

UNITED STATES 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 & 2))

) Docket Nos.
) 50-443,-444OL
) Offsite
) Emergency Planning
)

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S
OBJECTION TO BOARD ORDER OF JANUARY 17, 1986
AND MOTION FOR RECONSIDERATION

Introduction

The Licensing Board has issued an order establishing a schedule for the litigation of New Hampshire emergency plans in the Seabrook offsite emergency planning proceeding. The schedule is virtually identical to one proposed by the Applicants several days earlier, to which the Board provided no opportunity to respond. The Board's schedule is so compressed as to effectively deny intervenors the right to meaningful participation in this proceeding.

The New England Coalition on Nuclear Pollution ("NECNP") objects to the Board's failure to consider responses to Applicants' motion and to the untenable schedule established by the Board. We further request that the Board reconsider the litigation schedule and establish a new schedule with reasonable time limits and sufficient flexibility to permit the full and thorough litigation of the New Hampshire emergency plans.

Statement of Facts

On January 10, 1986, the NRC staff mailed NECNP twenty four emergency plans for the state of New Hampshire and New Hampshire local governments. The state plan was not complete. Although the staff had received the plans from FEMA several days earlier, no FEMA review documents were included with the plans.

On January 16, the Licensing Board's Secretary, Kathleen Kerr, telephoned Diane Curran, counsel for NECNP, to ask whether NECNP would have an objection to a recently filed motion for establishment of a litigation schedule. Ms. Curran told her that she had not received any motion but would let her know when she did. The next day Ms. Curran called Ms. Kerr to inform her that she had not yet received a motion. On January 21, following the holiday on January 20, counsel received a copy of Applicants' "Motion for the Establishment of a Schedule" by Express Mail. Ms. Curran immediately called Ms. Kerr to tell her that NECNP intended to object to the motion that week. The following day NECNP received the Board's order establishing a litigation schedule for the Seabrook offsite emergency planning proceeding. The order was dated January 17 and filed January 21, 1986. Despite its disclaimer that the Applicants' motion was not considered, the Board's order sets virtually the same litigation schedule as proposed by Applicants.

Argument

- I. The Board should have considered intervenor responses before ruling on the litigation schedule.

The Board erred in failing to consider the position of the intervenors and local governments before establishing the litigation schedule. NRC rules require the Board to offer parties ten days to respond to motions. 10 C.F.R. 2.730. The Board apparently planned to consider responses to Applicants' motion and then changed its mind. The rules allow no such discretion. The Board attempts to excuse its error by claiming that the litigation schedule was "predetermined" and therefore was not affected by any of the parties' pleadings. This reasoning is unacceptable in view of the fact that the schedule is almost identical to that proposed by the Applicants.

Even if the Board's actions could be found to comply with NRC regulations, the Board's failure to provide an opportunity for intervenors to respond to Applicants' motion was arbitrary and unfair. The Board's draconian hearing schedule appears to be closely tailored to the Applicants' predictions for the dates of completion and operation of the Seabrook plant. The Board made no attempt to discern any other party's views on those predictions or on other factors that should be considered in establishing a litigation schedule. As a result, the Applicants' views govern this litigation schedule.

II. The tightness of the schedule is unreasonable and unnecessary.

The litigation schedule set by the Board utterly fails to provide adequate time for preparation of this case. Intervenor are given only a month to prepare contentions on twenty four separate emergency plans containing several thousand pages of information. Preparation of these contentions requires not only reviewing each provision of these voluminous plans against the regulations, but contacting local officials to determine how and whether the plans will be carried out. Moreover, the intervenors do not have the benefit of any Federal Emergency Management Agency ("FEMA") review that may have been done for the plans. Similarly, the parties are given only a month for discovery on this huge volume of material. After ruling on summary judgment motions, the Board plans to allow only ten days for the filing of testimony on the twenty plans. It is simply irrational to expect that any party can meet these deadlines for litigating these volumes of complex and interdependent emergency plans.

Moreover, there is no justification for the Board's haste. By drastically telescoping the schedule for litigation of the New Hampshire emergency plans, the Board apparently hopes to clear the way for full power operation in October of 1986. However, the full power operating license for Seabrook cannot be issued until the emergency plans for both New Hampshire and Massachusetts have been found to provide an adequate assurance of safety. Massachusetts has not yet submitted its plans for review

by FEMA, and it is not clear when they will be finished. The plans must be litigated together, not only to conserve the resources of the government and the parties, but because joint litigation is necessary to assure that the plans are properly coordinated. There is thus no justification for a litigation schedule that permits virtually no time for preparing contentions, discovery, summary judgment motions, or prefiled testimony on the New Hampshire plans, simply so that the Board can hold a hearing by the middle of July. The schedule is both unfair and unnecessary.

NECNP therefore requests that the Board reconsider the schedule established in its order. First, NECNP requests an additional four weeks for preparation of contentions on the New Hampshire local plans. NECNP also requests that the Board defer the deadline for filing contentions on the New Hampshire state plan until four weeks after the parties have received the remaining portions of the plan. Second, NECNP asks that the Board allow ten days after the staff responds to contentions for filing of replies to the staff's and applicant's responses. This will allow time for the parties to reply to challenges by the Applicants and staff and to negotiate the terms of contentions that are in dispute. Third, the present discovery schedule is barely adequate for two rounds of interrogatories, and fails to provide enough time for the taking of depositions. The schedule also fails to take into account the time needed after notice of which contentions are admitted to formulate discovery on those

contentions. NECNP asks the Board to allow an additional 30 days for discovery. In a trial of this complexity, sixty days is the minimum time needed for adequate discovery. Fourth, the Board should allow at least sixty days for the filing of testimony. The current schedule allows only ten days after the Board's ruling on summary judgment. The only way that this deadline could possibly be complied with is for intervenors to prepare testimony on every single issue before they know which issues will survive summary judgment. This would be a gross waste of intervenors' resources that is totally unjustified in these circumstances. There is no need to set a deadline for the submission of testimony on the New Hampshire plans until the Board is able to schedule a hearing date for both the New Hampshire and Massachusetts plans. Finally, the Board should postpone a hearing date and retain maximum flexibility in the litigation schedule until it is clear when the Massachusetts plans will be submitted to the NRC.

NECNP proposes the following schedule for litigation of the New Hampshire local plans¹:

<u>Dates</u>	<u>Deadline</u>
March 24	Contentions on each plan due
April 7	Parties other than NRC staff respond

¹Since it is not yet completed, litigation of the New Hampshire state plan should be postponed until it is finished.

April 14	NRC staff responds to contentions
April 24	Replies to Applicant and staff responses due
May 1,2	Prehearing conference
May 9	Board rules on contentions, discovery commences
July 8	Discovery closes
July 22	Answer to last interrogatories due
July 29	Deadline for summary judgment motions
August 18	Responses to summary judgment motions due
August 28	Replies to responses due
September 8	Board rules on summary judgment motions
November 7	Prefiled testimony due now or ten days before hearing on New Hampshire and Massachusetts plans, whichever is later.


This schedule provides the minimum time necessary for the preparation of contentions and testimony on the New Hampshire local emergency plans.

Conclusion

Without consulting any parties other than the Applicants, the Licensing Board has established a litigation schedule that seriously restricts the ability of NECNP and other intervenors to participate effectively in these emergency planning proceedings. Moreover, there is no justification for the extremely tight time

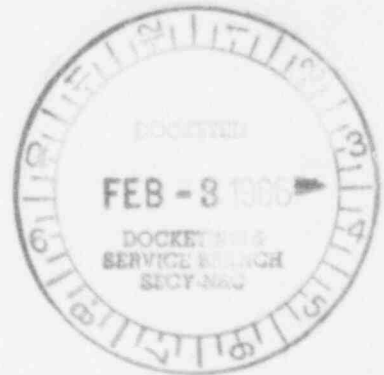
limits on the stages of the litigation. NECNP requests that the Board reconsider its schedule and establish a new schedule with fairer and more reasonable time allotments.

Respectfully submitted,


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January 31, 1986



CERTIFICATE OF SERVICE

I certify that on January 31, 1986, copies of NECNP's Objection to Board Order of January 17, 1986 and motion for reconsideration were served on the following by first-class mail:

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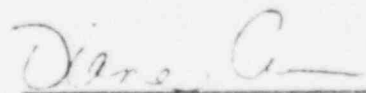
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