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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Public Service Company of New
Hampshire, et al.

(Seabrook Station, Units 1 and 2)

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) Docket Nos.
) 50-443, -444
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NECNP OBJECTION TO IMPROPER BOARD CONDUCT,
RESPONSE TO APPLICANTS' POSITION AS TO
SCHEDULING OF EMERGENCY PLANNING ISSUES,
AND REQUEST FOR HEARING ON LICENSING SCHEDULE

On August 30, 1983, counsel for the New England Coalition on Nuclear Pollution received a telegram reflecting a Licensing Board order to the effect that the Board had arranged to have a conference with the Director of the Massachusetts Civil Defense Agency on August 31, 1983. The telegram stated:

The purpose of the conference is to discuss the status of the emergency plans for Massachusetts and the Massachusetts towns, in order to give the Board an idea as to the timing of the remainder of the proceedings. All participants in these proceedings are invited to attend.

David Lewis, Law Clerk to the Board, had provided similar information to Mr. Jordan, counsel for NECNP, by telephone at the end of the previous week. In that conversation, Mr. Jordan asked whether any matters of substance that could affect the interests of NECNP would be discussed, or whether the conference would be limited to discussion of the timing of the

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Massachusetts state and local plan submissions. Mr. Lewis responded that he understood the conference to be limited to the latter point. Since the conference thus appeared to involve nothing more than information gathering by the Board, counsel for NECNP chose not to attend.

Contrary to the Board's representations, however, the Board engaged in discussions substantively affecting NECNP's interests in this proceeding, regarding the schedule for filing contentions and conducting discovery, and alleged coaching of witnesses by the NRC Staff. NECNP objects to the Board's ex parte consideration of Applicants' views on the scheduling of offsite planning proceedings. Moreover, NECNP has been informed that the Board conducted an off the record discussion in chambers, from which the representatives of the Towns of Hampton Falls and Rye, who were present at the time in the hearing room, were excluded.

During the meeting, the Board also announced its intention to cut drastically the time that will be allowed for preparing contentions and discovery on the Massachusetts plans. The purpose of this action would be to adhere to a hearing schedule that bears no relation to the plant completion date currently being predicted by the NRC Staff. The Board has never taken up consideration of the Staff reports predicting plant completion in early 1986. In essence, the Board proposes to reduce intervenor rights to a virtual nullity without any justification. NECNP therefore requests a hearing on the issue of expected completion of the Seabrook plan, so that the

licensing proceeding schedule can be made consistent with that schedule.

I. Improper Discusson of Substantive Issues

A. Schedule for Filing Contentions and Discovery on
Massachusetts Plans

According to the telegram sent by the Board to the parties, the purpose of the meeting with the Massachusetts Civil Defense Director was to "discuss the status of the emergency plans for Massachusetts and the Massachusetts towns, in order to give the Board an idea as to the timing of the remainder of the proceedings." Instead of restricting the scope of the meeting to this purpose, however, the Board sought "suggestions" from the NRC Staff and other counsel present at the meeting regarding the "effectiveness" of cutting the schedule for filing contentions and conducting discovery which was set by the Board's May 23 order. Tr. at 1837-38. The Board then entertained arguments by counsel, including recommendations by counsel for the Applicants of "slashing down" the periods for filing contentions and interrogatories, and placing no time constraints other than those imposed by NRC rules of practice on summary disposition motions. Tr. at 1844. Judge Hoyt then stated that "we are going to look at cutting all of the three periods at the very minimum in half," noting that "unless counsel can give me some reason here today, I can't see why there is going to be any great difficulty in formulating contentions." Id. at 1845. NECNP, of course, was not present and thus not able to inform the Board of its own position that

such drastic changes in the hearing schedule would severely impair NECNP's ability to participate effectively in the Seabrook licensing proceeding.

The Board also entertained arguments by counsel for Applicants that the Board should open up discovery on draft emergency plans for Massachusetts immediately. Tr. at 1846. (The Staff also inquired as to the availability of that option. Tr. at 1840.) Again, NECNP had no opportunity to respond to those arguments.

At the request of Mr. Bisbee, counsel for the State of New Hampshire, the Board stated that it would consider suggestions from any party as to the scheduling of litigation on the Massachusetts plans. After the meeting, however, the Board issued no formal notice of this opportunity to those who had not been present at the meeting.

Any opportunity offered by the Board to submit written suggestions on the scheduling of the proceeding would not cure the prejudice suffered by NECNP in being excluded from the August 31 meeting. Written submissions are no substitute for participation in oral advocacy that can irrevocably plant concepts or approaches in the Board's mind. Judge Hoyt's comment that "unless counsel can give me some reason here today, I can't see why there is going to be any great difficulty in formulating contentions," is illustrative of the vital importance of an opportunity to present oral argument at the same time that the Board is orally forming conclusions or

considering oral arguments from other parties.

In Section III of this pleading, NECNP submits its own position on the scheduling of contentions and discovery on the Massachusetts plans. We do not, however, consider the opportunity for this filing to remedy NECNP's inability to participate in the August 31 meeting. Since the damage arising from the Board's unfair actions cannot be reversed, NECNP requests that the Board arrange to have all future scheduling decisions related to litigation of offsite emergency plans be referred to and made by an impartial individual or tribunal who was not present at the conference.

B. Discussion of Alleged Coaching of Witnesses

As requested by the Board the previous week, counsel for NECNP submitted an affidavit by Dr. Thomas Urbanik II to the effect that Dr. Urbanik had not received signals from Staff counsel relative to questions posed during cross-examination. The Board also allowed Mr. Lessy to discuss and attempt to refute charges made by town representatives that Mr. Lessy had coached witnesses on the stand during the recent hearings, although the Board had previously ordered that the town representatives would not be allowed to discuss the matter again. NECNP has no position on the facts of the charges. NECNP objects, however, to the Board's practice of allowing Mr. Lessy to state his position on the charges without offering

the town representatives an opportunity to refute or otherwise address his statement. Since the representatives had been told they could not discuss the subject, they did not, and the result is an unfairly biased record. The Board should offer the town representatives an opportunity to respond to Mr. Lessy.

II. Off the Record Discussion

NECNP understands that before the recorded portion of the August 31 meeting commenced, the Board called all attorneys representing parties to the proceeding into chambers, excluding the town representatives of Hampton Falls and Rye, Roberta Pevear and Guy Chichester, who were also in the hearing room.

NECNP objects to the Board's exclusion of Ms. Pevear and Mr. Chichester from the conference in chambers. Whatever the status of Mr. Chichester, it was improper to exclude Ms. Pevear from a conference of representatives of all other parties. The towns have the right of full participation and may not be excluded. Since they are not represented by counsel, the Board has found it easy to berate or silence them, when the Board should, to the contrary, take particular care to assure that their lack of legal representation does not adversely affect their participation. Instead, the Board has clearly classified the towns as second or third class parties considered to be juvenile and unworthy of full participation and fair treatment. See transcript of August 23, 1983, at 1749-50

The obstruction by the Board of the local representatives' rights to participate fully in this licensing proceeding also affects NECNP's interest in the proceeding, since NECNP shares with the local governments the same concerns that emergency measures cannot be taken safely at Seabrook. Moreover, it is the local governments who are most critically involved in planning and preparedness for an emergency at Seabrook. Their positions on the adequacy of the plans and their ability to carry them out are critical to a determination of whether there is a reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook. It is therefore in NECNP's interest that their rights to participate in the licensing hearing be fully observed. Accordingly, NECNP moves that the Board refrain from any further unrecorded contacts with any party for any reason and the the Board provide all parties notice and opportunity to participate in all meetings and discussion relative to this proceeding.

III. Scheduling of Offsite Planning Hearings

At the August 31 meeting, the Board offered the Applicants and other parties an opportunity to brief the issue of scheduling of offsite planning hearings. Applicants submitted a proposal contemplating hearings on March 19, 1983. In order to achieve that hearing date, the Applicants proposed a schedule that would allow a week for the filing of contentions; four days after the NPC Staff response to those contentions for

intervenor replies; and two weeks for discovery. This is an extremely tight schedule for filing contentions on a single plan, assuming intervenors have the resources to have attorneys and experts working full time on the plans from the time they receive them. NECNP does not have those resources. Moreover, if more than one plan were submitted at once, it would be impossible under any circumstances to conform to this proposed schedule. The Board's May 23 schedule, establishing 30 days for the filing of contentions and 30 days for discovery, is the minimum necessary to provide sufficient time to review plans and prepare pleadings on them.

Although the Board asked for suggestions from the parties, it had apparently already decided to cut the schedule for contentions and discovery "probably in half at a minimum". Tr. at 1849. The Board gave no justification for its announced intention to drastically reduce the schedule. In fact, there is no apparent need to reduce the now-marginal times for filing pleadings on the offsite plans for the Seabrook EPZ. As of June, 1983, the NRC Staff has predicted a fuel loading date of the first quarter of 1986. (Letter from Darrell G. Eisenhut, NRC, to Robert J. Harrison, PSNH, dated June 24, 1983) Even the Applicants have acknowledged a ten-month slippage in their construction schedule. (Letter from Thomas G. Dignan to Atomic Safety and Licensing Board, November 30, 1982). There is no conceivable need to hold licensing hearings a full two years

before that license can even be issued. In fact, it is patently unwise to conclude consideration of the offsite plans such a long time before they may be called upon, since circumstances and resources may change significantly over that period.


Although NECNP has raised the issue a number of times, the Board has not directly addressed the potential impact of the latest plant completion date predictions on the schedule for licensing hearings. Now that the Board is proposing a scheduling policy that will seriously curtail intervenor participation rights to achieve a goal of holding hearings in early 1984, that issue must be addressed in fairness to the intervenors. Because the views of Applicants and Staff differ so substantially, and because resolution of these views involves the comparison of professional judgments on technical issues, the appropriate format for consideration of this matter is an adjudicatory hearing, with sworn testimony and opportunity for cross-examination. At the very least, the Board should afford all parties an opportunity to brief the issue.

The Board has shown great bias against the interests of intervenors in a fair hearing schedule by accepting arguments from the Applicants on the subject when no notice was given to NECNP or any other intervenors that it would be discussed. Moreover, the Board excluded two of the town representatives from a discussion during the meeting, which was held off the

record. The prejudice to NECNP's interests in this proceeding from the Board's actions cannot be cured by the Board itself, which in any event has already announced its predisposition to drastically reduce the licensing schedule. Tr. at 1849. NECNP therefore moves that the Board appoint a special master or separate tribunal for a hearing on the expected completion date for the Seabrook plant. The Board should also refer to this tribunal all further decisions regarding scheduling of pleadings and hearings on offsite emergency planning in this proceeding.

Respectfully submitted,


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