

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'83 APR 18 A9:58

In the Matter of)

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

(Seabrook Station, Units 1)
and 2))

Docket Nos. 50-443
50-444

NECNP OBJECTION TO LICENSING BOARD'S REFUSAL TO ALLOW
TIME FOR RESPONSE TO NRC STAFF AFFIDAVIT CONCERNING
ENVIRONMENTAL QUALIFICATION OF ELECTRIC VALVE OPERATORS.

At the April 7 and 8, 1983 prehearing conference in Boston, the Licensing Board considered oral arguments on summary disposition of a number of NECNP contentions, including Contention I.A.2., concerning environmental qualification of electric valve operators. During the oral argument in support of its summary judgment motion, the NRC Staff asserted for the first time in this proceeding that it had reviewed the electric valve operators inside the containment and determined that none of the unqualified electric valve operators was important to safety. NECNP objected that the Board could not consider summary disposition based on an unsupported assertion of which NECNP had no prior notice.

On April 14, 1983, the Licensing Board conducted a conference call with counsel for NECNP, the NRC Staff, and

Applicants, The Board requested from the NRC Staff a written affirmation of the Staff's representation at the April 7 prehearing conference. NECNP asked for an opportunity to review the affidavit and supporting analyses by the NRC Staff. The Staff agreed to make all documents supporting the determination available to NECNP for review. When NECNP asked the Board how much time would be permitted for a response to the affidavit, the Board stated that it did not wish any responses, and that the only thing it wanted was the affirmation from the NRC Staff.

In requesting the affirmation from the Staff, the Board has given the Staff an opportunity to make an additional summary judgment motion on Contention I.A.2., without allowing NECNP to respond to that motion. In so doing, the Board flagrantly violates the Commission's summary disposition rules, which require that parties be afforded an opportunity to answer the allegations made in summary disposition motions. 10 C.F.R. § 2.749(a).

The affidavit that the NRC Staff plans to submit early next week, and the analyses and documents on which it may rely, have never before been provided to NECNP, yet the Board has not allowed NECNP an opportunity to respond to these materials. Not only has the Board informed NECNP that it does not wish a response from NECNP to the NRC Staff, but the Board has indicated that it has no interest in the factual basis for the

NRC's determination. When counsel for the NRC Staff offered to supply an affidavit outlining the methodology applied by the Staff in its analysis, the Board stated that it wouldn't be necessary, and that the Board was only interested in receiving an affirmation that the determination had been made.

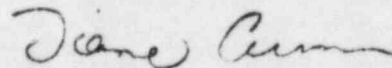
A determination that a piece of equipment is not "important to safety" requires a technical evaluation of whether the failure of a particular component will impair the function of safety related equipment. 10 C.F.R. § 50.49(b)(2). Presumably, the Staff's affirmation will be supported by some technical discussion of why each of the unqualified electric valve operators inside the containment do not meet the criteria of 10 C.F.R. § 50.49(b). NECNP is entitled to some reasonable period of time in which to evaluate the Staff's technical determination, at least the 20 days allowed by 10 C.F.R. § 2.749 (a) for answers to summary disposition motions.

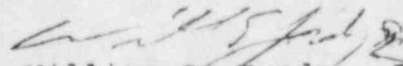
In determining that no response to the NRC Staff affirmation is necessary, and refusing to set a reasonable period for a response, the Board is essentially entertaining a summary judgment motion without allowing the regulatory period for response. As a result, the Board is undertaking ex parte consideration of the Staff's position in total disregard of NECNP's position. Moreover, by its willingness to accept mere staff assertions without examining the facts on which the assertions are based, the Board would abdicate its own

responsibility independently to review the record and make a reasoned determination on the facts. For these reasons, NECNP objects to the Board's decision in the conference call of April 14, 1983, not to provide for a response by NECNP to the Staff's new assertions.

Finally, NECNP objects to any further unrecorded telephone conference calls between the Board and the parties. The conversation of April 14, 1983, resulted in a ruling that seriously affects the rights of NECNP in this proceeding and could have a precedential effect on the participation of other parties. Such conversations should be recorded for the record, so that there is a clear basis for comment by other parties and for appellate review.

Respectfully submitted,


Diane Curran


William S. Jordan, III
HARMON & WEISS
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006
(202) 833-9070

April 15, 1983

CERTIFICATE OF SERVICE

I certify that on April 15, 1983, copies of NECNP OBJECTION TO LICENSING BOARD'S REFUSAL TO ALLOW TIME FOR RESPONSE TO NRC STAFF AFFIDAVIT CONCERNING ENVIRONMENTAL QUALIFICATION OF ELECTRIC VALVE OPERATORS were served by first-class mail on the following

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

Rep. Roberta C. Pevear
Drinkwater Road
Hampton Falls, NH 03844

Dr. Emmeth A. Luebke
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Phillip Ahrens, Esq.
Assistant Attorney General
State House, Station #6
Augusta, ME 04333

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert A. Backus, Esq.
111 Lowell Street
Manchester, NH 03105

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

Thomas G. Dignan, Esq.
R. K. Gad, III, Esq.
Ropes and Gray
225 Franklin Street
Boston, MA 02110

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

Dr. Mauray Tye, President
Sun Valley Association
98 Emerson Street
Haverhill, MA 01830

Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Roy P. Lessy, Jr. Esq.
Robert G. Perlis, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Maynard B. Pearson
Director of Civil Defense
Town Hall
Amesbury, MA 01913

Rep. Beverly Hollingworth
Coastal Chamber of Commerce
822 Lafayette Rd.
P.O. Box 596
Hampton, NH 03842

Anne Verge, Chair
Board of Selectmen
Town Hall
South Hampton, NH 03842

Jo Ann Shotwell, Esq.
Assistant Attorney General
Department of the Attorney
General
1 Ashburton Place, 19th Floor
Boston, MA 02108

John B. Tanzer
Town of Hampton
5 Morningside Drive
Hampton, NH 03842

Edward F. Meany
Town of Rye
155 Washington Road
Rye, NH 03870

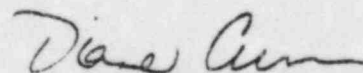
Ruthanne G. Miller, Esq.
Law Clerk to the Board
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

George Dana Bisbee, Esq.
Edward L. Cross, Jr., Esq.
Asst. Atty. Generals
State House Annex
Concord, NH 03301

Letty Hett, Selectman
Town of Brentwood
RFD Dalton Road
Brentwood, NH 03833

Sandra Gavutis
Town of Kensington
RFD 1
East Kensington, NH 03827

Diana P. Sidebotham
R.F.D. 2
Putney, VT 05346


Diane Curran