

## UNITED STATES OF AMERICA

DOCKETED

## NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.(Seabrook Station, Units 1  
and 2)Docket Nos. 50-443  
50-444NENCP PROPOSED SCHEDULE FOR EMERGENCY PLANNING HEARINGS

As the Board requested, NECNP submits the schedule for litigation of off-site emergency planning contentions that NECNP proposed at the April 7 and 8 prehearing conference. We first present the schedule itself, and then discuss it briefly.

Schedule As Proposed April 8, 1983:

Before June 20, 1983

Three (3) of Six (6) Massachusetts local plans received, and contentions filed within thirty (30) days.

June 20

N.H. plans received by parties

July 20

Contentions due on N.H. plans

August 10

Responses to contentions are due

August 24

Prehearing conference on all new emergency planning contentions.

September 7

Board rulings on admissibility of all new emergency planning contentions; beginning of discovery

November 7	Close of discovery
November 21	Deadline for filing summary disposition motions
November 28	Board rules on summary disposition motions
December 28	District testimony is filed
January 15, 1984	Rebuttal testimony
January 25	Hearing begins.

Discussion

1. This schedule contemplates a total of approximately seven (7) months for the pre-hearing litigation of all off-site emergency planning contentions. It does not contemplate an eleven (11) month period, as the Board seemed to believe. Measuring from June 1983, the month that the bulk of the emergency plans will become available (and the first time that it is even possible to consider what issues should be litigated, much less to begin litigation), an eleven (11) month period would lead to a hearing in May 1984, not January 1984.

The Board may have developed its eleven (11) month estimate based on the time from April 8, 1983 (the date on which the schedule was discussed), to March 1984 (the hearing date resulting from NECNP's original development of the schedule, but not proposed to the Board). If so, the Board apparently did not understand that NECNP had cut two months from its own original proposal. The January 25 hearing date is nine (9) months from April 8, 1983. Even then, however, nine (9) months is a grossly misleading figure. The total period for litigation prior to the hearing itself must be measured not from some arbitrarily chosen date before litigation begins, but from the point at which the parties have access to the information on which the litigation would be based. That period would be less than seven (7) months if it ended on January 15, 1984.

2. Even this schedule is a compromise. According to the schedule provided by the Federal Emergency Management Agency, the local plans of half of the affected towns in Massachusetts will not be available until after June 20, 1983. Thus, intervenors will be forced to review and develop contentions on the basis of those plans at the same time that they are preparing to litigate the earlier plans.

In addition, under the schedule set out above and that provided by FEMA, intervenors would be forced to review state and local emergency plans beginning as early as May 8, and to develop and file contentions as early as June 7. They would

have to undertake this effort at the same time that they were preparing for the safety hearing in June. This can only result in hurried reviews and contentions that do not assure the most efficient or effective resolution of the issues of concern to the public.

3. More important, the very concept of attempting to establish a schedule and begin litigation at this point is premature. We will not even have the basic documents underlying the litigation for another two months. We cannot know until then how extensive this litigation is likely to be or what sort of schedule it would reasonably require. If there are few issues in dispute, a tight schedule such as that proposed by NECNP might be reasonable. But if there are many issues in dispute, more time may be needed. A reasoned judgment as to schedule should be made at the time the relevant information is available and not before. Indeed, the attempt to establish a schedule now severely prejudices the integrity of the hearing by placing artificial limits on the litigation. As has been true to date, the initially established limits may well become set in concrete. Parties will be required to demonstrate good cause for extending the limits, when the limits should not have been imposed in the first place.

4. In addition, as NECNP noted during the pre-hearing conference, it is willing and eager to work with the Federal Emergency Management Agency in evaluating and improving the

local emergency plans. We made that commitment to FEMA late last year. We have no doubt that the states, towns, and other intervenors are also anxious to be involved in the planning process in a productive way. This expressed willingness to cooperate offers a unique opportunity to refine and improve emergency planning in the Seabrook area outside the unduly adversary context of litigation. With time and good will on all sides, much can be accomplished, and the public may be able to develop some sense of productive involvement and of confidence that the emergency plans reflect reality. While it is unlikely that all differences can be resolved or that all intervenors will be convinced that even the best emergency plan will provide adequate protection, the plans would be better, public acceptance would be greater, and the issues for litigation would be narrower and more clearly defined.

None of the above is possible under the schedule proposed by the NRC Staff, or even under that proposed by NECNP. The schedule that would best serve the public interest would provide for a period of several months between the time the local plans become available and the time that contentions must be filed. That time would be used for productive public involvement outside the context of litigation.

The goal of such public involvement in order to achieve the optimum result should be an important, if not primary

consideration in developing the schedule for this proceeding. In private litigation, emphasis on expedition is appropriate since the goal of resolving the dispute is nearly as important to public policy as the goal of assuring the correct result. The same is not true here. This is public litigation, in which the goal is not simply to resolve the dispute so that others can be addressed, but to assure that the resolution of the dispute is correct, so that the public will be adequately protected.

5. Since the scheduling of off-site emergency planning litigation is premature at this time, and since it would disrupt potentially fruitful efforts to raise and resolve public concerns, NECNP urges the Board to direct that contentions need not be filed for six (6) months after the date the New Hampshire plans become available to the parties. The Board should also provide for monthly reports from the parties during that time period to assure that they are working productively to evaluate and improve the plans before litigation must begin. In addition to allowing a productive, non-litigation approach to the issues, while retaining Board control to assure that such an approach was being attempted in good faith, this would serve as an important signal to the public that the Board is not governed by the utility's distinctly private interest in loading fuel precisely when it



would like to, but by the public interest in assuring the best possible outcome of the emergency planning process.

6. Even with this additional six (6) month period, the total pre-hearing litigation period would be less than that allowed for the safety contentions, assuming a hearing begins in June 1983. The total of the seven (7) months in NECNP's schedule as proposed at the pre-hearing conference, plus the additional six (6) months would be thirteen (13) months, one less than provided for by the Board between the April 1982 filing of safety contentions and the contemplated hearing date.

7. NECNP's originally proposed seven (7) month schedule contrasts even more sharply with that for the safety issues. Less than half as much time would be allowed for litigation of twenty-three (23) local plans and two (2) state plans, all involving the issue of greatest concern to the residents of the New England seacoast.

Where one or two experts might be consulted with respect to each technical safety contention, emergency plans and related contentions require consultation with many more people. Each town and state has its police and emergency officials, as well as transportation and medical facilities. All of the relevant personnel would have to be contacted in order to prepare to litigate emergency planning concerns. Thus, proper preparation for this litigation requires consultation with at least approximately one hundred (100) such individuals. This figure

does not include other experts or consultants who should examine the issues from a broader perspective or address matters such as accident consequence analysis that are integral to any evaluation of the adequacy of emergency planning.

For these reasons, even NECNP's originally proposed schedule is unreasonably tight.

8. At the hearing, NECNP attempted to argue that the Board should take into account the severe restrictions on the resources available to citizen intervenors. NECNP's argument was cut off by the Board, which apparently believed NECNP was appealing for the Board or the Commission to provide such resources. Although it would be justified in doing so, and it would serve the interests of the Board and the Commission to provide such resources, NECNP made no such plea. NECNP is aware of the restrictions on intervenor funding..

The lack of resources, specifically including the denial of intervenor funding, strongly supports the point that NECNP was attempting to make. If this hearing is to serve the public purpose of gathering the relevant information and assuring that a decision is reached only on the basis of a complete record, the Board must take intervenor resource limitations into account. If it cannot provide funding, it must provide time for preparation by volunteers and others who will be assisting the intervenors in their spare moments. Any schedule that does



not reflect this principle threatens to make a sham of the entire proceeding, and particularly of the concept that NRC hearings should be useful tools in the Commission's decisionmaking process. Nothing in Commission regulations, Congressional materials, or elsewhere prevents the Board from thus basing its schedule on the need for a full and fair hearing.

9. Finally, even the apparently overriding concern with finishing the hearing in time to allow the utility to fuel and operate the reactor without the slightest delay does not justify expediting this hearing as proposed by the Staff, or even following the schedule proposed by NECNP, with a hearing in January 1984. The fuel load date for Seabrook Unit No. 1 is now expected to be January 1, 1985, according to George Gantz of the staff of the New Hampshire Public Utility Commission (telephone conversation, April 12, 1983). A schedule that provided for the emergency planning hearing to begin in July 1984, thus accomodating the six (6) month period proposed by NECNP, would allow a decision by the end of 1984 and fuel load in 1985 if the decision were favorable.

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For these reasons, NECNP urges the Board to adopt the following schedule:

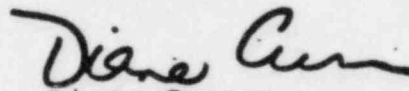
1. Contentions on off-site emergency planning issues are due six (6) months from the date the New Hampshire local plans are received.

2. The litigation schedule from that point forward would be the same as that proposed by the NECNP at the beginning of this document, with the dates changed to reflect the initial six (6) month period.

If the Board rejects this approach, we urge, at a minimum, that it adopt the NECNP proposed schedule without the initial six (6) month period.

Respectfully submitted,

  
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April 13, 1983

CERTIFICATE OF SERVICE

I certify that on April 13, 1983, copies of NECNP REWORDED CONTENTION I.D.2., TESTING OF MANUAL REACTOR TRIP ACTUATION FUNCTION and NECNP PROPOSED SCHEDULE FOR EMERGENCY PLANNING HEARINGS were served by first-class mail or as otherwise indicated on the following:

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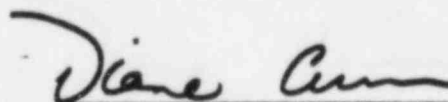
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