



UNITED STATES NUCLEAR REGULATORY COMMISSION

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NUCLEAR REGULATORY COMMISSION ALLOWS SEABROOK CONSTRUCTION TO GO FORWARD, PLANS RULE CHANGES

The Nuclear Regulatory Commission has unanimously affirmed its Appeal Board's July 1977 decision permitting the resumption of construction of two nuclear power plants at Seabrook, New Hampshire.

The Commission affirmed its Appeal Board by a unanimous vote. Victor Gilinsky, Richard Kennedy and Peter Bradford participated in the decision, Chairman Joseph Hendrie having disqualified himself from the proceeding because of his earlier involvement with the Seabrook application as Deputy Director for Licensing and Technical Review of the Atomic Energy Commission.

The Commission's review involved two basic issues: (1) the financial qualifications of the lead applicant, Public Service Company of New Hampshire; and (2) the effect of determinations by the Environmental Protection Agency concerning the aquatic impact of the Seabrook plant's proposed cooling system.

With respect to the question of the financial qualifications of the applicants, the Commission concluded that "Our independent assessment of the record in this case leads us to agree with the conclusion of the Licensing Board and of the Appeal Board majority--that there is a 'reasonable assurance' that these applicants are financially qualified."

The Commission said that the financial qualifications inquiry in this case "appears to have been the most searching examination of this question in the history of commercial power reactor licensing." The Commission added that in making a finding of reasonable assurance, "It is not enough that the applicant is a regulated public utility. On the other hand, given the history of the present (NRC) rule and the relatively modest implementing requirements...a 'reasonable assurance' does not mean a demonstration of near certainty that an applicant will never be pressed for funds in the course of construction. It does mean that the applicant must have a reasonable financing plan in light of relevant circumstances."

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In its opinion, the Commission took note of a recent decision of the Connecticut Public Utilities Control Authority suggesting that Northeast Utilities sell its share of the Seabrook units and also of a request for a rate increase by the Public Service Company of New Hampshire. That request is now pending before the New Hampshire Public Service Commission. To assure that the Commission is kept current on developments with regard to financial qualifications, it directed the lead applicant to report any changed circumstances.

The Commission added that further exploration of generic issues concerning financial qualifications--presumably applicable to all commercial nuclear plants--should be undertaken in a rulemaking proceeding which will offer broader opportunities for public and industry participation. The Commission directed its staff to initiate a rulemaking proceeding in which the factual, legal and policy aspects of the financial qualifications issue may be re-examined.

With respect to the effect of the EPA determinations of aquatic impact, the Commission noted that the EPA Administrator found that the once-through cooling system he approved for Seabrook was, as required by the Federal Water Pollution Control Act, adequate to assure the protection and propagation of a balanced, indigenous population of fish, shellfish and wildlife in and on the ocean waters near Seabrook.

"The narrow question presented is whether the Commission may accept and use without independent inquiry EPA's determination of the magnitude of the marine environmental impacts from the cooling system in striking the overall cost-benefit balance for the facility. Our conclusion is that we may and in this case should," the Commission said.

In its decision, the Commission reiterated its comments made in an opinion issued in March 1977, that the Seabrook proceeding represents "a serious failure of governmental process to resolve central issues in a timely and coordinated way."

It then noted that "this case illustrates the need to develop a procedure for assuring early Commission-level review of controverted licensing proceedings, when appropriate, particularly where siting is an issue. Consequently, we intend to develop a process which will allow the Commission to monitor more effectively the proceeding of its lower boards."

In connection with these observations, the Commission decided to initiate a study addressing but not necessarily limited to:

- "1. the effect which would be achieved by relaxation of our stay standards so that site-related issues in potentially troublesome cases may be taken up before large sums of money are committed and sites are irrevocably altered, and
2. ways in which our appellate administrative procedures may assure earlier resolution of all the issues arising out of a licensing and cut re-litigation and piecemeal review to a minimum."

The Office of Policy Evaluation and the General Counsel were directed to prepare a draft scope of work for this study for consideration by the full Commission.

The decision resolves most of the issues within the NRC's jurisdiction. When the case was argued in November, aspects of the case were being considered by an NRC Atomic Safety and Licensing Board, an NRC Atomic Safety and Licensing Appeal Board, the Commission itself and the United States Court of Appeals for the First Circuit. The EPA Administrator's decision allowing once-through cooling for the Seabrook plants is still on appeal in the First Circuit.

Copies of the Commission's memorandum and order are available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C.

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