

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of)

PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)

(Seabrook Station, Units 1)
and 2))

Docket Nos. 50-443
50-444

NECNP MOTION TO COMPEL NRC
STAFF RESPONSE TO INTERROGATORIES

On January 2, 1981, NECNP served a set of interrogatories on the NRC Staff. In order to minimize the time spent by the Board in peripheral matters, NECNP asked that the Staff respond without requiring a motion under 10 CFR 2.720(h)(2)(ii). The Staff agreed to respond to all but the following interrogatories:

- Q. 8. Please describe what the Staff believes to be the tectonic province or seismic area in which the Seabrook site is located.
- a. Please justify this choice in detail. In so doing, describe, explain the use of, and justify the Staff's conclusions concerning, at a minimum, the following:
1. All tectonic structures and other tectonic or seismic features, including all identified fault lines, that the Staff considered in reaching its conclusions.
 2. Any new information concerning tectonic or seismic features or activity in the Northeastern United States



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that has become known to the Staff since its original testimony on seismic issues in this proceeding.

3. All historical earthquakes considered by the Applicant, including their intensity on the Modified Mercalli scale.
 4. The "Boston-Ottawa seismic trend."
- b. Please explain the relevance of this choice of tectonic province to the determination of the design basis earthquake, under the methodology propounded by the Staff.
 - c. Please identify and describe the sources from which you have compiled a historical record of earthquakes in the tectonic province or seismic area described in response to this question. In particular, how complete is the record as a function of time, location within the province or area, and intensity.
- Q. 9. Has the Staff or any of its witnesses examined other possible tectonic province choices for the area?
- a. If so, please describe each one and explain in detail why it was rejected in favor of that described in response to Question 8.
- Q. 15. What, in your opinion, is the maximum epicentral intensity of the largest earthquake that will ever occur within the province or area described in response to Question 8?
- a. Please justify your answer in detail, including reference to all relevant tectonic structures, tectonic or seismic features, and historical earthquakes.
 - b. Explain why you are exactly 100% confident that your answer is correct. If you are not exactly 100% confident, state your degree of confidence, and explain how it was estimated.

The Staff argued that those three interrogatories were irrelevant because they relate solely to the definition of tectonic province. According to the Staff, since the Board's prior findings regarding "tectonic province" have not been reopened, no questions on the subject are relevant to the proceeding at this point. For the reasons set out below, NECNP disagrees and moves that the Staff be required to respond to NECNP Interrogatories 8, 9 and 15.^{1/}

Although the Staff objected only on relevancy grounds, it asserted that any effort by NECNP to compel a response would have to be resolved pursuant to 10 CFR 2.720(h)(2)(ii), which also requires a finding that answers to the interrogatories are "necessary to a proper decision in the proceeding," and "not reasonably obtainable from any other source." NECNP's interrogatories meet all of these tests.

I. The Interrogatories Are Relevant to the Reopened Proceeding.

One of the major issues to be addressed in the reopened proceeding is "the factual validity of Dr. Chinnery's hypothesis." If Dr. Chinnery's approach is found to be valid, the Appeal Board and the Commission will then be faced with making a choice between two approaches, both of which they have found to be valid. It is arguable, of course, that once Dr. Chinnery's approach is determined to be valid, the Staff's and the Applicant's automatically become invalid. However, it is more likely that the Appeal Board will view itself as faced with two valid and reasonable approaches.

^{1/} The same interrogatories are also the subject of a Motion to Compel Applicant's Response by NECNP and a Motion for a Protective Order by the Applicant.

with different scientific foundations. In light of the Commission's mandate for a conservative approach to seismic issues, the Appeal Board will be required to accept Dr. Chinnery's results unless the Staff and the Applicant demonstrate that the scientific foundation for their approach is so far superior to Dr. Chinnery's that their results should be accepted despite the fact that Dr. Chinnery's approach is valid.

NECNP has the right, therefore, to pose interrogatories related to the scientific foundation of the Staff's conclusions. In so doing, NECNP is not challenging the Appeal Board's "tectonic province" finding. Regardless of the finality of that finding, the issue of the strength of its foundation and of the foundation of the conclusions that flow from the choice of tectonic province is relevant to the Appeal Board's choice between the Staff's conclusions and Dr. Chinnery's.

Questions 8 and 9 seek the basic information by which the Staff reached its conclusions and by which the strength of the Staff's approach must be judged. While they are relevant to the choice of tectonic province under the Staff's method, they are also relevant to the question of which of two otherwise valid approaches must be chosen by the Appeal Board.

Question 15 seeks the Staff's position on the maximum possible earthquake in the Seabrook tectonic province. As such, it appears to be directly relevant to the reopened proceeding since the Appeal Board previously rejected Dr. Chinnery's methodology largely because it questioned his belief that "there is no limit to the intensity of earth-

quakes to be expected in any given area." Public Service Co. of New Hampshire, (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 58 (1977). Clearly the Board considers the issue of maximum earthquake intensity to be relevant to the factual validity of Dr. Chinnery's methodology and hypothesis.

II. Answers to the Interrogatories Are Necessary to a Proper Decision.

In the absence of answers to these Interrogatories, NECNP has had some difficulty preparing its own direct case on the relative strength of the two different conclusions, and it will be hampered in its attempts to address contentions that Staff conclusions must be chosen despite the validity of Dr. Chinnery's approach. As a result, the Board will have a poorly developed record from which to reach a decision.

That is particularly true here, where the parties and the Board must grapple with highly technical information that requires careful preparation. Any argument that this information is not necessary is, in fact, an attempt to hamper NECNP's full participation and the Board's ability to reach a reasoned decision.

The impending receipt of the Staff's direct testimony does not cure this deficiency. Since the Staff asserts at this time that this sort of testimony is irrelevant, one must conclude that the staff will not include any of the necessary information in its direct testimony. At the most, we will receive it only on rebuttal, and then only in the sanitized and carefully crafted form prepared by the Staff. A full and fair hearing on these issues requires responses to these interrogatories.

III. These Answers Cannot Be Obtained Elsewhere.

For the most part, these interrogatories do not request simple factual information that could be obtained from another reference, but seek the Staff's justifications for various positions. Only the Staff can provide that information.

It may well be that some of the answers are already contained in the record of this proceeding. If that is the case, the Staff is certainly welcome to refer us to the appropriate material, which may substantially reduce its perceived burden. Otherwise, of course, fresh material will be necessary.

IV. Staff Delay Cannot Be Justified.

In its response to NECNP's interrogatories, the Staff suggested that if tectonic province questions were reopened, substantial delay might be required since all of the relevant people were not yet involved. Such a delay cannot be justified. If the Staff has taken an unreasonably narrow view of the reopened proceeding, it cannot be allowed to delay consideration of these issues because it was not adequately prepared. To allow that to happen would be tantamount to ruling that the Staff can effectively allow Seabrook to be completed before these basic seismic issues are finally decided by the Board. A deadline was set long ago, and the Staff must join the other parties in meeting it.

Conclusion

For these reasons, NECNP requests that the Staff be compelled to respond to NECNP Interrogatories 8, 9 and 15.

Respectfully submitted,



Elyn R. Weiss



William S. Jordan, III
HARMON & WEISS
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006
(202) 833-9070

Attorneys for NECNP

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