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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

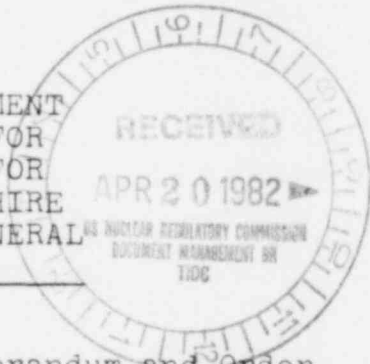
In the Matter of)

PUBLIC SERVICE COMPANY OF NEW)
HAMPSHIRE, et al.)

(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443-OL
50-444-OL

APPLICANTS' RESPONSE TO THE AMENDMENT
AND SUPPLEMENT TO THE PETITION FOR
LEAVE TO INTERVENE AND REQUEST FOR
HEARING OF THE STATE OF NEW HAMPSHIRE
AND GREGORY H. SMITH, ATTORNEY GENERAL
OF THE STATE OF NEW HAMPSHIRE



On March 12, 1982, the Board issued a Memorandum and Order Setting Special Prehearing Conference ("Order"). This Order required the filing of amended petitions by April 6, 1982. On April 5, 1982, the State and Attorney General of New Hampshire (hereafter collectively referred to as "New Hampshire") filed an "Amendment and Supplement to the Petition for Leave to Intervene and Request for Hearing" (hereafter cited N.H. Supp.). Therein New Hampshire set out twenty-one contentions it seeks to have admitted to litigation in this operating license proceeding. As contemplated by the Order, the Applicants hereby respond to, and set out their position with respect to the admissibility of, each of New Hampshire's contentions.

1. Interim Reliability Evaluation Program

By this contention, New Hampshire asserts that a probabilistic risk assessment (PRA) must be done for Seabrook. It is noted in the basis statement that the Applicants are conducting a PRA for this facility.

It is true that a PRA is being done for Seabrook at Applicants' request and expense. It is equally true that neither any regulation of the NRC nor NUREG-0737 require a PRA as a prerequisite to the issuance of an operating license for Seabrook. It is long settled that an operating license applicant need do no more than demonstrate compliance with the regulations. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003 (1973), aff'd, CLI-74-2, 7 AEC 2, aff'd sub nom. Citizens for Safe Power v. NRC, 524 F.2d 1291 (D.C. Cir. 1975); NRC Policy Statement, 45 F.R. 41738 (June 20, 1980).

The contention should be excluded.

2. Systems Interaction

By this contention New Hampshire seeks to require the Applicants to do a comprehensive analysis of systems interaction. There is no such requirement in either NUREG-0737 or the regulations. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-81-27, 14 NRC 325, 331 (1981). The contention should therefore be excluded.

3. Class 9 Accidents

Here New Hampshire contends: "The applicant has not presented, contrary to the requirements of 10 CFR 51.20(a), (d), a complete assessment of the risks posed by operation of Seabrook." N.H. Supp. at 11. The argument is that the Environmental Report does not adequately address Class 9 accidents because the discussion therein "is based in large part on the Wash. 1400 methodology which has been rejected". Id. at 12. No citation is given for this statement because none can be. The methodology (as opposed to certain numerical conclusions) of WASH-1400 has not been rejected by the Commission.

Prescinding from all of the foregoing, the fact is that the degree to which so-called "Class 9" accidents must be discussed in environmental reports or environmental impact statements is set out in the Commission's Interim Policy Statement of June 13, 1980. 45 Fed. Reg. 40101. New Hampshire in its statement of contentions makes no mention of this statement and instead attempts to freight on to the contention New Hampshire's own views of what the law should be. The contention as framed should be rejected.

4. Anticipated Transients Without Scram (ATWS)

ATWS is presently the subject of a rulemaking proceeding and alternative proposed rules have been published for comment. 46 Fed. Reg. 57521 (Nov. 24, 1981). Licensing Boards should not accept in individual licensing proceedings contentions which are

(or are about to become) the subject of general rulemaking by the Commission. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981); Potomac Electric Power Co. (Douglas Point Station, Units 1 & 2), ALAB-218, 8 AEC 79, 85 (1974). The contention should be excluded.

5. Liquid Pathway Impact

New Hampshire contends that there has been inadequate consideration given to the consequences of a core melt (Class 9) accident which could cause a release of radioactivity by the liquid pathway. It is contended that such analysis might reveal the need for a "core catcher" or other device to contain a melted core. New Hampshire points to no regulation, and there is none, which requires plants of the Seabrook vintage to have such devices. The contention should be excluded.

6. Environmental Qualification of Safety-Related Equipment

Again, New Hampshire in its statement of contention seeks to freight its interpretation of various regulations on to the proceeding. We suggest that this contention should be reworded to state:

"The design of Seabrook Units 1 and 2 does not comply with applicable provisions of DOR Guidelines and NUREG-0588."

Applicants would have no objection to a contention so worded being admitted into litigation. The suggested wording complies with the rulings of the Commission in Petition for Remedial

Action, CLI-80-21, 11 NRC 707, 711-12 (1980). See also Statement on Proposed Rule, 47 Fed. Reg. 2867 (Jan. 20, 1982).

Nos. 7-10

As Contentions Nos. 7-10, New Hampshire lists a number of technical contentions, all of which, if stripped of editorializing and conclusions, appear to be proper. Applicants would have no objection to the admittance of these contentions if worded as follows:

7. The Seabrook Station instrumentation is not in accord with the applicable provisions of GDC 13 and NUREG-0737.^{1/}
8. The Seabrook Station design does not comply with applicable provisions of 10 CFR § 50.44.
9. The Seabrook Station in-plant monitoring system is not in conformity with GDC Nos. 63 and 64 or applicable provisions of NUREG-0737.
10. The Seabrook Station Control Room Design does not comply with applicable provisions of NUREG-0737 and GDC 19-22.

11. Deviation From Current Regulatory Practice

There is no regulation which requires an applicant or the Staff to document deviations from current regulatory practice.

^{1/} It is not required that the Applicants comply with regulatory guides. E.g., Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 174 at n.27 (1974); Porter County Chapter of the Izaak Walton League of America v. AEC, 533 F.2d 1011 (7th Cir. 1976). Thus, the reworded issue does not refer to Reg. Guide 1.97.

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-27, 14 NRC 325, 331-32 (1981). The contention should be excluded.

12. Quality Assurance

The Applicants would have no objection to the admission of the following contention:

"The Seabrook Quality Assurance Program does not comply with 10 CFR 50, App. B."

13. Operations Personnel Qualifications and Training

Again, instead of a direct statement of a contention, New Hampshire editorializes to the point where it is not clear what exactly its contention is. We suggest the contention being made is:

"The Seabrook training programs for operations personnel do not comply with applicable provisions of NUREG-0737."

If that is the contention, Applicants do not object to its admission into the proceeding.

14. Reliable Operation Under On-Site Emergency Power

New Hampshire contends that: "The Seabrook design does not adequately insure reliable operation in the event of loss of off-site power and a LOCA at the plant." It is next claimed that the NRC Staff has "recognized a generic unresolved safety problem" having to do with alleged "unreliability of emergency on-site diesel generators at pressurized water reactors of the

Seabrook type." And finally, we are told the FSAR does not indicate compliance with GDC 2, 4, 5 and 50, none of which deal with electric power systems as do GDC 17 and 18, which the FSAR does indicate compliance with. FSAR, p. 8.1-3.

This contention gives the Applicants no idea in what particulars the diesels are unreliable. The basis is nothing but a set of statements as to what the generators should do and what will happen if they do not do it. Nothing is stated in the way of facts as to what is supposedly wrong with the Seabrook diesels. The contention should be excluded.

15. Unresolved Safety Issues

The concept of unresolved safety issues has nothing to do with Applicants. Pursuant to the decisions of Appeal Boards in ALAB-444^{2/} and ALAB-491^{3/} the NRC Staff has certain obligations to deal satisfactorily with these issues in the Safety Evaluation Report (SER). This makes sense because these issues are by definition "unresolved" by the Staff not the applicant. Since the SER is not out, this contention is premature and should be excluded at this time.

^{2/} Gulf States Utilities Co. (River Bend Station, Units 1 and 2), 6 NRC 760 (1977).

^{3/} Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245 (1978).

16. Ultimate Heat Sink

The issue of the design of Seabrook Station's ultimate heat sink was litigated to a conclusion in favor of the present design in the construction permit hearing. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-76-26, 3 NRC 857, 877-78 (1976). "[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). New Hampshire was a party to the prior proceeding and no change in circumstances has occurred which would provide a basis for relitigating this issue.^{4/} Such being the case, classic principles of collateral estoppel apply. 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 14 (1980). The contention should be excluded.

17. Environmental Impact

Despite its title, this contention is in reality a contention that the design of the radiation monitoring system is inadequate. This too was litigated to a conclusion favorable to the Applicants at the construction permit hearing. Public Service Co.

^{4/} New Hampshire alleges that the Seabrook ultimate heat sink does not comply with Reg. Guide 1.27. As noted earlier, n.l, supra, Reg. Guides are not regulations and compliance therewith need not be demonstrated.

of New Hampshire (Seabrook Station, Units 1 & 2), LBP-76-26, 3 NRC 857, 877 (1976). For the same reasons as set forth with respect to Contention No. 16, Contention No. 17 should also be excluded.

18. Health and Environmental Monitoring

This is a more detailed contention raising the same issue as raised in No. 17 and should be excluded for the same reasons.

19. Financial Qualifications

Financial Qualifications are no longer an issue in utility operating license proceedings. 10 CFR § 50.33(f), as amended by 47 Fed. Reg. 13750 (March 31, 1982).

20-22. Emergency Planning Issues

New Hampshire, with a lot of editorializing and conclusions as to what the regulations require, seeks to raise a whole laundry list of emergency planning contentions. What is required is compliance with the regulations. We suggest that a single contention be admitted which is:

"The Seabrook Station emergency planning does not comply with applicable provisions of 10 CFR § 50.47 and 10 CFR 50, App. E."

CONCLUSION

Contentions 1, 2, 3, 4, 5, 11, 14, 15, 16, 17, 18 and 19 should be excluded. Nos. 6, 7, 8, 9, 10, 12, 13, 15 and 20-22 should be excluded unless recast as herein indicated.

Respectfully submitted,

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April 15, 1982

CERTIFICATE OF SERVICE

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