

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

RECEIVED
MAR 11 10:26

In the Matter of)

PUBLIC SERVICE COMPANY OF NEW)
HAMPSHIRE, et. al.)

(Seabrook Station, Units 1 & 2))

Docket Nos. 50-443
50-444

March 8, 1983

ANSWER IN SUPPORT OF NECNP'S MOTION FOR
DEFERRAL OF CONSIDERATION OF MOTIONS FOR
SUMMARY DISPOSITION OR FOR DISMISSAL

Pursuant to 10 C.F.R. §2.730(c) New Hampshire files this answer in support of NECNP'S Motion to Defer Consideration of Summary Disposition Motions filed on March 3, 1983.

In its September 13, 1982, Memorandum and Order, this Board set forth its initial "Schedule For Proceeding". That schedule established the filing date of February 12, 1983 for summary disposition motions and a corresponding date of March 9, 1983 for answering any such motions. The Applicant filed most of its twenty-one motions for summary disposition by February 12, 1983, and the Staff to date has filed six such motions. Prior to the Board's Order staying the obligation to answer these summary disposition motions by March 9, 1983, New Hampshire was attempting to prepare fully its answers to several of the motions. Due, however, to the unavailability of the Safety Evaluation Report

(SER) and the incomplete state of discovery, New Hampshire was not able to discern with finality the material issues relating to the summary disposition motions. It is wholly appropriate, therefore, that the Board continue the stay until the SER has been reviewed by the parties¹ and until discovery on the relevant contentions is complete.

New Hampshire supports the position taken by NECNP in its March 3, 1983 motion with regard to the obligation to answer summary disposition motions before the SER has been issued and reviewed. It is fundamental that the parties to a licensing proceeding are entitled to a full review of the SER. That such a review is required before summary disposition may be granted as to any safety related contentions is supported by principles of fairness and economy. The SER sets forth the NRC Staff's position on the Applicant's compliance with NRC regulations, and the information and conclusions contained therein must, as a matter of fairness, be provided to the parties before any valid contentions can be summarily dismissed.

In addition, by deferring judgment on the summary disposition motions until after the issuance of the SER, the Licensing Board will avoid the potential for unnecessary pleadings and duplication

¹ New Hampshire has learned that the Staff issued the SER yesterday, March 7, 1983. The issues discussed in this Answer are not moot, however, since the SER not only must have issued, but the parties must have an adequate opportunity to review the document before having to respond to summary disposition motions.

of effort. Should the parties be required to answer the summary disposition motions without a full review of the SER, further pleadings may be necessary to address issues developed from the SER subsequent to the deadline for filing answers to the summary disposition motions.

New Hampshire also notes that the Licensing Board in Duke Power Company, (William B. McGuire Nuclear Station, Units 1 and 2) LBP-77-20, 5 N.R.C. 680, 681 (1977), held without discussion that summary disposition of safety related contentions is inappropriate before the SER is issued.

That summary disposition is premature at the present time is also evident where discovery on the relevant contentions is incomplete. At the present time the Applicant has not provided completed responses to interrogatories propounded by New Hampshire Contentions NH-9 and SAPL Supp. - III. The Staff, furthermore, has not answered any of the substantive interrogatories on Contention NH-21 and many of the interrogatories on NH-9 and SAPL Supp. - III.

The NRC rules of procedure contemplate that discovery be complete before summary disposition is appropriate. Where 10 C.F.R. §2.749(d) permits parties to rely on answers to interrogatories to support their position on summary disposition, it is clearly improper for the Board to consider summary disposition until interrogatories have been fully answered. See Wisconsin Electric

Power Company (Point Beach Nuclear Plant) LBP-81-55, 14 N.R.C. 1017, 1021 (1981) (The Board stated that motions for summary disposition are generally filed after discovery is completed.)

Because the SER has not yet been issued and reviewed, and because discovery is not complete, it is New Hampshire's position that the Board could properly deny each of the motions for summary disposition filed to date. New Hampshire suggests in lieu of this action that the Board continue to extend the deadline for filing and answering summary disposition motions until such date as the SER is issued and fully reviewed and discovery is substantially complete. This will allow all the parties to rely on the complete information to which they are entitled in formulating responses to the motions. This modification of the schedule will also avoid the possibility of duplicative filings.

The date for the next pre-hearing conference, scheduled by the Board's February 24, 1983 Order for March 17-18, 1983, should likewise be adjusted. The conference¹ should be deferred at least until the SER has been thoroughly reviewed by the parties. Argument on summary disposition motions as well as on newly-filed contentions based on the SER could then be heard. An appropriate pre-hearing conference date may be late April, by which time emergency planning contentions on many of the emergency plans will have been submitted by the intervenors. New Hampshire recognizes the need for clarification of the timing of emergency planning contentions, and suggests that a telephone conference or written

motions will allow for adequate consideration of that question.

New Hampshire also would like to express its concern that the persons most affected by and interested in these proceedings be afforded the best opportunity to attend the pre-hearing conference. To this end, it is appropriate that all hearings be held at a site within or as close as possible to Seabrook Station. A hearing site in Massachusetts is, of course, perfectly acceptable but New Hampshire suggests that Boston may be too distant to allow for the attendance of some interested persons in the Seabrook area.

For the above reasons, New Hampshire respectfully requests that the Board:

- (a) Order that summary disposition is not appropriate until the SER has been issued and reviewed by the parties, and until discovery on the contentions at issue is complete;
- (b) Modify accordingly the schedule as it pertains to summary disposition; and

(c) Order such other relief as may be just.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

GREGORY H. SMITH
ATTORNEY GENERAL

Dated: March 8, 1983

By



George Dana Bisbee
Attorney
Environmental Protection Div.
Office of the Attorney General
State House Annex
Concord, New Hampshire 03301
Tel. 603/271-3678

CERTIFICATE OF SERVICE

I, George Dana Bisbee, Esquire, do hereby certify that a copy of the foregoing ANSWER IN SUPPORT OF NECNP'S MOTION FOR DEFERRAL OF CONSIDERATION OF MOTIONS FOR SUMMARY DISPOSITION OR FOR DISMISSAL has been mailed this 8th day of March, 1983, by first class mail, postage prepaid, to:

Helen F. Hoyt, Chm.
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. NRC
Washington, D.C. 20555

Dr. Emmeth A. Luebke
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. NRC
Washington, D.C. 20555

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. NRC
Washington, D.C. 20555

Roy P. Lessy, Jr., Esquire
Robert Perliss, Esquire
Office of Executive Legal Dir.
U.S. NRC
Washington, D.C. 20555

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, N.H. 03105

Phillip Ahrens, Esquire
Assistant Attorney General
State House, Station #6
Augusta, Maine 04333

Robert K. Gad, Esquire
Thomas G. Dignan, Jr., Esquire
Ropes and Gray
225 Franklin Street
Boston, Massachusetts 02110

Office of Selectmen
Town of Brentwood
Brentwood, New Hampshire 03833

Office of Selectmen
Town of Hampton
Hampton, New Hampshire 03842

Office of Selectmen
Town of Kensington
Kensington, New Hampshire 03833

Jo Ann Shotwell, Asst. AG
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Mrs. Beverly Hollingsworth
822 Lafayette Road
P.O. Box 596
Hampton, New Hampshire 03842

William S. Jordan, II, Esquire
Ellyn R. Weiss, Esquire
Harmon and Weiss
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006

Edward J. McDermott, Esquire
Sanders and McDermott
408 Lafayette Road
Hampton, N.H. 03842

Atomic Safety and Licensing
Board Panel
U.S. NRC
Washington, D.C. 20555

David R. Lewis, Esquire
Atomic Safety and Licensing
Board
U.S. NRC - Room E/W - 439
Washington, D.C. 20555

Rep. Roberta C. Pevear
Town of Hampton Falls
Drinkwater Road
Hampton Falls, New Hampshire 03844

Ms. Sandra Gavutis
Office of Selectmen
Town of East Kingston
RFD 1
East Kingston, New Hampshire 03848

Mr. Calvin A. Canney
City Manager
City of Portsmouth
126 Daniel Street

Portsmouth, New Hampshire 03801

Mr. Patrick J. McKeon
Office of Selectmen
Town of Rye
10 Central Road

Rye, New Hampshire 03870


George Dana Bisbee

Dated: March 8, 1983