

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)		
)		
NEW ENGLAND POWER)	Docket Nos.	50-568
COMPANY)		50-569
)		
(NEP-1 and NEP-2))		

RESPONSE TO NEPCO MOTION TO CONTINUE PROCEEDINGS
GENERALLY AND MOTION TO REQUIRE THE NRC STAFF TO RECONSIDER
THE ACCEPTABILITY OF NEPCO'S APPLICATION

Concerned Citizens of Rhode Island, the Point Judith Fishermen's Cooperative, the Thomas L. Arnold Trust, and the New England Coalition on Nuclear Pollution (referred to collectively as CCRI) oppose the Applicants' (referred to collectively as NEPCO) motion for a general continuance. Since NEPCO has been denied the use of the Charlestown site, there is no longer any logical basis for continued consideration of this application. CCRI requests instead that the Licensing Board expedite the final resolution of this case by requiring the Nuclear Regulatory Commission Staff to reconsider the acceptability of NEPCO's application. This motion is based on the Board's decision In the Matter of New England Power Company (NEP Units 1 and 2), LBP-78-9, 7 NRC 271 (1978), and on the Board's authority to regulate the course of this proceeding under 10 CFR 2.721(d).

On June 20, 1979, the General Services Administration issued a final administrative decision denying NEPCO the use of the NALF as the site for NEP Units 1 and 2. Accordingly, CCRI has submitted to the Director of Nuclear Reactor Regulation a Request for an Order to Show Cause why the Application for Construction Permits for NEP Units 1 and 2 Should Not Be Dismissed. (Attachment 1) CCRI's

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Request for an Order to Show Cause is based on the fact that the application no longer contains the minimum site-related information required by the regulations. CCRI has submitted this request to the Director of Nuclear Reactor Regulation rather than making a motion to dismiss to this Board because this Board has previously ruled, Id., at 280, that only the Staff may determine whether an application is acceptable for docketing.

However, the Board's previous ruling does not leave it powerless when faced with a patently unacceptable application, as is now the case. Although it may not be able to dismiss the application on its own authority in this situation, it may certainly take judicial notice of the GSA decision and of the regulatory requirements governing the acceptability of an application for docketing and consideration by a Licensing Board. Having done so, it may require the Staff to re-examine the acceptability of the application and justify its continued docketing before the Board. This action is authorized by 10 CFR 2.718(e) and (1) as incorporated by reference in 10 CFR 2.721(d).

In the face of GSA's final decision rendering its application unacceptable, NEPCO offers nothing to indicate that there is any possibility that the NALF will somehow become available for use as a reactor site. The only possible justification for continuing this proceeding would be a showing by NEPCO that there is a substantial likelihood that it will prevail in an appeal of the GSA decision. NEPCO has made no such showing.

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CONCLUSION

For these reasons, CCRI opposes NEPCO's motion for a continuance of these proceedings and moves that the Licensing Board direct the Staff to reexamine the acceptability of NEPCO's application.

Respectfully submitted,



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