

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 & 2)

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

APPLICANTS' ANSWER TO THE MOTION
OF THE TOWN OF SOUTH HAMPTON
FOR LATE ENTRY OF AMENDMENT
TO PETITION TO INTERVENE
AND
APPLICANTS' RESPONSE TO AMENDMENT
TO PETITION FOR LEAVE TO
INTERVENE OF THE TOWN OF
SOUTH HAMPTON



On April 13, 1982, the Town of South Hampton (South Hampton) filed a "Motion for Late Entry of Amendment to Petition to Intervene" accompanied by an "Amendment to Petition for Leave to Intervene". The motion for late filing recites that the reason for the amendment being filed later than the time allowed by this Board's special prehearing conference order issued March 12, 1982 is a death in the immediate family of the attorney in charge of this matter. The applicants submit that the foregoing constitutes good cause for the late filing and that the motion should be allowed.

Turning now to the amendment to the petition: In their answer to the original South Hampton petition, the Applicants noted that it appeared that the only contentions which

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South Hampton wanted to raise lay in the area of transmission line routing. See Answer of the Applicants to the Petition to Intervene of the Town of South Hampton (Dec. 1, 1981).

The amendment to the petition which sets forth five 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 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 South Hampton was not a party to the construction permit proceeding. But this avails South Hampton 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 * permit stage. However, its reliance on its construction license is substantial.

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)."

* Probably should read "licensing".

CONCLUSION

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

Respectfully submitted,

s/ Thomas G. Dignan, Jr.

s/ R. K. Gad III

s/ Ropes & Gray

Thomas G. Dignan, Jr.

R. K. Gad III

Ropes & Gray

225 Franklin Street

Boston, MA 02110

(617) 423-6100

April 16, 1982

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the applicants herein, hereby certify that on April 16, 1982 I made service of the within document by mailing copies thereof, postage prepaid, to:

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

Mr. Tomlin P. Kendrick
Executive Director
Coastal Chamber of Commerce
of New Hampshire
822 Lafayette Road
P.O. Box 596
Hampton, NH 03842

Paul A. Fritzsche, Esquire
General Counsel
Public Advocate
State House Station 112
Augusta, ME 04333

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney
General
Augusta, ME 04333

Jo Ann Shotwell, Esquire
Assistant Attorney General
Environmental Protection Division
Public Protection Bureau
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

William S. Jordan, III, Esquire
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006

Mr. Arnie Wight, Chairman
House Science and Technology
Committee
House of Representatives
Concord, NH 03301

E. Tupper Kinder, Esquire
Assistant Attorney General
Office of the Attorney General
208 State House Annex
Concord, NH 03301

Mr. Robert F. Preston
226 Winnacunnet Road
Hampton, NH 03842

Wilfred L. Sanders, Jr., Esquire
Sanders and McDermott
Professional Association
408 Lafayette Road
Hampton, NH 03842

Roy P. Lessy, Jr., Esquire
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Donald L. Herzberg, M.D.
George Margolis, M.D.
Hitchcock Hospital
Hanover, NH 03755

Ms. Patti Jacobson
3 Orange Street
Newburyport, MA 01950

Edward J. McDermott, Esquire
Sanders and McDermott
Professional Association
408 Lafayette Road
Hampton, NH 03842

Robert L. Chiesa, Esquire
Wadleigh, Starr, Peters, Dunn & Kohls
95 Market Street
Manchester, NH 03101

Rep. Nicholas J. Costello
Whitehall Road
Amesbury, MA 01913

Cooperative Members for Responsible
Investment
Box 65
Plymouth, NH 03264

Helen Hoyt, Chairperson
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Emmeth A. Luebke
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

s/ Thomas G. Dignan, Jr.
Thomas G. Dignan, Jr.