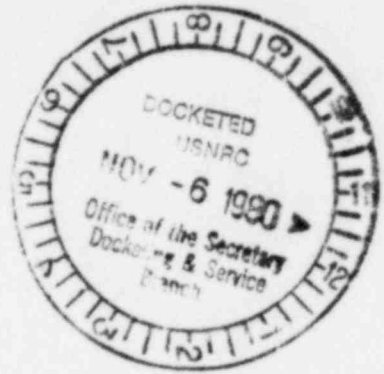


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Dr. W. Reed Johnson

In the Matter of)
)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)
)
(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443
50-444

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SERVICES

MEMORANDUM AND ORDER

November 6, 1980

Yesterday, this Board conducted a prehearing conference by telephone with counsel for the several parties to the remand on seismic issues ordered by the Commission in its September 25, 1980 order. CLI-80-33. On the basis of full consideration of (1) the papers previously submitted by the parties in response to the Board's September 29 and October 20, 1980 orders; and (2) the representations and arguments of counsel at the conference:

1. The request of the New England Coalition on Nuclear Pollution that Dr. Minailo Trifunac be called to testify as a Board witness is granted. In such capacity, Dr. Trifunac will be under the protection of the Board. Any party to the proceeding may cross-examine him. Inasmuch as he previously had

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testified in this proceeding on behalf of the Coalition (and will be now called as a Board witness only because of his consultant relationship with the Advisory Committee on Reactor Safeguards), the Coalition will not be permitted to pose leading questions to him.

2. The Coalition's request that Dr. Michael A. Chinnery similarly be called to testify as a Board witness is denied. In common with Dr. Trifunac, Dr. Chinnery was a Coalition witness before the Licensing Board several years ago. Unlike Dr. Trifunac, however, he is not an ACRS consultant. And no other extraordinary cause appears why he should not once again testify on behalf of the Coalition rather than as a Board witness. In this connection, in his October 23, 1980 letter to Coalition counsel, Dr. Chinnery took note of the fact that he has never been a member of the Coalition and does not support its aims and objectives. Although that may be true, his appearance as an expert witness on its behalf would not imply otherwise. Frequently, experts testify as witnesses for parties with whom they have no relationship whatever.

3. The major bone of contention during the conference was the scheduling of the filing of the prepared testimony and the evidentiary hearing. Both the Coalition and the Commonwealth of Massachusetts essentially supported the following schedule suggested by the Board:

Filing of the prepared testimony of all parties (except for that of Dr. Trifunac on the second issue identified at p. 4 of the Commission's September 25 remand order) -- February 16, 1981.^{1/}

Filing of Dr. Trifunac's testimony as well as any additional testimony of the parties in rebuttal of the testimony filed on or before February 16 -- March 16, 1981.

Commencement of evidentiary hearing -- April 6, 1981 (tentative). The hearing will be held in Nashua or some other location in southern New Hampshire.

Notwithstanding the disagreement of the applicants and the staff with that proposed schedule, it is hereby adopted. We perceive insufficient reason to adopt the alternative proposal of both of those parties that the prepared testimony of Drs. Trifunac and Chinnery be submitted before (1) their own testimony on the first issue identified at pp. 3-4 of the Commission's September 25 remand order; and (2) the staff's testimony on the second issue as well.^{2/} To begin with, we do not

1/ The staff represented at the conference that, because of severely limited personnel resources, it would be unable to supply its prepared testimony at an earlier date.

2/ For their part, the applicants have advised us that they very possibly will not file prepared testimony on the second issue.

accept the staff's suggestion that it must necessarily be given the last word. In any event, our schedule allows it to file rebuttal testimony to that of Dr. Chinnery and it will have ample opportunity to cross-examine Dr. Trifunac at the hearing. Beyond that, we find insubstantial the insistence of the applicants and staff that they need to have the testimony of those witnesses in hand in order to facilitate the preparation of their own testimony. Dr. Trifunac has represented that he has nothing to add at this point to the testimony previously given by him on the second issue. If this representation is true, his contribution will be by way of response to the testimony of the staff (and possibly the applicant) on that issue.^{3/} And, while Dr. Chinnery will be plowing ground not traversed by him at the earlier Licensing Board hearing, much (if not all) of that ground seemingly is already known.

If the staff or applicants wish to corroborate the correctness of Dr. Trifunac's representation (as reported by the

^{3/} As previously noted, the applicants may not put in affirmative evidence on the issue. This is presumably because, as framed by the Commission's remand order (at p. 4), the issue focuses upon the validity of the staff's methodology for correlating vibratory ground motion with the Safe Shutdown Earthquake. In the circumstances, the staff can properly be taken as having the burden of going forward on it.

Coalition), they are, of course, free to do so through discovery^{4/} -- perhaps by taking his deposition.^{5/} And the same means are available to them should they wish to obtain further information respecting the intended scope and content of Dr. Chinnery's testimony on the first issue. Whether, and to what extent, they resort to discovery is, of course, up to them. It occurs to us, however, that they might wish to explore further with him, inter alia, the anticipated range and nature of his proposed testimony on "[h]ow should the tectonic province containing the Seabrook site be defined". See his October 23, 1980 letter to Coalition counsel, at p. 2. We refer to that matter specifically because our recollection is that his earlier testimony did not address it at all.

It need be added only that the scheduling determinations announced herein were made without reference to the pending motion of the Coalition to suspend the Seabrook construction permits pendente lite. That motion, filed on October 29, 1980, awaits responses. Should the action eventually taken on the motion so warrant, consideration may then have to be given to an alteration in the schedule.

^{4/} During the conference, we encouraged the parties to conduct all necessary discovery on an informal basis.

^{5/} We are told that Dr. Trifunac may be out of the country from December 20, 1980 to February 10-15, 1981. There will, of course, be ample time to conduct any desired discovery prior to his departure. And his return to the United States will coincide with the filing of the testimony to which he will respond. See p. 3, supra.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Bishop
C. Jean Bishop
Secretary to the
Appeal Board