

04/19/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)

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

(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443 OL
50-444 OL

RESPONSE OF THE NRC STAFF TO
MOTION BY NECNP "FOR CLARIFICATION
OF SCHEDULE FOR FILING CONTENTIONS
OR FOR AN EXTENSION OF TIME"

I. INTRODUCTION

On October 19, 1981, the Nuclear Regulatory Commission published in the Federal Register a notice of opportunity for a hearing on the application by Public Service Company of New Hampshire, et al., for operating licenses for the Seabrook Station, Units 1 and 2 (46 Fed. Reg. 51330). The notice provided that requests for an operating license hearing and petitions to intervene should be filed by November 18, 1981. In response thereto, petitions to intervene were initially filed by sixteen groups or persons.^{1/} Responses to such petitions were filed by

^{1/} With respect to petitions to intervene in operating license proceedings, ". . . a licensing board should take utmost care to satisfy itself fully that there is at least one [good] contention advanced in the petition" because in the absence of successful intervention and a good contention, no hearing need be held. See Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, ALAB-305, 3 NRC 8, 12 (1976); Tennessee Valley Authority (Watts Bar Nuclear Power Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292, 1297; aff'd ALAB-413, 5 NRC 1418 (1977).

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the Applicants and the Staff no later than the end of the first week of December, 1981. The matter of the standing of the various petitioners^{2/} has been pending before the Licensing Board since that time.

On March 12, 1982, the Licensing Board issued a "Memorandum and Order Setting Special Prehearing Conference" (hereafter "Order"). That Order designated a location in Portsmouth, New Hampshire, for the holding of a Special Prehearing Conference. The substantive provisions in that Order were to quote 10 C.F.R. § 2.751(a) in its entirety, and to Order the filing of "any Amended Petitions to Intervene" "not later than thirty (30) days prior to the Special Prehearing Conference," with responses thereto by the Staff and Applicants due "not later than fifteen (15) days prior to the Special Prehearing Conference." The Order further provided that any document not filed in accordance with the Order and received by the Board on the due date "will not be considered by the Board."

By motion dated March 24, 1982, petitioner, the State of New Hampshire, requested additional time to file contentions, arguing that the Board's Order afforded it only twenty days notice to file contentions. On April 5, 1982 the Licensing Board summarily denied the request.

On April 2, 1982, petitioner New England Coalition on Nuclear Pollution ("NECNP") moved in the alternative, for clarification of the Board's Order, or for an extension until April 21, 1982, fifteen days

^{2/} Petitioner the Maine Public Advocate, a petitioner under 10 C.F.R. § 2.715(c), subsequently withdrew its petition.

prior to the Special Prehearing Conference, for the filing of its contentions. See 10 C.F.R. § 2.714(b).

II. DISCUSSION

In its motion, NECNP draws a distinction, based upon the wording of 10 C.F.R. § 2.714(a), between "amendments" to petitions to intervene and "supplements" to such petitions. It is argued that "amendments" to such petitions are used to cure objections or deficiencies relating to the standing of a petitioner under 10 C.F.R. § 2.714(a), whereas "supplements" to petitions as used in 10 C.F.R. § 2.714(b) refer to supplementing a petition by the filing of contentions. NECNP further argues that it should be afforded additional time inasmuch as 10 C.F.R. § 2.714(b) provides that contentions are to be filed "no later than 15 days prior to the special prehearing conference." Applicants in opposing NECNP's motion argue that the Board's Order is clear. As to NECNP's argument that the Commission's Rules of Practice afford a petitioner an opportunity to file contentions no later than 15 days prior to the special prehearing conference, Applicants refer to the general authority in the regulations for the presiding officer to regulate the course of a hearing. See 10 C.F.R. §§ 2.718(e) and (i).

Two factual matters should also be added to the above discussion. The first is that of the fifteen present petitioners, only two such petitioners timely filed contentions in accordance with the Board's

Order. Another two petitioners, Massachusetts^{3/} and Seacoast Antipollution League, filed pleadings to the effect that they did not receive service of the Board's Order. Indeed, the service list attached to the copy of the Board's Order which the Staff received appears somewhat abbreviated.

The second factual matter which is noteworthy is that while it is true that the Board's Order recites § 2.751(a) in haec verba, the Board's Order never used the word "contention" or "contentions," or refers to the filing of contentions. To this should be added the fact that generally, intervention boards first rule on standing prior to asking for the filing of contentions in order to eliminate the necessity of evaluating the adequacy of contentions by those petitioners who lack the requisite standing to file contentions.

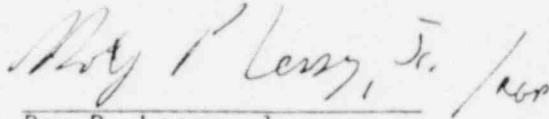
It is against this backdrop that NECNP's instant motion should be judged. Inasmuch as NECNP has been an active intervenor in the construction permit phase of this proceeding, and from the very low number of petitioners actually filing timely contentions in response to the Board's Order,^{4/} the Staff would not oppose the Board affording NECNP an opportunity to file contentions until April 21, 1982, if the Staff and

^{3/} Counsel for the State of Massachusetts was however, well aware of the provisions of the Board's Order, upon requesting information to this effect from the Staff. Counsel for Massachusetts was also informed where, in Boston, the Order could be obtained if Massachusetts had not received service.

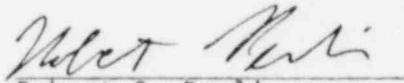
^{4/} The Board's Order contains a provision on page three to the effect that any document not filed by petitioner or party by the dates in the Order "will not be considered by the Board." Notwithstanding the instant motion, 10 C.F.R. § 2.714(b) expressly provides a standard by which to evaluate late-filed contentions.

Applicants are permitted to respond orally to said contentions at the Special Prehearing Conference to be held on May 6-7th . This procedure would not result in any delay to the current schedule.

Respectfully submitted,

 / RLP

Roy P. Lessy, Jr.
Deputy Assistant Chief
Hearing Counsel



Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 19th day of April, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of RESPONSE OF THE NRC STAFF TO MOTION BY NECNP "FOR CLARIFICATION OF SCHEDULE FOR FILING CONTENTIONS OR FOR AN EXTENSION OF TIME" in the above-captioned proceeding have been served on the following by deposit in the Nuclear Regulatory Commission's internal mail system, this 19th day of April, 1982.

Helen Hoyt, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Lynn Chong
Bill Corkum
Gary McCool
Box 65
Plymouth, NH 03264

E. Tupper Kinder, Esq.
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
State House Annex
Concord, NH 03301

Robert A. Backus, Esq.
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

Dr. Emmeth A. Luebke*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Paula Gold, Asst. Atty. General
Stephen M. Leonard, Asst. Attorney
Jo Ann Shotwell, Asst. Attorney
Office of the Attorney General
Environmental Protection Division
One Ashburton Place, 19th Floor
Boston, MA 02108

Nicholas J. Costello
1st Essex District
Whitehall Road
Amesbury, MA 01913

Tomlin P. Kendrick
822 Lafayette Road
P.O. Box 596
Hampton, NH 03842

William S. Jordan, III, Esq.
Ellyn R. Weiss, Esq.
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006

Rep. Arnie Wight
State of New Hampshire
House of Representatives
Concord, NH 03301

Paul A. Fritzche, Esq.
Public Advocate
State House Station #12
Augusta, ME 04333

Wilfred L. Sanders, Esq.
Sanders and McDermott
408 Lafayette Road
Hampton, NH 03842

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Atomic Safety and Licensing
Appeal Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ms. Patti Jacobson
3 Orange Street
Newburyport, MA 01950

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Phillip Ahrens, Esq.
Assistant Attorney General
State House Station #6
Augusta, ME 04333

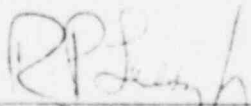
Donald L. Herzberger, MD
Hitchcock Hospital
Hanover, NH 03755

Edward J. McDermott, Esq.
Sanders and McDermott
408 Lafayette Road
Hampton, NH 03842

Sen. Robert L. Preston
State of New Hampshire Senate
Concord, NH 03301

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert L. Chiesa, Esq.
Wadleigh, Starr, Peters, Dunn &
& Kohls
95 Market Street
Manchester, NH 03101



Roy P. Lessy, Jr.
Deputy Assistant Chief
Hearing Counsel