

UNITED STATES OF AMERICA

'98 AUG 21 P1:42

BEFORE THE NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

B. Paul Cotter, Jr., Chairman
Dr. Charles N. Kelber
Dr. Linda W. Little

In the Matter of)	
)	
North Atlantic Energy)	
Service Corporation)	
)	Docket No. 50-443
Seabrook Station, Unit No. 1)	
)	ASLBP No. 98-746-05-LA
Rockingham County, New Hampshire)	

SAPL/NECNP REPLY TO NAESCO RESPONSE TO PROPOSED CONTENTIONS

By a pleading dated August 10, 1998, the licensee, North Atlantic Energy Services Corporation ("NAESCO") objects to the four contentions proffered by the Petitioners. While joining in certain of the objections raised by the Staff; to wit, that the contentions are barred by 10 CFR 50.58(b)(6) and that contentions 2 through 4 are not within the scope of the proceeding, NAESCO also - unlike the staff - specifically contends that Contention I does not meet the "strict" pleading requirements of the regulation. This reply addresses the NAESCO objections.

I. Contention I is Admissible.

NAESCO starts by nominally joining in the Staff position that 10 CFR 50.58(b)(6) bars the Board from consideration of Contention I, or indeed, from consideration of any of the contentions. However, unlike the Staff, NAESCO recognizes that the "no significant hazards consideration determination is relevant only as to whether any hearing requested and determined to be required may be held after issuance and effectiveness of the amendment." (Page 4). As set forth in the Petitioners' reply to the Staff, which is incorporated here by reference, Petitioners are

not seeking a hearing prior to any issuance or effectiveness of the license amendment, but only a hearing on the underlying safety concerns presented by the four contentions. Thus, for the reasons set forth in the Reply, 10 CFR 50.58(b)(6) is not a bar to consideration of the contentions.

Apparently in recognition that the 10 CFR 50.58 issue is not a bar to the hearing the Petitioners seek, NAESCO then goes on to argue the contention should not be admissible, citing NRC cases and policy statements holding that the revisions of 10 CFR 2.714 were intended to raise the pleading bar for Petitioners.

Petitioners do not contest that the revisions of the regulation raised the pleading bar. However, that bar is not intended to be so high that the Petitioners have to prove their case before they are entitled to a hearing, which would be an absurd result. Indeed, as the Board said In the Matter of Florida Light and Power Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), LPB-89-15, 29 NRC 493, 498 (1989): “Petitioners need only set forth the bases, i.e., the reasons for each contention and need not detail the evidence in support thereof.” (Citation omitted).

In this case, Petitioners have set forth a sufficient contention with a basis that meets all the applicable requirements. Although NAESCO claims that, “Petitioners fail to state specifically where the analysis is flawed,” in fact the Petitioners do so. In particular, they pointed out that by decreasing the steam generator inspections by 25% (actually 33%), there is an increased risk that degraded tubes would not be detected in a timely way and that this would increase the risk of a steam tube rupture event which can lead to an accident with offsite release of radioactivity. They also pointed out that, although NAESCO is apparently prepared to accept a tightening of

acceptable primary to secondary leak rate, from 500 to 100 gallons per day, that there is no analysis that this will in any way offset the increased risk from less frequent inspections. The omission of any justification for NAESCO's decision to decrease the inspection frequency constitutes a matter of fact tendered for resolution in this proceeding. At the most fundamental level, the NAESCO reply does not address the gravamen of Contention I: that decreasing steam generator inspections will result in a decrease of the nuclear safety margins.

As set forth in the basis to the Contention, steam generator tubes are a very important safety element of a PWR. Generic Letter 95-05, page 1, points out: "The tubing of the steam generator constitutes more than half of the reactor coolant boundary." According to NRC Generic Letter 95-03, page 2: "Inspection practices should furnish reasonable assurance that steam generator tube degradation will be reliably detected so that the potential for the rupturing of a tube is maintained at an acceptably low level." (See also the Seabrook Technical Specification, Section 3/4.4.5, Attachment B to the NAESCO Reply, which states: "The Surveillance Requirements for inspection of the steam generator tubes ensure that the structural integrity of this portion of the RCS will be maintained.")

NAESCO also takes issue with the concern expressed in the basis to the Contention concerning the apparent weakening of the criteria for a degraded tube from 40% wall loss to 75% wall loss. NAESCO says, page 8, that the 40% wall loss requires either plugging the tube, or an analysis to show that the tube will not go to a 75% loss, "during the next anticipated operating cycle..." But it is obvious that delaying the next inspection by up to an additional six months may well increase the likelihood of the wall loss increasing close to or beyond the 70% limit that constitutes the increased hazard that Petitioners are protesting.

NAESCO also does not contest that the issue of the appropriate criteria for wall loss, and the issue of whether eddy current or voltage testing can provide sufficient warning, are unresolved safety issues. NRC Inspection Notice 97-88, "Experiences During Recent Steam Generator Inspections," states that: "Entergy's experience illustrates some of the potential difficulties in qualifying and applying eddy current depth-sizing techniques. Because eddy current inspections methods are sensitive to a number of variables, the qualification process should consider all of these variables." The Report goes on to state there are instances where the methodology discussed in Generic Letter 95-05 "was shown to be non-conservative with respect to operating experience." Pages 2,4. This is the issue raise by Dr. Joram Hopenfeld in his differing professional opinion, referenced in the basis to Contention I.

In conclusion, although NAESCO, unlike Staff, has at least claimed to contest the substance of Contention I, in fact it has not contested that there are specifically identified aspects of the license amendment request that present safety significant matters. The Petitioners are entitled to the institution of a proceeding as to Contention I, to undertake discovery on the Contention and, assuming the Board does not grant a motion for summary disposition, to a hearing.

II. Contentions 2 through 4 are Admissible.

Since NAESCO joins in the Staff position that only Contention I is relevant to the subject matter of the proceeding, the Petitioners adopt their response to the Staff on this point as to NAESCO as well. However, NAESCO makes an additional argument in opposition to these Contentions, and as to Contention 2 in particular, as to which Petitioners reply here.

Contention 2 raises the question of a reduction in the margin of safety because of the added stress of a 33% longer run on fuel integrity; i.e, the potential for fuel cladding failure. Although

NAESCO states that this is, in its opinion, an “unrelated issue,” it apparently is not sufficiently confident of this position to rest its opposition on this argument alone.. It therefore provides an affidavit from Mr. Ted C. Feigenbaum, its Chief Nuclear Officer. This affidavit, Petitioners submit, by itself raises questions that this Board should address..

The apparent purpose of the affidavit is to support the additional claim that Contention 2 is without substance because, contrary to the concern underlying the Contention, the licensee (NAESCO) has no intention of extending the Seabrook operational run from 18 months to two years. (“In addition, and as mentioned above, NAESCO is not proposing any change related to fuel in any of the license amendment applications intended to accommodate 24-month cycles.” NAESCO Response at 12-13).

Yet the Affidavit, at paragraph 12, states:

In 1995, consistent with a general industry trend, North Atlantic determined that there would be economic benefit in operating Seabrook Station with longer fuel cycles. This benefit would occur due to elimination of one refueling outage every six years. The decision was made to begin a transition from an 18-month to a 24-month cycle.

This is entirely consistent with Mr. Feigenbaum’s transmittal letter for the license amendment request describing the request as the second “in a planned series of License Amendment Requests which propose changes to the Seabrook Station technical specifications to accommodate fuel cycles of up to 24 months.” However, to Petitioners, it does not seem consistent with paragraph 17 of the Affidavit, which states:

North Atlantic has no plans to operate Seabrook with a 24 month cycle at the present time.

If there is no “plan” to operate Seabrook on a 24- month cycle, why is NAESCO seeking approval, in a “series of amendment requests,” to change surveillance intervals to 24 months? If there is no plan to operate Seabrook on a 24- month fuel cycle, why was a “decision...made to begin a transition from an 18 month to a 24-cycle”? If there is no “plan” to go to a 24-month cycle, why has NAESCO not limited its amendment request to a one time extension to allow for the two recent unscheduled outages described in Mr. Feigenbaum’s Affidavit, to permit the intended fuel utilization of the current fuel load? (Perhaps the key phrase in paragraph 17 is the one that states,” NAESCO has no plans to operate Seabrook with a 24-month cycle at the present time.”) (Emphasis added.)

Petitioners would also point to paragraph 14 of the Affidavit stating that: “The industry has experienced a small number of issues associated with longer fuel cycles and higher energy cores. Some of these were associated with plants using a 24-month cycle and some occurred at plants with shorter operating cycles but which had the potential for a greater effect in a longer cycle.” These are fuel-failure related issues that clearly pertain to Contention 2. While NAESCO purports not to seek a 24-month cycle, the amendment request, if granted, would clearly reduce the safety margin based on actual industry operating experience, as paragraph 14 indicates. Without the license amendment, Seabrook could not operate on a 24-month cycle and would therefore be less likely to suffer the adverse industry experience described by Mr. Feigenbaum.

Finally, Petitioners note that, as a practical matter, NAESCO has conceded that it is segmenting its planned change to a 24 month fuel cycle. The Response states, at page 12, that, “To the extent that NAESCO is requesting a change that is subject to the license amendment process, Petitioners either had or will have an opportunity to file comments and request a hearing. Petitioners do not lose any hearing rights by virtue of NAESCO’s decision to file its applications in series.

Petitioners simply need to timely request a hearing and raise admissible, material issues.” In other words, the planned major change should be dealt with in the discrete, segmented steps that result from acceptance of NAESCO’s unanalyzed decision to make the change in a series of requests.

If, as Petitioners contend, this “series” of amendment requests is intended to effect a major operational change, with several related safety concerns, then NAESCO is in effect conceding that the Petitioners, and this Board, should have to deal with the planned change in a series of discrete proceedings, without the agency ever reviewing the change in a integrated, thorough and overall fashion, because of its unilateral decision on how to request the change.

CONCLUSION

For the reasons stated, the Board should admit SAPL/NECNP Contentions 1 through 4 and reject the NAESCO arguments to the contrary.

Respectfully submitted,
Seacoast Anti-Pollution League,
New England Coalition on Nuclear Pollution

By their attorneys,
Backus, Meyer, Solomon, Rood & Branch

DATE: _____

BY: _____
Robert A. Backus, Esq.

UNITED STATES OF AMERICA

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USNRC

BEFORE THE NUCLEAR REGULATORY COMMISSION '98 AUG 21 P1:43

Before Administrative Judges:

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CERTIFICATE OF SERVICE

I hereby certify that copies of SAPL and NECNP's Reply to NAESCO Response to Proposed Contentions have been served on the following by deposit in the United States Mail, first class, this 18th day of August, 1998.

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Attn: Docketing and Service Station
(Original and two copies)

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Dated: August 18, 1996


Robert A. Backus
For SAPL and NECNP