularity required in §2.730(b); additionally, the "evidence relied on" is also conspicuous by its absence.

Treating the remainder of Applicant's motion seriatim, the "reasons" numbered "3" and "4" attempt to raise wholly unconnected and unrelated issues: neither the current function of Applicant's technical staff, nor the holding of a statewide referendum in Maine, constitute any legally sufficient reason whatever for delaying the Special Prehearing Conference herein; and as further developed below, number 4 in fact casts doubt upon Applicant's good faith in its pursuit of the instant motion.

Three other reasons also disfavor Applicant's efforts at delay: First, Applicant has, whenever able, consistently hurried the instant proceedings forward, stating in its submission of September 18, 1979: "We respectfully request approval of this proposed change not later

³Almost inevitably, there are due process considerations involved herein, relative to Intervenor's and the public's right to the timely and **expeditious** scheduling of the Special Prehearing Conference; the controlling rule of law holds that an agency's regulations constitute the minimum of due process protections. E.g., Service v. Dulles, 98 U.S.App. D.C. 268, 235 F.2d 215, rev. 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957).

than December 3, 1979."⁴ Applicant also vigorously objected to the motions by Intervenor and the State of Maine for additional time to receive and study material and to prepare their cases. On such basis, and given Applicant's failure to make any real showing of changed circumstances, Applicant should not now be heard to pursue a delay of over three months, (June 11, 1980 - October 1, 1980).

Second and in corollary to the foregoing, Applicant's current effort at delay comes at a time when these proceedings have been in train for some nine months, and as such appear late:

Where a party has an objection to the scheduling of a pre-hearing phase of a proceeding, he must lodge such objection promptly. Late requests for changes in scheduling will not be countenanced absent extraordinary unexpected circumstances. Consolidated Edison Co. of N. Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-377, 5 NRC 430 (1977).⁵ (Emphasis added.)

Applicant has clearly failed to demonstrate any such "extraordinary unexpected circumstances".

Third, Applicant has similarly failed to make any demonstration of any legally significant prejudice to its interests from the timely holding of the Special Prehearing Conference; in fact, upon consideration of Applicant's assertions, and upon consideration of the acknowledged purposes of the Special Prehearing Conference, quite the contrary appears.

If in fact Applicant is reconsidering its proposal, all parties hereto are significantly advantaged - and reasonably entitled - to learn of the same as soon as possible with as much specificity as possible. Applicant's motion seems to suggest that a Special Prehear-

⁴Covering letter of September 18, 1979, per Mr. W. P. Johnson, Vice-President of Maine Yankee, at 3.

⁵Quoted from USNRC Staff Practice and Procedure Digest, at 7.

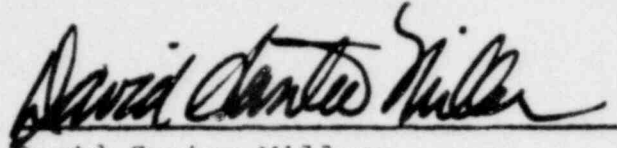
ing Conference is some sort of outcome-determinative Armageddon, rather than a procedural mechanism clearly intended to enhance the orderly and efficient management of proceedings such as these. It can in fact quite reasonably be offered that on the facts and circumstances presented, no more ideal or proper forum could be presented for the just and orderly treatment of all the issues presented herein than said Special Prehearing Conference: in such forum the parties and the Board could present, pursue and resolve not only the issues presented herein, but also related matters including the scheduling of the further conduct of this proceeding, which purposes are not only favored by the Commissions own rules and regulations, but are also beneficial to all parties.

Last, Applicant's assertion that a statewide referendum scheduled for September 23, 1980, constitutes cause for delay of the instant proceedings is specious at best. Intervenor respectfully submits that not only is such referendum wholly unrelated to the instant proceedings, but also that Applicant's pursuit of delay herein suggests an effort on Applicant's part to limit such adverse publicity as might flow from the timely holding of the Special Prehearing Conference; thus Applicant's pursuit of delay is arguably contaminated by a lack of good faith.

But even absent such intent on Applicant's part, Intervenor submits that a granting of any such unwarranted delay as is sought by Applicant would possess the unfortunate effect of limiting if not in fact negating the right of the public to full and timely information under circumstances and in a proceeding where the public interest carries and merits a statutorily recognized premium.

In conclusion, then, and on the bases presented herein, Applicant has failed to make a sufficient showing for its requested delay, and

all applicable law and relevant considerations in fact favor the timely and expeditious scheduling of the Special Prehearing Conference in this proceeding.



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CERTIFICATE OF SERVICE

I hereby certify that I have mailed copies of the foregoing Opposition and the accompanying Memorandum and Order to the following named individuals or entities, first class regular mail postage prepaid, this 26th day of June, 1980:

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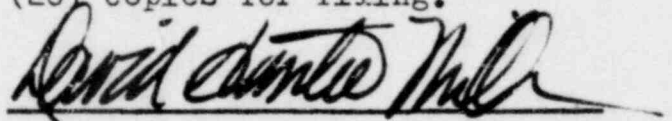
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