

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

July 2, 1980

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
MAINE YANKEE ATOMIC POWER COMPANY)	Docket No. 50-309
(Maine Yankee Atomic Power Station))	(Spent Fuel)

NRC STAFF'S RESPONSE TO LICENSEE'S
MOTION TO POSTPONE PREHEARING CONFERENCE

INTRODUCTION

As indicated in Licensee's motion to postpone the prehearing conference contentions and responses thereto have been filed in this matter. Pursuant to 10 C.F.R. 2.751a a special prehearing conference should now be scheduled, and discovery start. 10 C.F.R. §2.740(b)(1). The Licensee now asks that such conference be postponed until after October 1, 1980. The Staff does not believe the Licensee has set forth adequate grounds for such a course. However, the Staff would not object to a moderate delay in holding the pretrial conference until the middle of August, 1980.

BACKGROUND

10 C.F.R. §2.751(a) provides that a special prehearing conference should be scheduled within 90 days after a Notice of Hearing is published or such other time as the Commission or Board may establish. The Notice of Opportunity of Hearing was published over 90 days ago on October 24, 1979 (44 Fed. Reg. 61273).

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On November 23, 1979, Intervenor Sensible Maine Power petitioned to intervene.^{1/} On December 7, 1979, the Licensee responded to that petition stating inter alia that it wished "a prehearing conference to be held at the earliest practicable time in this matter in order to cause the early settling, and decision as to the justiciability, of petitioner's contentions."^{2/} On January 4, 1980, this Board scheduled a prehearing conference for February 12, 1980.^{3/} Intervenor thereafter asked for an enlargement of time to April 27, 1980, to supplement its petition with specific contentions, and that the prehearing conference be postponed until after that time.^{4/} The Licensee responded on January 21, 1980, opposing the requested extension, and stating that this delay might possibly hurt the Licensee and "To assert time is not of the essence . . . is erroneous."^{5/} On January 25, 1980, the Board postponed the special prehearing conference and gave the Intervenor until April 28, 1980, to frame contentions.^{6/} The Intervenor filed his contentions within such time.^{7/} The Licensee then asked for additional

^{1/}Petition For Leave To Intervene of Sensible Maine Power, mailed November 23, 1979.

^{2/}Answer of the Licensee To The Petition To Intervene of Sensible Maine Power, mailed December 7, 1979.

^{3/}Notice of Special Prehearing Conference, dated January 4, 1980.

^{4/}Intervenor's Motion for Enlargement of Time and For Rescheduling of First Special Prehearing Conference, mailed January 16, 1980.

^{5/}Licensee's Answer to Intervenor's Motion for Enlargement of Time and Rescheduling of First Special Prehearing Conference, mailed January 21, 1980.

^{6/}Order, dated January 25, 1980; see also Notice of Postponement of Special Prehearing Conference, dated January 25, 1980.

^{7/}Intervenor's Specific Contentions, mailed April 28, 1980.

time to respond to the contentions essentially because its attorneys were engaged in other matters.^{8/} Such request was granted and both the Licensee's and the Staff's time to reply to the contentions was extended until June 11, 1980,^{9/} at which times those responses were filed.^{10/}

DISCUSSION

As the Licensee recognizes in the instant motion, it is appropriate that a special prehearing conference now be scheduled. Contentions could then be ruled upon and discovery begun. However, the Licensee sets out three reasons for delaying the pretrial conference: alternate proposals are being considered for changing on site spent fuel storage, the Licensee's staff is engaged in working on TMI related matters, and the State of Maine is holding a referendum on September 27, 1980, on the continued utilization of nuclear energy for power generation in Maine. The last reason does not appear germane to whether this Board should schedule a prehearing conference on a proposed amendment of the NRC issued license. Nor does any reason appear to give the licensee the large period of time it seeks for the first two reasons given. Giving the Licensee an additional 30 or 45 days before scheduling a prehearing conference should supply sufficient time for the Licensee to decide if it wishes to amend its application, and allow Licensee's staff more time to prepare for the special prehearing conference and the start of discovery.

^{8/} Licensee's Motion for Extension of Time to Respond to Intervenor's Specific Contentions, mailed May 6, 1980.

^{9/} Order, dated May 12, 1980.

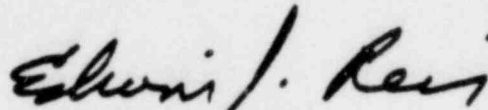
^{10/} NRC Staff's Response to Contentions Filed by Sensible Maine Power, dated June 11, 1980, Licensee's Response to Intervenor's Specific Contentions, dated June 11, 1980.

It is the policy of this Commission to move proceedings along expeditiously.
See 10 C.F.R. Part 2, Appendix A, introductory paragraph.

CONCLUSION

For these reasons the Staff opposes the motion to postpone the special pretrial conference until after October 1, 1980, but does not oppose postponing the conference until the middle of August, 1980.

Respectfully submitted,

A handwritten signature in cursive script that reads "Edwin J. Reis". The signature is written in dark ink and is positioned above the typed name and title.

Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland,
this 2nd day of July, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO LICENSEE'S MOTION TO POSTPONE PREHEARING CONFERENCE" 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 2nd day of July, 1980:

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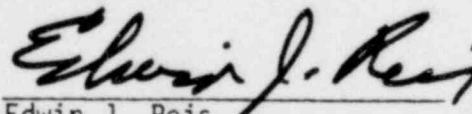
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