

9/28/88

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
UN-NRC

SEP 29 P3:07

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
DOCKETING & RECORDS
BRANCH

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
Off-site Emergency Planning

NRC STAFF'S RESPONSE TO INTERVENORS' MOTION
TO PERMIT RESPONSE TO APPLICANTS' REPLY FINDINGS

On September 16, 1988, Intervenor NECNP, SAPL, Town of Hampton, and the Massachusetts Attorney General filed a motion seeking leave to file a 20-page response to Applicants' reply to their proposed findings of fact, which the Applicants had filed on August 31, 1988. The Intervenor acknowledge that Commission regulations "do not provide a right to reply to Applicants' reply findings." In support of their Motion, however, they assert that the Applicants' reply findings "are so replete with inaccuracies and mischaracterizations of the record" as to warrant, "in the interest of fairness", the filing of their extensive reply thereto. ^{1/}

The NRC Staff opposes the Intervenor's request for leave to file a reply to Applicants' reply findings. The Commission has provided through rule-making an appropriate order of procedure governing the filing of proposed findings of fact and conclusions of law. Pursuant to 10 C.F.R. § 2.754(a)(1), the Applicants (as the party bearing the burden of proof)

^{1/} "Intervenor Motion to Permit Response to Applicants' Reply Findings," dated September 16, 1988.

are required to file the initial set of proposed findings of fact, after which proposed findings may be filed by Intervenors and the Staff. This order of procedure, applicable generically to all Commission licensing proceedings, provides a proper opportunity for Intervenors to challenge the Applicants' proposed findings and to demonstrate why those findings are incorrect or should otherwise be disregarded. The Commission has further afforded the Applicants, as the party bearing the burden of proof, an opportunity to reply to any other party's proposed findings of fact, 10 C.F.R. § 2.754(a)(3). No further filing of proposed findings is contemplated by the rule.

Although they challenge the accuracy of Applicants' reply findings and contend that "fairness" requires the acceptance of their rejoinder, the Intervenors fail to demonstrate why the Commission's established rules governing the filing of proposed findings should be abandoned. For instance, nowhere do the Intervenors contend that the Applicants have filed proposed findings on new issues which had not been addressed in the Intervenors' prior set of proposed findings; if that had occurred, an opportunity for the Intervenors to reply might be appropriate. Rather, the Intervenors essentially seek to have the "final word" with respect to certain of their findings which have now been challenged by the Applicants, thereby attempting to buttress Intervenors' initial set of proposed findings. However, any necessary support for these earlier proposed findings of fact should have been contained in those pleadings; no further opportunity to support those positions should be permitted.

Moreover, there are compelling reasons why the Commission's rule should be strictly applied, and no further filing of proposed findings on

beach issues should be permitted. As the Licensing Board and parties are all aware, this proceeding is unusual in its extensive scope, in its number of active litigants, and in the resource demands created by the breadth of the litigation pressed by the Intervenor. Given these demands, efficient case management can only be accomplished by strict adherence to Commission procedures. Only in the most compelling circumstances should additional pleadings, beyond those contemplated by regulation, be permitted. No such compelling case has been demonstrated by the Intervenor's lengthy and broad-scale rejoinder to the Applicants' reply findings. ^{2/}

CONCLUSION:

For the reasons set forth above, the Licensing Board should deny the Intervenor's Motion for leave to respond to Applicants' reply findings.

Respectfully submitted,



Sherwin E. Turk
Senior Supervisory
Trial Attorney

Dated at Rockville, Maryland
this 28th day of September, 1988

^{2/} In any event, the Intervenor's concern as to the accuracy of Applicants' reply findings is misplaced. The Licensing Board was in attendance throughout the hearings and heard all of the evidence presented by the parties in the proceeding. The Board is, of course, fully capable of reviewing all of the parties' proposed findings of fact and the record citations offered in support thereof, and is fully capable of determining which of the proposed findings are or are not meritorious.

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CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "NRC STAFF'S RESPONSE TO MOTION OF EDWARD A. THOMAS FOR LEAVE TO FILE A RESPONSE TO CERTAIN PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW" (2) "NRC STAFF'S RESPONSE TO INTERVENORS' MOTION TO PERMIT RESPONSE TO APPLICANTS' REPLY FINDINGS" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of September 1988.

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