

New Hampshire Yankee

Ted C. Feigenbaum
President and
Chief Executive Officer

NYN-91060

April 16, 1991

United States Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Document Control Desk

- References:
- (a) Facility Operating License No. NPF-86, Docket No. 50-443
 - (b) Petition for Leave to Intervene in the Transfer of Public Service Company of New Hampshire's Ownership Interest in Seabrook Station to Northeast Utilities (the Petition), dated April 1, 1991, filed by Seacoast Anti-Pollution League
 - (c) Application to Amend OL to Authorize North Atlantic Energy Service Company (NAESCO) to Act as Managing Agent for Seabrook Station, dated November 13, 1990, as supplemented (Operator Amendment)
 - (d) Application to Amend OL to Authorize North Atlantic Energy Corporation (NAEC) to Acquire and Possess the Public Service Company of New Hampshire Ownership Interest in Seabrook, dated November 13, 1990

Subject: Response to Comments Contained in Seacoast Anti-Pollution League's "Petition for Leave to Intervene in the Transfer of Public Service Company of New Hampshire's Ownership Interest in Seabrook Station to Northeast Utilities"

Gentlemen:

New Hampshire Yankee (NHY) is in receipt of the Petition (Reference (b)), which, after reciting allegations against Northeast Utilities (NU) derived from "newspaper and magazine articles," concludes with a plea that "NU should not be granted permission to become the licensed operator of the Seabrook Nuclear Power Plant." Insofar as the Petition constitutes a request for a hearing, the Seabrook Licensees have responded in accordance with the Commission's Rules of Practice. Insofar as the Petition is deemed to be a comment upon the proposed no significant hazards consideration determination regarding the Operator Amendment, NHY addresses it herein.

NHY Division of Public Service Company of New Hampshire (PSNH), in its capacity as Managing Agent for the Seabrook Joint Owners, is the present authorized operator of Seabrook Station under Facility Operating License NPF-86. As such, NHY submitted the two pending applications for license amendments (References (c) and (d)).

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New Hampshire Yankee Division of Public Service Company of New Hampshire
P.O. Box 300 • Seabrook, NH 03874 • Telephone (603) 474-9521

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As explained in the Operator Amendment, in accordance with the July 19, 1990 Agreement (Exhibit 1 to the Operator Amendment, hereafter the July Agreement) and paragraph 36 of the Joint Ownership Agreement (JOA), the instrument governing the relationships among the Joint Owners, Joint Owners owning the requisite percentage of Seabrook Station propose, upon receipt of requisite regulatory approval, to appoint a new entity, NAESCO, as successor Managing Agent to operate Seabrook Station on behalf of all the Joint Owners. This change in operator is an integral part of the Reorganization Plan approved by the Bankruptcy Court in the proceeding relating to PSNH.¹ The transaction will be implemented by the execution of the Managing Agent Operating Agreement (MAOA), (Exhibit D-1 to the Form U-1 filed as a supplement to the Operator Amendment on January 22, 1991) between NAESCO and the Joint Owners. Paragraph 3(a) of the MAOA explicitly provides that NAESCO, as Managing Agent for all the Joint Owners, "shall have complete and ultimate responsibility for day-to-day management of [Seabrook Station which includes]...authority on all operational issues respecting Seabrook 1 to the extent necessary to comply with the NRC License." (Emphasis added). As the Operator Amendment expressly states, the existing staff of NHY will be concurrently transferred to NAESCO in order to "achieve continuity in the management of Seabrook with the same staff and contractor support resources . . . previously evaluated and approved" by the NRC. Therefore, NAESCO will be staffed by essentially the same individuals who currently staff the NHY organization. Thus, the MAOA will transfer to NAESCO, as Managing Agent, the ultimate responsibility for management, operation and maintenance of Seabrook Station previously vested in PSNH and NHY by the Joint Ownership Agreement.

Under the JOA, the Managing Agent is deemed to act on behalf of all Joint Owners, none of whom has a majority interest in Seabrook. In addition, Joint Owners are represented by an Executive Committee which is responsible for policy making, financial and other decisions not involved in day-to-day operations. The MAOA will also expand the Joint Owners' participation in general oversight, increase their access to Project information, and entitle them to more auditing and budgetary input, as well as update the limitation on liability provision.

Based on the information above, all of which is set forth in the Operator Amendment, the Petition's allegations with respect to NU, even assuming, for the sake of argument, their substantiation,² are irrelevant and immaterial to the issue of NAESCO's technical qualifications. As described in the Operator Amendment, NAESCO will succeed to the

¹A second consequence of the Reorganization Plan is the change in ownership of PSNH's interest in Seabrook which will be transferred to NAEC. See Reference (d).

²The Petition alludes to an investigation of NU currently being conducted by the NRC Office of Investigations which was "triggered by a Department of Labor complaint." Since that investigation has not been concluded, it would be improper to draw any inferences from its mere existence. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), DD-84-19, 20 NRC 773, 774-775 (1984). Indeed, NRC case law makes clear that without a present showing of a pervasive pattern of retaliation for raising nuclear safety concerns, allegations such as these should not give rise to an issue of technical qualifications or to a significant hazards consideration. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, NRC 282, 327-28 (1985); Duke Power Co. (Catawba Nuclear Power Station, Units 1 and 2), LBF-84-24, 19 NRC 1418, 1518 n.27, 1530-31 (1984); and Pacific Gas and Electric Co., 20 NRC at 774.

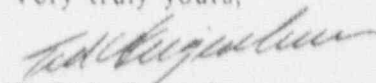
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resources of NHY and NAESCO's technical qualifications will necessarily be at least equal to those of NHY, which qualifications have been previously approved by the NRC and which are not impugned in any manner by the Petition's allegations. Furthermore, the Commission's proposed "no significant hazards consideration" determination in the Operator Amendment proceeding should not be revised simply because allegations, supported only by petitioner's citation to "newspaper and magazine articles", are made with respect to an on-going OI investigation. Indeed, the OI investigation referred to in the Petition was pending when the Staff made its proposed no significant hazards consideration determination. The Petition, which merely restates the known fact of the existence of the OI investigation, has thereby raised no new information. Thus, the NRC Staff is fully justified in maintaining its position and acting on the pending amendment application based upon the facts available to them when the Notice was published.

NHY reaffirms all of its statements in the Operator Amendment, including its no significant hazards consideration evaluation, and urges the Commission and the Staff to act expeditiously to issue the requested license amendment effecting the change in operator for Seabrook Station.

Very truly yours,



Ted C. Feigenbaum

TCF:AMC/ssl

cc: Mr. Thomas T. Martin
Regional Administrator
United States Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406

Mr. Gordon E. Edison, Sr. Project Manager
Project Directorate I-3
Division of Reactor Projects
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Noel Dudley
NRC Senior Res. Inspector
P.O. Box 1149
Seabrook, NH 03874

Mr. George Iverson, Director
N.H. Office of Emergency Management
State House Office Park South
107 Pleasant Street
Concord, NH 03301