

Filed: December 9, 1983

DOCKETED
USNRC

'83 DEC 12 P12:04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE COMMISSION

In the Matter of)
)
)
PUBLIC SERVICE COMPANY OF NEW)
HAMPSHIRE, et al.)
)
(Seabrook Station, Units 1 & 2))
)

Docket Nos. 50-443
50-444

APPLICANTS' RESPONSE TO "REQUEST OF
CONNECTICUT DIVISION OF CONSUMER COUNCIL TO DENY
RENEWAL OF CONSTRUCTION PERMIT FOR SEABROOK UNIT 2"

Under date of October 26, 1983, the "Connecticut
Division of Consumer Counsel" apparently filed, with
the Commission, a document entitled "Request of
Connecticut Division of Consumer Counsel to Deny
Renewal of Construction Permit for Seabrook 2."¹ Since

¹According to the pleading, copies were mailed to
the "Atomic Safety and Licensing Board Service List" on
October 26, 1983. Counsel for the Applicants received
no such service. Nor was service upon the Licensing

8312130224 831209
PDR ADOCK 05000443
G PDR

3503

there is presently pending before the Commission an application for extension of the Seabrook construction permits for both units,² we presume that this pleading should properly be construed to be a request for a hearing and petition for leave to intervene.

For the reasons set forth herein, the Applicants say that the petition for hearing should be denied.

Pages 2 and 3 of the Consumers Counsel pleading set forth the contentions that the pleaders advance as the reasons why the extension of the construction permit for Seabrook 2 ought to be denied. Each of these contentions relates to need for power, economics of power, alternative fuel use, cost of construction,

Board and parties before it appropriate, since the Licensing Board in the operating license proceeding has not been commissioned with ruling on any requests for hearing in connection with the construction permit extension application.

²Technically, the pending application is for amendment of the "last date for completion" provisions of the construction permits. See 10 CFR § 50.55(b).

construction schedule, and financial qualifications. Taken together, these contentions relate to only two issues that are ever litigable in NRC hearings: (1) the so-called "need for power" issue, which is an element of the NEPA cost/benefit balance in construction permit (but not operating license) proceedings, and (2) the "financial qualifications" issue, which arises under the Commission's health and safety jurisdiction (to the extent provided in the regulations).³ Neither of these issues is relevant to a construction permit extension case.

In Washington Public Power Supply System (WPPSS Nuclear Projects Nos. 1 and 2), CLI-82-29, 16 NRC 1221 (October 15, 1982), the Commission reviewed these very questions. It determined that the Atomic Energy Act does not contemplate litigation of anything other than issues directly related to AEA § 185 and 10 CFR § 50.55(b):

³Since the Applicants are all electric utilities, and since Seabrook is a facility described in 10 CFR § 50.22, no requirement of "financial qualification" applies to the construction permit 10 CFR § (f).

"[W]e discern no intent on the part of Congress to require the periodic relitigation of health, safety, or environmental questions in agency adjudications between the time a construction permit is granted and the time the facility is authorized to operate. Rather, interested persons have been legislatively afforded a particular opportunity to raise such issues in the context of a proceeding in which the agency determines whether an operating license will be granted. . . . Consistency with the congressionally mandated two-step licensing process suggests a construction of section 185 that limits the scope of litigable issues with regard to the extension of a construction permit. . . .

"We believe that the most 'common sense' approach to the interpretation of section 185 and 10 CFR § 50.55 is that the scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show 'good cause' justification for the delay. The avenue afforded for the expression of health, safety, and environmental concerns in any pending operating license proceeding, or in the absence of such a proceeding, in a petition under 10 CFR § 2.206 would be exclusive despite the pendency of a construction permit extension request."

16 NRC at 1228-29.

Since none of the contentions set forth in the Consumers Counsel pleading address the issue of justification for delay in construction, the request for a hearing and petition raises no litigable issue

under section 50.55(b) and should, therefore, be denied.

Respectfully submitted,



Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
Telephone: 423-6100

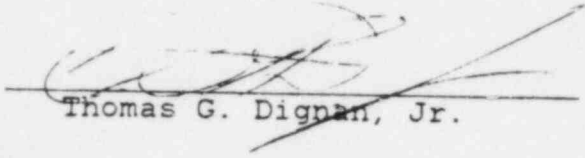
Dated: December 9, 1983

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on December 9, 1983, I made service of the within "APPLICANTS' RESPONSE TO "REQUEST OF CONNECTICUT DIVISION OF CONSUMER COUNCIL TO DENY RENEWAL OF CONSTRUCTION PERMIT FOR SEABROOK UNIT 2 " by mailing copies thereof, postage prepaid, to:

Barry Zitser, Esquire
Valerie Bryan, Esquire
Division of Consumer Counsel
One Central Park Plaza
New Britain, Connecticut 06051

Roy P. Lessy, Jr., Esquire
William F. Patterson, Jr.
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555


Thomas G. Dignan, Jr.