

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

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In the Matter of)
)
PUBLIC SERVICE COMPANY OF) Docket Nos. 50-443
NEW HAMPSHIRE, et al.) 50-444
)
(Seabrook Station, Units 1)
and 2))
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NECNP MOTION FOR DEFERRAL OF CONSIDERATION
OF MOTIONS FOR SUMMARY DISPOSITION OR FOR DISMISSAL

In its first prehearing conference order, the Licensing Board set a schedule for this proceeding which required the submission by February 12 of motions for summary disposition on the contentions admitted by the Board's order of September 13, 1982. (The Board later changed the deadline to February 14.) Answers to those motions were required by March 9, 1983. Applicants have now submitted motions for summary judgment on virtually all of NECNP's contentions, including several which were not admitted to the proceeding until November 17, and for which the Board has never set a schedule for discovery, summary disposition motions, or other matters.^{1/} The Staff has also

^{1/} Applicants have filed Motions for summary disposition on NECNP Contentions I.D.4, I.L, I.F, I.N, and I.I (February 7, 1983); I.B.1, I.C., and I.M. (February 9, 1983); I.A.2, I.D.1, I.D.2, I.D.3, and I.G. (February 11, 1983); and I.U, II.B.1, II.B.3, II.B.4, II.B.5, III.2, III.12, and III.13 (February 14, 1983).

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filed motions for summary disposition on several of NECNP's contentions.^{2/} NECNP contends that all of these summary judgment motions are premature. For the reasons stated below, we request an extension of the time for answering Applicants' and Staff's motions until a reasonable period after the Safety Evaluation Report is filed. In the case of onsite emergency planning contentions, consideration should be deferred until after the Staff has submitted its evaluation of onsite emergency plans, whether it is in the SER or some other document. Because summary judgment issues are not capable of resolution at this stage, NECNP requests that the Board postpone the discussion of summary judgment issues now scheduled for the March 24 and 25, 1983, prehearing conference. This discussion should be deferred until after the SER has been filed and the parties have had a chance to consider its effect on their contentions and to answer the motions for summary judgment in light of the SER.

1. Technical Safety Contentions Admitted September 13, 1982

When the Board established the schedule discussed above, it assumed that the Staff's Safety Evaluation Report would be filed by November 8, 1983. Almost four months later, summary disposition motions have been filed, but the SER still has not appeared.

^{2/} The Staff has filed summary disposition motions on Contentions I.B.1, II.B.1, II.B.3, II.B.4, and II.B.5.

The Licensing Board has previously held unequivocally that contentions on safety issues may not be disposed of until the SER and the ACRS letter are issued. Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), LBP-77-20, 5 NRC 680 681 (1977). Several important considerations support this principle.

The SER contains the Staff's position on the entire range of safety issues involved in licensing a nuclear power plant, and is the critical document evaluating the Applicants' compliance with NRC regulations. Normally, the Staff has not even reached or articulated its position on a number of issues until the SER is filed. For example, in numerous answers to our interrogatories, the Staff states its reliance on the SER, without identifying the information in the SER on which it relies, or the conclusions reached in the SER. See, e.g., "Response of the NRC Staff to NECNP's First Set of Interrogatories and Request for Documents", Interrogatory 8 at page 5; Interrogatory 15 at 8; Interrogatory 4 at 24; Interrogatory 8 at 25; Interrogatory 1 at 34; Interrogatory 1 at 40; Interrogatory 2 at 79.

Intervenors, who do not have the burden of proof in NRC proceedings, are entitled to know the Staff's position on safety issues in answering applicants' challenges to their contentions. They are also entitled to review that position and the information contained in the SER before taking final positions on their own contentions. Information or Staff

technical judgments in the SER may eliminate an intervenor's contentions,^{3/} or it may provide further support for the contentions. In either case, it is both premature and wasteful to consider summary disposition motions before the SER is issued. The Board would be acting on insufficient information that could become irrelevant with the issuance of the SER.

Finally, the SER also includes an analysis of unresolved safety issues, which the Staff is required to evaluate on a plant-specific basis before a facility can be licensed.

Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978). NECNP has filed a number of contentions involving unresolved safety issues, including environmental qualification and residual heat removal.^{4/} We are entitled to know the Staff's position on these issues in order to respond to summary judgment motions filed by Applicants or Staff.

2. Emergency Planning Contentions Admitted November 17, 1982

The Applicants' motions for summary judgment on NECNP's emergency planning contentions are premature for the same reasons. The SER, which contains the Staff's evaluation of on-

^{3/} For example, NECNP was able to resolve its concerns about fire protection after examining a draft copy of the SER's chapter on fire protection. Accordingly, we have dropped contention I.M.

^{4/} NECNP's contentions relating to unresolved safety issues include I.A.2, I.B.2, and II.B.1, (environmental qualification); I.B.1, and I.I. (residual heat removal).

site planning, has not been submitted. In fact, NECNP has been informed by counsel for NRC Staff that the Staff is still in the process of evaluating on-site planning, and the Staff's conclusions will probably be published as supplement to the SER. NECNP is entitled to be informed of the Staff's position before any action is taken to exclude NECNP's contentions from this proceeding.

Moreover, the motions are premature because discovery on these contentions is not complete. NECNP's emergency planning contentions were not admitted to this proceeding until November 17, fully two months after the admission of the first set of contentions. NECNP has not completed discovery on these contentions, nor has the Board set a deadline for discovery. The filing of summary judgment motions with respect to on-site emergency planning before a Staff evaluation of onsite planning is submitted or discovery is finished, wastes the time and resources of all the parties.

3. Rulings Requested

a) The law is clear that summary disposition motions may not be granted before the SER and the ACRS letter are filed. Duke Power, supra. As long as the critical Staff evaluations on which the Licensing Board must rely in considering any summary disposition motions are still missing, there can be no point in carrying on with summary judgment proceedings at this time. For these reasons, NECNP requests the Board to rule that summary disposition motions may not be considered until the

SER, (or appendix to the SER addressing a particular issue) is submitted.

b) Following the filing of the SER or Staff evaluation, intervenors should be given an opportunity to resolve any further questions on those documents through discovery. NECNP asks the Board to rule that intervenors will be given a reasonable opportunity for review and discovery on the SER or other relevant Staff evaluations before answers to summary judgment motions must be filed.

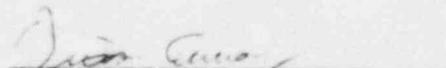
c) In the meantime, there is no purpose to be served in considering the summary judgment motions which have been filed by Applicants and Staff. NECNP asks the Board to rule that the summary disposition motions which have been submitted by Applicants and Staff should be either held in abeyance or dismissed.

d) For these reasons, NECNP also requests that the discussion of summary judgment motions and other matters specified in 10 CFR 2.752(a)(1)-(6) be deferred until after the SER has been issued and the parties have had the opportunity to conduct any necessary discovery and answer summary judgment motions based on the SER. Not only would it be premature to discuss or rule on motions for summary judgment at this stage, but without the critical staff evaluation provided by the SER, NECNP is not ready, nor is it required, to undertake the considerations specified in 10 CFR 2.752 and the Board's order,

such as settlement, stipulation, or amendment of pleadings. As there is little to be accomplished in a prehearing conference at this stage, we urge the Board to reschedule the prehearing conference to a later date.

Respectfully submitted


William S. Jordan, III


Diane Curran

DATED: March 3, 1983

CERTIFICATE OF SERVICE

I certify that copies of NECNP Motion for an Immediate Stay of Obligation to Answer Motions for Summary Judgment and NECNP Motion for Deferral of Consideration of Motions for Summary Disposition or for Dismissal were served March 3, 1983 by first-class mail or as otherwise indicated, on the following:

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