UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.	Docket Nos. 50-443-OL 50-444-OL
(Seabrook Station, Units 1 and 2)	

APPLICANTS' RESPONSE TO THE "SUPPLEMENT TO PETITION TO INTERVENE PURSUANT TO 10 C.F.R. § 2.714(b) CONTENTIONS WHICH PETITIONER SEEKS TO HAVE LITIGATED" FILED BY THE SOCIETY FOR THE PROTECTION OF THE ENVIRONMENT OF SOUTHEASTERN NEW HAMPSHIRE

Under date of April 21, 1982 The Society for the Protection of the Environment of Southeastern New Hampshire (the Society) filed a "Supplement to Petition to Intervene Pursuant to 10 C.F.R. § 2.714(b) Contentions Which Petitioner Seeks to Have Litigated" (Society's Supplement). The Society's Supplement is in reality two pleadings (1) a motion to file contentions late and (2) a statement of contentions. The Applicants respond to these two aspects of the document seriatim.

A. As to the Motion to File Late

The reason given for the late filing is that the Society interpreted the Special Prehearing Conference Order as not requiring the filing of contentions by April 6, 1982. This

reason might have had some merit had the Society not been served, as it was, with New Hampshire's "Motion for Additional Time for Filing Supplement to Petition to Intervene" wherein the New Hampshire Attorney General states:

> "This Order requires the State and the Attorney General to file their contentions thirty (30) days prior to the May 6, 1982 filing, which filing deadline is April 6, 1982."

This filing, made on March 24, 1982, and the NECNP "Request for Clarification" filed on April 2, 1982 which revealed that the Chairperson had advised Staff Counsel that contentions were required, also served on the Society, at a minimum put the Society on notice[1/] as to the fact that contentions would be required long before April 21, 1982. The motion should be denied.

B. As to the Merits

In their answer to the original Society petition, the Applicants noted that it appeared that the only contentions which the Society wanted to raise lay in the area of transmission line routing. See Answer of the Applicants to the Petition to Intervene of the Society for the Protection of the Environment of Southeastern New Hampshire (Dec. 1, 1981). The amendment to the petition which sets forth their contentions confirms that understanding. For the reasons set forth below, the Applicants say that the petition, as amended, should be denied.

The routing of Seabrook's transmission lines was litigated at length before the Licensing Board in the construction permit

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1/ If any be required. We fail to see how an order which states that the conference will permit identification of issues (which arise only from contentions in NRC practice) could be misunderstood as claimed by the Society and other petitioners herein.

proceeding. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-76-26, 3 NRC 857, 885-90 (1976). After extensive briefing and argument, the Licensing Board's decision was affirmed by the Appeal Board. Id., ALAB-422, 6 NRC 33, 82-90 (1977). Review of this issue was sought by the Applicants and denied by the Commission. Id., CLI-77-22, 6 NRC 451 (1977). The Applicants then sought review in the Court of Appeals which affirmed the Appeal Board's decision. Public Service Company of New Hampshire v. NRC, 582 F.2d 77 (1st Cir. 1978). Applicants' petition for a writ of certiorari was then denied by the Supreme Court of the United States. 439 U.S. 1046 (1978).

"[A]n operating license proceeding should not be utilized to rehash issues already ventilated and resolved at the construction permit stage." Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), CLI-74-12, 7 AEC 203 (1974). Nothing was more fully "ventilated" and "resolved" at the construction permits stage than the routes of Seabrook's transmission lines. No significant intervening change in circumstances would warrant relitigation of this issue. See Houston Lighting and Power Co. (South Texas Project, Units 1 & 2), LBP-79-87, 10 NRC 563 (1979), affirmed summarily, ALAB-575, 11 NRC 114 (1980).

It is true that the Society was not a party to the construction permit proceeding. But this avails the Society nothing. As the Licensing Board in Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 199-200 (1981) recently observed:

"Commission licensing is dissimilar from many other forms of litigation. Unlike many other kinds of cases, licensing cases are notorious. Their existence is not merely noticed in the federal register. Universally, plans to build a nuclear plant receive widespread news coverage; and the licensing proceedings themselves also are extensively covered. Consequently, residents living in the area of a proposed plant have actual notice rather than just constructive notice. Furthermore, even late petitioners with serious concerns and good cause for late filing are commonly granted intervention. See, e.g., Public Service Company of Oklahoma Associated Electric Cooperative, Inc., et al. (Black Fox, Units 1 and 2), LBP-77-17 (March 9, 1977).

In addition, intervenors who are admitted play a different role in Commission proceedings than in many other kinds of litigation. Although they are admitted to the proceeding because of their own interest, often because of residence near to the plant, their safety and environmental concerns often are quite general, as they were in the construction stage of this proceeding. Hence, while intervenors do not have any obligation to represent persons who are not parties, they often attempt to litigate generally any concerns which might also bother other residents in the community. Furthermore, even when intervenors' ability to broadly represent the community may be called into question, it is the obligation of the Staff, which always participates, to represent the public interest. In addition, the Commission's staff attempts to protect the public further by conducting an independent safety and environmental review that is required by statute.

On the other hand, Applicant in a construction permit proceeding litigates all the issues that are raised. At the conclusion of the proceeding, it may obtain a license to construct the facility. It often invests over $1 billion in reliance on the license. Of course, Applicant knows that it is continuously responsible for revising its plans in light of current knowledge and that it may face a serious challenge at the construction[2/] permit stage. However, its reliance on its construction license is substantial.

2/ Probably should read "licensing".

> When the Board balances the equities, it concludes that collateral estoppel can properly be applied so that issues decided at the construction permit stage need not be rehashed at the licensing permit stage even when new parties have intervened in the latter proceeding. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2)), ALAB-455, 7 NRC 41, fn. 4 at 46 (1978) (in a proceeding to amend a license to enlarge a spent fuel pool, the environmental inquiry may be limited to the consequences of the amendment)."

Perhaps in an attempt to avoid the force of the above reasoning, the Society states its last two contentions in terms of effects; effects of "proximity . . . to present dwellings" in contention B and "esthetic" effects in Contention C. Both of these effects are inherently part of routing (as opposed to operation) and were open for litigation as part of the routing issue at the Construction Permit stage. The petition, as amended, should be denied.

CONCLUSION

The motion to allow a late filed amendment should be denied. The petition to intervene as amended should be denied.

Respectfully submitted,
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April 26, 1982

CERTIFICATE OF SERVICE

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