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RELATED CORRESPONDENCE

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

In the Matter of )

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

(Seabrook Station, Units 1 & 2) )

Docket Nos. 50-443 OL  
50-444 OL

APPLICANTS' MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES BY  
NEW ENGLAND COALITION ON NUCLEAR POLLUTION

The Applicants' move pursuant to 10 CFR § 2.740(f) that the Board enter an order compelling New England Coalition on Nuclear Pollution ("NECNP") to answer the interrogatories propounded to it by them on December 7, 1982, in the respects set forth herein.

### Interrogatories G-2 and G-3

NECNP has objected to answering Interrogatories G-2 and G-3 (which, pursuant to the instructions provided with respect to the interrogatories, are required to be answered repeatedly). NECNP has not moved for any protective order, but neither has it answered the questions.

NECNP's objections are not well founded. First, these interrogatories were taken almost verbatim from the general interrogatories considered by the Appeal Board in Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 333 n.23 (1980). Second, NECNP contends that, because the product of consultation with so-called "non-testifying experts" is not discoverable under the Federal Rules of Civil Procedure, it is not discoverable under the Commission's Rules of Practice. NECNP has fallen into the trap of assuming that the former govern the latter, however, and such is not the case. See, e.g., Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 580-81 (1978). In particular, the Commission's rules regarding discovery contain no equivalent of Fed. R. Civ. P. 26(b)(4)(B) (the rule cited by NECNP), and none

will be implied. General Electric Company (Vallecitos Nuclear Center, General Electric Test Reactor), LBP-78-33, 8 NRC 461, 465-66 (1978).<sup>1</sup>

Third, it must be remembered that the matters into which the interrogatories inquire are the matters that NECNP itself has put into controversy and, in particular, are matters concerning which NECNP intends to offer evidence and argument in support of its position that the pending application should be denied or conditioned. It is fundamentally inconsistent for NECNP to work up a theory or theories based on expert

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<sup>1</sup>"[The intervenors] place particular reliance on FRCP 26(b)(4)(B). But there is no Commission discovery rule even remotely similar to FRCP 26(b)(4)(B); hence, we are unable to apprehend the supposed 'analogy.' . . . While it is true that some of the Commission's discovery rules 'are strikingly parallel to the analogous provisions of the Federal Rules of Civil Procedure,' . . . that fact hardly provides a reasonable basis for inferring a Commission intention to have discovery in its proceedings governed by the Federal Rules in instances such as this, where no analogous provision is to be found in the rules expressly adopted. Indeed, we think the contrary inference is the better one: having expressly selected some, but not all, of the discovery provisions set out in the Federal Rules, the Commission did not intend for the unselected Federal Rules to control its proceedings." (Citations omitted; emphasis in the original.)

consultation, calculation, or studies, and yet decline to reveal the consultation, calculation or studies against which the Applicants will have to defend at the hearing.

The Board should order NECNP to answer Interrogatories G-2 and G-3 as to each of its answers to specific interrogatories.

Interrogatories VI-2 and VI-3

These answers are non-responsive.<sup>2</sup>

The contention advanced by NECNP is that certain valve operators (i) are required to be environmentally qualified and (ii) are not environmentally qualified. NECNP advanced two purported regulatory bases for requiring environmental qualification: (i) GDC 4, and (ii) "to provide a reasonable assurance that the

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<sup>2</sup>Ordinarily in a motion such as this one the relevant text of the interrogatory and the proffered response is set forth in full. Because both the interrogatories and the responses in this instance are bulky, however, that practice would enlarge this document unduly. Accordingly, the Applicants respectfully seek leave to depart from the customary practice, and to refer the Board to the interrogatories (filed 12/8/82) and the responses (filed, in revised form, 1/24/83) directly.

equipment can survive an accident environment of the harshness and duration experienced at TMI Unit 2." See "NECNP's Reply to the Responses by the Applicant[s] and the NRC Staff to NECNP's Contentions" (filed 6/17/82). Interrogatory VI-2 asked NECNP to identify the valve operators that NECNP contends are required to be environmentally qualified by GDC 4, and Interrogatory VI-3 asked NECNP to identify the valve operators that NECNP contends are required to be environmentally qualified by the additional alleged requirement.

NECNP's response, which states that NECNP is "unable to evaluate the status of the qualification of the electric valve operators,"<sup>3</sup> is wide of the mark. The interrogatories didn't ask NECNP to evaluate anything. They asked NECNP to specify which valve operators NECNP has in mind for litigation by this contention. These questions must be answered if the litigation is to proceed in an orderly fashion; moreover, these questions must be answerable if the

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<sup>3</sup>Emphasis added.

contention is (and was) anything but a sham in the first place.

The Board should order NECNP to answer Interrogatories VI-2 and VI-3 as framed.

Interrogatories VI-6 and VI-7

Bearing in mind that NECNP has advanced a contention that some (unidentified) electric valve operators are required to be environmentally qualified (beyond the extent required by GDC 4) "to provide a reasonable assurance that the equipment can survive an accident environment of the harshness and duration experienced at TMI Unit 2," this interrogatory sought to elicit with some precision what it was the NECNP was contending is the requirement short-handed by the phrase "of the harshness and duration experienced at TMI Unit 2." Given that the phraseology is NECNP's, this was both a proper and a necessary interrogatory; unless it is answered, then neither the Applicants nor anyone else will know what it is that NECNP contends is "the harshness and duration experienced at TMI Unit 2" until NECNP surprises us all in the hearing room. That

scenario is precisely the reverse of the goal of the Commission's discovery rules.<sup>4</sup>

The Board should order that, unless NECNP promptly answers these interrogatories, so much of contention NECNP I.A.2 as refers to "an accident environment of the harshness and duration experienced at TMI Unit 2" should be stricken and dismissed.

Interrogatory VI-8

It is axiomatic that the "harshness and duration" of the accident environment at TMI Unit 2 is quite irrelevant in a proceeding regarding Seabrook unless there exists a credible and reasonable accident scenario that could produce that environment at Seabrook. Thus, Interrogatory VI-8 properly sought to

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<sup>4</sup>"[A]n important reason for allowing discovery is to eliminate, insofar as possible, the element of surprise in modern litigation. The underlying concept is to shorten the actual trial, with its attendant expense and inconvenience for all concerned, while increasing the parties' ability to develop a complete record for decisional purposes. . . . We can find no fault in these circumstances with filing interrogatories designed to probe thoroughly the basis of the Coalition's case; it would have been imprudent not to have done so." Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 321-22, 335 (1980).



probe a fundamental element of the case the NECNP hopes to make (and must make) under this Interrogatory.

The fact that NECNP has chosen to abjure learning whether the issue has any relevance to Seabrook is not the pertinent inquiry; to the contrary, it only demonstrates graphically that NECNP had no basis for this aspect of this contention at the time it was filed. The Applicants are entitled to know now, however, what proposed accident scenarios they must defend against in the hearing. Unless NECNP can specify those scenarios it proposes to contend could produce the environment to which it contends the equipment must be qualified, this aspect of the contention should be stricken and dismissed.<sup>5</sup>

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<sup>5</sup>"A litigant may not make serious allegations against another party and then refuse to reveal whether those allegation have any basis. . . . The Coalition's understanding of an intervenor's role is simply wrong. To be sure, the license applicant carries the ultimate burden of proof. But intervenors also bear evidentiary responsibilities. In a ruling that has received explicit Supreme Court approval, the Commission has stressed that an intervenor must come forward with evidence 'sufficient to require reasonable minds to inquire further' to insure that its contentions are explored at the hearing. Obviously, interrogatories designed to discover what (if any) evidence underlies an intervenor's own contentions are not out of order." Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 339-40 (1980).



The Board should order NECNP to specify each and every accident scenario that it proposes to contend could produce an accident environment of the "harshness and duration experienced at TMI Unit 2" at Seabrook.

Interrogatories VII-2 and VII-3

Once again, NECNP proposes to seek shelter from its discovery and specification obligations behind the shield of its own unpreparedness and lack of basis.

This proposed contention asserts (i) that certain equipment (which NECNP called equipment "required for residual heat removal") is required to be environmentally qualified, and (ii) that some portion of that equipment is not environmentally qualified. These two interrogatories sought to obtain some specification of the equipment NECNP had in mind. In response to the interrogatory calling for the specification of the equipment which NECNP contends must be qualified, NECNP has stated only:

"NECNP has not yet obtained an expert evaluation of this issue."

No responsive answer at all is proffered to the interrogatory that sought specification of the equipment that NECNP contends is not suitably qualified. Once again, all that is shown is that, even

Today, NECNP has no basis for the contention it has advanced.

The Board should order NECNP to specify the equipment that contends is required to be qualified under this contention and to specify the equipment that NECNP contends is not qualified under this contention, with the caveat that NECNP will not be permitted to litigate any equipment under this contention that is not specified.

Interrogatories VII-4 and VII-5

NECNP has offered no answer to these interrogatories, and, for the reasons set forth above, the excuse it attempts is inadequate. The Board should order NECNP to answer these interrogatories, with the same caveat.

Interrogatory IX-5

This answer is inadequate. At some point in time the Applicants' are entitled to know what it is the NECNP contends the equipment is required to deal with. NECNP apparently intends to divulge that information only during the hearing; under the Rules of Practice, however, we submit that the time at which disclosure is required is now. The Board should order NECNP to answer this interrogatory as it is framed.

Interrogatories X-2 through X-5

This contention is premised upon NECNP's assertion that the ultrasonic testing of reactor vessel welds for Seabrook does not comply with GDC 1. The Applicants by these interrogatories asked NECNP what it is that NECNP contends is wrong with the ultrasonic testing of the reactor welds. In response, NECNP states that it doesn't believe that it possesses sufficient information to enable it to determine what is wrong -- an answer which as a matter of absolute logic necessarily means that NECNP doesn't know whether anything is wrong. These answers demonstrate that, at best, this contention is premature; at a minimum, it presently lacks any basis. Given NECNP's inability to answer these questions, this contention should (at least for the time being) be dismissed.

Interrogatories XIII-2 through -32

An answer to these interrogatories is required unless NECNP's answer to Interrogatory XIII-1 is "an unqualified negative." Interrogatory XIII-1. NECNP's answer is not unqualified; answers to the remaining interrogatories in this group are therefore required.

Interrogatories XV-2 and XV-3

NECNP has not answered the questions. Its proffered excuse for not having answered the questions is, for the reasons set forth above, inadequate. If NECNP is not able to answer these interrogatories, then the contention was (and is) wholly lacking in basis and should be dismissed.

Interrogatories XV-8 and XV-9

NECNP has objected to these interrogatories as being "in violation of the Federal Rules of Civil Procedure." Prescinding from the fact that no motion for a protective order has been filed, NECNP has not -- and for the reasons set forth above regarding Interrogatories G-2 and G-3, NECNP cannot -- assert that these interrogatories violate the Commission's Rules of Practice. In fact, these questions are legitimate and should be answered.

Interrogatories XVI-4 and XVI-5

NECNP has provided, in this case, neither answers, nor objections, nor excuses. It has, in fact, totally ignored these questions.<sup>6</sup> The Board should order that

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<sup>6</sup>"It is not proper for a party to ignore a discovery request." Pennsylvania Power & Light Company

these questions, which go directly to the heart of the contention that NECNP has advanced, be answered forthwith.

Interrogatories XVI-6 and XVI-7

NECNP has not answered, but rather only disclaimed its present ability to answer, these interrogatories. The time at which positions on these interrogatories must be set, however, is now.

Interrogatories XX-2 through XX-4

Once again, NECNP is not, even now, prepared to support its original contention. Prescinding from the implications of NECNP's answers for the original assertion of this contention, they demonstrate plainly that, as of today, the contention is without basis. In view of NECNP's inability to assert any basis for the contention, the contention should be stricken or dismissed.

Interrogatory XXI-6

Particularly in view of NECNP's answer to Interrogatory XXI-5<sup>7</sup> and the Applicants' answer to

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(Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 322 (1980).

<sup>7</sup>The Interrogatory was:

NECNP's Interrogatory No. 1 of "NECNP Second Set of Interrogatories and Request for Production of Documents to Applicants on Contentions I.A.2, I.B.1, I.B.2, and I.C.",<sup>8</sup> NECNP's inability to answer this question demonstrates that there is nothing to litigate under this contention. Given NECNP's answer, and given that under the Rules of Practice and this Board's orders regarding discovery the time for fixing the scope of

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"Does NECNP agree that if, in fact, the Applicants have aggregated all of the equipment that is 'safety related,' as NECNP understands the term, and all of the equipment that is 'important to safety,' as NECNP understands the term, and has subjected the aggregated equipment to requirements applicable to equipment that is 'safety related,' then the difference in understanding between NECNP and the Applicants is academic?"

The response was:

"Yes."

<sup>8</sup>"The term 'important to safety' when used by the Applicants to identify structures, systems and components that perform a safety function has the same definition as 'safety-related.' The Applicants have no structures, systems or components which are indented as important to safety that do not perform a safety function. . . . There are no equipment or systems that are designated 'important to safety' but are not 'safety-related'." (Answers filed 12/16/82.)

litigation (if any) under this contention is now, this contention should be stricken or dismissed.

Interrogatories XXIII-2 and XIV-2

The Applicants respectfully submit that these answers are inadequate. While it well may be that NECNP is no more prepared to answer these interrogatories than it was six months ago, and (indeed) while it may well be that NECNP thinks that the unsworn legal arguments that it previously advanced contain all the material on which it proposes to rely, the Applicants are entitled to have their questions answered in the form and with the specificity demanded. At a minimum, such answers will promote, we submit, a more orderly consideration of matters at the hearing.

Interrogatories XXIX-3 through XXIX-21,  
and XXIX-24 and XXIX-25

It is, we submit, not sufficient to excuse NECNP from answering interrogatories that "[it has] nothing to add at this time." (This is particularly so given that NECNP continues to refer to its arguments previously asserted in support of this contention and most of the interrogatories that NECNP has declined to answer probe matters set forth in those very assertions. Thus, for example, NECNP previously



asserted that "The Applicants' classification scheme fails to include consideration of specific plant circumstances, such as the anticipated time lag for evacuation due to local problems." "NECNP Supplemental Filing on Emergency Planning Contentions" (filed 7/23/82) at 3. All NECNP has done in response to Interrogatory XXIX-2 is repeat verbatim the same overly general and vague language. Steadfastly avoided, however, has been NECNP's obligation to provide the very specificity and basis upon which the Applicants and the Board must rely if the litigation of this contention is to be manageable and consistent with the Rules of Practice.)

If NECNP means to say that it does not know the answers to these questions, then it must be prepared to say so -- and to accept the consequences. The Board should order the answer proffered by NECNP stricken and further answers submitted.

Interrogatories XXX-2, XXX-4 and XXX-5,  
XXX-7 and XXX-8, XXX-10 and XXX-11

Once again, the time by which NECNP must take its position for litigation on this contention is not a matter of NECNP's convenience or desires, but rather of orders that this Board has already issued. A response

to the effect that NECNP will declare its position when it gets around to it is not consistent with those orders and should be stricken. Unless NECNP is prepared to divulge the changes for which it will advocate, there is nothing available for litigation.

Interrogatories XXX-13 through XXX-25

In support of this contention, NECNP advanced the legal argument as follows:

"Events that could cause a simultaneous emergency at both units include earthquakes, severe storms, loss of offsite power, or degraded grid voltage."

"NECNP Supplemental Filing on Emergency Planning Contentions" (filed 7/23/82) at 5. NECNP then asserted that the foregoing constituted a violation of twelve different regulations, "each of which would involve different actions for a simultaneous event than for an event at a single reactor." Id. NECNP added some generalized examples of what it had in mind; liberal was the use of the phrase "for instance."

The Applicants propounded twelve interrogatories to NECNP, one for each of the twelve regulations that were asserted to impose the requirements, in the form:

"Please describe each and every respect in which NECNP contends that [one of the regulations] requires 'different actions for a simultaneous event than for an

event at a single reactor.'" (Emphasis added.) Had these interrogatories been answered, then (i) we would have been put on notice as to what it is that NECNP intends to assert at the hearings in support of its contention, (ii) the contention would have been narrowed so that no additional theories could be sprung, and (iii) the hopelessly vague speculation of the July 23d filing would have been cured.

NECNP's response, however, was "See NECNP supplemental filing on Emergency Planning Contentions (July 23, 1982) at 5-10." This adds nothing; it amounts to no answer at all. The Board should order NECNP to specify all of the things it intends to litigate now.

#### Interrogatory XXXI-2

In answer to an interrogatory calling for NECNP to specify the changes in the emergency plan that it contends are required to be made -- an interrogatory which NECNP apparently admits is proper -- NECNP has stated, in essence, that it prefers to give one specification now and additional specifications later. The effect of Rules of Practice regarding discovery and the Board's orders regarding the timing of discovery is, we submit, that NECNP must give all the

specifications upon which it will rely at hearings now. This answer, as framed, is inadequate.

Interrogatories XXXII-3 through XXXII-8

For precisely the reasons set forth above, the option of answering these interrogatories at its pleasure is not one available to NECNP. These responses should be stricken and NECNP ordered to answer the questions forthwith.

(Moreover, NECNP's response, as applied to Interrogatory XXXII-8, is doubly unacceptable because the interrogatory calls for NECNP to describe what (if anything) NECNP has already done. NECNP does not need future expert assistance to tell it what it has already done, and the Applicants are entitled to know.)

Interrogatory XXXII-12

In this answer NECNP refuses to disclose the contents, and evidence of the contents, of a particular conversation. It premises its objection on the ground of "work product." Whatever the application of the work product doctrine might be in some other case, however, NECNP cannot rely upon it to shield scrutiny regarding a particular conversation which NECNP has itself disclosed and discussed publicly, and which NECNP has advanced to this Board as the basis on which

this Board should take certain action (i.e., admission of a proposed contention). Under these circumstances, NECNP must answer the question.

Interrogatories XXXIII-2 through XXXIII-5, XXXIII-8 and XXXIII-9, and XXXIII-12 through XXXIII-20

Once again, NECNP leans upon ignorance and lack of preparation to avoid probing questions about assertions that it itself has made previously, publicly and to this Board. There is no purer use of interrogatories than to probe the asserted basis for a contention, which is precisely what these interrogatories seek to do. If NECNP cannot answer the questions without new input that it has not yet received from someone it has not yet consulted, then it was and is without basis for the contention and the contention should be stricken.

Respectfully submitted,



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Dated: January 28, 1983

CERTIFICATE OF SERVICE

I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on January 28, 1983, I made service of the within "Applicants' Motion to Compel Answers to Interrogatories by New England Coalition on Nuclear Pollution" by mailing copies thereof, postage prepaid, to:

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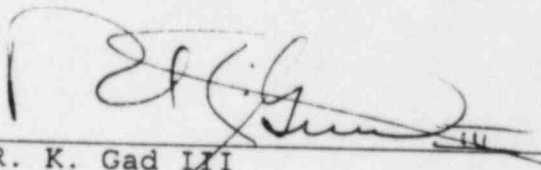
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