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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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
and
50-444

February 9, 1983

THE STATE OF NEW HAMPSHIRE'S ANSWER
TO THE APPLICANT'S MOTION TO COMPEL ANSWERS
TO THE APPLICANT'S INTERROGATORIES
AND MOTION FOR PROTECTIVE ORDER

On December 8, 1982, the Applicant served 108 pages of Interrogatories on the State of New Hampshire. These Interrogatories related to every contention filed by every party to this proceeding. While many of these Interrogatories were deemed to be objectionable by the State of New Hampshire in that they delved into the mental processes of the State's representatives and consultants and further sought information beyond the normal scope of discovery as defined by the Federal Rules of Procedure, the State did not object, but rather in good faith, attempted to answer the Interrogatories as best it could. The amount of material sought by the Interrogatories is, quite obviously, enormous. The State has represented to

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this Board on several occasions that the amount of time allotted for discovery is inadequate in this proceeding, both from the point of view of obtaining discovery from the Applicant and Staff and in responding to discovery requests from those parties. The Applicant's Motion to Compel underscores the burden which has been placed upon the Intervenor in this proceeding.

The Applicant has now filed a Motion to Compel Answers which is a clear attempt to strip the State of New Hampshire's rights of participation in this proceeding. For the reasons set forth below, the State of New Hampshire asserts that the Applicant's Motion to Compel should be denied.

Interrogatories VIII-2 through -5,
IX-2 through -6, X-2 through -8,
XII-2 through -15, XIII-2 through -31,
XV-2 through -9, XVII-2 through -5,
XVIII-2 through -4, XIX-2 through -4,
XXII-2, XXIII-2, XXIV-2, and
XXX-2 through -25

At the outset, it should be noted that all of the above Interrogatories relate to contentions originated by NECNP, not to contentions originated by New Hampshire. Since NECNP has indicated in its answers to Interrogatories that it does not intend to pursue the contentions which are the basis for Interrogatories XIII, XVII, and XIX, New Hampshire believes it is bound by the intentions of the originator of the contention, and therefore asserts that it does not intend to pursue these contentions. Thus, at issue are only Interrogatories VIII, IX, X, XII, XV, XVIII, XXII, XXIII, XIV, and XXX.

New Hampshire has responded to the Interrogatories in a meaningful manner, stating that it will not present a direct case but that it will reserve its right to participate on these contentions, depending upon the testimony presented. However, the Applicant has not accepted this response and seeks, through the discovery process, to exclude New Hampshire from participating on NECNP's contentions. It takes the position that, unless the State of New Hampshire can set forth what its cross-examination and proposed findings and ruling will be at this time, it should be stripped of its right to cross-examine or offer proposed findings and rulings on the applicable contentions. Such a result is patently unfair.

The right of a party in NRC proceedings to cross-examination and to the filing of proposed findings and rulings is a fundamental right which cannot be swept away by the Applicant placing impossible obstructions in front of the parties.

In In the Matter of Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc., 10 N.R.C. 597 (1979), the ASLB recognized that extensive discovery requests propounded by the Applicant concerning contentions advanced by other parties were unduly burdensome to the intervenors. In its Memorandum and Order on Discovery Motions (2) (October 30, 1979), the Board stated that:

Finally, several interpretations of the discovery rules advanced by the Applicants and Staff have had the effect of enormously compounding the discovery burden imposed on the Intervenors. For example, the Applicants have made discovery requests of each party requiring responses with respect to contentions, or parts of contentions, advanced by the other parties The justification advanced by the Applicants is that 'Since all Intervenors are entitled to cross-examination on all contentions at the hearing ..., answers to the interrogatories by all Intervenors are needed for Applicants to prepare to respond to such cross-examination.' 10 N.R.C. 604 (1979).

The Board recognized that although such a request was not prima facie inconsistent with the Rules of Practice, it did produce a result which was "patently unfair" to the Intervenors. 10 N.R.C. 605 (1979). Consequently, the Board ordered that:

3. All parties are directed, to the extent that they have not already done so, to respond by December 14, 1979 to the discovery requests on the environmental contentions, except that no party need answer questions with respect to contentions or portions of contentions, which it is not sponsoring. We recognize that the Applicant's Staff may possibly be surprised by the cross-examination of Intervenors on other than their own contentions; but we are persuaded [sic] by the circumstance that this cross-examination is mainly for our benefit, rather than that of the questioning party, and we are disinclined to impose on Intervenors a heavy discovery burden to serve that purpose. [Emphasis added.]

In the above case, the ASLB recognized that the fundamental right of meaningful participation in the proceeding is more important than the possibility of surprise to the Applicant during cross-examination. In light of the burdens placed upon Intervenor in these proceedings, this is the only fair result. The Applicant and Staff have been working with this project intensely for years. The State of New Hampshire and other Intervenor have been involved for a few short months, and with resources which are miniscule by comparison.

It is interesting to note that were New Hampshire participating as an interested state, Interrogatories such as the Applicant has posed would not be allowed. In the Matter of Gulf States Utilities Co. (River Bend Station, Units 1 and 2)(1977), the ASLB approved of the ASLB decision indicating that an interested state is entitled to conduct cross-examination with respect to matters put in evidence in support of an application without the necessity of defining the subject matter of its questions as matters in controversy (see River Bend, supra at 770, 771). It would be inconsistent and unfair to apply a different standard to New Hampshire which, in good faith, has entered this proceeding as a full party, and subjected itself to the framing of contentions and discovery process with the goal of contributing to an orderly hearing process.

Clearly, New Hampshire cannot set forth the scope of its cross-examination at this time before any direct testimony has been identified. There is no doubt that if New Hampshire attempted to do so, the Applicant would try to limit New Hampshire to that scope, regardless of the scope of subsequently identified direct testimony. New Hampshire is not attempting, as the Applicant suggests, to avoid its responsibility for disclosing positions. In effect, the State of New Hampshire has indicated that it cannot form a position with regard to these NECNP contentions at this time. However, there is no basis for stripping New Hampshire of its right to participate in this proceeding based on this response. There is, quite simply, nothing more that the State is required to provide to the Applicant at this time.

On the basis of the above, the Applicant's Motion to Compel Answers with regard to the referenced Interrogatories should be denied and the Board should enter a protective order indicating that the State need not provide further answers to the Interrogatories in question.

Interrogatory II.8

At the outset, New Hampshire takes a moment to express its displeasure at the kind of "sniping" which has been spread liberally throughout the Applicant's pleadings in this matter, including this Motion to Compel Answers. These efforts to make derogatory comments about the parties do nothing to further the proceedings and quite frankly serve no legitimate purpose. New Hampshire suggests that the Applicant and its counsel focus on legal and factual arguments.

New Hampshire's answer to Interrogatory II.8 is fully responsive to the question. It reflects that New Hampshire has not performed the analyses which are required by regulation to be performed by the Applicant, which analyses would reveal defects in the Control Room Design. Although the State of New Hampshire has had this contention under review at intermittent times during the last five months, the Applicant has been reviewing it for years and has yet to come forward with the required analyses. It makes no sense for New Hampshire to search for specific defects when the Applicant is in the process of revising its Control Room Design. Although the DCRDR is apparently over 50% complete (see Applicant's answer to Interrogatory No. NH 10.2), the Applicant has not made any of the completed portion available to New Hampshire. Further, the Applicant has made little in the way of specific

information available. Neither the Safety Parameter Display System (SPDS) nor the Post Accident Monitoring System (PAMS), both of which are critical to this contention, have reached the final design stage.

In summary, New Hampshire has been placed in the impossible position of trying to provide specific comments on an incomplete project. We simply do not have the information available to us with which to provide the kind of answer which the Applicant apparently would like. When the completed information is made available, New Hampshire is committed to supplementing its answer to this Interrogatory. For the above reasons, the Applicant's Motion to Compel Answers to Interrogatory No. II.8 should be denied.

Interrogatory No. II.9

The intent of the answer was to reflect that to our knowledge every power plant in the United States is required to develop the information relating to (the DCRDR, SPDS, and PAMS) which the Applicant has not yet developed. However, the State recognizes that the Interrogatory and an answer thereto will be more appropriate once the information referred to above is produced by the Applicant and reviewed by New Hampshire. Since no further answer is possible at this time, the Applicant's Motion to Compel Answers should be denied.

Interrogatories Nos. VII.2 and 3

Interrogatory VII.2 requested the State of New Hampshire to identify what equipment the State contends is required for residual heat removal. In its answer, the State referred to the Applicant's response to RAI 440.133 and 134. The intent of this response was to reflect that New Hampshire has accepted the Applicant's listing of equipment required for residual heat removal.

With regard to Interrogatory VII.3, the State responded that it will focus its testimony on steam generators as not environmentally qualified. By this answer, we intended to reflect that the scope of our participation would relate to steam generators. Thus, we have no objection to being limited with regard to our direct case to the qualification of steam generators.

However, New Hampshire must point out that we would not accept such a limitation if it is deemed to strip New Hampshire of its right to cross-examine or offer proposed findings and rulings based on other testimony presented relating to this contention. As set forth in the first portion of our response to this Motion, New Hampshire believes that the Applicant's efforts in this regard constitute an attempt to interfere with the fundamental rights of New Hampshire to due process and fair hearing.

Thus, with the above explanation and qualification, New Hampshire asserts that the Applicant's Motion to Compel with regard to the above Interrogatories should be denied.

Interrogatories XI-2 through -6,
XIV-2 through -8, XVI-2 through -8,
XX-2 through -4, XXI-2 through -7,
XXXII-2 through -13, and
XXXIII-2 through -21

The above Interrogatories relate to seven contentions originated by NECNP. New Hampshire has indicated that it does intend to "litigate" these contentions, including the intention to offer direct testimony with regard to such contentions. Our response intended to convey, as it states, that New Hampshire has not yet finalized its position on these contentions. In other words, we do not yet have a position which can be communicated to the Applicant. This is, we believe, equivalent to what the Applicant identifies as an answer of "I don't know yet." The Applicant recognizes that such an answer is a complete answer to the question.

The Applicant, for some reason, insists on alleging that New Hampshire is not complying with the Board's previous Orders. Such an allegation under the circumstances is absurd. It is this sort of posturing which, as New Hampshire indicated previously, does nothing to further this proceeding. The Applicant is basically quibbling over terminology and admits that had the State used the terminology "I don't know yet," it would have been acceptable to the Applicant.

In summary, New Hampshire's response to the Interrogatories in question was complete when made and New Hampshire is committed to supplementing that response as is required by NRC Rules of Practice. Clearly, the Applicant's request that the contentions to which these Interrogatories relate be dismissed is inappropriate, since the contentions were not originated by New Hampshire but rather by NECNP. New Hampshire asserts that the Applicant's Motion to Compel Answers with regard to the above Interrogatories should be denied, and that to the extent the Applicant seeks to obtain information concerning New Hampshire's potential cross-examination or offering of proposed findings and rulings, on NECNP contentions, a protective order be issued as requested in the early portion of this response.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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Dated: February 9, 1983

CERTIFICATE OF SERVICE

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I, E. Tupper Kinder, Esquire, hereby certify that a copy of the foregoing State of New Hampshire's Answer to Applicant's Motion to Compel Answers to Applicant's Interrogatories and Motion for Protective Order have been mailed this 9th day of February, 1983, by first class mail, postage prepaid, to:

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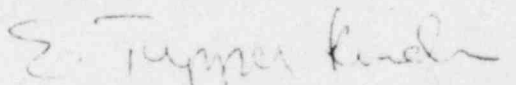
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