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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'88 MAR 10 AIO:11

Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Emmeth A. Luebke
Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED MAR 10 1988

In the Matter of

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-OL-1
50-444-OL-1

(On-Site Emergency Planning
and Safety Issues)

(ASLBP No. 88-558-01-OLR)

March 9, 1988

MEMORANDUM AND ORDER
(Procedural Rulings)

MEMORANDUM

I. Background

On January 26, 1988, in responding to NECNP's second set of interrogatories dated January 7, 1988, the Applicants had objected to the production of a Westinghouse Electric Corporation document, "Steam Generator Tube Plugging Margin Analysis for the Seabrook Nos. 1 & 2 Nuclear Power Plants," because it contained information proprietary to Westinghouse but advised that the document would be produced to NECNP upon NECNP's signature to an appropriate protective order. On February 10, 1988, NECNP filed a motion to compel Applicants to respond to its second set of interrogatories and request for production of the aforementioned Westinghouse document relative to NECNP Contention I.V.

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NECNP argued that Applicants had failed to apply for a protective order under 10 C.F.R. §2.740(c) and failed to meet their burden of proof establishing that a protective order was appropriate.

On February 22, 1988, Westinghouse filed a special appearance for the sole purpose of insuring confidential treatment of proprietary information owned by Westinghouse, and, in a separate motion, requested an extension of time from February 24 to March 15, 1988 within which to respond to NECNP's motion to compel dated February 10. In its motion Westinghouse stated that it had been advised of the NECNP motion to compel by counsel for Applicants on February 17, and that, among other reasons, it needed the requested time extension in order to review the motion, relevant portions of the proceeding which gave rise to the discovery request and relevant Commission precedents. It advised that its manager, who reviews such matters, would not be available until after March 2, 1988. It noted that Applicants and Westinghouse remain willing to provide the proprietary documents to NECNP upon NECNP's signing of an appropriate protective agreement.

In a response of February 24, 1988, Applicants stated that, despite the offer by Applicants and Westinghouse to make the document available under a protective agreement without prejudice to NECNP to seek full public disclosure, NECNP has refused to accept the document on that basis. Accordingly, it requested that the Board issue an order to the effect that NECNP's continued refusal to accept the document under an appropriate protective agreement will estop NECNP from seeking any delay in the resolution of the steam generator tube rupture issue (NECNP

Contention I.V.) on the basis that NECNP has not had discovery of the document. Applicants advised they had no objection to the Westinghouse motion for a time extension, and that, with respect to NECNP's motion to compel, they left the substantive defense of the assertions as to the proprietary nature of the document to Westinghouse.

On March 2, Staff advised it did not oppose the Westinghouse motion for a time extension.

On March 3, NECNP opposed Applicants' request for an estoppel order and Westinghouse's motion for a time extension. NECNP argued that the request for an estoppel order be denied because (a) Applicants have not even attempted to make the requisite threshold showing of entitlement to a protective order as required under 10 C.F.R. §§2.740(c) (6) and (f)(1), (b) summary disposition is premature and inappropriate unless and until all outstanding discovery issues are resolved, and because (c) UCS v. NRC, 735 F_{2d} 1437 (D.C. Cir. 1984) precludes the entry of a protective order at this time without any prior determination of actual need because the entry could result in the complete closure of the hearings and thereby violate the public's right to a hearing. With respect to Westinghouse's motion for a time extension, NECNP advised it had no objection thereto provided that no disposition motions on the steam generator tube contention are entertained until all outstanding discovery issues are resolved.

II. Discussion

The Board denies NECNP's motion to compel as directed to Applicants since its arguments are without merit. When Applicants objected to the

production of the Westinghouse document, obviously they did not have to file for a protective order under 10 C.F.R. §2.740(c) and did not have to establish that a protective order was appropriate. The information in the document contained information proprietary to Westinghouse, not to Applicants, and Westinghouse, in its motion for an extension of time, advised that it needed the time extension in order to respond properly to the NECNP motion to compel. However, after the filing of the Westinghouse response on March 15, 1988, NECNP may file a motion to compel directed to Westinghouse pursuant to §2.740(f).

The Applicants' request for an estoppel order is premature and is denied without prejudice. Applicants may renew their request after the submission of the Westinghouse response, and after the submission by NECNP (if any) of a motion to compel.

Good cause having been shown, the Westinghouse motion for a time extension is granted.

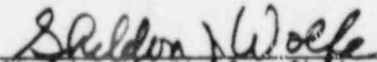
Order

1. NECNP's motion to compel directed to Applicants is denied.

2. Applicants' request for an estoppel order is denied without prejudice.

3. Westinghouse's motion for a time extension is granted.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 9th day of March, 1988.