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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 & 2))

Docket Nos. 50-443 OL
50-444 OL

APPLICANTS' ANSWER TO
"NECNF MOTION TO AMEND
PETITION TO INTERVENE"

The Applicants hereby answer "NECNF Motion to Amend
Petition to Intervene" (hereinafter "Motion"), and say
that, for the reasons set forth herein, the Motion
should be denied on grounds of timeliness. If not so
denied, the motion should be allowed in part and denied
in part on grounds of vagueness, lack of specificity,
and lack of regulatory basis.

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The Proposed Contention

NECNF proposes a contention purportedly based on the recently promulgated amendment to the electrical equipment qualification rule, 10 CFR § 50.49, 48 Fed. Reg. 2732 (January 21, 1983). The proposed contention is in three distinct parts: Part (a) contends that certain unidentified equipment that is required to be environmentally qualified has not been so qualified;¹ Part (b) contends that a list containing certain information that is supposedly required to be furnished to the NRC Staff has not been furnished;² and

¹"Applicants' program for the environmental qualification of electrical equipment at Seabrook does not comply with 10 C.F.R. § 50.49 of General Design Criterion 4 in the following respects: (a) Applicants' program does not provide for the qualification of all electrical equipment 'important to safety' as defined by 10 C.F.R. § 50.49(b)."

²"Applicants' program for the environmental qualification of electrical equipment at Seabrook does not comply with 10 C.F.R. § 50.49 of General Design Criterion 4 in the following respects: . . . (b) Applicants have not met the requirements of 10 C.F.R. § 50.49(d) in that they have not prepared a list of all electrical equipment important to safety, including the following required information:

"(1) The performance specifications under

Part (c) contends that a certain "interim showing" that is required to be made prior to issuance of the operating license has not been made.³

Proffered Justification for Lateness

NECNP's proffered justification for submitting the contention at this late hour is nominally both the promulgation of the amended rule (which occurred on

conditions existing during and following design basis accidents.

"(2) The voltage, frequency, load, and other electrical characteristics for which the performance specified in accordance with paragraphs [sic] (d)(1) of this section can be ensured.

"(3) The environmental conditions including temperature, pressure, humidity, radiation, chemicals, and submergence at the location where the equipment must perform as specified in accordance with paragraphs (d)(1) and (2) of this section."

³"Applicants' program for the environmental qualification of electrical equipment at Seabrook does not comply with 10 C.F.R. § 50.49 of General Design Criterion 4 in the following respects: . . . (c) Applicants have not performed an analysis to ensure that the Seabrook plant can be safely operated pending environmental qualification of those components important to safety which Applicants have not yet qualified or as to which the documentation for qualification is not complete."

January 21, 1983, or exactly 85 days prior to the filing of its proposed additional contention) and the publication of the Seabrook SER by the NRC Staff (which came into NECNP's possession on March 8, 1983, or exactly 44 days prior to the filing of its proposed additional contention). In fact, however, NECNP makes no showing of excuse for delay beyond the promulgation of the amended rule; plainly the newly required submissions had not previously been tendered and, therefore: (i) the entire basis for Parts (b) and (c) of the proposed additional contention was known immediately upon the issuance of the amended rule, and (ii) NECNP could not and does not refer to anything happening after the promulgation of the rule that provided any additional basis for Parts (b) and (c).⁴

⁴A newly created regulatory requirement may be the basis for justifying a late-filed contention, Cincinnati Gas and Electric Co. (Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 575-75 (1980); it functions like a newly issued document. To avoid a time bar on the basis of a previously unavailable document, however, the proposed new contention must be "wholly dependent on the content of the document." Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, NRC _____, CCH Nuc. Reg. Rptr. ¶ 30,725, at p. 30,531 (8/19/82). NECNP's proposed additional contention may well be -- as to Parts (b) and (c), at least -- wholly dependent on amended § 50.49, but it cannot be said to have been wholly dependent on the SER.

The question, therefore, is whether NECNP's proffered justification for waiting 85 days after the promulgation of the amended rule is sufficient, but NECNP has not even tendered a basis for excusing that delay.⁵

As for Part (a) of the proposed new contention, NECNP's delay has been even more egregious. As NECNP admits in the opening words of the contention, the ultimate regulatory basis for the contention is GDC 4 of 10 CFR Part 50, Appendix A. Nothing in Appendix A or GDC 4 has changed since the deadline for submitting contentions elapsed. Moreover, the concept of equipment "important to safety" -- defined to mean "structures, systems and components that provide

⁵To put the matter in proper context, when the amended rule was promulgated the pre-hearing conference on technical contentions was 76 days away and the start of hearings on technical contentions was 144 days away. On the date that NECNP filed its newly proposed contention, however, the pre-hearing conference was 13 days past and the start of hearings was only 54 days away, with testimony due in 16 days. NECNP thus "sat upon" this proposed contention for 100% of the time remaining until the pre-hearing conference and for 63% of the time remaining until the start of the hearings.

reasonable assurance that the facility can be operated without undue risk to the health and safety of the public"⁶ -- has long antedated the amendment to § 50.49. As NECNP concedes, Motion at 4-5, it has been on notice since receipt of the FSAR of what equipment the Applicants propose to qualify environmentally -- and, therefore, of what equipment they do not. NECNP has been able since the beginning of the proceeding to raise a contention that some piece of equipment that the Applicants do not propose to qualify is equipment "that provide[s] reasonable assurance that the facility can be operated without undue risk to the health and safety of the public" -- but it did not do so. NECNP did not need the issuance of amended § 50.49 to advance such a contention, and therefore, the tardiness of the contention cannot be defended on the basis of the

⁶10 CFR Part 50, App. A, "Introduction," ¶ 1.

amendment. Catawba, supra note 4.⁷

⁷NECNP's reference to the Applicants' answers to interrogatories as somehow providing support for NECNP's tardiness (or as support for the proposition that to date the Applicants have addressed only one of two supposedly discrete classes of equipment) is, we respectfully submit, somewhat disingenuous. What the Applicants said in their answers to interrogatories was that they did not understand any difference between the terms "safety related" and "important to safety" as used in 10 CFR Part 50, App. A ("important to safety"); Part 50, App. B ("safety related"); and Part 100, App. A ("safety related"), and hence used the term "safety related" to refer to and to include both concepts (if there is a difference):

"Note that no distinction was made between 'safety related' and 'important to safety.' Therefore, both of these categories are encompassed in the table designation 'safety related.'"

"Applicants' Answer to 'NECNP First Set of Interrogatories . . . on Contentions I.A.2, I.B.1, I.B.2 and I.C'" (filed 11/1/83), Answer No. 3, at p. 6 (emphasis added). On request, the Applicants expanded upon their use of the terms:

"The term 'important to safety' when used by the Applicant[s] to identify structures, systems and components that perform a safety function has the same definition as 'safety-related.' The Applicant[s have] no structures, systems or components which are identified as important to safety that do not perform a safety function."

"Applicants Answer to 'NECNP Second Set of Interrogatories . . . on Contentions I.A.2 . . . ' . . . " (filed 12/16/82), Answer No. 1(b), at p. 4.

Factual Basis for the Contention

Insofar as Parts (b) and (c) of the proposed contention are premised on the non-submission of the documents in question,⁸ the Applicants agree that a factual basis exists for these parts.

Part (a), however, stands upon a different footing. It asserts, not the omission to have filed certain documents, but rather the failure to have environmentally qualified electrical equipment that, as NECNP wishes to contend as a matter of fact, has the nexus to safety set forth in Part 50, App. A and § 50.49. NECNP has not given any identification or specification of the equipment it proposes to contend meets that description, and NECNP has offered nothing in suport of this premise but its own unsupported ipse dixit. Given (i) the Applicants' answers to interrogatories describing its understanding and application of the two terms for enviromental

⁸Or at least of the documents called for by the regulations, which differ from those that NECNP asserts must be submitted. See note 11, infra.

qualification purposes, and (ii) that NECNP has had since the publication of the FSAR all the information needed to review the Applicants' decisions as to what equipment will be qualified and what will not, NECNP must do more. It must, for Part (a) of its proposed additional contention, identify the equipment of concern and then offer some reasoned basis in fact for asserting that the identified equipment possesses the required nexus to safety.⁹ Prescinding entirely from its timeliness, Part (a) of the contention is fatally vague, insufficiently specific, and without factual basis.¹⁰

⁹"At the very least, for purposes of intervention a petition must be adequate to show that it applies to the facility at bar and that there has been sufficient foundation assigned for it to warrant further exploration." Philadelphia Electric Co. (Peach Bottom Atomic Power Station), ALAB-216, 8 AEC 13, 21 (1974) (emphasis added).

¹⁰In addition to the foregoing, amended § 50.49 exempts from its scope equipment required to be qualified under the previously applicable standards, i.e., NUREG-0588 and the "DOR Guidelines." 10 CFR § 50.49(k). NECNP makes no attempt either to limit the scope of Part (a) of its proposed additional contention to equipment not exempted by § 50.49(k) or to demonstrate any basis for asserting that any particular item of equipment was not subject to the prior standards. The proposed contention therefore lacks requisite specificity, is impermissibly vague, and lacks the required basis in fact.

Regulatory Basis

In addition to an adequate factual basis, any proposed contention must have a basis in the regulations applicable to the application pending before the Board. In the present case, this requirement means that the thing in support of which the contention is urged must be something the satisfactory compliance with which is required by the NRC regulations prior to the issuance of an operating license.

Part (a) of the proposed new contention relates to sub-section (a) of 10 CFR § 50.49, as amended, which requires that "[e]ach holder of or each applicant for a license to operate a nuclear power plant shall establish a program for qualifying the electrical equipment defined in paragraph (b) of this section." By its terms this does not impose a condition precedent to licensing, and the explicit provisions of sub-section (i) of the amended regulation make it clear that no such requirement is intended for licensing proceeding at the stage at which Seabrook is at:

"Applicants for operating licenses that are to be granted on or after February 22, 1983, but prior to November 30, 1985, shall perform an

analysis to ensure that the plant can be safely operated pending completion of equipment qualification required by this section."

(Emphasis added.) To require the complete satisfaction of sub-section (a) of § 50.49 as a condition precedent to the issuance of the Seabrook operating license would be flatly contrary to this transition provision.

Just as plainly, part (b) of the proposed contention relates to sub-section (d) of § 50.49, which is the requirement for documentation of compliance with sub-section (a). By the terms of the regulation compliance with sub-section (d) cannot antedate compliance with sub-section (a).¹¹

¹¹Part (b) of the proposed contention, as framed by NECNP, fails the regulatory basis test for an additional reason, which derives from NECNP's misparaphrasing of § 50.49(d). As NECNP frames the proposed contention, the Applicants must prepare a list of certain equipment ", including the following information: [quotation from § 50.49(d)(1)-(3)] This information is only partially supplied" (Motion at 1-2, emphasis added.) What the amended regulation actually says is that the Applicants shall prepare a list of the equipment, period. It then goes on to say that the data called for by sub-sections (1) through (3) of § 50.49(d) shall be maintained "in a qualification file." § 50.49(d). See also 48 Fed. Reg. 2732, item (9) (1/21/83). NECNP does not contend

For these reasons, parts (a) and (b) of the proposed new contention lack a regulatory basis for the Seabrook operating license application.


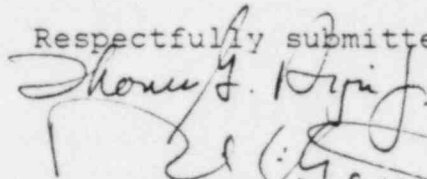
The Applicants agree that the transitional provision, § 50.49(i), provides a regulatory basis for part (c) of the proposed contention.

that this information is not contained "in a qualification file" and for a very good reason: NECNP was offered an opportunity to inspect the electrical equipment environmental qualification files (which are massive) kept in Philadelphia, Pennsylvania, in November, 1982, which it declined to pursue.

Conclusion

For the foregoing reasons, the entire proposed additional contention should be denied on grounds of timeliness. If the Board determines that the proposed additional contention is not required to be denied on grounds of timeliness, then Part (a) of the contention should be denied on grounds of vagueness, lack of specificity, and lack of basis, either regulatory or factual, and Part (b) should be denied on grounds of lack of basis, either regulatory or factual.

Respectfully submitted,



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Dated: April 29, 1983

CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on April 29, 1983, I made service of the within "APPLICANTS' ANSWER TO 'NECNF MOTION TO AMEND PETITION TO INTERVENE'" by mailing copies thereof, postage prepaid, to:

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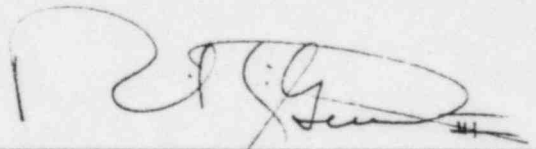
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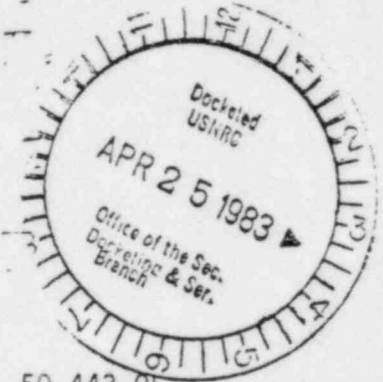


R. K. Gad III

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Helen F. Hoyt, Chairperson
Emmeth A. Luebke
Jerry Harbour.



In the Matter of
PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-0L
50-444-0L
(ASLBP No. 82-471-02-0L)

April 25, 1983

MEMORANDUM AND ORDER

(Memorializing Conference Call of April 14, 1983 and
Addressing NECNP Objection to Licensing Board's
Refusal to Allow Time for Response to NRC Staff
Affidavit Concerning Environmental Qualification
of Electric Valve Operators)

1. On April 14, 1983, this Board held a conference call to request formal clarification from the NRC Staff of its review of Applicant's Table I.A.2-3 prepared by Applicants in response to a discovery request by NECNP relating to NECNP Contention I.A.2. Parties to the conference call were Applicant, NRC Staff Counsel and Counsel for NECNP.

2. This Board in the exercise of its duties to conduct hearings pursuant to its appointment requested clarification of a matter brought before it during the Prehearing Conference of April 7, 1983.

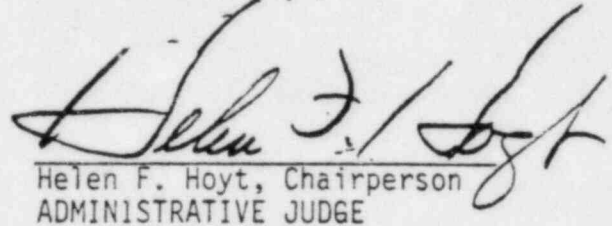
Tr. 717-724. The Board's request related to a Staff review which had not been completed until the week of the Prehearing Conference dealing with summary judgement matters. An examination by the Board of the transcript of the Prehearing Conference caused Board concern that the

updated Staff review had not been included in the record of this proceeding. Staff volunteered to provide the affidavit it filed on April 20, 1983. NECNP, in its motion of April 15, 1983, contends that the Board has given NRC Staff "an opportunity to make an additional summary judgement motion on Contention I.A.2, without allowing NECNP to respond to that motion.

3. Such torturous reasoning does disservice to this Board's actions in ensuring a complete, accurate, and current record of material information on which this Board and appellate agencies may base a decision in this proceeding. As the Atomic Safety and Licensing Appeal Panel said in Cleveland Electric Illuminating Company, et al., ALAB-443, 6 NRC 741, 752 (1977), there is nothing improper in a Board requesting an additional submission. This Board considered the method of a conference call in the best interest of all parties as well as the Board. The Staff had supported the Applicant's Eighth Motion for Summary Disposition of NECNP Contention I.A.2. The Staff affidavit, the Board finds, is merely a supplemental Staff response to Applicant summary motion. The Board advised parties during the conference that a response was not considered necessary for the Board. However, a NECNP response, if the Intervenor elects to file, may be made within 10 days, by operation of the rules of this Commission. In accordance with

10 C.F.R. § 2.749(a), NECNP must file in hand to this Board, any response by May 2, 1983.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Helen F. Hoyt, Chairperson
ADMINISTRATIVE JUDGE

Dated in Bethesda, Maryland
this 25th day of April, 1983.