UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Gary J. Edles
Howard A. Wilber

In the Matter of:	)	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL.	)	Docket Nos. 50-443 OL 50-444 OL
(Seabrook Station, Units 1 and 2)	)	

JOHN F. DOHERTY'S BRIEF IN SUPPORT OF HIS APPEAL OF THE NOVEMBER 15, 1983, LICENSING BOARD DENIAL OF HIS PETITION FOR LEAVE TO INTERVENE

Introduction

John F. Doherty, of 318 Summit Ave. #3, Brighton, Mass. 02135, now files pro se this Appeal of the Atomic Safety and Licensing Board Order (hereafter: Order) of November 15, 1983, in this operating licenses proceeding.

Petitioner's first entry in this proceeding was on August 26, 1983, when Petitioner made a limited appearance statement pursuant to 10 CFR 2.715, at Dover, New Hampshire, opposing the licensing of the Seabrook Station. (Tr. 1782-8) mentioning two safety issues of concern to him with the two reactors. On September 6, 1983, Petitioner filed a Petition for Leave to Intervene, asserting standing, and a single contention which concerned only the Seabrook, Unit 2 reactor. On September 19, 1983, Applicant opposed the petition for lack of standing and lateness in filing. The Staff replied on September 26, 1983, opposing the petition for lateness.

Petitioner filed an amended petition for leave to Intervene on October 4, 1983, answering Staff and Applicant positions with regard to standing and lateness. Staff moved to reply to Petitioner's amended Petition on October 24, 1983, in a two page filing pointing out to the Board a Commission regulation it deemed significant. Petitioner, On October 27, 1983, urged the Board that Staff's filing was procedurally defective. 1/ (f.n., next page)

On October 19, 1981, a Federal Register notice announcing Applicant was seeking an operating license for Seabrook Station, Units 1 and 2, was published with the usual provision for members of the public to file for intervention to protect their interests.

On June 23, 1983, Petitioner became a resident at his above address after five years and nine months living in Houston, Texas. Commission regulations require that unless discretionary intervention is granted, a member of the public must have standing and one litigable issue to participate in a licensing proceeding. Therefore, this Petitioner filed his September 6, 1983, petition under the provision for late intervention in 10 CFR 2.714(a)(1)(i)-(v). Filing under these requirements was the only path to assertion of Petitioner's rights given the 1981 Notice of Intervention, which Petitioner could not utilize because Commission licensing Boards have never granted standing to persons living as great a distance as Petitioner did at that time from the Seabrook Station.

This Petitioner had desired to file several safety contentions against the Seabrook Unit 2, reactor. However, he found himself blocked from this by the Notice of Intervention procedure as may be easily inferred from the above. Exhibit "A" of the original petition (Exhibit "B" in this appeal) indicates that on August 21, 1983, Seabrook Unit 2 was 22.5% constructed, so it may be inferred that on October 19, 1981, it was less complete. As developed below, Petitioner believes the dismissal of his petition on the basis of lateness in the case of Seabrook Unit 2 has unfairly deprived him of intervention rights in the operation of a Commission licensed reactor available to him under 10 CFR 2.714. This dismissal requires reversal by this Board with instructions that at such time Seabrook Station, Unit 2 is substantially completed, a Notice of Intervention procedure be published.

1/ (From previous page) The Board in its Order (pg.2) mentions an October 20, 1983, letter Petitioner sent the Board on the chance the Board had issued an order on the petition which had not been delivered (Exhibit A). The item was sent Staff and Applicant and some of the thirty parties in the proceeding. Petitioner was not entirely certain his amended petition had effect and thus, twenty-four days after Staff's initial reply, a brief inquiry seemed appropriate. However, the Board considered all pleadings filed by Petitioner, Applicant and the NRC Staff in reaching its decision. (Order, pg. 8)

The practice of combining licenses (10 CFR 50.52) should not be used to foreclose intervention rights of this Petitioner in this proceeding.

In this proceeding, the Commission, through its Licensing Board, is permitting adjudication of whether the Applicant's operation of two nuclear reactors at the Seabrook site is inimical to the public health and safety. These reactors have been under construction since 1976. Unit 1 is approximately 80% constructed, Unit 2 is less than 25% constructed. [2/] If Unit 1 were not at its current construction level, application for an operating license for Unit 2 would not have been remotely appropriate on October 19, 1981, the date on which the Notice of Intervention Procedure appeared in the Federal Register. Thus, as interpreted by the Licensing Board, the rules permitted Unit One's level of construction completion to set a deadline on the right of intervention against Unit Two, a benefit to Applicant and a detriment to Petitioner-Appelant. For, the notice has had the effect of requiring Petitioner to justify through 10 CFR 2.714(a)(1)(i)-(v) "factors" his failure to file when the October 19, 1981 notice was published. As previously stated Petitioner thought it was a certainty he had no standing at any time prior to his resumed residency in Brighton, Massachusetts. The decision to return to New England was made approximately April 10, 1983. [3/]

10 CFR 50.52 permits combination of license proceedings. Petitioner does not claim this rule inapplicable to any multi-reactor plant or facility, but that it is not reasonably applicable in the instant licensing. Where, as here, the disparity in construction status reaches a great quantity and the forseeable time requirement to bring a unit to substantially completed status is of long duration, it is denial of due process to disallow a petition (which effects only the less completed unit) on the basis of 10 CFR 2.714(a)(1), (Order, pg. 8).

[2/] Exhibit "B" (which is Exhibit "A" of the original petition for leave to intervene).

[3/] To date, no Party has urged that Petitioner slept on his intervention rights after his arrival in Boston, June 2, 1983. At sometime near the end of July, Petitioner filed his request for a 10 CFR 2.715, "limited appearance". In the amended petition for leave to intervene, (page 3), Petitioner has accounted for this time, however.

A hypothetical situation might further illuminate what Petitioner believes is the arbitrary and capricious destruction of his intervention rights by the appealed Order. Suppose an Applicant had built as much as is completed of Seabrook Unit 1, at the site but constructed another unit equidistant from Petitioner's home using the same cooling inlet water, etc. but a mile further inland from Seabrook, called "Waterbrook". If "Seabrook" were 78% complete and "Waterbrook" 25% complete, would denial of intervention in "Waterbrook" as in this Petitioner's denial in this licensing, be reasonable under Commission practice if there were a "combined licensing" proceeding? The answer must be "no", but the difference is only a small distance, which cannot effect this Petitioner's interest any more than Seabrook Two does over and above Seabrook One. The difference between the two Seabrook reactors and the hypothetical reactors is that they are conceived as a unitary plant. The use of one to aid the other to obtain a license is not based on a legal doctrine, and should not be allowed here.

The combining of Seabrook One and Two for licensing purposes made sense for obtaining construction permits and for some aspects of operating considering the impact of both plants makes sense as well. For instance, findings on evacuation or other aspects of the public response to accidents, would apply to any single reactor at the site, since a double accident releasing radiation from both reactors is not credible.

The combining of license proceedings also makes sense from a regulatory viewpoint if there is certainty the adjudicatory hearing is licensing what the actual licensed items shall be. However, where one licensed item clearly lags, there is the growing possibility of regulatory changes (such as those bought on by the Three Mile Island accident of March, 1979, by way of example of an unexpecated event that bought change) interceding between the license granting and the completion of the remaining 78% construction which well could cause a different Seabrook Two to emerge than is the subject of the present licensing. 4/

4/ On September 8, 1983, the Managing partner for Seabrook Station, Public Service Company of New Hampshire, agreed to reduce work to "the lowest feasible level" on Seabrook Station, Unit 2, until some as yet unknown date, thus increasing the length of time from the deadline for petitions for leave to intervene and the date for fuel insertion, when the plant would be for practical purposes capable of "operating". (Exhibit "C").

It follows, of course, that if the construction of two plants were close in status, a 10 CFR 50.52 "combined licensing" proceeding would make sense and not violate Intervenor rights as asserted in the instant case. But, here these possible differences that would emerge due to the long time required for further construction are not the conern of this Petitioner alone. The Advisory Committee on Reactor Safeguards has stated with regard to Seabrook Station, Unit 2, "Should there be a significant delay in this [planned fuel load] schedule we would expect to examine the need for additional review of Unit-2". 5/

However, even if it can be shown no changes will occur in the plant design, this Petitioner believes that in the case of his one filed issue in this multi-license proceeding and as regards all health and safety issues, the fact that the deadline for Intervention petitions passed prior to Petitioner attaining standing and filing a petition for leave to intervene, cannot be used to prevent intervention against a substantially incompletely constructed reactor even if that reactor is docketed with, is on the same site as, and is planned to be identical to, another which is substantially completed and whose deadline for petitions for leave to intervene was announced at the same time, without taking away intervention rights which he is entitled to by virtue of his standing and contention as stated in his petition for leave to intervene and its amendment. For, the addition of the second reactor adds to the hazards, regardless of how small, to Petitioner's interests, and since he would have standing to intervene when that reactor became substantially constructed but for Seabrook Unit 1, he should be afforded the opportunity to be heard.

5/ NUREG-0896, "Safety Evaluation Report for Seabrook Station, Units 1 and 2," Supp. No. 2, p. I-2 (June, 1983).

Although the use of a combined licensing appears to prohibit this Petitioner's filing, Petitioner qualifies to Intervene in this proceeding under 10 CFR 2.714, and CLI 83-23.

The Board in its Order, (p. 3) states it "[n]eed only consider whether the late-filed petition can be admitted after balancing all five of the intervention factors set forth in 10 CFR 2.714(a)(1)", and careful consideration of the contents of the contention and the circumstances of its offering. Public Service Company of New Hampshire, et al., __ NRC __, CLI 83-23, September 19, 1983. The Commission Issuance was two weeks after this Petitioner's original filing, and hence may not be applicable. However, Petitioner urges use of CLI 83-23 by the Appeal Board. Below, Petitioner uses the five factors of 10 CFR 2.714(a)(1) seriatim, to show that their balancing and careful consideration of the contents of the contention and offering circumstances favors admission of his petition for this proceeding.

(i) Good cause, if any, for failure to file on time.

It is clear it would have been fruitless for Petitioner to have filed a petition for leave to intervene in this proceeding prior to June of 1983, when Petitioner resided in Texas. The Staff essentially states this inter alia in its first Response (p. 4, f.n.1). The Board, in its Order (p. 4), has expanded the scope of Carolina Power & Light Company, (Shearon Harris Nuclear Power Plants, Units 1 - 4, ALAB-526, 9 NRC 122, 124,(1979), to apply to Petitioner. In Carolina, 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 holding a pre-hearing conference on one aspect of the licensing (offsite emergency planning, (Memorandum and Order, November 10, 1983) and has very recently completed hearing evidence on safety issues. This proceeding has not progressed as far as had the one in Carolina, and thus an opposite result in this proceeding would not burden Parties as much as a like result would have in Carolina. Then too, since Carolina

(supra.) was a construction permit proceeding, start of activity awaited the permit. Here, admission of Petitioner's filing can only effect the Seabrook Unit 2, publicly acknowledged less than 25% constructed, and several years from completion. Admission of the petition cannot possibly render the harm caused by delay as would have been the case in Carolina (supra.) had that case been decided differently. This Petitioner believes it is an extreme view that admission of his petition could have any conceivable delay on the progress toward completion of either subject reactor units.

In Carolina (supra.) the Appeal Board expressed its belief 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 would require a chain of newly arrived persons, filing in a well spaced, virtually coordinated effort. It has never been shown that such has been attempted in a Commission proceeding. It is also difficult to see how the rights of Petitioner can be denied because of the speculation of conduct by others at a later date. Something more is required to apply this aspect of Carolina (supra.) to this Petitioner.

Staff cited Houston Lighting & Power Company, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 241, (1980) to the Board. 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 decision (supra.) as one which the licensing board had used with their approval. However, it is clear the final result in Houston (supra.) rested in great part on affirming a petition inadequate because "[p]etitioner had not particularized his interests". (Id. at 241)

The Board in its Order (p. 4) apparently believed this Petitioner argued lack of awareness of the significance of the Federal Register notice (Notice of Intervention) in this proceeding in his Amended Petition and was estopped by his own actions.(Order, p. 5) The Board states, "Petitioner has betrayed his understanding of such legal requirement as notice by the character of his pleading and admitted prior participation in Allens Creek." (f.n. omitted) Petitioner instead was saying that to expect a person to act on all Federal Register notices applying to a licensing 1,800 miles from his residence is expecting beyond normal human action. Petitioner does take notice of Federal Register notices that effect his interests in order to assert his rights. In 1981, this Petitioner had no such interests in Seabrook Station, and hence could not and did not attempt to assert any rights. Petitioner sought to conceal nothing in the passage quoted in the Order, (p.5), there being nothing to conceal.

The Carolina proceeding (supra.) offers no guidance for abuse from over application of its doctrine. Here, Petitioner's standing is destroyed by placing the Notice of Intervention unreasonably ahead of the required substantial completion of Seabrook Station Unit 2 for an operating license. Since Seabrook Station Unit 2 is less than 25% complete Petitioner has already demonstrated it is, in effect, improperly before the Licensing Board (infra.). If the Notice of Intervention were published in the Federal Register and a petitioner were two days late in filing, having moved into the area, and yet the evidentiary hearing were not held for four years thereafter, all persons moving within the zone of effected interests to the plant in the four years would have no rights to Intervene under application of the Carolina (supra) rule.

In the case of this Petitioner, the res of his stated contention is the licensing of the Seabrook Station, Unit 2. By the placing of the operating license for Unit 2 with that for Unit 1, Petitioner has been deprived of his right to intervention. In 1981, the year of the Notice of Intervention it was published in at least one national reference publication, that Unit 2 would not be completed until 1986, meaning that the Carolina rule is now asserted by this Licensing Board as a basis for denying intervention against Unit 2, for any person moving into its effected area in the last five years. This is an overextension of the Carolina rule.

The Commission practice of multiple licensing has been strained beyond anything contemplated in Carolina in the instant case. Convenience to parties cannot be used to deny intervention ad infinitum. If so, not only are the intervention rights of Petitioner, as here, stripped, but it becomes increasingly attractive for construction permit holders to file for operating licenses early so that they may rid themselves of the problem of public participation in Commission hearings.

Thus, Petitioner would have the Appeal Board conclude there was good cause for failure to file on time. He would urge the Appeal Board to note that the setting of "on time" (10 CFR 2.714(a)(1)(i)) for this proceeding which is for two licenses, cannot be made on the basis of a single one of them given the facts here. This would, of course, urge that the "on time" time has not yet arrived in order to make a determination that there has not been good cause shown for not filing on time, and hence the balancing of factors on this part of the regulation is in Petitioner's favor.

(ii) The availability of other means whereby the Petitioner's will be protected.

The Board agreed with this Petitioner that a limited

appearance statement could not protect his interests. (Order p. 6) The Board also agreed with Applicant and Staff that no other party had articulated the concern. [6/] However, the Order (p. 7) then appears to say this should not count much in Petitioner's favor, since "[W]ith the active intervenors in the proceedings, the (fact that) the issue has not been brought forward...can only be considered as a novelty at this point in time."(Order, p. 7) This Petitioner can only make out that the Licensing Board was saying that with so many intervenors, this issue must have been examined by at least one and found trivial. [7/]

The inclusion in the Order (p. 7) of delay and broadening the issues factors in this one of the five factors of 10 CFR 2.714(a)(1) by the Licensing Board failed to recognize these factors were included in 10 CFR 2.714(a)(1)(v). While giving Petitioner the greater weight on this issue, it would have been error if the Board arrived at the conclusion, "This factor weights less than other factors to be considered",

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[6/] The Contention as worded in the Amended Petition of October 4, 1983, is:

> 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.

[7/] However, one Party, Seacoast Anti-Pollution League, filed a motion September 26, 1983, to have the Seabrook Station Unit 2 licensing dismissed.

because it included the extent the petition would broaden the issues or delay the proceeding. It appears the Licensing Board did this. (Order, p. 7) Doing this counts these factors twice against Petitioner since they would be applied in the weighing of 10 CFR 2.714(a)(1)(ii) and 10 CFR 2.714 (a)(1)(v), and contrary to CLI 83-23 (supra).

(iii) The extent to which the Petitioner's Participation may may reasonably be expected to assist in developing a a sound record.

The Licensing Board stated Petitioner's pleadings did not demonstrate any way his participation would assist it in compiling a sound record. (Order, p. 7) In his filings, Petitioner had assumed the Licensing Board would realize Petitioner would cross examine witnesses willing to testify a 22% completed unit was substantially completed in compliance with NRC regulations, and that the various systems listed in the Contention would not differ from the more fully constructed unit. This Petitioner acknowledges this was an over-assumption on his part. However, this level of participation is the most frequently seen since per se intervenors infrequently present their own witnesses. The Board might have inferred that cross examination would be Petitioner's form of participation from the fact the Staff challenged Petitioner with regard to this, (Staff's Response, Sept. 26, 1983, p.6), yet Petitioner did not reply by saying he would present a witness. (Amended Petition, p. 4 - 5) Petitioner, however, is not saying the Board had ought to have seen this.

This Petitioner has cross examined witnesses in an NRC construction permit hearing, Allens Creek in 1981 and 1982. Petitioner believes this background gives him, "the ability to contribute sound evidence." Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1, ALAB-671, 15 NRC 508, 513 (1982). This included cross examination of approximately 75 witnesses.

In CLI 83-23 (supra) decided two weeks after this Petitioner's Petition for Leave to Intervene, the Commission stated that in considering the five factors of 10 CFR 2.714(a)(1), "Careful consideration of the contents of the contention was significant in balancing the five factors. Hence, 10 CFR 2.714(a)(1)(iii) includes in its weighing not only the Petitioner's personal ability and witnesses willing to testify in Petitioner's contention's behalf, but also the Contention itself. The Contention comes with the Petitioner, and while a Petitioner may appear of low ability, that person may, by a significant contention to a great extent be expected to assist the Licensing Board in developing a sound record.

In one filing, this Petitioner has urged that if a Seabrook Station, Unit 2 operating license is granted, the record will be improved by a consideration by the Licensing Board of what effect on public health and safety, granting the license will have on a reactor but 22% complete, whose construction time is uncertain and many safety systems are subject to change due to changing regulations. (Petition for Leave to Intervene, p. 7) The Contention gives a greater opportunity for a careful determination of whether the Applicant is in compliance with 10 CFR 50.57(1) by the Licensing Board and the Commission. Petitioner urges that the content of the Contention should be considered in determining the balancing of 10 CFR 2.714(a)(1)(iii) and that this would have made this factor in favor of Petitioner had it been done, and that the Licensing Board erred in not doing so sufficiently.

(iv) The extent to which the Petitioner's interest will be represented by existing parties.

On this factor, the Board apparently held against Petitioner the fact that other Intervenors (unspecified in Applicant's filing and the Order) have health and safety interests represented in this proceeding. This speaks well for the proceeding, but since Petitioner's concerns are not those of any other party, and hence won't be dealt with in cross-

examination, the Licensing Board erred if it discounted the weight this Petitioner is entitled to on this issue. According to " N. R. C. Staff's Proposed Opinion, Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision", of November 14, 1983, issues of Environmental Qualification of Equipment, Emergency Classification, and Action Levels and Evacuation Time estimates have been heard thus far. There are offsite emergency planning contentions yet to be covered. (Memorandum & Order, November, 10, 1983)

The Board Order (p. 8) states, "While some weight may be given to Petitioner here, it does not tip the balance when viewed against the time in the proceeding at which the Petitioner seeks to introduce it." Evidently the Board counted this factor against Petitioner, believing the " [c]ircumstances under which the contention is offered"(CLI 83-23, Sept. 19, 1983, supra) could include the lateness in which it was filed and it could be a factor in the 10 CFR 2.714(a)(1)(iii) balancing. In considering lateness, the Board is obviously most concerned with delaying the proceedings. But, 10 CFR 2.714(a)(1)(v) is specifically concerned with, "The extent to which the Petitioner's participation will broaden the issues or delay the proceedings. (emphasis added) The Board is in error if it places any weight of delay in the balance against Petitioner on this factor as it appears to have done. (Order, p. 8) For, this factor is aimed at eliminating repetition. This Petitioner urges the proper place for weighing the delay factor is 10 CFR 2.714(a)(1)(v) and not here.

(v) The extent to which the Petitioner's participation will broaden the issues or delay the proceedings.

The Board Order (p. 8) indicates Petitioner's participation would "truly" broaden the issues and delay the proceedings.

The Board has pointed out this Petitioner has not provided information in his filings on what he needs to do to present his contentions. As pointed out earlier, the Petitioner envisioned only cross examination of witnesses put forth by Staff and Applicant. A systematic cross examination by this Party would probably require three days at the most. Petitioner cannot tell what other parties may wish to do.

The Board showed concern that this Contention has been introduced, "[n]early two years after the proceeding began...", (Order, p. 8), as if there were some time limit from the date of the Notice of Intervention until the end of an operating license hearing. Nowhere is it indicated the introduction and hearing of this issue will impact on the date Seabrook Station, Unit 1, will start operation. Although Petitioner believes no late filed petition can speed up the proceedings, he would urge that the delay will not be extensive and consideration of the issue is very relevant to one of the Board's determinations as well as safe operation for one of the two reactors.

As with delay, the introduction of this Contention necessarily broadens the proceeding. But, since the Board must make a determination under 10 CFR 50.57(1) of substantial construction, the broadening aspect is not as great as appears without that consideration. But, under CLI 83-23, weighing the importance of the Contention is important to proper balancing of the broadening factor. And broadening is not a very sharp concept. Surely the hearing should not drift into irrelevant matters, and Petitioner asserts his single Contention is relevant to the operating license for one of the two plants in the proceeding. Instead, broadening is probably related to delay. That is a broadened hearing could be vulnerable to delay from cross examination ranging into areas not readily visible as open to cross examination on the contentions admission.

However, Petitioner's contention is drawn to the safety systems of one plant, and in particular if the plant is substantially completed. The safety systems part of the contention cannot go into their workings, reliability or other aspects. Instead the inquiry must go to how well these systems can be licensed given the long time before it is expected they will be in place in the newly constructed Unit 2.

Thus Petitioner believes the content of the Contention overrides any delay or broadening it will bring into these hearings, which though complex and partisan are not of a long record and in no danger of slowing the sensibly expected operating licensing date of either Seabrook reactor. Thus, although there is reason to doubt Petitioner should win this factor of 10 CFR 2.714(a) on balancing, if seen in the total context of contention content and delay effecting the starting date or dates of the reactors, Petitioner should gain the greater weight on this factor.

Conclusions

Petitioner has shown that his Petition was unjustly denied by the Board Order because of overzealous application of the Commission practice of combined licensings and unwarranted expansion of Carolina Power & Light Company (Shearon Harris Nuclear Power Plants, Units 1 - 4, ALAB-526, 9 NRC 122 (1979). This expanded application has resulted in prohibiting his Petition although the actual operation of the Seabrook Station, Unit 2, is at least several years hence. Left standing, the Licensing Board Order has the effect of closing intervention against Seabrook Station, Unit 2, for persons moving into the zone of effects of the unit (including Petitioner)

from 1981 onward.

One remedy Petitioner seeks is that his Petition be admitted with its single contention. But, it follows from the arguements presented in the first section of this Brief, that more is required to do justice to the public interests, including those of Petitioner. Thus, this Petitioner has argued the full licensing of Seabrook Station, Unit 2, is improperly before this Board, and only a Partial Initial decision should be issued if a favorable finding is made at this time. The partial initial decision for Seabrook Station, Unit 2, would cover issues tried before the Board in the hearings. It appears certain that for Unit 2, a Notice of Intervention Procedures would have to be published in the Federal Register at such time the unit was close to or actually substantially constructed. Intervenors could raise issues based on new evidence not available to the current Licensing Board on issues previously tried and other issues could be raised without meeting this requirement. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1, ALAB-535, 9 NRC___, April 4, 1979)

With regard to the application of 10 CFR 2.714(a)(1) by the Licensing Board to this Petitioner's filings, each factor is considered in this Brief. However, Petitioner believes the pre-mature start of the operating license proceeding for Seabrook Station, Unit 2, has been the cause of the Board's finding of lack of good cause for failure to file on time as required in 10 CFR 2.714(a)(1)(i), and has shown here that this factor should not have been found against his Petition because that licensing was allowed to begin in unfairness to him.

In determing the weight given each factor of 10 CFR 2.714(a)(1)(i-v) the Licensing Board improperly considered perceived delay with regard to 10 CFR 2.714(a)(1)(ii) and 10 CFR 2.714(a)(1)(iv).

Respectfully submitted,

John F. Doherty

John F. Doherty

October 20, 1983

EXHIBIT A

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Re: Seabrook Station, Docket No. 50-443
50-444

To the Members of the Honorable Board:

This letter is to inquire if the Board has issued an order with regard to this Petitioner's "Petition for Leave to Intervene" of September 6. 1983, and "Request for Leave to Amend His Petition for Leave to Intervene", together with an "Amended Petition for Leave to Intervene" of October 4, 1983.

Petitioner respectfully requests the Board take steps to send him the Order(s) if indeed they have been circulated, and the Board can see the Order(s) should have arrived at Petitioner's address by this time.

Thank you.

Sincerely,

John F. Doherty

John F. Doherty
Petitioner

EXHIBIT B

Skepticism voiced over Seabrook 2

■ SEABROOK
Continued from Page 65

does not directly regulate electric companies, but it represents the thinking of Gov. Joseph Brennan and likely will be reflected in deliberations by regulators.

According to the latest tally, at least eight of Seabrook's 16 owners are seeking to delay the project, or sell off part of their holdings. In some cases, the utilities have taken those actions on their own, while in others they are under the order of utility commissioners. In neither case is there a market for Seabrook shares.

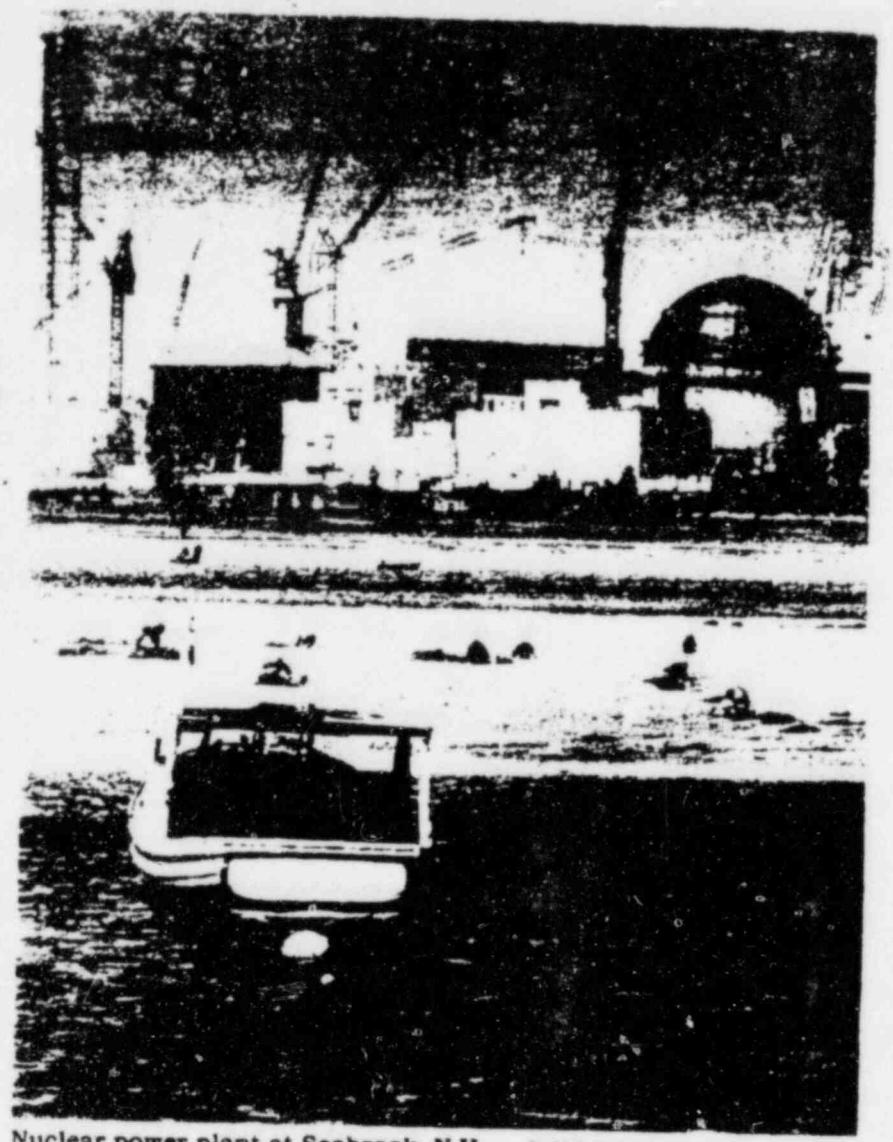
Regulation the bane of Seabrook

"These are not positive developments. They don't make things easier for us, but it doesn't change our belief customers will be better off if we can complete Seabrook 1 and 2 as soon as posible." Nicholas Ashooh, spokesman for Seabrook's major builder, Public Service Co. of New Hampshire responded in an interview. Unit 1, which even critics concede will probably be finished, is 79 percent built and the second reactor is 22.5 percent complete.

Ashooh acknowledges Seabrook 2 is taking its knocks in state regulatory circles. "Regulation has always been the bane of Seabrook, from day one . . ." he said. Earlier in the project, intervention came from the federal level, he said, "but now it seems we're seeing more activity on the regional level."

Still, federal scrutiny of Seabrook continues. Last week, the Nuclear Regulatory Commission's Atomic Safety and Licensing Board gathered in Dover and Exeter for the first round of hearings on whether Seabrook should be granted an operating license. It is a high-stakes proceeding. If the NRC should deny the license and the courts should uphold the denial, the owners of Seabrook would be out their investment, which totals $2.1 billion to date.

But Seabrook's backers can take comfort in the knowledge the



Nuclear power plant at Seabrook, N.H. GLOBE PHOTO BY JOSEPH DENNEHY

During the hearings, Seabrook's sponsors are expected to defend their estimates that in a nuclear accident the seacoast around Seabrook could be evacuated in six hours and five minutes on a sunny summer weekend when the beach is crowded with tourists. The estimate jumps to 9 hours and 15 minutes in bad weather.

Estimates questioned

The New England Coalition on Nuclear Pollution, the Seacoast Anti-Pollution League and the state of Massachusetts all question the adequacy of Public Service Co.'s evacuation estimates. They are parties to the case, along with New Hampshire (which has doubts about notification of the state during an accident) and Maine, an interested observer. The borders of both Maine and Massachusetts are near Seabrook.

But the issues to be addressed in the NRC hearings, primarily emergency planning, are far from the concerns state regulators voiced last week. They worried about the and repeated delays in start-up times. In addition, some cited the recent stabilization in the price of oil, which makes new nuclear generation no bargain.

All those things, Paul [redacted], chairman of the Massachusetts Public Utility Commission, said, add up to increasingly diminished support for Seabrook 2. "I think that everyone realizes the probability of completion is lower now than it was," he said.

Maine Utility Comr. [redacted] Geider added: "As events pass, more commissions have become more certain that Seabrook 2 [redacted] for their companies . . . To the extent that adds up, it makes the likelihood of Seabrook 2's being completed more uncertain." He said that in Maine, commissioners' skepticism about Seabrook intensified about one year ago.

In New Hampshire, the state with the biggest stake in Seabrook's future, Comr. Vincent Iacopino was cautious about saying regulatory opinion has turned against Seabrook 2. "I don't

Most work on Seabrook 2 to be suspended until 1984

9.9.83
Globe (BOSTON)

EXHIBIT C

By Bruce A. Mohl
Globe Staff

The leading owner of the two Seabrook nuclear power plants in New Hampshire finally caved in to pressure from other utilities in the consortium and agreed yesterday to suspend most construction work on the second reactor.

But Public Service Co. of New Hampshire stopped short of canceling Seabrook 2 altogether, agreeing instead to reduce work on Seabrook 2 to "the lowest feasible level" until at least December 1984, and probably much longer.

Nonetheless, critics of the second reactor saw yesterday's action as an important step toward eventual cancellation. Asked if yesterday's decision increases the likelihood Seabrook 2 will be canceled, a Public Service spokesman said, "It certainly doesn't help."

Electric rates are not expected to be affected immediately by the decision, although the delay will result in higher construction costs and consequently higher rates for New England consumers if the plant is eventually completed.

All 16 utilities building Seabrook supported a motion to delay construction of the second reactor at least until Seabrook 1 is operat-

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Utility group votes to suspend m

■ **SEABROOK**

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ing. That vote came after a motion to cancel the second unit had been defeated by a vote of 53 percent to 33 percent, with 14 percent of the utility owners abstaining.

The Seabrook project originally carried a price tag of less than $1 billion. The official price forecast now is $5.24 billion, and New Hampshire utility regulators say the final bill may run as high as $9 billion.

Seabrook 1, which is 81 percent complete, is officially scheduled for completion by December 1984. But even Public Service is saying the unit is not likely to begin producing electricity before July 1985. Critics say Seabrook 1 will be completed much later.

Before yesterday's decision, Seabrook 2 was scheduled for completion by July 1987. Currently 1000 construction workers are employed on Seabrook 2. Public Service said it was unknown how many of these workers would lose their jobs as work levels are scaled back at the site.

Public Service is required to report on the financial impact of yesterday's decision at the next meeting of the Seabrook owners in October.

Utility executives attending the closed meeting at the Seabrook power station yesterday said the proceedings were calm with little emotion.

Up until two weeks ago, Public Service had been saying both units should be built as soon as possible. Public Service owns 35.5 percent of the two plants and theoretically could block any motion to delay or cancel either one. Delay requires a vote by 75 percent of the ownership and cancellation requires 80 percent.

A Public Service spokesman said the utility is still committed to finishing the second reactor and went along with the delay motion because of pressure being felt by its co-owners.

Late last month the Connecticut Department of Public Utilities ruled that the financial estimates for Seabrook 2 were not realistic and ordered United Illuminating Co. and Northeast Utilities "to make every effort to disengage from Seabrook Unit No. 2."

United Illuminating owns 17.5 percent of Seabrook, the second-largest share. Northeast's Connecticut Light & Power subsidiary owns 4.1 percent. Both utilities previously had supported Public Service's efforts to push ahead with Seabrook 2.

But yesterday the two Connecticut utilities made both the cancellation motion and the delay motion. United Illuminating had no comment after the meeting, but a Northeast spokesman said his company viewed the decision to

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I certify copies of the enclosed "PETITIONER DOHERTY'S NOTICE OF APPEAL" and "JOHN F. DOHERTY'S BRIEF IN SUPPORT OF HIS APPEAL OF THE NOVEMBER 15, 1983, LICENSING BOARD DENIAL OF HIS PETITION FOR LEAVE TO INTERVENE" were served via First Class U. S. Postal Service this 1st of December, 1983, from Boston, Massachusetts, on the persons below:

Alan S. Rosenthal, Chairman, Atomic Safety Licensing & Appeal Board
Gary J. Edles, Member, Atomic Safety Licensing & Appeal Board
Howard A. Wilber, Member, Atomic Safety Licensing & Appeal Board

Helen F. Hoyt, Chairperson, Atomic Safety & Licensing Board
Kenneth A. Luebke, Member, Atomic Safety & Licensing Board
Jerry Harbour, Member, Atomic Safety & Licensing Board

Thomas G. Dignan Jr., Esq., Applicant Counsel
Roy F. Lessey, Esq., NRC Staff Counsel
Docketing & Service Branch, U. S. Nuclear Regulatory Commission

David R. Lewis, Esq., Law Clerk, Atomic Safety & Licensing Board
Robert A. Backus, Esq., Seacoast Anti-Pollution League
William S. Jordan, Esq., New England Coallition on Nuclear Pollution

Jo Ann Shotwell, Esq., Commonwealth of Massachusetts

Respectfully Submitted,
John F. Doherty
John F. Doherty