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March 3, 1988

UNITED STATES NUCLEAR REGULATORY COMMISSION **88 MAR -7 P4:57**  
 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

Public Service Company of )  
New Hampshire, et al. )

(Seabrook Station, Units 1 &amp; 2) )

Docket No. 50-443 OL-1/444-06-1

ONSITE EMERGENCY  
PLANNING & TECHNICAL  
ISSUES

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S  
 REPLY TO APPLICANTS' RESPONSE TO NECNP'S  
REQUEST FOR ENTRY UPON LAND

On February 19, 1988, the New England Coalition On Nuclear Pollution (NECNP) requested, pursuant to 10 C.F.R. § 741(a)(2), that the Applicants permit NECNP's counsel and experts to inspect and take notes, samples, and photographs at Seabrook Station with respect to NECNP Contention IV. Applicants have objected to this request on the grounds that NECNP's Request was untimely. According to Applicants, this Board's December 2, 1988 Scheduling Order, which provided that "Applicants, NECNP and the Staff shall ... complete discovery by February 19, 1988," should be interpreted as requiring that all responses to discovery must be received by February 19, 1988.<sup>1</sup>

NECNP believes that the Licensing Board's December 2, 1987 Scheduling Order establishes February 19, 1988 as the last date

<sup>1</sup> Applicants' Response to NECNP's Request For Entry Upon Land, dated February 26, 1988.

on which requests for discovery may be served. Past NRC practice in the Seabrook proceeding has consistently been that the date by which discovery is to be closed has meant the date on which the last discovery request must be filed.<sup>2</sup> Where a Licensing Board has intended to impose on parties a specific deadline by which the last discovery response must be received, and depositions must be taken, it has done so explicitly.<sup>3</sup>

Here, the Board's Scheduling Order did not provide a separate deadline by which discovery requests must be served, as has been done in the past. Accordingly, in light of prior Licensing Board scheduling orders in the Seabrook proceeding, the Board's December 2, 1987 Scheduling Order can only be read to require that all requests for discovery must be served on or before February 19, 1988.

Even if the Scheduling Order can be construed as Applicants suggest, NECNP relied in good faith on the Board's previous practice of providing explicit guidelines and deadlines in such instances where it intended for the deadline for service of discovery requests to be different and earlier from deadline for completion or closure of discovery. Given the serious con-

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2 "Memorandum & Order - Establishing Hearing Schedule on Offsite Issues Raised By NHRERP," ASLBP No. 82-471-02-OL, dated December 4, 1986; "Memorandum and Order," ASLPBP No. 82-471-02 OL, dated September 13, 1982.

3 "Memorandum and Order," ALBP No. 82-471-02-OL, dated July 25, 1986, at 11-12.

sequences in terms of NECNP's ability to effectively litigate the important, remanded safety issue of NECNP Contention IV, had the Board intended to establish a separate deadline for serving discovery requests prior to February 19th, it was entirely reasonable for NECNP to assume that the Board would have been explicit as to what that deadline was.

A ruling that NECNP's Request for Entry Upon Land is timely will result in no interference with or delay to this proceeding. To the contrary, a site visit which occurs later on in this proceeding would be more efficient, and conservative of the parties' time and resources. NECNP requested a site visit for after February 19th because it wished to await resolution of the dispute concerning the scope of NECNP Contention IV, and the receipt of responses to all outstanding discovery requests, including those requests that were the subject of NECNP's Motion to Compel.<sup>4</sup> Accordingly, deferral of the site visit until after these issues were resolved would be conservative of the time and resources of the parties and the Board.

Moreover, NECNP's request for a site visit will in no way interfere with or delay summary disposition of NECNP Contention IV. NECNP has no wish to conduct the site visit until after summary disposition proceedings on Contention IV. If, at that

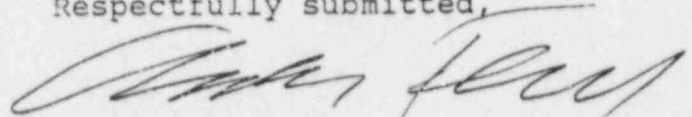
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4 NECNP's Motion to Compel Applicants to Respond to NECNP's Second Set of Interrogatories and Request for Production of Documents to Applicants on NECNP Contention IV, filed December 23, 1987.

point, NECNP Contention IV is resolved on summary disposition, there will be no need to conduct the site visit at all.

If, in fact, the Board did intend for February 19, 1988 to be the deadline for completion of all site visits, and the receipt of all interrogatory responses, NECNP hereby requests an extension of this deadline. An extension would be warranted in this instance, in light of the reasonableness of NECNP's reliance on past practice regarding discovery scheduling, and in light of the potential for denying NECNP a meaningful hearing on NECNP Contention IV should this Board determine that NECNP's discovery requests served on February 19, 1988 are untimely. See Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), 12 NRC 231, 232 n.1 (1980) (ASLB considered untimely filed response because reluctant to take position which might preclude litigation of safety or environmental issues without giving every party an opportunity to be heard).

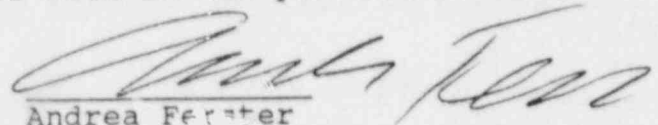
Respectfully submitted,



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CERTIFICATE OF SERVICE

On March 3, 1988, copies of the foregoing were served by first-class mail on all parties listed on the attached service list.



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