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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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Before Administrative Judges:
Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Jerry Harbour

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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
(ASLBP No. 82-471-02-OL)
(Offsite Emergency Planning)
February 3, 1988

MEMORANDUM AND ORDER
SETTING AND PROPOSING SCHEDULE MILESTONES

During telephone conferences among the parties and the Licensing Board on January 27 and 28, 1988, the Board granted the NRC Staff's motion to defer the evidentiary hearing on sheltering issues, considered proposals for scheduling the hearing on the balance of the New Hampshire Radiological Emergency Response Plan (NHRERP), and considered a schedule for beginning the litigation of the emergency plan for the Massachusetts communities.

As a consequence there are now three separate tracks for litigating Seabrook offsite emergency planning issues. In the schedule set or proposed below, the NHRERP, without sheltering issues, is the subject of the "Main Track." The "Sheltering Track" describes itself. The "SPMC Track" relates to the litigation of the Seabrook Plan for the Massachusetts Communities.

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Most of the milestones listed below were agreed upon by the parties or set by the Board following thorough discussions with the parties. Milestones indicated by asterisks (*), in contrast, are somewhat softer and are regarded by the Board as proposals open to further discussion.

The schedules are parallel in that the parties may be required to attend to more than one track at a time. For example, parties will be required to work on proposed findings and conclusions on the Main Track during the same period that FEMA's evaluation of New Hampshire's response to FEMA's concerns on the sheltering issue is being considered. However, the Board does not believe that this presents any undue burden. The Main Track issues have been heard in discrete segments since October 5, 1987; there have been generous gaps between hearing weeks; and specific responsibility for all issues has been allocated among lead intervenors from the very beginning. The Board expects that the parties will adhere to the lead-intervenor approach through the filing of proposed findings. In addition, the schedule for the Main Track affords to the intervenors eight weeks after the close of the record for filing proposed findings compared to the forty days anticipated by 10 C.F.R. § 2.754.¹

¹ To provide even greater flexibility to the intervenors, the Board has shortened the time available to the Applicants for filing proposed findings. Counsel for Applicants agrees to a shorter period. Tr. 9118 (Dignan). The time for filing proposed findings is counted on the assumption that the record of the Main Track closes on February 12. We expect to adhere to that timing even
(Footnote Continued)

The Sheltering Track continues into the SPMC Track. The plan for the Massachusetts communities, except for redacted information concerning service agreements, was filed in September 1987. The Board expects to make an early ruling on whether the redacted information will be subject to a protective order, but, in any event, the redacted information will be in the hands of the intervenors with or without a protective order long before contentions are due. The Massachusetts Attorney General and counsel for NECNP argue that the litigation clock on the Massachusetts plan should not run until the redacted information is released. We find no reason for such a delay.

The Board designates the Massachusetts Attorney General as the lead intervenor on the plan for the Massachusetts communities. As has been the practice, other intervenors may take the lead on subissues on the SPMC where their respective interests cannot be served by the Massachusetts Attorney General.

Miscellaneous Matters

Although the schedule below establishes a traditional sequence for the filing of proposed findings and conclusions, the Board has additional requirements not apparent on the schedule. The Applicants shall, at their earliest convenience, propose to the other parties a

(Footnote Continued)

though a clean-up session, reserved for the week of February 22, may be required.

stipulation for proposed findings of fact on all uncontroverted matters on the Main Track, for example, the procedural background, so that the Board may adopt a stipulation as its own without delay. The Board will also require the parties to agree upon a common organization for their respective proposed findings and conclusions so that the Board may easily and reliably locate each party's position on a particular issue. This too will be Applicants' lead. Those parties with the capability to do so are required to file their proposed findings in electronic format so that the Board may readily adopt proposed findings with which it agrees. These and other matters pertaining to proposed findings will be discussed at the evidentiary hearing during the week of February 8.

The schedule for the Sheltering Track calls for the filing of "hypothetical testimony" by the NRC Staff on February 22. The Board recognizes that the Staff has agreed to file such testimony as an accommodation to the Board so that a prehearing schedule can be set and discovery problems avoided. Tr. 9113 (Turk). The Staff has not yet decided whether it intends to present testimony on the sheltering issue.

In the event that the Board rules that the information redacted from the plan for the Massachusetts communities should be released under a protective order and agreement, the Applicants will have the responsibility of proposing the terms of the order and agreement. To save time, if Applicants choose, they may seek in advance the approval of the other parties as to the form of any such order and agreement. By agreeing to a possible format, the parties opposing any protective order would not be deemed to be abandoning their opposition.

The transcript of a dialogue between Judge Smith and Mr. Flynn, counsel for FEMA, needs to be corrected. On page 9106, line 23, the words "even though" should be inserted in place of the word "because," and the word "not" should be inserted between "does" and "provide." The corrected version now reads:

JUDGE SMITH: Mr. Flynn, let me ask you some questions about your testimony to see if I can enhance my understanding of it.

As I understand it now, you do not categorically rule out finding a plan adequate [because] even though it does not provide for sheltering.

MR. FLYNN: That's correct.

Tr. 9106.

SCHEDULING MILESTONES

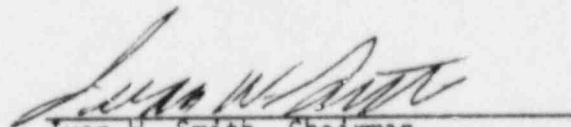
<u>Date</u>	<u>Event</u>	<u>Track</u>
2/5/88	FOIA determination by NRC	SPMC
2/8/88	Hearings begin - rebuttal	Main
2/11/88	New Hampshire response to FEMA supplemental position	Sheltering
2/12/88	Record closed, except for sheltering	Main
2/16/88	Massachusetts brief on redacted information	SPMC
2/22/88	Possible hearing to finish rebuttal	Main
2/22/88	Staff hypothetical testimony on sheltering	Sheltering
2/23/88	Applicants brief on redacted information	SPMC
2/24/88	Discovery requests, if any, on sheltering	Sheltering
2/26/88	Staff brief on redacted information	SPMC
3/1/88	Board ruling on protective order for redacted information	SPMC

3/9/88	Applicants proposed findings, except sheltering	Main
3/14/88	FEMA evaluation of New Hampshire response on sheltering	Sheltering
3/28/88	Prefiled sheltering testimony	Sheltering
4/6/88	Intervenors proposed findings, except sheltering	Main
4/18/88 *	Evidentiary hearing on sheltering begins	Sheltering
4/18/88	Staff proposed findings, except sheltering	Main
4/26/88	Applicants response to proposed findings	Main
5/2/88 *	Record closed on sheltering	Sheltering
5/6/88 *	Contentions due on SPMC	SPMC

* Proposed milestone

Another version of the foregoing schedule, organized according to tracks, is attached for the convenience of the parties.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

February 3, 1988

ATTACHMENT: Seabrook Proceeding Schedule

SEABROOK PROCEEDING SCHEDULE
OFF SITE EMERGENCY PLANNING

MAIN TRACK	SHELTERING TRACK	SPMC TRACK (Seabrook Plan for Mass. Communities)
		02/05/88 FOIA DETERMINATION BY NRC
02/08/88 1 WK HRGS-REBUTTAL		
	02/11/88 NH RESPONSE TO FEMA POS	
02/12/88 RECORD CLOSED EXC SHEL		
		02/16/88 MASS BRIEF/REDACTED INFO
02/22/88 POSS HRGS/FINISH REBUTTAL		
	02/22/88 STAFF-HYPOTHET. POSITION	
		02/23/88 APPPL BRIEF/REDACTED INFO
	02/24/88 DISCOVERY REQUESTS, IF ANY	
		02/26/88 STAFF BRIEF/REDACTED INFO
		03/01/88 80 RULE ON PROTECT ORDER
03/09/88 APPL PROP FDGS EX SHEL		
	03/14/88 FEMA EVAL OF NH SHEL POS	
	03/28/88 PREFILED SHEL TESTIMONY	
04/06/88 INTERV PROP FDGS EX SHEL		
	04/18/88 1ST WK HEARING ON SHEL	
04/18/88 STAFF PROP FDGS EX SHEL		
04/26/88 APPL RESP PROP FDGS/MAIN		
	05/02/88 CLOSE RECORD: SHELTERING	
		05/06/88 CONTENTIONS DUE ON SPMC