

insofar as concerns provision for the sheltering of the beach population within the New Hampshire portion of the Seabrook plume exposure pathway emergency planning zone in the event of a nuclear emergency at the facility.

Our preliminary examination of the directed certification motion led to the entry of an order calling for the filing of full responses to the motion in sufficient time to be received by us by 4:00 pm next Monday, May 2.¹ The order went on to direct the total suspension, pending our further order, of the evidentiary hearing on the beach sheltering issue that had been scheduled by the Licensing Board to commence on that date.

At the applicants' request, we conducted a telephone conference yesterday afternoon for the purpose of entertaining their oral motion for reconsideration of the suspension of the evidentiary hearing. In addition to applicants' counsel, the participants in the conference were counsel for two of the intervenors and NRC staff counsel.²

¹ The order was entered on April 26 but its text was read to counsel the prior day.

² The motion was filed on behalf of the intervenors by counsel for the New England Coalition on Nuclear Pollution. Because of her unavailability to take part in the conference, we allowed the intervenors to designate counsel for two of the other intervenors to participate in her stead.

In directing the suspension, we had proceeded on the assumption that, from its outset, the hearing would focus upon the current FEMA position on the beach sheltering issue.³ We learned early in the conference that that assumption was unjustified. In actuality, before any witnesses take the stand on FEMA's behalf, the applicants -- and we understand certain intervenors as well -- are slated to put on their own witnesses in support of their independently developed positions respecting the adequacy of the New Hampshire plan from the standpoint of beach sheltering arrangements.

In light of the foregoing, applicants' counsel maintained that the evidentiary hearing could appropriately go forward on all but the FEMA testimony prior to our decision on the pending directed certification motion. While intervenors' counsel disputed that assertion, they did not provide any persuasive reason why real prejudice to their clients' interests might result from a partial lifting of the suspension. In this connection, we were asked by counsel to take into account the possibility that, were the intervenors to prevail on their motion for directed

³ Nothing in the directed certification motion countered this assumption, which was founded on the fact that a rebuttable presumption of correctness attaches to FEMA findings on the adequacy of state and local emergency response plans. See 10 CFR 50.47(a)(2).

certification, the resultant further discovery accorded them would lead to new lines of germane inquiry of one or more applicants' witnesses who had already finished testifying. We saw, however, no need to speculate on the likelihood that that contingency might materialize. For, as applicants' counsel explicitly represented, should that situation arise the witness or witnesses in question would be made available for additional cross-examination.

For the above reasons, as well as because of the unchallenged representation of applicants' counsel that satisfactory hearing space is not readily obtainable in New Hampshire, we decided to lift in part the suspension of the now-scheduled evidentiary hearing. That hearing may go forward but it is not to include, pending our further order following disposition of the directed certification motion, the receipt of evidence from witnesses on behalf of FEMA.

The parties were notified of this result by the Secretary to this Board shortly after the conclusion of the telephone conference. They were also informed that our action was without prejudice to the entitlement of each party to seek such additional relief from the Licensing Board with respect to the upcoming evidentiary hearing as might be thought warranted.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board