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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
before the  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

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

(Seabrook Station, Units 1 and 2 )

Docket Nos. 50-443  
50-444

APPLICANTS' RESPONSE TO  
"MEMORANDUM IN SUPPORT OF SAPL's  
MOTION TO DISMISS THE OPERATING LICENSE  
APPLICATION FOR SEABROOK UNIT 2 AND  
PETITION FOR LATE-FILED CONTENTION

Under date of September 26, 1983, SAPL filed a motion to dismiss the operating license for Seabrook Unit 2. In due course, the Applicants, on October 6, 1983, and the Staff, on October 17, 1983, responded to this motion. Some two months later SAPL has now filed a new piece of paper which comprises, first, what amounts to a reply brief with respect to the original motion and, second, a late-filed contention which is pressed in the event the motion to dismiss is denied.

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With respect to the first aspect, the Applicants continue to rely on their original brief in opposition to the motion. We also note that the principal decision cited therein in opposition to the motion, Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 410-11 (1974), has been ignored by SAPL in its new filing despite its seeming "on all fours" applicability to the motion at bar.

As to the late-filed contention, we analyze that in relation to the "five factors" as follows:

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

SAPL has no good cause for failure to raise this contention prior to this. From the outset, it has been known that Unit 2 would follow Unit 1 on line by at least almost two years. No significant change in the percentage of completion of Unit 2 has occurred. Any potential or actual intervenor was fully informed of these facts, and if, it was desired to raise the point now sought to be raised, i.e., the issue of whether Unit 2 would be substantially completed by any particular time, SAPL has long been on notice that issue was there. Since the proposed contention falls woefully short of being "wholly dependent" upon some subsequently issued document or statement and impossible of having been advanced earlier, it does not meet the timeliness requirement. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469

(1982) aff'd as to this point, CLI-83-19, 17 NRC 1041

(1983).

- (ii) The availability of other means whereby the petitioner's interest will be protected

This issue cannot be raised by SAPL in any other forum.

- (iii) The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record

When, as here, the contention is inexcusably late, SAPL is required to:

"both (1) identify specifically at least one witness it intends to present; and (2) provide sufficient detail respecting that witness' proposed testimony to permit the Board to reach a reasonable conclusion on the likely worth of that testimony on [the contention]." Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC \_\_\_, Slip Op. at 26 (Nov. 15, 1983).

Accord Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

SAPL has furnished neither the name of a witness nor any detail respecting his or her proposed testimony.

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

No one else has raised this issue and presumably no one else will.

- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding

SAPL concedes the issues will be broadened. In addition, a whole new type of issue will be injected into the proceeding. It is axiomatic this will delay things. Further, SAPL has provided "no basis for judging how much time might be necessary for pretrial preparation (including possible discovery)" as is required. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 514 (1982).

CONCLUSION

The motion to dismiss should be denied; the proposed late-filed contention should be excluded.

Respectfully submitted,



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Dated: December 27, 1983

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on December 27, 1983, I made service of the within document by mailing copies thereof, postage prepaid, to:

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