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

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In the Matter of)
)
Public Service Company of)
New Hampshire, et al.)
)
(Seabrook Station, Units 1 & 2))
)
_____)

Docket No. 50-443 OL-1/444-OL-1
ON-SITE EMERGENCY
PLANNING & TECHNICAL
ISSUES

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S OPPOSITION
TO APPLICANTS' REQUEST FOR AN ORDER AS TO FUTURE ESTOPPEL
AND TO WESTINGHOUSE ELECTRIC CORPORATION'S
MOTION FOR AN EXTENSION OF TIME

I. INTRODUCTION

On February 10, 1988, the New England Coalition on Nuclear
Pollution ("NECNP") moved to compel Applicants' production of a
document¹ which Applicants asserted contained information "pro-
prietary" to Western Electric Corporation, and which they refused
to produce until NECNP agrees to an "appropriate protective
order". Applicants did not at any time even attempt to make the
requisite threshold showing of entitlement to a protective order,
as they are required to do under 10 C.F.R. §§ 2.740(c)(6) and

1 Applicants have identified this document in their response
to interrogatory 5g) as Villator, A.P., Jr., "Steam Generator
Tube Plugging Margin Analysis for the Seabrook Nos. 1 & 2 Nuclear
Power Plants", WCAP 10413, Westinghouse Nuclear Energy Systems,
Pittsburgh, Pa., November 1983.

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(f)(1). Westinghouse has stated that it is now in the process of preparing a non-proprietary version of the document as well as, under 10 C.F.R. § 2.790, an application to the Commission for protection of propriety information in the document. Applicants now seek to estop NECNP from seeking postponement in any summary disposition of the steam generator tube inspection contention without any resolution of outstanding discovery issues.

II. DISCUSSION

NECNP strongly opposes Applicants' Request for an Order as to Future Estoppel. Under NRC rules, NECNP is entitled to this document so that it can have full and complete discovery prior to any final resolution of the steam generator tubing inspection issue. NECNP is also entitled to the document without prior entry of a protective order unless Applicants first establish their entitlement to such an order.² While Applicants assert their willingness to provide NECNP with the document at issue under a protective order, without prejudice to any future public

² NECNP has set forth the law on entitlement to protective orders for trade secrets or other confidential research, development, or commercial information in its Motion to Compel Applicants to Respond to NECNP's Second Set of Interrogatories and Request for Production of Documents on NECNP Contention I.V. (February 10, 1988) (hereafter "NECNP Motion to Compel"). Applicants have not disagreed with NECNP's statement of the legal burdens for establishing the need for a protective order and have left it to Westinghouse to establish the "proprietary" nature of the document at issue.

use of the document by NECNP, Applicants' Request for an Order as to Future Estoppel is merely an attempt to evade their burden of proof of establishing that a protective order is indeed appropriate in this instance.

Regulation 10 C.F.R. § 2.740(f)(1) requires Applicants to seek a protective order from the Board before they can legitimately refuse to produce a document on grounds that it is objectionable. Applicants could have expeditiously resolved this discovery issue simply by making the showings required for a protective order under 10 C.F.R. §§ 2.740(c)(6) and (f)(1) simultaneously with the filing of their January 26, 1988 response to NECNP's Second Set of Interrogatories and Request for Production of Documents to Applicants on NECNP Contention I.V. NECNP would be disserving the public interest if it agreed to review the document under a protective order before such a showing was made. That interest requires public access to discovery absent a demonstration of confidentiality and harm to Westinghouse which outweighs the public interest in access.³

NECNP has no objection to Westinghouse's taking the addi-

³ See NECNP Motion to Compel at 3-5. Moreover, it may never prove necessary for NECNP or its experts to review Westinghouse's proprietary information, if that information is irrelevant to the case and can be segregated from a non-proprietary version. It is neither in NECNP's nor Westinghouse's interest for NECNP to become privy to trade secrets in which it has no interest.

tional time requested to gather information needed to establish entitlement to a protective order, provided that no dispositive motions on the steam generator tube contention are entertained. Summary disposition is premature and inappropriate unless and until all outstanding discovery issues are resolved. Moreover, the entry of a protective order at this time, without any prior determination of actual need, could result in the complete closure of the hearings, thereby violating the public's right to a hearing under UCS v. NRC, 735 F.2d 1437 (D.C. Cir. 1984).

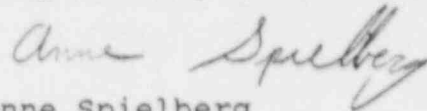
III. RELIEF REQUESTED

To facilitate resolution of these issues as well as to accommodate any legitimate entitlement to a protective order Westinghouse might have, NECNP proposes the following approach to this discovery issue.⁴ NECNP will review Westinghouse's non-proprietary version of the document, as well as the affidavits to be filed with the Commission setting forth the proprietary nature of the information sought to be withheld from public disclosure under 10 C.F.R. § 2.790, and evaluate whether NECNP will also need access to portions of the document which Westinghouse deems proprietary in order to proceed to summary disposition. If NECNP

⁴ Counsel for NECNP proposed this method of proceeding to counsel for Applicants. He refused, however, to agree to any procedure other than prior entry of a protective order.

determines that the allegedly "proprietary" information is necessary in order to proceed to summary disposition, a summary disposition motion cannot be entertained until Applicants and Westinghouse carry their burden of establishing entitlement to a protective order sufficient to overcome the public interest in public access to discovery. NECNP believes this method of proceeding will best serve all the interests at stake here. NECNP respectfully submits that whatever course the Board chooses, it must resolve this motion to compel in favor of allowing full and complete discovery before any disposition can be made of the steam generator tubing issue.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on March 3, 1988, copies of the foregoing pleading were served by first-class mail on all parties listed on the attached service list.



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