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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
PUBLIC SERVICE COMPANY OF)	Docket Nos. 50-443 OL-2
NEW HAMPSHIRE, <u>et al.</u>)	50-444 OL-2
)	
(Seabrook Station, Units 1 and 2))	

NRC STAFF'S RESPONSE TO OBJECTIONS FILED BY
TOWNS OF RYE, HAMPTON AND HAMPTON FALLS, AND
BY THE SEACOAST ANTI-POLLUTION LEAGUE AND THE
NEW ENGLAND COALITION ON NUCLEAR POLLUTION

On January 17, 1986, the Licensing Board issued a Memorandum and Order ("Order") in which it invited the filing of new contentions based upon the revised offsite emergency plans submitted by the State of New Hampshire, ^{1/} and established a "Schedule for Offsite Emergency Planning Contentions -- New Hampshire Plans." Therein, the Licensing Board noted that the filing of new contentions addressing the revised plans "would provide for all parties a fairer opportunity for full participation in these proceedings," and would avoid "any difficulties arising from a comparison of an original draft against the latest draft of the plans." Pursuant to the Board's schedule, contentions addressing the revised

1/ The New Hampshire plans were transmitted to the Licensing Board and parties on January 10, 1986. These included three of the six volumes comprising the New Hampshire State plan applicable to the Seabrook plant, 17 local town plans, and six New Hampshire host community plans. See letter to the Licensing Board from Robert G. Perlis, dated January 10, 1986.

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plans are due to be filed by February 24, 1986. ^{2/} Various objections and requests for modifications of the dates established by the Board's schedule were subsequently filed by or on behalf of the Towns of Rye, ^{3/} Hampton ^{4/} and Hampton Falls, ^{5/} and by the Seacoast Anti-Pollution League ("SAPL") ^{6/} and the New England Coalition on Nuclear Pollution ("NECNP"). ^{7/} For the reasons set forth below, the NRC Staff ("Staff") opposes these objections and requests for schedular modification, and recommends that they be denied.

DISCUSSION

On January 14, 1986, following the Staff's transmittal of the revised New Hampshire plans to the Board and parties, the Applicants

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- ^{2/} In the Board's schedule, the dates for events following the filing of contentions were set in accordance with the time frames established in the Licensing Board's Order of May 23, 1983.
- ^{3/} "Objection to Motion for the Establishment of a Schedule" ("Rye Objection"), dated January 22, 1986.
- ^{4/} Letter to Licensing Board Chairperson Helen F. Hoyt, from Rockingham District #17 Representatives Parr, Hollingworth, Walker, and Pevear, New Hampshire House of Representatives ("Hampton Objection"), dated January 23, 1986. This letter purportedly was filed on behalf of both the Town of Hampton and the Town of Hampton Falls.
- ^{5/} "Hampton Falls Joinder and Objection" (Hampton Falls Objection"), dated January 24, 1986. In addition, as noted in n. 4, supra, four New Hampshire State Representatives filed objections on behalf of both Hampton and Hampton Falls.
- ^{6/} Letter to the Licensing Board from Robert A. Backus, dated January 24, 1986 ("SAPL Objection").
- ^{7/} "New England Coalition on Nuclear Pollution's Objection to Board Order of January 17, 1986 and Motion for Reconsideration" ("NECNP Objection"), dated January 31, 1986.

filed a "Motion for the Establishment of a Schedule" (Applicants' Motion). Therein, the Applicants requested the Board to order that contentions addressing the revised plans be filed by February 24, 1986, that responses to the contentions be filed by Applicants and Staff by March 14 and March 21, 1986, respectively, and that a prehearing conference be scheduled for April 1-2, 1986. The Licensing Board noted that it had received the Applicants' Motion while it was preparing its Order, and that it had provided an opportunity for New Hampshire, Massachusetts, SAPL and NECNP to respond by telephone; however, the Board noted that its schedule "had been predetermined" and "nothing submitted by any party has altered the Board's schedule" (Order, at 2 n.2).

In effect, the schedule established by the Board requires the filing of contentions some 45 days after the Staff transmitted the New Hampshire plans to the parties, or some 40 days after the parties should have received the plans. While the date established by the Board for filing contentions is consistent with the date which had been proposed by the Applicants, ^{8/} the other dates established by the Board -- including the dates for filing responses by the Applicants and Staff -- are more compressed than those which the Applicants had proposed. While the Staff recognizes that the New Hampshire plans are voluminous, we believe that

^{8/} The Licensing Board's Order also is consistent with the Applicants' suggestion that new contentions be filed which would supplant all previously filed offsite contentions (Applicants' Motion, at 2-3). Like the Board and Applicants, the Staff believes that this approach is appropriate and will serve to eliminate unnecessary confusion in the offsite emergency planning phase of this proceeding. None of Towns or parties who filed objections have opposed this aspect of the Licensing Board's Order.

the dates established by the Board are reasonable, particularly in view of the fact that earlier versions of the New Hampshire plans have previously been made available to the parties, and all parties have been aware that revisions to the New Hampshire plan were in preparation. As set forth in the following discussion of each Town/party's objections, none of the various objections and requests for schedular modification demonstrate that sufficient cause exists for the Licensing Board to modify the schedule established by its Order of January 17, 1986.

1. Town of Rye's Objections.

In its filing, the Town of Rye complained that since May 1983, the Applicants have failed to engage in "any substantive communications" with it concerning any emergency plan for the Town, despite the Applicants' purported knowledge that the plans which previously had been submitted for the Town were unsatisfactory. In addition, the Town complains that the New Hampshire Civil Defense Agency submitted a plan for it, without prior consultation with or approval by the Town, and that this plan is now pending for review by FEMA and the Licensing Board. Rye states that "emergency evacuation planning" will significantly affect its residents, and it asserts that "both review of any such plans through the local hearing process and approval of the same through official Town Meeting vote are mandated" (Rye Objection, at 3). Accordingly, the Town requests (a) that the Applicants' Motion be denied, (b) that the Town be given, "as a minimum," until May 1, 1986, "to review the plan proposed for it, to obtain professional evaluation, to hold a Public Hearing, and

to file any contentions it might have"; and (c) that the Town be given "sufficient time to present any final plan for Town Meeting vote" (Id.).

These assertions do not demonstrate sufficient cause to require the Board to modify its schedule. As to the Applicants' Motion, while the parties normally would have been entitled to respond to Applicants' Motion, the Board has indicated that it had commenced preparation of its Order before receiving the Applicants' Motion. Thus, the Board's Order does not directly address Applicants' Motion, and responses to that Motion were not required before the Board issued its Order. Moreover, the Board's Order effectively establishes the schedule to be followed in this proceeding; to the extent that the Town objects to the schedule set forth in Applicants' Motion, those objections are moot. Nor are the Town's other objections sufficient. The Town certainly has been aware that the State was preparing the emergency plan which has now been submitted for it, and no reason has been stated as to why the Town did not work with the State in developing that plan or attempt to comment upon the plan before it was submitted to FEMA. Further, regardless of the merits presented by the suggestion that local hearings be conducted on the adequacy of the Town's plan, the Town has not provided any reason as to why the Town cannot submit its own views as to any inadequacies in the plan, in advance of conducting local hearings and holding a town vote. Finally, no facts have been offered which would support the assertion that the Town needs "at least" until May 1, 1986, to file contentions, and such an open-ended request should be denied as inconsistent with the Commission's long-standing policy that adjudicatory proceedings be conducted without unnecessary delay.

2. Town of Hampton Falls.

The Town of Hampton Falls has joined in the objections filed by the Town of Rye (See Hampton Falls Objection), and the Staff's response to the objections filed by the Town of Rye apply as well to Hampton Falls' objections. Additional objections are contained in the State Representatives' letter, submitted on behalf of the Towns of Hampton and Hampton Falls. Therein, the Representatives assert that the date established for the filing of contentions "is creating a hardship on the Towns" in that they had not previously been given copies of the plans submitted for them by the State, and they request that some additional, unspecified amount of time be provided for the filing of contentions. ^{9/} This objection, however, is particularly vague. In the absence of further specification, the objection should be denied as failing to provide sufficient cause to warrant any modification to the Board's schedule.

3. Town of Hampton.

The Staff's response to the objections filed by the New Hampshire State Representatives filed on behalf of the Town of Hampton Falls, are equally applicable to these objections and are incorporated by reference herein.

^{9/} The Representatives also request that the prehearing conference and any hearings be convened in the New Hampshire seacoast vicinity. The Staff does not oppose this request insofar as it addresses the prehearing conference scheduled for March 1986. However, to the extent that this request addresses subsequent evidentiary hearings, the request is premature; any determination as to where hearings are to be held, at a minimum, should await the outcome of the prehearing conference and should take into consideration other factors such as the availability of hearing rooms, and the convenience of the Board as well as that of all parties to the proceeding.

4. Seacoast Anti-Pollution League.

SAPL has objected to the Board's entry of an Order before SAPL had received the Applicants' Motion and before it had an opportunity to file a written response thereto (SAPL Objection at 2). SAPL also asserts that the time provided for filing contentions is inadequate in that the plans are voluminous, and they had not seen the plans before the transmittal of January 10, 1986. SAPL further asserts that the filing of contentions is premature, in that (a) the Massachusetts plans have not yet been submitted, (b) FEMA's review has not been completed, and (c) they have been informed that "later and different versions of at least some town plans" are now in the possession of "certain town representatives" (Id.).

These assertions do not warrant any modification to the Board's schedule. In light of the Board's Order, SAPL's objection to the entry of a ruling on Applicants' Motion before it had an opportunity to respond in writing is moot. Further, SAPL's assertion that an inadequate amount of time has been provided for the filing of contentions is unsupported, and SAPL has not even indicated how much time it believes it requires to file its contentions. Finally, the reasons offered by SAPL to support its assertion that the filing of contentions is premature, are insufficient to warrant modification to the Board's schedule. No reason has been suggested as to why proceedings on the New Hampshire plans cannot commence before, or independently of, proceedings on the Massachusetts plans, nor has any reason been offered which would warrant a departure from the usual course of events whereby offsite emergency planning proceedings commence before FEMA's review has been concluded. Also, as the

Board is aware, FEMA normally submits interim findings and conclusions as to issues which have been placed in controversy by the parties, independently of reaching its conclusions on the adequacy of the plans pursuant to 44 C.F.R. Part 350. SAPL's assertion that it has received, from some unidentified source, information that some unidentified town representatives have received newer and different versions of some unidentified town plans is totally unsupported; without further specification, this assertion does not warrant further consideration.

5. New England Coalition on Nuclear Pollution.

NECNP's objections to the schedule adopted by the Licensing Board are similar to many of the objections discussed above. NECNP asserts (a) that the Board erred in issuing its Order before other parties had an opportunity to respond to Applicants' Motion; (b) that the schedule is so compressed as to deny intervenors a meaningful opportunity to participate in the proceeding; and (c) that the time provided for filing contentions and discovery is unreasonable and unnecessary, considering that Massachusetts plans have not been submitted and FEMA's review is not complete. NECNP sets out certain proposed revisions to the Board's schedule, which result in at least a four-month delay (until November 1986) in the commencement of hearings on the New Hampshire plans. ^{10/}

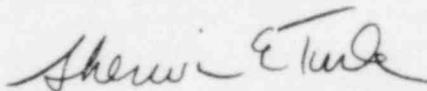
^{10/} NECNP proposes an additional 4 weeks for filing contentions, or delaying the filing of all contentions until the complete New Hampshire plan has been submitted; affording the intervenors 10 days in which to file replies to the Applicants and Staff's responses to contentions; providing for an additional 30 days of discovery; allowing 60 days for the filing of testimony following a ruling on motions for summary disposition; and postponing a hearing date until it is clear when the Massachusetts plans will be submitted.

The Staff's response to many of the objections discussed above are applicable, as well, to NECNP's objections. Further, contrary to NECNP's assertion, in our view the schedule adopted by the Board does not unduly restrict the intervenors' ability to participate in this proceeding, nor is the Board's schedule unreasonable. The parties have been aware for some time that the New Hampshire plans were under development, and they have been on notice since May 1983 as to the time frames which would govern this proceeding. Any attempts to modify those time frames should have been initiated before now, when construction of the plant is nearly complete and delays in this proceeding could delay plant operation.

CONCLUSION

For the reasons set forth above, the Staff opposes the various objections and requests for schedular modification which have been filed and recommends that they be denied.

Respectfully submitted,



Sherwin E. Turk
Deputy Assistant Chief
Hearing Counsel

Dated at Bethesda, Maryland
this 11th day of February, 1986

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO OBJECTIONS TO SCHEDULE FILED BY TOWNS OF RYE, HAMPTON AND HAMPTON FALLS AND BY SEACOAST ANTI-POLLUTION LEAGUE AND COALITION ON NUCLEAR POLLUTION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of February, 1986.

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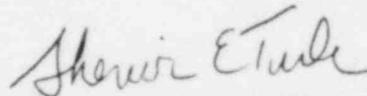
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