

Dated: March 28, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
PLANNING & SERVICE
BRANCH

before the
ATOMIC SAFETY AND LICENSING BOARD

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

Under date of March 28, 1984, John F. Doherty, filed an admittedly late-filed petition for leave to intervene. This is Mr. Doherty's second late-filed petition to intervene.

Standing

In his petition Mr. Doherty recites as a basis for standing his residence "approximately 40 miles from the site of Seabrook Station"; that he has used, and will in the future use, the Seabrook and Hampton Beach areas for recreational purposes; and that he frequently travels on Route 95 (presumably near Seabrook) to visit relatives in Maine. The latter two factors have never been recognized as

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conferring standing upon an individual. As to the assertion of residence "approximately 40 miles from Seabrook", it should be noted that in fact Mr. Doherty's recited residence in the Brighton section of Boston is more than 40 miles from the Seabrook site. Generally, over the years 40 miles has been viewed as the "outer limit" of residential proximity for purposes of conferring standing in NRC licensing proceedings insofar as safety issues are concerned. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 190, reconsid. denied, ALAB-110, 6 AEC 247, affirmed, CLI-73-12, 6 AEC 241 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973); Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631, 633-34 (1973). But cf. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 at n.4 (1977) (distance "is not so great as necessarily to have precluded a finding based upon residence in [a] city" 50 miles from the site). It is the Applicants' position that the facts pleaded by Mr. Doherty are insufficient to confer standing upon him to raise safety issues in this proceeding.

Even Assuming Standing Exists the
Petition Fails to Satisfy the
Criteria of 10 CFR § 2.714(a)(1)

This late-filed petition must be judged under the criteria set forth in 10 CFR § 2.714(a)(1), each of which is discussed below.

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

Mr. Doherty justifies his late filing by a claim that he had no basis for raising his issue until he received IE Information Notice No. 84-15 March 2, 1984, a portion of which he attaches to the petition. The contention he is raising, as stated by Mr. Doherty, is:

"Petitioner contends his health and safety interests will not be protected against accidental radioactive releases from Seabrook Station because the NRC Emergency Notification System (ENS) is inadequate."

He then goes on to state the basis for his contention as being the two incidents reported in the above-referenced information notice. A reading of just the portion of the information notice attached to the petition reveals that these were two different events at two different reactors not arising from any generic cause, and to the extent, if any, that there was a breakdown of the ENS (which is not at all clear), it was the result of actions or inactions of personnel at those particular plants. There is no basis here for an attack on the Seabrook facility as such. Thus, all that Mr. Doherty can be said to be contending is that the ENS may be faulty for some unspecified reasons and as a

general matter.¹ This contention could have been made without having in hand IE Information Notice No. 84-15. In short, Mr. Doherty is simply trying to make it appear that he could not raise the contention without the IE notice. In fact, however, that notice told him nothing he needed as a prerequisite to the raising of his contention and most

¹ The Emergency Notification System is not, in fact, a piece of equipment provided or maintained by the Applicants. It is, rather, a dedicated telephone system arranged for by NRC:

"A direct and dedicated telephone (ENS red phone) has been installed between the Nuclear Regulatory Commission Incident Response Center in Bethesda, Md. and each Control Room with extensions in each Technical Support Center, primary and alternate Emergency Operations Facilities and the NRC resident inspector's office. This is an automatic ringing system designed to immediately contact the NRC Incident Response Center of an emergency condition. The system is tested daily by the NRC and has a 24-hour manning capability at both organizations."

FSAR-SS-REP, § 7-6, p. 7-3. As the materials contained in Section 7 make clear, the ENS is backed up by alternative means of communication, including commercial telephone. *Id.* § 7.3, Fig. 7.3. As noted in Section 7.6, the ENS is tested daily by NRC, which essentially eliminates any possibility of undetected failures unless what Mr. Doherty proposes to challenge is NRC's administration of NRC's emergency plans and capabilities. In any event, the adequacy of the ENS is an issue generic to NRC -- and has little to do with any action the Applicants have taken or could take -- and such an issue ought not to be litigable in this proceeding. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-83-7, 17 NRC 336, 337 (1983). That Mr. Doherty knows the proper way to deal with such generic issues is a matter of public record. See Matter of John F. Doherty, DPRM-83-2, 17 NRC 1193 (1983).

assuredly this generalized contention does not meet the tests of "wholly dependent upon the content of a particular document" and "could not have been advanced with any degree of specificity (if at all) in advance of the public availability of the document", which are the standards applicable to late-filed contentions purportedly justified on the basis of previously unavailable information. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982), rev'd on other points, CLI-83-19, 17 NRC 1041 (1983). No good cause for failure to file on time has been shown.

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

As usual, this factor weighs in favor of the petitioner.

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

Mr. Doherty makes no relevant showing on this factor. The fact that he is a skilled cross-examiner is of no moment because the contribution sought under this factor is evidence not legal skills. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 at n.14 (1982). He has utterly failed at any attempt to meet the requirement of setting forth "the identity of [his] proposed witnesses and the substance of the testimony they would offer." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC

387, 400 (1983). Accord Mississippi Power & Light Co.
(Grand Gulf Nuclear Station, Units 1 & 2), ALAB-704, 16 NRC
1725, 1730 (1982); Washington Public Power Supply System
(WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC ___, ___,
(Slip Op. at 18) (Nov. 15, 1983).

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

It is true that no other party has raised the specific
issue Mr. Doherty wishes to raise. However, his "interest"
i.e., that of a resident within 40-50 miles of the plant, is
well represented by two private intervenor groups, SAPL and
NECNP, with numerous members having the same "interest".

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

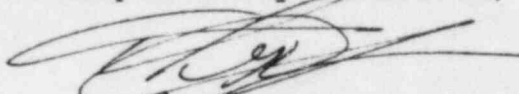
If, as here, the petitioner is extremely late, the most
important factor is the delay factor. Detroit Edison Co.
(Greenwood Energy Center, Units 2 & 3), ALAB-476, 7 NRC 759,
761-62 (1978). Furthermore, this proceeding has concluded
one phase of the evidentiary hearing; and all deadlines for
filing contentions as to the remaining issues which might
encompass the filing of an ENS contention have passed. In
such circumstances the Board should be very leery of
permitting this petitioner to inject himself and wholly new
claims into this proceeding. ALAB-671, supra, at 511, South
Carolina Electric and Gas Co. (Virgil C. Sumner Nuclear
Station, Unit 1), ALAB-642, 13 NRC 881, 886 (1981).

Furthermore, he has provided "no basis for judging how much time might be necessary for pre-trial preparation (including possible discovery) in connection with [his issue]", ALAB-671, supra at 514.

CONCLUSION

The petition should be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

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