

9/26/89

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UNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'89 SEP 28 11:49

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-443 OL
PUBLIC SERVICE COMPANY OF)	50-444 OL-04
NEW HAMPSHIRE, <u>et al.</u>)	Off-site Emergency Planning
)	
(Seabrook Station, Units 1 and 2))	

NRC STAFFS' OPPOSITION TO MOTION OF MASSACHUSETTS
ATTORNEY GENERAL FOR A SCHEDULE FOR THE FILING OF
CONTENTIONS ARISING OUT OF THE SEPTEMBER, 1989 ONSITE EXERCISE

BACKGROUND

The NRC Staff opposes the Massachusetts Attorney General's (MAG's) renewed request to set a schedule for the filing of "contentions arising out of the September 27, 1989 onsite exercise." Motion at 1. The hearings on the off-site emergency planning exercise and the emergency plan for Massachusetts communities have been completed and this Board is scheduled to issue its decision on those issues by November 30, 1989. ^{1/} The instant motion was filed on September 18, 1989, before the September 27, 1989 exercise was held, and before it could be determined whether there could be contentions arising from that exercise.

^{1/} Licensing Board Report to the Commission, July 6, 1989. The Appeal Board in ALAB-920, certified to the Commission the question of whether certain regulations should be waived to permit the mitigation of financial qualification regulations. That matter is pending before the Commission and could affect the Board's schedule.

BACKGROUND

On June 30, 1989, the Licensing Board denied the original May 31, 1989, motion which sought, inter alia, the setting of "a deadline for submission of contentions" arising from the onsite emergency planning exercise and low power testing. ^{2/} The Board denied the motion principally on the ground that it did not have authority to grant the relief requested. Tr. 28287-88. ^{3/} The Intervenor filed their "renewed" motion to set a schedule for the submission of contentions on the onsite exercise on September 18, 1989.

DISCUSSION

The Intervenor move to set a schedule for the filing of contentions arising from an onsite emergency planning exercise scheduled for September 27, 1989. The Staff opposes the setting a schedule for the filing of contentions on events which have not even transpired. At the time the instant motion was filed the exercise had not been held and it could not be known if there will be "contentions arising out of the September 27, 1989 on-site exercise." It is indeed speculative to say that a schedule for the submission of a contentions is needed to prevent harm before the exercise is even held and it can be seen if possible contentions can be formulated. See CLI-89-19, ____ NRC ____ (slip op. at 3, September 15, 1989. It is even more difficult to determine what a reasonable schedule

^{2/} Motion of Massachusetts Attorney General To Hold Open The Record Pending Low Power Testing And The Required Yearly Onsite Exercise And For Other Related Relief, May 3, 1989, at 10.

^{3/} See also NRC Staff Response to Motion of Massachusetts Attorney General To Hold Open the Record Pending Low Power Testing and the Required Yearly Onsite Exercise and For Other Relief, June 15, 1989 ("Staff Response"), at 3-5.

for these hypothetical contentions might be, when one does not even know the results of the exercise. No good cause is established to show a schedule is needed nor can a reasonable schedule be established in the present posture of this proceeding. ^{4/}

Moreover, the request for a period of 45 days after the Staff issues its report on the on-site emergency planning exercise to file contentions on the exercise could not be granted as it is contrary to the Commission's direction that their be expedited procedures "to bring this proceeding to a close within a reasonable timeframe." Commission Memorandum, February 3, 1989; CLI-89-19, slip op. at 4; see also Staff Response at 8-9. This Board has stated that it will issue its decision on the remaining litigated issues in November 1989. To propose any schedule that would not allow, at least, a ruling on the admissibility of contentions within that period would be contrary to the directions of the Commission and unjust in preventing a timely completion of proceedings. ^{5/}

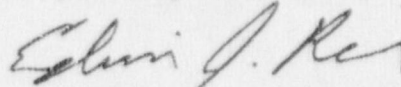
^{4/} The motion coming before the exercise does not evidence a desire to raise actual concerns about the exercise (which could not then be known), but rather a desire to search for matters to litigate regardless of their merit. As the Staff stated in regard to the original MAG motion of May 31, 1989: "The instant motion seeks to prevent completion of the full power proceeding to give intervenors time to raise additional issues for litigation in the full power proceeding which would substantially delay the completion of the proceeding." Staff Response, June 15, 1989 at 2. There is no basis upon which to grant the motion.

^{5/} Further, it is doubtful that the Licensing Board has the authority to set a schedule past the time it might issue its decision on presently admitted contentions. Staff Response, June 15, 1989, at 3-5, 8-10.

CONCLUSION

For the foregoing reasons the NRC Staff opposes the MAG's motion to set a schedule for the filing on contentions on the September 1989 exercise.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edwin J. Reis".

Edwin J. Reis
Deputy Assistant General Counsel
for Reactor Licensing

Dated at Rockville, Maryland
this 26th day of September 1989

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFFS' OPPOSITION TO MOTION OF MASSACHUSETTS ATTORNEY GENERAL FOR A SCHEDULE FOR THE FILING OF CONTENTIONS ARISING OUT OF THE SEPTEMBER, 1989 ONSITE EXERCISE" 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 26th day of September 1989:

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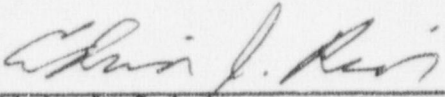
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