

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

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USNRC

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Public Service Company of  
New Hampshire, et al.  
(Seabrook Station, Units 1 & 2)

Docket Nos. 50-443 OL  
50-444 OL

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JOHN F. DOHERTY'S AMENDED PETITION FOR LEAVE TO INTERVENE

John F. Doherty, Petitioner pro se, of 318 Summit Ave. Suite 3, Brighton, Massachusetts 02135, (617) 232-3853 and (617) 266-7575,x-157, now files this Amended Petition for Leave to Intervene. This Petitioner received Applicant's September 19, 1983 Response (Hereafter: Applicant's Response) and Staff's Response, (hereafter: Staff's Response) dated September 26, 1983, and received September 29, 1983. This Amendment is pursuant to 10 CFR 2.714(a)(3), Rule 12(b) of the Federal Rules of Civil Procedure, and an NRC Appeal Board decision, Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1) ALAB-565, 10 NRC 521, 524-5, (1979).

On September 6, 1983, Petitioner filed a Petition for Leave to Intervene in this proceeding, stating his interest, posing his single contention plus two exhibits, and justifying the lateness of the Petition as required by 10 CFR 2.714. Neither Staff nor Applicant discussed the admissibility of the contention in their Replies, but opposed the Petition in a generally serial manner using the form of 10 CFR 2.714(a)(1). Staff and Applicant urged the Board to expand prior rulings of several agency Appeal Boards to exclude this Petitioner's filing. No other parties or interested states who have a stake in a rapid hearing had replied by the date of this Amended Petition.

Petitioner below uses the same orgnizational approach in discussing Staff and Applicant Responses.

A. Good cause, if any, for failure to file on time:

It is clear that it would have been both illegal and fruitless for Petitioner to file a Petition for Leave to Intervene in this Proceeding prior to June 1983. The Staff essentially states this inter alia in its Response, at Page 4 at f.n. 1. However, Staff would have the Board expand Carolina Power & Light

Company, (Shearon Harris Nuclear Power Plants, Units 1 - 4), ALAB-526, 9 NRC 122, 124, (1979), to cover Petitioner. In Carolina, the Petitioner's filing came after an initial decision by the Licensing Board on a Construction Permit application, and Petitioner had then attempted to gain Party status on a single issue remanded by the Commission which the Petitioner had not made part of his general petition for leave to intervene. Here, unlike Carolina, the Licensing Board is actually receiving contentions on one aspect of the licensing (emergency preparedness) and has very recently completed hearing evidence on safety issues. This licensing has not proceeded as far as had Carolina, nor would an opposite result obtained in this licensing (that is in favor of this Petitioner) burden the Applicant, Staff, and other Parties as much as a like decision would have in Carolina. Since Carolina was a construction permit proceeding, the start of construction or site clearing actually awaited that permit; in the instant case, Petitioner's contention can only effect the Seabrook-Unit 2, publicly acknowledged less than one fourth constructed, and several years from completion. Admission of Petitioner's contention cannot possibly render the harm caused by delay that the Carolina (supra.) Petitioner most certainly would have caused had he been admitted as a Party.

In Carolina (supra.), the Appeal Board expressed the fear that if newly acquired standing were sufficient of itself to justify permitting belated intervention, the necessary consequences would be an interminable hearing. (Id. at 124) This scenario would include a chain of newly arrived persons, filing in a well spaced, virtually coordinated effort. It has never been shown that such has been attempted, and the other four of the five factors become increasingly difficult to surmount as time passes. It is also difficult to see how the rights of a Petitioner may be denied because of the fear of conduct of unidentified others at a later date.

Staff has also cited Houston Lighting & Power Company, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239,241, (1980), as instructive. In that case, a late petition was denied on Appeal because Petitioner's proposed standing was based on economic interests and status as a ratepayer, which is not sufficient. The Appeal Board mentioned the Carolina (supra.) decision as one which the licensing Board had used. However it is clear the final result in Houston (supra.) rested

in great part on affirming a petition inadequate because "petitioner had not particularized his interests." (Id. at 241)

The Staff, in reviewing this Petitioner's filing has come to the conclusion Petitioner argued a petition filed in June of 1983 would be timely. (Staff's Response, page 5) The point of my discussion of time prior to June, 1983 was merely to show an attempt by this Petitioner to place the contention would have been illegal for lack of standing. This was not a case of a Petitioner, "sleeping on his rights." In South Carolina Gas & Electric Company, (Virgil C. Sumner Nuclear Station, Unit 1), ALAB 642, 13 NRC 881,886, (1982), the Appeal Board for that Operating License proceeding cited this time honored phrase in reversing a Licensing Board decision permitting intervention of an anti-nuclear group which filed 27 contentions, whose members had resided within the zone of effects of the plant throughout an entire licensing period of some four years. (Id. at 886, 883) Petitioner has not slept on his rights as had the group in South Carolina (supra.), since he possess only the right to file a late petition after acquiring standing upon coming to Boston.

Staff has cited (Staff's Response, page 5) New England Power & Light Company, (NEP, Units 1 and 2), LBP-78-18, 7 NRC 932, 933-35, (1978), as a basis for showing that Petitioner should have known, regardless of how absurd it appeared, that Applicants were seeking an operating license for Seabrook Unit 2. However, in New England Power, the appellant-would be Intervenor lived within 50 miles of the proposed plant to be licensed. It is not reasonable, as Staff would have it (Staff's Response, page 5) to expect a member of the public to assimilate the notices on all nuclear plants throughout the nation in the Federal Register on the chance that some day, Petitioner might relocate in the zone of affected interest. It is even less reasonable to expect a person to read notices of intervention for nuclear plant licensings 1,800 miles away from his domicile let alone to act on them. The Board should reject this expansion of New England Power (supra.) as unreasonable.

Finally, although Petitioner dislikes citing hardship, he would point out that returning to a place after six years absence and an 1,800 mile journey with all his possessions in a single automobile offered problems of finding a job, furniture, and other adjustments immediately after June 23, 1983.

B. The availability of other means whereby the Petitioner's interest will be protected:

The Applicant agrees there are no other means for Petitioner to protect his interest. (Applicant's Response, page 3). The Staff, in its response, has lifted language suited to South Carolina Gas & Electric (supra.) and attempted to make it apply here. The South Carolina Board indeed gave relatively less weight to this factor in that case, but weight accorded this factor might well be great if the concerns, be they safety or otherwise, were serious. Here a specific regulation of the Commission is alleged violated. Violation of Commission regulations should not be taken lightly. In addition, balancing of the five factors of 10 CFR 2.714(a) involves careful consideration of the contention. Public Service Company of New Hampshire, (Seabrook Station, Units 1 & 2), CLI-83-23, slip op. 2, (1983).

C. The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record:

Applicant has quoted a footnote from Houston Lighting & Power Company, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513, n. 14, (1982) with regard to the third factor, extent to which Petitioner's participation may reasonably be expected to assist in developing a sound record, in particular that sound evidence is the significant consideration. This could hardly mean that the Petitioner must turn up a list of Nobel prize winning expert witnesses in their behalf. Rather, participation means the subject matter which will be introduced into the hearing by admission of the proposed contention. In ALAB-671, the Petitioner attempted to Intervene on a financial qualification contention that had been heard two months previously by the Licensing Board. The evidence on the issue had already taken two full days, and in the interim the Commission, through rulemaking, had determined financial qualifications were no longer within Commission jurisdiction. However, in this Petitioner's case, participation will not be repetitive and is likely to produce evidence which will assist in the development of a sound record (that is, one without void places where there should be substance) by covering the evident failure to meet a Commission regulation on the part of the Applicant. In Houston (supra.) there was no void; the issue had already been covered in the hearings.

The Staff, citing ALAB-671 (Staff's Response, page 6) argues that since the Staff evidently believes this Petitioner cannot produce any "significant contribution", it would be better not to consider the issue at all. The Staff has not suggested any way this issue can be raised without Petitioner's participation.

D. The extent to which the petitioner's interest will be represented by existing parties:

Applicant believes SAPL and NECNP have numerous members with the same interest as Petitioner. Yet, since neither SAPL or NECNP have raised this issue, it is difficult to see how it will be represented by existing parties to any extent.

E. The extent to which the petitioner's participation will broaden the issues or delay the proceeding:

The Applicant believes on this factor the Board should be very "leery" of permitting this contention's admission, although emergency planning contentions were filed some fourteen days after this Petitioner's contention. Applicant's argument that since the time for safety contentions is passed, the Board should not hear another one is meagre. There is no problem in hearing the contention, it is the same Board for all types of issues. There are certainly safety considerations in emergency planning, a group of issues yet to be heard, and for which presumably discovery time will be permitted. The division of Licensing Board hearings into phases are intelligent organizational tools, but each phase is not a separate hearing. To exclude an issue because it was too late for a particular phase would not be justified in view of the Board's responsibilities. Moreover, Licensing Boards frequently hear a mixture of safety, environmental and other issues in the closing days of a hearing, with only evident minor discomfort. There is no statement by the Staff or Applicant that a burden will be caused by the fact this Petitioner's contention is not an "emergency planning" contention.

It is impossible for any petition to raise an issue without lengthening a proceeding, and it should broaden a proceeding or be repetitious. The Staff (Staff's Response, page 6) indicates it can always hold this factor against a late filed contention. 10 CFR 2.714(a) (1) (v) emphasizes "the extent" of



broadening and delay, which must be balanced against the value of consideration of the contention, as urged by the Commission in CLI-83-23 (supra.).

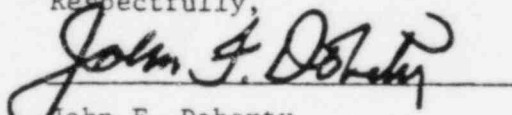
Unlike Staff, Applicant has indicated its concern with pre-trial preparation being too short if the contention is admitted. But, "Allowance of a late intervention need not disrupt established discovery schedules... A tardy petitioner with no good excuse may be required to take the proceeding as he finds it." Nuclear Fuel Services, (West Valley Reprocessing Plant) CLI 75-4, 1 NRC 273,274, (1975). Applicant does not say it will be harmed because it will not be able to perform discovery, but instead complains of the uncertainty of time for discovery this Petitioner would ask for. Clearly CLI 75-4, gives the Board the power to greatly limit a late filed contention's discovery period.

Amendment of Doherty Contention #1:

The contention should be amended by the insertion of a sentence from the "Supporting Statement" into the Doherty Contention 1 text:

Public Service Company of New Hampshire's Application for an Operating License for Seabrook Station, Unit 2, is premature because the unit is but 22% complete and many more than four years are likely to remain before the unit is substantially completed in conformance with NRC rules and regulations. Application for an operating license for this unit now, violates 10 CFR 50.57(a)(1) and granting the operating license with the unit but 22% completed or not substantially completed threatens those health, safety and economic interests of Petitioner set forth above. With 78% of the plant on paper, the Board cannot adequately control the outcome of the plant's systems, in particular, the high pressure core injection, high pressure core spray, low pressure core injection, low pressure core spray, pressurizer, standby liquid control system, reactor coolant leak detection system, ESF sequencer and make-up system(CVCS), sufficiently to protect Petitioner's interests. The Board should deny the operating license for Unit 2 until the Applicant has substantially completed it.

Respectfully,

  
John F. Doherty

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I certify that copies of "JOHN F. DOHERTY'S REQUEST FOR LEAVE TO AMEND HIS PETITION FOR LEAVE TO INTERVENE" and "JOHN F. DOHERTY'S AMENDED PETITION FOR LEAVE TO INTERVENE" were served via U. S. Postal Service from Boston, Massachusetts, this 4th of October, 1983, on the persons below.

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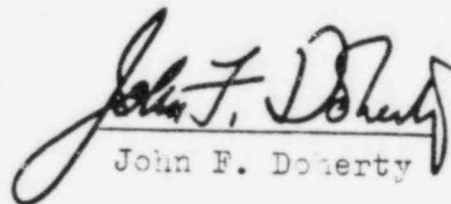
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