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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
PUBLIC AFFAIRS AND
ADJUDICATION STAFF
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-443 LA
)	
NORTH ATLANTIC ENERGY)	
SERVICE CORPORATION)	License No. NPF-86
(Seabrook Station, Unit 1))	
)	

NRC STAFF'S ANSWER TO CONTENTIONS

The NRC Staff hereby files its answer to the contentions submitted by the Seacoast Anti-Pollution League (SAPL) in its submittal dated July 9, 1998.¹ As discussed below, SAPL's contentions are invalid in that they raise issues over which the Atomic Safety and Licensing Board (Board) does not have jurisdiction. Accordingly, the contentions should be rejected and this proceeding should be terminated.

BACKGROUND

North Atlantic Energy Service Corporation (NAESC or Licensee) is seeking an amendment to the Seabrook Station technical specifications with respect to certain surveillances that are currently performed at each 18 month or other outage interval. NAESC License

¹Letter from R. Backus to P. Cotter, Jr., et al. (July 9, 1998) and attachments thereto (SAPL July 9 submittal). This submittal was filed also on behalf of the New England Coalition on Nuclear Pollution (NECNP), whose standing the Staff is contesting.

Amendment Request 98-03 (Apr. 8, 1998).² The technical specifications at issue are Technical Specification (TS) 4.4.5.3 (Steam Generators -- Inspection Frequencies), and TS 3.4.6.2c (Reactor Coolant System Leakage).³ According to the amendment application, the proposed changes are consistent with NRC Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle" (Apr. 2, 1991) (GL 91-04).

SAPL has filed four contentions with supporting bases, which SAPL seeks to litigate at the hearing it has requested. Each contention alleges, on different grounds, that the Staff "erred" in proposing to determine that the amendment request involves no significant hazards consideration.⁴ *See* SAPL July 9 submittal, Contentions 1-4. Contention 1 asserts that the proposed changes to the technical specifications sought by NAESC "may cause a significant increase in the probability or consequences of an accident previously evaluated, and may involve a significant reduction in the margin of safety, contrary to the requirements of 10 CFR 50.92." Contention 2 states that the Staff erred in making its proposed "finding of no significant hazards consideration . . . because the staff failed to analyze the impact of a 25% longer operational run on fuel rod failure, and because the result of a longer run will be to

²Notice of the amendment request was published at 63 Fed. Reg. 25,113 (May 6, 1998). To avoid any confusion, the Staff notes that the amendment request does not involve a request for an exemption under 10 C.F.R. § 50.12, notwithstanding SAPL's erroneous references to the amendment request as a "license exemption request." *See, e.g.*, Letter from R. Backus to Office of Administration, NRC (June 5, 1998).

³NAESC is also proposing to change the associated bases, 3/4.4.5 (Steam Generator Bases) and 3/4.4.6.2 (Operational Leakage Bases).

⁴The Staff's proposed no significant hazards consideration determination was published at 63 Fed. Reg. 25,113 (1998).

increase fuel rod failure, thereby breaching the first line of defense against offsite radioactive releases." Contention 3 alleges that the Staff erred in making its proposed no significant hazards consideration determination "because the staff failed to analyze the effect of increasing the operational run by 25% with a resulting requirement for an increased reliance on on line maintenance" Finally, Contention 4 asserts that the Staff erred in making its proposed no significant hazards consideration determination "because the decreased opportunity to conduct surveillances within the areas of the plant inaccessible during normal operations may create an increased hazard as the result of the failure to timely detect abnormal or improper conditions (such as misaligned or mispositioned valves), which may result in an increased probability of a previously analyzed accident and which may result in a significant reduction in the margin of safety, contrary to the requirements of 10 CFR 50.92." *Id.*

DISCUSSION

As is readily apparent from a reading of the contentions filed by SAPL, using SAPL's words, "[t]he very issue the petitioners are proffering in this proceeding is whether the Staff's proposed [no significant hazards consideration] determination is correct." Reply to Staff and NAESCO Objections to Joinder of NECNP and to NAESCO Objection to Standing (July 30, 1998) at 4 (submitted under cover of letter from R. Backus to P. Cotter, Jr., et al. (July 31, 1998)). Because the contentions take issue with the Staff's proposed no significant hazards consideration determination, the contentions should be rejected.

Under the Commission's regulation at 10 C.F.R. § 50.58,

[n]o petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is

final, subject only to the Commission's discretion, on its own initiative, to review the determination.

10 C.F.R. § 50.58(b)(6). Accordingly, the issue of whether the Staff "erred" in making its proposed no significant hazards consideration determination is "not litigable in any hearing that might be held on the proposed amendment." *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 91 (1990); *see also Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-23, 33 NRC 430, 442 (1991); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 35 (1993). *See generally* Final Procedures and Standards on No Significant Hazards Considerations (Final Rule), 51 Fed. Reg. 7,744 (1986) (no significant hazards consideration standard is a procedural standard which governs whether an opportunity for a prior hearing must be provided; hearing requests on the Staff's determination will not be entertained).

In addition to being invalid contentions because they challenge the Staff's proposed no significant hazards consideration determination, Contentions 2, 3, and 4 are invalid because they address issues that are outside the scope of the amendment request. As mentioned earlier, the amendment request involves changing surveillance requirements for steam generator tube inspections, and changing the limitations on reactor coolant system leakage. While the proposed changes are intended to "accommodate" fuel cycles of up to 24 months, and the Licensee apparently is planning to submit additional amendment requests sometime in the

future that will be consistent with a fuel cycle of up to 24 months,⁵ the instant amendment does not seek a change regarding fuel rods (Contention 2), does not seek a change that would increase on-line maintenance (Contention 3), and does not seek a change to other surveillance requirements (Contention 4). In fact, SAPL unequivocally admits that "[t]he Petitioners' contentions 2 through 4 do not involve the narrow issue of steam generator inspection frequency." *See* Memorandum of Law Submitted by SAPL and NECNP in Support of Jointly Filed Contentions 2 Through 4 (July 8, 1998) (Memorandum of Law) at 1 (submitted as part of SAPL July 9 submittal).

The notice of an opportunity for a hearing on the instant license amendment application provides that contentions "shall be limited to matters within the scope of the amendment under consideration." 63 Fed. Reg. 25,102 (1998). Nonetheless, SAPL attempts to argue that its Contentions 2 through 4, although outside the scope of the amendment request, should be admitted. SAPL's Memorandum of Law filed to support this argument relies upon cases decided, in part, under the National Environmental Policy Act of 1969, as amended (NEPA), where the "segmentation" of a project (such as the construction of a highway) into discrete parts to avoid NEPA requirements was at issue. However, the Memorandum of Law in fact acknowledges that "SAPL and NECNP are not aware of any decided NRC adjudicatory decision in which the issue of segmentation by means of a series of license amendment requests has been discussed." *See* Memorandum of Law at 2.

⁵Letter from NAESC to NRC (Apr. 8, 1998).

While the Staff acknowledges that, in general, NEPA requirements apply to the granting of license amendments,⁶ it is not a NEPA issue that SAPL is raising here. Instead, its contentions relate to provisions in the Atomic Energy Act of 1954, as amended (AEA), under which there are adjudicatory decisions that clearly hold that matters to be heard must be within the scope of the issues involved in the proceeding, which are delineated by the relevant notice regarding the hearing. *See, e.g., Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-89-15, 29 NRC 493, 498 (1989) (contention proffered must fall within the scope of the issues set out in the *Federal Register* notice of opportunity for hearing), citing *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980) (Board's jurisdiction limited by notice of hearing) and *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976) (hearing notice determines Board's jurisdiction); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 412 (1991) (contention that did not fall directly within the scope of the notice of opportunity for hearing rejected). Thus, notwithstanding whatever limitations may exist on "segmentation" in the NEPA context, no such doctrine applies to license amendments under the AEA. Given the established NRC law that issues must come within the scope of the proceeding to be heard, Contentions 2, 3, and 4 must be rejected.

Under 10 C.F.R. § 2.714(b)(1), a party will not be permitted to participate in a proceeding unless it proposes at least one valid contention. Given that SAPL and NECNP have

⁶Of course, there are categorical exclusions for certain types of amendments. 10 C.F.R. § 51.22.

failed to submit a single valid contention, they should be denied intervention in this proceeding, and thus the proceeding should be terminated.⁷

CONCLUSION

In consideration of the foregoing, all of the contentions proposed should be rejected, and this proceeding should be terminated.

Respectfully submitted,



Steven R. Hom
Counsel for NRC Staff

Dated at Rockville, Maryland
this 10th day of August 1998

⁷In light of the contentions proposed by SAPL and NECNP being barred by 10 C.F.R. § 50.58(b)(6) and coming outside the scope of this proceeding, under 10 C.F.R. § 2.714(d)(2)(ii), the contentions should not be admitted because "if proven, [they] would be of no consequence in the proceeding because [they] would not entitle petitioner[s] to relief." Therefore, the criteria in 10 C.F.R. § 2.714(b)(2) applicable to proffered contentions that do not suffer from the defects discussed above need not be addressed.

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NORTH ATLANTIC ENERGY)) RULEMAKING AND
SERVICE CORPORATION)) ADJUDICATION STAFF
(Seabrook Station, Unit 1)) License No. NPF-86

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO CONTENTIONS" in the above captioned proceeding have been served on the following by deposit in the United States mail, first class, as indicated by an asterisk, or by deposit in the Nuclear Regulatory Commission's internal mail system this 10th day of August 1998:

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