

March 18, 1988

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USNRC

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

'88 MAR 22 P2:18

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

OFFICE OF SECRETARY
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Docket Nos. 50-443 OL
50-444 OL
OFFSITE EMERGENCY
PLANNING ISSUES

JOINT INTERVENORS' MOTION FOR
EXTENSION OF HEARING SCHEDULE

I. Introduction

Intervenors New England Coalition on Nuclear Pollution, Seacoast Anti-Pollution League, Town of Hampton, and Town of Ameshury, (hereafter "Intervenors") respectfully request the Licensing Board to extend the schedule established in its February 17, 1988, order, for litigation of offsite emergency planning issues. Intervenors seek more time for the preparation of proposed findings on the New Hampshire Radiological Emergency Response Plan ("RERP") and contentions on the Seabrook Plan for the Massachusetts communities ("SPMC"). Earlier, the Licensing Board overruled Intervenors' oral objections to the February 17th schedule. Since that time, however, new circumstances and obligations have arisen which make an extension of the schedule all the more warranted. Intervenors therefore seek renewed consideration of the schedule.

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II. Factual Background

On February 3, 1988, the Licensing Board proposed a schedule for the litigation of offsite emergency planning at Seabrook. That schedule included a deadline of April 6 for proposed findings on the NHRERP on all issues except sheltering and May 6 for the filing of contentions on the SPMC. The Board also proposed a schedule for litigation of the sheltering issue, setting March 14 as the deadline for FEMA's evaluation of the New Hampshire response on sheltering, March 28 for prefiling testimony on sheltering, and April 18 for the commencement of hearings on sheltering on April 18.

Intervenors generally accepted the proposal while noting that supervening events, such as FEMA changing its position, might require changes. In response to an objection from the Applicants, however, the Board reduced the time for filing contentions on the SPMC by a month from May 6 to April 1, 1988. In apparent recognition of the resulting hardship to Intervenors, the Board also extended the hearing schedule on sheltering issues by approximately two weeks, calling for the prefiling of testimony on April 18 and the commencement of hearings on May 2, 1988.

The new schedule was set out in a Memorandum and Order dated February 17, 1988. The Board therein overruled oral objections to the schedule made by Intervenors during the February 10th hearing session. Intervenors petitioned for directed certification of the February 17 order, which the Appeal Board denied by

order of March 9, 1988 for failure to satisfy the standard for interlocutory review. However, the Appeal Board stated that its decision did not preclude intervenors from returning to the Licensing Board for scheduling relief.

III. ARGUMENT

Since the Board's order, a number of events have taken place which further reduce the time available to intervenors to prepare proposed findings on the New Hampshire RERP and contentions on the SPMC. They include the following:

1) Within the past week, FEMA has completely changed its position and the makeup of its witness panel on the adequacy of protective measures for the beach population. Intervenors have noticed the deposition of 9 FEMA witnesses and substantial document requests; those depositions are to take place over several days beginning on March 23rd. Through informal discussions with FEMA counsel, intervenors have also learned that FEMA may oppose some of these depositions; therefore, some time will probably be taken up in discovery disputes.

2) Intervenors have also received a substantial amount of new information relating to the SPMC, which must be reviewed and assimilated into contentions. Significant portions of the SPMC were redacted from the plan, and were not provided to the intervenors until February 24, 1988. Intervenors have also received three supplements to the SPMC, which were served on February 18, 22, and 23, 1988. These supplements, which total hundreds of pages, substantially modify the SPMC.

3) On March 1, Intervenors were required to file briefs before the U.S. Court of Appeals for the First Circuit, in their appeal of the NRC's emergency planning rule amendments that affect the Seabrook litigation. This appeal, which is pivotal to the outcome of the Seabrook licensing case, required extensive legal research and review of an enormous factual record. Reply briefs are due on April 14. At the end of February and beginning of March, Intervenors also prepared comments on the joint FEMA/NRC criteria for implementation of the new rule.

4) At the invitation of the Appeal Board, on February 23, Massachusetts filed a supplemental brief concerning Applicants' financial qualifications to operate the Seabrook plant, in light of Public Service Company's bankruptcy filing.

5) In the onsite technical phase of the hearings, NECNP has a deadline of March 22 for filing with the Appeal Board its response to the Licensing Board's decision regarding the environmental qualification of RG-58 coaxial cable. By April 8, NECNP must also brief its appeal of the Licensing Board's recent decision to re-issue a license for low power operation.

6) NECNP is in the active pre-trial phase for the hearings on the safety issues remanded by the Appeal Board. This has required substantial time to be devoted to consultation with experts, discovery disputes on both issues as well as extensive briefing on the scope of the issue regarding corrosion of piping at Seabrook (now pending a decision on NECNP's Motion for Reconsideration).

The record shows that since the Board's order was issued in mid-February, the Intervenors have been faced with major filing deadlines and/or discovery obligations virtually every week. There has been almost no opportunity for the time-consuming process of reviewing the hearing record and the SPMC and preparing proposed findings and contentions.¹ The proposed findings and contentions are not only due within one week of each other, but during the same week, NECNP must file a brief appealing the low power license.

A litigation schedule may not be so compressed in time as to deprive parties of a fair opportunity to be heard. Such a schedule violates the procedural due process requirement of fundamental fairness. See Public Service Co. of New Hampshire, ALAB-864, 25 NRC 417, 421 (1987). This schedule, unless modified, requires so many different tasks of great importance to be completed at the same time as to make it impossible for the Intervenors to meet their obligations to their clients to perform the tasks in a competent and complete fashion. Having come so far with this case, it would be a violation of due process if Intervenors were denied an opportunity to prepare full findings or to identify the issues of importance for the Massachusetts plans. Given the many

1 It should be noted that significant revisions to the SPMC, along with protected information, were not received until the third week of February. There has been little time since then to review the thousands of new pages of data that have arrived.

other obligations that have been imposed in the Seabrook licensing case and related litigation since the Board's February 17 order was issued, Intervenors have been able to accomplish little more than a cursory review of the vast hearing transcript or the SPMC. They cannot possibly hope to meet the filing deadlines for the NHRERP proposed findings and the SPMC contentions in any meaningful way. Therefore, Intervenors propose that the April 1 deadline for filing SPMC contentions be extended until April 6, and the April 6 deadline for proposed findings be extended until May 6.² This extension would allow Intervenors the minimum time required to focus intelligent attention on each issue and develop findings that will be adequate to protect their interests and to provide some help to the Board in resolving this litigation.

Intervenors are aware that the Board expects them to adhere to the lead intervenor process as they have throughout this proceeding. Intervenors do intend to do so. Even so, the preparation of findings is an enormous task, considering the many pages of testimony devoted to the issues and the considerable overlap

2 The Board's proposed schedule of February 3 set April 6 as the deadline for proposed findings on the NHRERP, and May 6 as the deadline for filing of contentions on the SPMC. However, in light of Applicants' expressed wish to expedite the litigation of the Massachusetts plan [Tr. at 9756-57], we have inverted that proposal to put the filing of contentions before the filing of proposed findings. Moreover, the extension of the deadline for proposed findings on the NHRERP will not delay the overall litigation of the New Hampshire plans in any way, due to the fact that litigation of the sheltering issue is still underway.

between them. Also, all intervenors have a great interest in the SPMC and our obligation to our clients requires us to do a thorough job in reviewing the plans and advising them with regard to the issues that should be pursued.

Counsel for the Applicants and the Commonwealth of Massachusetts assent to this motion. Counsel for the NRC Staff assents on the deadline for Staff findings will be adjusted accordingly.

Respectfully submitted,

Diane Curran (HAW)

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March 18, 1988

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served on all parties this 18th day of March 1988 by first-class mail or overnight mail as indicated on the enclosed service list.

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Ellyn R. Weiss

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