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July 13, 1988

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

'88 JUL 15 P5:50

In the Matter of)

Public Service Company of)
New Hampshire, et al.)

(Seabrook Station, Units 1 & 2))

Docket Nos. 50-443 OL
50-444 OL

OFFSITE EMERGENCY
PLANNING

INTERVENORS' JOINT RESPONSE TO
APPLICANTS' MOTION FOR SCHEDULE

Intervenors New England Coalition on Nuclear Pollution, Seacoast Anti-Pollution League, Town of Hampton, Town of Amesbury, Town of Kensington, and Commonwealth of Massachusetts (hereafter "Intervenors") hereby respond to Applicants' "Motion for Schedule," dated July 1, 1988. The motion, which proposes a schedule for the litigation of the Seabrook Plan for the Massachusetts Communities ("SPMC") and the Graded Exercise ("GE") that took place in the last week of June, should be rejected because it is premature.

At this point in time, there is no basis for establishing even tentative time frames for the litigation of the SPMC and the GE, let alone a full schedule. The Licensing Board now has before it hundreds of contentions on the SPMC. Only after the Board issues its decision on the admissibility of those contentions will the parties have any idea of the scope or factual complexity of the issues to be litigated, and hence the time needed for case preparation. It is simply absurd to set schedules for discovery and a hearing before the Board and the parties know the

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size of the case that is to be litigated. Intervenor request that the Board offer all parties an opportunity to propose a schedule for the litigation of the SPMC after it has issued a prehearing conference order on the admissibility of contentions, so that the parties may make informed judgments on their scheduling needs.

Similarly, there is as yet no basis for setting a litigation schedule for the GE. Intervenor have no idea how much time will be needed for the first step of the litigation, preparation of contentions, because the documents needed for that task -- FEMA's final report on the exercise and the controller messages issued by the utility and the state of New Hampshire -- have not been provided. Intervenor have no idea how long it will take to review those documents¹ and to piece together the events of the exercise by comparison of controller messages, participant logs, and the FEMA report. Moreover, before contentions are filed and ruled on, there is no way to determine how much time will be needed for discovery, summary disposition motions, or preparation of testimony.

¹ We note that at the post-exercise public meeting, a FEMA official stated that controller messages, which describe the events of the accident and the utility's responses thereto, constituted as many as eight volumes of written material. While these critical documents have purportedly been sent to the NRC's Public Document Room, they have not arrived there at this writing; nor have they been sent to the parties.

While Intervenor consider that establishment of a schedule for litigation of either the SPMC or the GE is of no utility to the Board or the parties at this point in the litigation, we believe it is important to address a number of general problems raised by Applicants' proposal that are likely to be relevant later in the litigation.

First, the Applicants' proposed schedule omits the special prehearing conference that is provided for by 10 CFR § 2.751a and to which the Licensing Board had appeared to commit itself. Section 2.751a contemplates that the Licensing Board will hold prehearing conferences at the outset of a hearing in order to take additional steps to identify key issues, to consider all petitions to intervene, and to establish a schedule for the proceeding. While such a prehearing conference is technically required only at the outset of a licensing case, the Board should exercise its discretion to hold such a conference with respect to the commencement of litigation of the SPMC. Here the Board has opened a major new segment of the operating license case and is entertaining petitions to intervene from a number of parties who were not previously involved. Moreover, given the novelty and complexity of the issues involved, and the fact that this litigation involves the application, for the first time, of a new and controversial rule, a special prehearing conference is highly warranted. Given the large number of overlapping contentions in this proceeding, efficiency would also be greatly served by con-

vening the parties in order to consolidate and/or streamline contentions.

In fact, the Board indicated to the parties that it contemplated holding a special prehearing conference in mid-July in order to address the admissibility of the SPMC contentions. As stated in a letter to the Board dated July 7, 1988, the Massachusetts Attorney General's office drafted its reply to Applicants' and the NRC Staff's responses to its SPMC contentions in specific reliance on the Board's stated intention. They also notified other intervenors to expect a pre-hearing conference in mid-July.

A second defect in the proposed schedule is that the provision for only 30 days of discovery is based on the erroneous assertion that this is "plenty" because "the intervenors were permitted to observe the exercise, and the FEMA report will have amounted to complete discovery on the exercise." As demonstrated in the attached letters to Applicants from SAPL and the Commonwealth of Massachusetts, Intervenors were completely blocked from observing the Applicants' Emergency Operations Facility; and were obstructed in their efforts to observe at a number of other exercise sites.

Moreover, release of a FEMA report hardly amounts to complete discovery on the exercise. Discovery documents would also include voluminous logs and reports prepared by Applicants, FEMA, and the State of New Hampshire. It should be noted that while the State of New Hampshire has agreed to grant Intervenors access

to its logs, reports, and other exercise-related documents within two weeks after the exercise, Applicants have refused to provide full access to its own relevant documents until the issuance of a discovery order. Thus, they can hardly be heard to argue that discovery will be "complete" by the time the FEMA report is issued.

Finally, even for a relatively simple proceeding -- which this clearly is not -- the overall scope of the hearing schedule proposed by Applicants is so compressed as to deny Intervenors a meaningful opportunity to present their case. The schedule contains no allowance for a prehearing conference following the close of discovery under 10 CFR § 2.752; nor does it provide time to resolve discovery disputes. Virtually no time is allowed to review discovery answers before summary disposition motions must be filed. Similarly, the schedule provides only two weeks after summary disposition rulings for preparation of testimony on those issues that will go to trial. This type of hearing schedule is precisely the kind that was rejected by the Appeal Board in Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-864, 25 NRC 417 (1987), as violative of the Intervenors' due process rights.

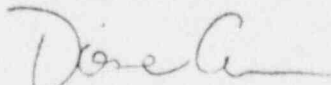
CONCLUSION

The schedule proposed by Applicants is not only premature; but by any standards it is too compressed to guarantee Intervenors a meaningful opportunity to participate in the offsite

emergency planning proceeding for Seabrook. Intervenor request that the Board reject Applicants' motion and instead take the following actions:

- 1) hold a prehearing conference to discuss petitions to intervene, the admissibility of contentions on the SPMC, and the nature of hearings on the General Exercise;
- 2) wait to establish a hearing schedule for the SPMC until after it has issued its ruling on admissibility of contentions and taken comments from the parties on what the schedule for litigation of the SPMC should be.
- 3) set a schedule for filing of contentions on the emergency planning exercise which commences with the issuance of FEMA's final exercise report and the time frame of which is based on the volume of documents that must be reviewed in order to prepare contentions;
- 4) wait to establish a hearing schedule for the exercise until after it has issued its ruling on admissibility of contentions and taken comments from the parties on what the schedule for litigation of the exercise should be.

Respectfully submitted,



Diane Curran
HARMON & WEISS
2001 "S" Street N.W. Suite 430
Washington, D.C. 20009
(202) 328-3500

on behalf of Intervenor New
England Coalition on Nuclear
Pollution, Seacoast Anti-
Pollution League, Town of
Hampton, Town of Amesbury,
Town of Kensington, and Com-
monwealth of Massachusetts

July 13, 1988

CERTIFICATE OF SERVICE

I certify that on July 13, 1988, copies of the foregoing
pleading were served by hand, overnight mail, or first-class mail
on all parties to this proceeding, as designated on the attached
service list.


Diane Curran



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. MCCORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698

JAMES M. SHANNON
ATTORNEY GENERAL

July 1, 1988

Kathryn Selleck, Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Dear Ms. Selleck:

This letter documents the extent to which your promise of fair access to the Salem Staging Area for purposes of observation during the June 28 and 29, 1988 exercise was not honored.

As you know, you and Allan Fierce reached an agreement that whatever access was given to Massachusetts Attorney General participants in the exercise upon arrival at each of the various facilities would not be withdrawn arbitrarily. I arrived at the Salem Staging Area with an investigator from my office, Maureen Mangan, at approximately 7:30 a.m. We were accompanied into the facility at 7:50 a.m. with our escort, Peter Kearns, one of New Hampshire Yankee's attorneys from Sheehan, Phinney in Portsmouth. Mr. Kearns and the individual who greeted us at the facility (his first name is Dick, I do not remember his last name) told Ms. Mangan and me that we were given full access to the briefing rooms, the special vehicles room, the liaison room, and the staging area leaders' room. The only limitation was that should a full briefing take place in the staging area leaders' room, and the room became crowded with people, we would be asked to leave and observe from outside. I accepted that arrangement as fair and reasonable.

At approximately 9:20 a.m., I entered the staging area leaders' room and observed a discussion between Mr. Michaels, the New Hampshire Yankee controller, and two FEMA evaluators. The discussion centered around a bus evacuation and traffic control point problem which, judging from Mr. Michaels' reaction, was unanticipated by your client. As instructed, I did not ask questions; did not obstruct movement; and I merely observed and took notes on the conversation.

One-half hour later, Mr. Kearns informed me that Mr. Michaels had restricted my access to outside of the leaders' room. He gave no reason but promised to open the windows in the office. Shortly thereafter, two windows to the office, which had earlier been closed, were cracked open by two inches. After I complained that this action hardly amounted to an accommodation, the windows were opened further. Nevertheless, I could not hear any conversations in the staging area leaders' room (mostly because of the hushed tones used whenever I was in the vicinity) either from outside of the open windows or from the doorway. In any event, by noon one window and then the other one were again closed.

Early in the morning, I had introduced myself to Mr. Tanzman, the lead FEMA evaluator. At his own initiative, he later gathered his four onsite evaluators and introduced them to me and to Ms. Mangan. He told me that he would be happy to answer any questions I had, to the extent time permitted, but would prefer that I directed them at him rather than at his evaluators. Shortly thereafter, Mr. Kearns informed me that notwithstanding Mr. Tanzman's offer, I was not permitted to ask questions of anyone.

At 3:30 p.m., three observers from the NRC entered the facility and were permitted unrestricted access to the staging area leaders' room. Given the reason for limiting my access to that room, namely that it was too crowded and my presence would obstruct the views of the boards, I do not understand why NRC observers were permitted in that room. Moreover, at no point during the day was the room so crowded as to render my presence obstructive.

At 3:45 p.m., while I was observing activities within the special vehicle room, Mr. Kearns again came in and informed me that I was being asked to stay out of that room as well as the liaison room. At 4:15 p.m., Mr. Kearns informed me that Mr. Badger had restricted my access to the hallways and that I was not to enter any of the briefing rooms. No reason was given.

At 4:30 p.m., while I was observing activities within the staging area leaders' room through the windows, the assistant staging area leader instructed a member of his administrative staff to move the information table underneath the windows so as to prevent me from viewing from that location as well.

Kathryn Selleck, Esq.
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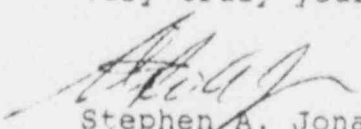
At approximately 4:40 p.m., Mr. Kearns informed me that I would be permitted in the briefing rooms but not in the liaison or special vehicles room. He told me it was Mr. Badger's feeling that those rooms were too crowded. In fact, the special vehicles room was nearly empty for the vast majority of the afternoon and the liaison room was large enough to accommodate several observers, although few actually went through that room.

As you know, through the course of the day I attempted to remove these unreasonable restrictions on my access by having other members of our team contact you. Either you did nothing to instruct the staging area personnel to abide by your original agreement or your efforts were completely ineffectual. In either event, the conduct of New Hampshire Yankee employees toward Ms. Mangan and myself was reprehensible.

Unfortunately, that conduct did not abate but rather worsened during the second day of the exercise when Pamela Talbot took my place at the Staging Area. She was not permitted even near the special vehicles room or liaison room; the remaining observation spot into the staging area leaders room -- the windows -- was removed; and the briefing rooms were accessible only if Ms. Talbot and Ms. Mangan remained in the back of the rooms, often out of hearing range. Once again, New Hampshire Yankee representatives used the excuse that too many people would be in those rooms to permit us access. However, they were near empty for the entire day. Particularly inexcusable is the fact that several of your client's employees were rude to Ms. Talbot and Ms. Mangan.

The agreement on access reached between you and the intervenors was premised on the notion that we should and would be given meaningful opportunities to observe all facets of the exercise. At all times during the course of the two days, Ms. Mangan, Ms. Talbot and I abided by the rules set forth in the agreement. On the other hand, you, or at least your clients, did most everything possible to interfere with our observations. The result was not only a breach of the agreement but also our constructive removal from the facility.

Very truly yours,


Stephen A. Jonas
Deputy Chief
Public Protection Bureau
(617) 727-4878

SAJ:bm

RECEIVED JUL 8 1988

SEACOAST ANTI-POLLUTION LEAGUE
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July 6, 1988

Kathryn A. Selleck, Esquire
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Geoffrey M. Huntington, Esquire
Assistant Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301

Dear Ms. Selleck and Mr. Huntington:

This is to record SAPL's concerns as regards the treatment accorded to intervenor observers on the date of the graded exercise of the radiological emergency response plans for Seabrook Station. SAPL does not believe that there was a full and fair opportunity to observe the exercise and notes the following:

1. Shortly before the exercise, it was stated that no intervenor observer was to be given access to the EOF portion of the emergency response facility at Newington Station, blocking a key area of the emergency response effort from any review.
2. On the day of the exercise, intervenor observers who reported to the Omne Mall Staging Area were barred from being in the Mobil Unit from which the response at that location was directed. This made it impossible for them both to see the status boards and to hear the conversations of the emergency response workers in the unit.
3. The intervenor observer who reported to Exeter Hospital to observe the response there was told to stay in a hallway where nothing could be seen or heard. That situation was never corrected and the observer left.

Kathryn A. Selleck, Esquire
Geoffrey M. Huntington, Esquire
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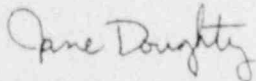
4. The intervenor observers who reported to the Dover High School Reception/Decontamination Center were barred entry to the rooms where things could be observed for a period of time and were able only to see a portion of the Reception center from the hallway where they were told to stand during that time. That situation did ultimately get corrected, though it took some time.

SAPL believes that these problems of access were detrimental to the overall intervenor effort to track the progress of the exercise and to evaluate the performance of personnel in important areas.

SAPL would ask that all documents from the graded exercise be made available within two weeks for review by intervenors. SAPL understands and appreciates that the State of New Hampshire has already expressed a willingness to provide all documents in that time frame.

SAPL holds that Applicants should do likewise, especially in view of the "Applicants Motion for Schedule" filed in this proceeding on July 1 which requests a very constricted schedule for litigation of graded exercise issues.

Sincerely,



Jane Doughty
Field Director
SAPL

JD:jsr

cc: Allan Fierce /
Diane Curran /
Matt Brock

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** By Overnight Mail

* By Hand Delivery