

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

TO: DIRECTOR OF NUCLEAR REACTOR REGULATION
RE: APPLICATION FOR CONSTRUCTION PERMITS FOR
NEP UNITS 1 AND 2

In the Matter of
NEW ENGLAND POWER COMPANY
(NEP-1 and NEP-2)

Docket Nos. 50-568
50-569

REQUEST FOR AN ORDER TO SHOW CAUSE WHY THE
APPLICATION FOR CONSTRUCTION PERMITS FOR
NEP UNITS 1 AND 2 SHOULD NOT BE DISMISSED

Introduction

In September of 1976, the New England Power Company (NEPCO) applied for permits to construct two nuclear reactors, NEP Units 1 and 2, at the former Naval Auxiliary Landing Field (NALF) in Charlestown, Rhode Island. At that time, the proposed transfer of the NALF to NEPCO by the General Services Administration was the subject of a court order requiring GSA to prepare an Environmental Impact Statement before disposing of the property. On June 20, 1979, the Acting Administrator of GSA decided that the NALF should be transferred to the Department of Interior, the Environmental Protection Agency, and the Town of Charlestown for wildlife refuge, environmental research, and municipal and recreational purposes. The Acting Administrator made it clear that no portion of the site may serve as the site for a nuclear power plant.

413

037

036

7907190 547

The Administrator stated:

"By this decision, it is my intent to specifically preclude disposal of this remaining 237 acres (the Charlestown parcels) for the construction of any large facility such as the proposed nuclear power plant. (Decision p.14)

As a result of this administrative decision, NEPCO has been denied the use of the site that is the basis for its application to construct NEP Units 1 and 2. Accordingly, NEPCO's application is no longer complete and acceptable for docketing under 10 CFR Section 2.101, and it must be dismissed. Concerned Citizens of Rhode Island, the Thomas Arnold Trust, and the Point Judith Fishermen's Cooperative (referred to collectively as CCRI), intervenors in the construction permit proceeding before the Atomic Safety and Licensing Board, request that the Director of Nuclear Reactor Regulation issue an Order to Show Cause why this application should not be dismissed.

ARGUMENT

I. The Director of Nuclear Reactor Regulation Has Jurisdiction to Issue the Requested Order to Show Cause

CCRI submits this Request for an Order to Show Cause to the Director of Nuclear Reactor Regulation because the question is no longer whether the site is suitable for a nuclear power plant, an issue that would be decided by the Licensing Board, but whether, given that the site is not available, the application is complete and may continue to be accepted and docketed for consideration by the Licensing Board. At an earlier stage in the construction permit proceedings, the Licensing Board specifically stated that,

413 038
037

We concur with the Staff's position that the question of whether or not an application is acceptable for docketing is a determination to be made only by the staff.

In the Matter of New England Power Company (NEP Units 1 and 2), LBP-78-9, 7 NRC 271, 280 (1978).

Since the Staff is apparently the sole decisionmaker on the issue at hand, CCRI's request must be to the Director Nuclear Reactor Regulation, as provided by 10 CFR 206(a):

Any person may file a request for the Director of Nuclear Reactor Regulation . . . to institute a proceeding pursuant to Section 2.202 to modify, suspend or revoke a license, or for such other action as may be proper. (Emphasis supplied.)

10 CFR 2.202(A), in turn, provides:

The Director of Nuclear Reactor Regulation . . . may institute a proceeding to modify, suspend, or revoke a license, or for such other action as may be proper by serving on the licensee an order to show cause . . .

In this case, there is technically no licensee since NEPCO has never been "authorized to conduct activities under a license or construction permit." 10CFR 2.4(j). However, NEPCO clearly stands in the position of a licensee for the purpose of this request. Since there is no other provision for consideration of this type of issue, Sections 2.206 and 2.202 must govern. This is supported by the language of Section 2.200(a):

This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order on a licensee or to modify, suspend, or revoke a license, or for such other action as may be proper. 1/

1/ Even if Section 2.202(a) does not specifically apply here, this Request for an Order to Show Cause is not precluded by the regulations. See Statement of Consideration for Section 2.206, 39 F.R. 12353 April 5, 1974.

493 038

II. NEPCO's Application Must Be Dismissed Because It Is Not Complete And Acceptable For Docketing Pursuant To 10 CFR 2.101(a).

Among the most fundamental information that the NRC must consider in addressing the question of whether a particular nuclear power plant should be constructed is that related to the proposed site. Here, the only detailed site-related information in NEPCO's application concerns the Naval Auxiliary Landing Field, which the General Services Administration has now dedicated to other uses. As a result, there is virtually no information related to a possible site for NEP Units 1 and 2 in the application.

The question of whether this application for construction permit is complete and acceptable for docketing is governed by 10 CFR 50.34 and 51.20. Section 50.34(a) provides, in relevant part,

Each application for a construction permit shall include a preliminary safety analysis report. The minimum information to be included shall consist of the following:

- (1) A description and safety assesment of the site on which the facility is to be located, with appropriate attention to features affecting facility design.
(Emphasis supplied.)

The PSAR submitted here contains a substantial amount of information concerning the NALF as the proposed site, and virtually no information concerning other possible sites. Since the information related to the NALF is now irrelevant, the application no longer includes the "minimum information" required by Section 50.34(a).(1).

Similarly, Section 51.20(a) requires that the application include an Environmental Report that discusses the characteristics of the proposed site in detail. The NEP ER did exactly that for


the NALF, which is no longer available. The ER also discussed several alternatives to the NALF, but these cursory presentations do not satisfy the information requirements for an Environmental Report or a proposed site.

Conclusion

This application no longer meets the threshold of acceptability established by 10 CFR 50.34 and 51.20, thus it cannot be considered to be complete and acceptable for docketing under 10 CFR 2.101(a)(3), and it must be dismissed. The fact that the application has already been docketed does not alter this conclusion. Where the basis for a determination of completeness and acceptability has been eliminated, the justification for continued docketing of the application has been eliminated as well.

For the foregoing reasons, Concerned Citizens of Rhode Island, the Thomas Arnold Trust, and the Point Judith Fishermen's Cooperative request that the Director of Nuclear Reactor issue an Order to Show Cause why this licensing proceeding should not be terminated and the application for NEP Units 1 and 2 dismissed.

Respectfully submitted,


William S. Jordan, III
Karin P. Sheldon
Sheldon, Harmon, Roisman & Weiss
1725 I Street, NW, Suite 506
Washington, DC 20006

Dated: 2/27/90

413 041
040