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June 24, 1998  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'98 JUN 24 P2:13

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of

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) Docket No. 50-443

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NORTH ATLANTIC ENERGY  
SERVICE CORPORATION  
(Seabrook Station, Unit 1)

)

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) License No. NPF-86

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NRC STAFF'S ANSWER TO SEACOAST  
ANTI-POLLUTION LEAGUE'S JUNE 5, 1998 REQUEST  
FOR A HEARING AND TO NEW ENGLAND COALITION ON  
NUCLEAR POLLUTION'S JUNE 18, 1998 REQUEST FOR INTERVENTION

The NRC Staff hereby responds to the June 5, 1998 hearing request submitted by the Seacoast Anti-Pollution League (SAPL), and to the intervention request by the New England Coalition on Nuclear Pollution (NECNP) contained in the June 18, 1998 filing by SAPL and NECNP.<sup>1</sup> For the reasons set forth below, the Atomic Safety and Licensing Board (Board) should not grant the June 5, 1998 hearing request by SAPL based on the information contained therein, and the Board should deny the request by NECNP for intervention.

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<sup>1</sup>Supplemental and Amended Petition for Institution of Proceeding and for Intervention Pursuant to 10 CFR 2.714 on Behalf of the Seacoast Anti-Pollution League and the New England Coalition on Nuclear Power (June 18, 1998). As more fully discussed herein, a Staff response to the June 18, 1998 submittal as it pertains to SAPL, and to subsequent amendments to the June 5, 1998 hearing request by SAPL, will follow separately.

SECY-EHD-006

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### BACKGROUND

By application dated April 8, 1998, North Atlantic Energy Service Corporation (NAESC or Licensee) requested amendments to the Facility Operating License No. NPF-86 technical specifications for Seabrook Station, Unit 1, concerning surveillance requirements involving steam generator tube inspections. Specifically, the Licensee is seeking to modify technical specifications 4.4.5.3 and 3.4.6.2c.<sup>2</sup> These sections deal with the frequency of inservice inspections of steam generator tubes, and limiting conditions for operation for reactor coolant system leakage through steam generators. As described in a notice published in the *Federal Register* on May 6, 1998, the Staff reviewed the Licensee's analysis of significant hazards consideration, and based on its review, proposes to determine that the amendment request involves no significant hazards consideration.<sup>3</sup>

By letter dated June 5, 1998, SAPL, through its counsel Robert A. Backus, advised the Commission that SAPL was of the view that the Commission should either deny the amendment request, or institute a proceeding under the Atomic Energy Act and grant a hearing.<sup>4</sup> A

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<sup>2</sup>The Licensee also proposes to modify the corresponding sections of the Bases, 3/4.4.5 and 3/4.4.6.2.

<sup>3</sup>63 Fed. Reg. 25,113 (1998).

<sup>4</sup>Letter from Robert A. Backus to U.S. Nuclear Regulatory Commission (June 5, 1998) at 1, 7. SAPL's comments on the proposed amendment provided in its June 5, 1998 submittal appear to be based, in part, on an apparent misunderstanding of the nature of the amendment request. SAPL characterizes the request as seeking changes to the technical specifications "to permit a 24 month refueling cycle at Seabrook." However, the amendment request does not propose to change the length of the fuel cycle to 24 months, but proposes to change only certain surveillance requirements discussed above. SAPL also expressed its disagreement with the Staff's proposed no significant hazards consideration determination.

supplemental filing was submitted on June 18, 1998, on behalf of SAPL and the NECNP.<sup>5</sup> In this June 18, 1998 filing, additional information concerning SAPL and its members is provided. In addition, similar information is provided for NECNP, even though NECNP is mentioned for the first time in this document, *i.e.*, there was no indication in the June 5, 1998 submittal by SAPL that such hearing request was also being filed on behalf of NECNP.

By Memorandum and Order (Initial Order) dated June 18, 1998, the Board declared that the June 5, 1998 submittal was timely, and established a schedule for additional filings. The Initial Order provided that SAPL may file amendments to the June 5, 1998 submittal to address any shortcomings, or other matters, by July 13, 1998. The Initial Order further provided that SAPL must file a supplement containing proffered contentions, also by July 13, 1998. In addition, the Initial Order provided that NAESC and the Staff may file responses to an amended SAPL petition by July 27, 1998, and answers to any contentions set forth in a supplement filed by SAPL, by August 10, 1998. By Order dated June 22, 1998, the Board stated that additional briefs may be filed by SAPL and NECNP by the July 13, 1998 deadline for amendments to the June 5, 1998 hearing request if the Staff and NAESC oppose standing, and, in any event, SALP and NECNP should furnish appropriate affidavits from at least one member of each organization regarding standing issues.

### DISCUSSION

The Initial Order did not expressly address whether the Board expected initial answers to be filed regarding SAPL's June 5, 1998 submittal. While the Staff plans to respond to any and

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<sup>5</sup>See note 1 *supra*.

all amended petitions filed by SAPL by the July 27, 1998 date set by the Board for NAESC and Staff responses, the Staff is taking this opportunity to answer SAPL's initial submittal. The Staff is also taking this opportunity to address NECNP's apparent late request to intervene contained in the June 18, 1998 submittal.

I. SAPL's June 5, 1998 Submittal

Any person whose interest may be affected by a proceeding and who would like to participate as a party must file an intervention petition and may request a hearing. 10 C.F.R. § 2.714(a)(1). The petition shall, *inter alia*, set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene. 10 C.F.R. § 2.714(a)(2). In ruling on a petition, the adjudicatory body shall consider the following factors:

- (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d)(1). In determining whether a petitioner has met these standards, the Commission has applied contemporaneous judicial concepts of standing. *See, e.g., Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993). Thus, a petitioner "must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision," and "the injury must be to an interest arguably within the zone of interests protected by the governing statute." *Id.* (citations omitted).

In the June 5, 1998 submittal, the only information provided about SAPL is that it is a "concerned citizens organization" and has citizens of the State of Maine included in its membership. Without further information, such as the identification of members of the organization living in close proximity to the facility who have indicated that they wish SAPL to represent their interests in this proceeding, the foregoing criteria contained in 10 C.F.R. § 2.714 cannot be analyzed. Thus, based on the June 5, 1998 submittal, the Board should not rule that SAPL has standing without receiving additional information.<sup>6</sup> The Staff will address SAPL's standing once all of SAPL's amendments to its original hearing request, including the affidavits ordered by the Board to be submitted, have been filed by the July 13, 1998 deadline set by the Board.

## II. NECNP Late Filing

The June 18, 1998 submittal filed on behalf of both SAPL and NECNP indicates, for the first time, that NECNP is seeking to intervene in this proceeding, along with SAPL. Although the Board has decided that SAPL's petition filed on June 5, 1998, was timely, that petition was not filed on behalf of NECNP. As the notice of the license amendment published in the *Federal Register* indicated, June 5, 1998 was the deadline for a timely request for a hearing and for intervention. Thus, construing the June 18, 1998 filing as an initial request by NECNP for leave to intervene, the Staff believes such request is untimely.

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<sup>6</sup>In this regard, on June 22, 1998, Mr. Backus informed the undersigned counsel for the Staff during a telephone conversation that he would be obtaining affidavits from a member or members of SAPL and/or NECNP. Mr. Backus also stated during this conversation that, notwithstanding the signature block indicating "Campaign for Ratepayers' Rights" as the submitter, the June 18, 1998 submittal on behalf of SAPL and NECNP should have been signed by Mr. Backus as counsel for SAPL and NECNP.

Under 10 C.F.R. § 2.714(a)(1), untimely filings will not be entertained absent a determination that the request to intervene should be granted based on a balancing of the following factors, in addition to those in § 2.714(d)(1) cited above:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

NECNP failed to address any of the above criteria in the June 18, 1998 submittal, notwithstanding the admonition in the rule concerning untimely filings and the *Federal Register* notice specifically pointing out the balancing factors contained in the rule. See 63 Fed. Reg. at 25,102 (1998). Accordingly, to the extent the June 18, 1998 submittal constitutes a petition for intervention by NECNP, such petition should be denied. *Boston Edison Co. (Pilgrim Nuclear Power Station)*, ALAB-816, 22 NRC 461 (1985).

CONCLUSION

In consideration of the foregoing, the Board should not grant SAPL's June 5, 1998, request for a hearing and intervention based on the information contained therein. Furthermore, the Board should deny NECNP's petition to intervene as untimely. The Staff intends to respond to SAPL's amended petition of June 18, 1998, and any additional amended petitions by SAPL, in accordance with the schedule set by the Initial Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven R. Hom", written in a cursive style.

Steven R. Hom  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 24th of June 1998

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OFFICE OF SECRETARY  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO SEACOAST ANTI-POLLUTION LEAGUE'S JUNE 5, 1998 REQUEST FOR A HEARING AND TO NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S JUNE 18, 1998 REQUEST FOR INTERVENTION" in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system this 24th day of June 1998:

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