

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

April 30, 1979

**ADJUDICATORY**  
**CONSENT CALENDAR ITEM**

SECY-A-79-41

For: The Commissioners

From: James A. Fitzgerald  
Acting Assistant General Counsel

Subject: SEABROOK SEISMIC SHUTDOWN AND REDESIGN  
PETITION

Purpose: To obtain Commission approval for an order denying relief but directing review to be expedited.

Discussion: Ms. Elizabeth Weinhold has filed a request with the Commission seeking a halt to construction at Seabrook until the facility and its cooling system is redesigned to meet stricter seismic standards (Attachment A). Ms. Weinhold was an active intervenor before the Seabrook Licensing Board, but has not substantially participated in the Seabrook review proceedings since 1976. Her petition does not cite any seismic evidence that was not previously before the Seabrook Licensing and Appeal Boards, but she refers in general terms to the Three Mile Island accident and the recent five facility seismic shutdown. Staff has filed a response to Ms. Weinhold's petition, opposing suspension of construction, but recommending that she be given an opportunity to file an amicus brief with the Commission in the event that the Commission takes review of the seismic issue (Attachment B).

To discuss the treatment of Ms. Weinhold's petition it is necessary to rehearse part of Seabrook's tangled history. One of the many contested issues before the

Contact:  
Stephen S. Ostrach, GC  
X-43224

520 079

7908080

638

Licensing Board was the issue of the proper values to use for the Safe Shutdown Earthquake and for the resulting ground acceleration. NECNP appealed the Licensing Board's decision to the Appeal Board. In ALAB-422, 6 NRC 33,54-65 (July 26, 1977) a majority of the Board affirmed. Member Farrar dissented and provided an outline of his reasons. He stated that he would provide his full reasoning in a forthcoming supplemental opinion. 6 NRC at 106. Subsequently, NECNP filed a petition for Commission review of, inter alia, the Board's decision on the seismic questions. On September 15, 1977, the Commission accepted review on a number of issues, most notably financial qualifications, but it reserved judgment on whether to review the seismic issue until it received Mr. Farrar's full dissent. There have not been any developments on the seismic questions since then.

Since Ms. Weinhold is not presenting any new seismic data, she is, as a formal matter, simply seeking review of the Appeal Board's decision in ALAB-422. She is more than 19 months out of time, and her petition could simply be dismissed out of hand. However, the Commission has taken an extraordinary amount of time to resolve the Seabrook seismic matter, and disposition of Ms. Weinhold's petition offers an opportunity to urge Mr. Farrar to expedite his dissent, and thus bring that proceeding one step closer to resolution.

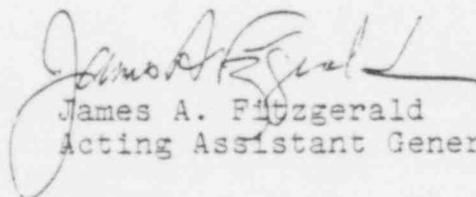
We suggest you approve issuance of the attached order (Attachment C). It briefly reviews the facts set forth above, notes that Ms. Weinhold presents no new facts and therefore, denies her request for a halt in construction. It then notes that NECNP's petition for

review of the seismic issue is still pending, that the Commission has become increasingly concerned about the length of time it has taken to complete action on this aspect of the proceeding, and that therefore, the Commission is requesting Mr. Farrar to give priority to the completion of his dissent. Once that dissent is received you will be able to consider NECNP's original petition for review and any supplemental documents NECNP or Ms. Weinhold may care to file.

As we have drafted it, the Order would, in effect, permit NECNP or Ms. Weinhold to file a new petition after the supplemental opinion is filed. We believe that this will be helpful to the Commission and to the parties, since the supplemental opinion will contain material not discussed in the original petition for review and since that original opinion is now over a year-and-a-half old. Of course, the parties opposing review would be given the normal opportunity to reply provided by 10 CFR 2.786.

Recommendation:

That the Secretary issue the attached draft Order.



James A. Fitzgerald  
Acting Assistant General Counsel

Attachments:

- A. Ltr, 4/1/79, Weinhold to  
Gilinsky, et al.
- B. Staff Response 4/23/79
- C. Draft Order

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, May 9, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 4, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of May 21, 1979. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

Commissioners  
Commission Staff Offices  
Secretariat

520 082

**POOR ORIGINAL**

3 Godfrey Avenue  
Hampton, N H 03842  
April 1, 1979

Victor Gilinsky, Commissioner  
Richard T. Kennedy, Commissioner  
Peter A. Bradford, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: In the matter of Public Service Company of  
New Hampshire (Seabrook Station, Units 1 & 2 )  
Docket Nos. 50-443 & 50-444

Gentlemen:

In view of the fact that an accident has occurred at the Three Mile Island-Nuclear Facility, that the same United Engineering Corporation will be building the Seabrook nuclear units, and that the Nuclear Regulatory Commission recently shutdown five nuclear facilities to re-analyze the piping systems ability to withstand stress from earthquakes, I as a General Intervenor of record in the above referenced matter, respectfully request that the Nuclear Regulatory Commission IMMEDIATELY STOP CONSTRUCTION OF THE SEABROOK UNITS until the following design changes are made:

1.) That the Seabrook units be re-designed to withstand an Intensity 9 not Intensity 8 earth tremor in order to allow for a conservative margin of error.

At present, the units are designed for Intensity 8 (modified mercalli scale ) and both the N.R.C. Staff and the Public Service Company of New Hampshire have agreed that an Intensity 8 earthquake occurred near the Seabrook site and could be expected to occur there in the future lifetime of the nuclear units.

520-083

2.) That the "emergency baby cooling tower" which is to be used as a backup emergency cooling system, should be designed to withstand an Intensity 10 not Intensity 8 earth tremor.

At present, the "baby cooling tower" is only designed to withstand an Intensity 8 earth tremor -- the same as the reactor units. So, if an Intensity 8 earth tremor damages the reactor piping system or the cooling tunnels - or both - why isn't it conceivable that it would damage the tower.

3.) That the three mile long COOLING TUNNELS be re-designed to withstand an Intensity 9 not Intensity 5 earthquake.

At present, they are only designed to withstand Intensity 5 earth tremors and history has shown that Seabrook is part of a seismically active region where numerous Intensity 5 and larger earth tremors have occurred quite frequently.

Support of seismic activity can be found in the Bulletins issued by the Northeastern U.S. Seismic Network - Boston College.

All of the above issues were argued at the N.R.C. Seabrook Hearings but they were considered insignificant and ~~irrelevant~~ irrelevant by the Staff, Utility and Licensing Board.

Then, in June 1976, your agency issued an Amendment to the N.R.C. Rules & Regulations governing seismic design criteria which states in part...." the largest earthquake to have been historically reported at a proposed nuclear site should be considered the MINIMUM not the maximum seismic design criteria for all future nuclear units....."

520 084

So the question arises, if future nuclear units are to

page three.

have a more conservative seismic design to allow for a margin of error, why not Seabrook? It is still my opinion; now supported by recent developments, that the Seabrook Units will be UNSAFE and a HAZARD to humans and the environment. If Seabrook is built as presently designed, we here in New Hampshire, could be part of the first people to experience a complete "core meltdown".

Very cordially yours,

*Elizabeth H. Weinhold*

Elizabeth H. Weinhold  
(General Intervenor-Seabrook  
Licensing Hearings )

*cc: All parties of record*

520 085

April 23, 1979

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
 )  
PUBLIC SERVICE COMPANY OF ) Docket Nos. 50-443  
NEW HAMPSHIRE, et al. ) 50-444  
 )  
(Seabrook Station, Units 1 )  
and 2) )

NRC STAFF RESPONSE TO REQUEST OF ELIZABETH H. WEINHOLD  
TO REQUIRE SEISMIC DESIGN CHANGES

By letter to the Commission dated April 1, 1979, Ms. Elizabeth H. Weinhold requests that the seismic design of the Seabrook facility be upgraded and that construction be halted by the Commission until the requested changes are imposed. In the Staff's view, Ms. Weinhold's request, besides being untimely, does not provide any support for a stay of construction, and should be summarily denied. However, the Staff believes that the Commission should offer Ms. Weinhold an opportunity to file a brief as amicus curiae in the event the Commission decides to grant the petition for review of seismic issues now pending before it at the behest of another intervenor.

The question of the design requirements for the Seabrook seismic category I structures was a contested issue before the Licensing Board. Two separate intervenors, Ms. Weinhold and the New England Coalition on

520 086

Nuclear Pollution (NECNP), disputed the Applicants' and the Staff's proposed safe shutdown earthquake (SSE). In its Initial Decision, the Licensing Board unanimously decided the issue against Ms. Weinhold and NECNP and found that it is acceptable to design the seismic category I structures to withstand an SSE of intensity VIII (modified mercalli) with an associated acceleration of 0.25 g. 3 NRC 857, 868-71, 919-22 (June 29, 1976).

Since the June, 1976 initial decision, until now, Ms. Weinhold has not participated in this proceeding with respect to the seismic design or any other issue. Although NECNP appealed the initial decision on this issue, Ms. Weinhold neither took an appeal nor participated in any way in support of NECNP's appeal. The Appeal Board, by a 2-1 majority, affirmed the SSE determination of the Licensing Board.<sup>1/</sup> ALAB-422, 6 NRC 33, 54-65, 106, 111-13 (July 26, 1977). Mr. Farrar presented only an outline of his dissenting views on the seismic issue and stated that he would set forth his full reasoning in a supplemental opinion. ALAB-422, supra at 106.

On August 10, 1977, NECNP filed a petition for Commission review of the Appeal Board's decision on several matters, including the seismic issue. Again, Ms. Weinhold filed no requests for review or any other relief in the wake of the Appeal Board decision. The Commission, in an unpublished Order

---

<sup>1/</sup>NECNP's position on appeal was that the SSE should be intensity IX with an associated acceleration of 0.75 g, and that, in the alternative, the acceleration associated with the intensity VIII SSE should be 0.40 g, and not 0.25 g as determined by the Licensing Board.

issued on September 15, 1977, (at p. 4), inter alia extended its time to consider whether to review the seismic issue until after it received and analyzed Mr. Farrar's supplemental dissenting opinion. Since that opinion has not been issued, the question of whether to grant NECNP's petition for review of the seismic issue remains before the Commission.<sup>2/</sup>

As can be seen from the above background, Ms. Weinhold has long abandoned the seismic issue which she litigated before the Licensing Board some three years ago. She was not a party to the appeal before the Appeal Board, and has not been a party to the Commission's consideration of whether to grant review on the seismic issue. Parties cannot step in and out of proceedings at will. Northern States Power Co. (Prairie Island, Units 1 and 2), ALAB-288, 2 NRC 390, 393 (1975); see also Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-358, 4 NRC 558 (1976).

Under the Commission's Rules of Practice any request for a stay by a party to a proceeding must be made within seven days of the decision appealed from. 10 CFR §2.788(a). A request some three years after the Licensing

---

<sup>2/</sup> The Applicants and Staff opposed NECNP's petition for review of the seismic issue, among other issues, in responses dated August 18, 1977 and August 22, 1977, respectively. The Staff continues to believe that under the regulations governing discretionary Commission review, NECNP's request to review the factual issue of the selection of the SSE and associated "g" value should not be granted because the Appeal Board did not resolve the factual issue ". . . in a clearly erroneous manner contrary to the resolution of that same issue by the Atomic Safety and Licensing Board." 10 CFR §2.786(b)(4)(ii).

Board decision, and almost two years after the Appeal Board decision is certainly long out of time and may be denied for this reason alone. More importantly, there are no new circumstances which would justify granting Ms. Weinhold any special consideration at this late date. In requesting a stay of construction premised on her new found dissatisfaction with the three-year old decision on the seismic issue by the Licensing Board and the two-year old affirmance of that decision by the Appeal Board, Ms. Weinhold points to no new facts or even any arguments as to why the old facts as determined by both Boards below are in error. Ms. Weinhold's bare reference to the accident at Three Mile Island and the recent shut-down by the NRC Staff of five nuclear power reactors adds nothing to either her equally bare request for a stay of construction or to the substantive seismic issues determined by the Licensing and Appeal Boards with respect to the Seabrook facility.

The Three Mile Island accident has no relationship to selection of the proper SSE. The recently ordered shutdown of five nuclear power reactors was for the purpose of reanalyzing whether the piping systems were in fact constructed to the earthquake stresses to which they were supposed to be designed, in light of apparent errors in the computer code used to guide the designers. This is not at all related to the seismic

issue in Seabrook--the proper choice of the SSE and associated "g" value from which to calculate the resultant stresses on plant systems.<sup>3/</sup>

Even if Ms. Weinhold had been a party to an appeal, and even if she had timely filed the instant request for stay pending appeal years ago, the request still presents no basis upon which it could be granted. Such a stay in the circumstances of this proceeding would be governed by the four factors listed in Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958), for consideration by Federal courts before the issuance of preliminary injunctions (now codified in the Commission's Rules of Practice in the context of stays pending appeal by 10 CFR §2.788(e)).<sup>4/</sup> In the absence of any attempt by Ms. Weinhold to address these factors to support a stay of construction pending Commission consideration of whether to grant review on the seismic issue, her request should be summarily denied.

<sup>3/</sup> Although not related to the seismic issue litigated in Seabrook, it should be noted that the NRC Staff in IE Bulletin 79-09 dated April 14, 1979, requested all licensed facilities (including Seabrook), to verify that resultant earthquake stresses postulated for piping systems were not calculated in a manner similar to the erroneous calculations performed for the five reactors which have been shut down. The responses from all facilities will be evaluated by the NRC Staff.

<sup>4/</sup> These factors are:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties, and
- (4) Where the public interest lies.

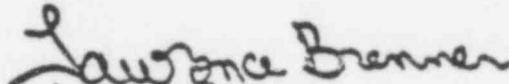
520 090

in addition to the fatal absence of any attempt to address these factors, Ms. Weinhold's failure to even appeal the decisions below on the seismic issue, let alone timely request a stay pending such an appeal, points strongly to the implication that Ms. Weinhold herself did not perceive any need for a stay to avoid any irreparable injury to her. It is the "established rule that a party is not ordinarily granted a stay of an administrative order without an appropriate showing of irreparable injury." Permian Area Rate Cases, 390 U.S. 747, 773 (1968); Public Service Co. of Indiana (Marble Hill, Units 1 and 2), ALAB-437, 6 NRC 630, 632 (1977); Toledo Edison Co. (Davis-Besse, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 626 (1977). This established rule is certainly applicable here where there has not been any showing by Ms. Weinhold on any of the four factors, let alone the particularly strong (perhaps even overwhelming) showing required on the remaining factors to justify a stay where there is no irreparable injury to the movant absent the stay. Florida Power & Light Co. (St. Lucie, Unit 2), ALAB-404, 5 NRC 1185 (1977). Cf. Marble Hill, supra at 632.

For the reasons stated, Ms. Weinhold's filing is clearly insufficient to justify any relief at her independent behest. However, the Commission does have before it the question of whether to grant MECNP's petition for review of virtually the same seismic matters

which Ms. Weinhold has listed in her letter.<sup>5/</sup> In recognition of this, and the fact that Ms. Weinhold was previously an active party to the litigation of the seismic issue before the Licensing Board, the Staff believes the Commission should grant Ms. Weinhold the opportunity to file a brief as amicus curiae pursuant to 10 CFR §2.715(d) in the event the Commission in the future decides to grant NECNP's request for review of the seismic issue in this proceeding.

Respectfully submitted,

  
Lawrence Brenner  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 23rd day of April, 1979.

<sup>5/</sup> One matter which Ms. Weinhold lists is not still subject to possible Commission review--Ms. Weinhold's apparent belief that the cooling tunnels are a seismic category I structure and should therefore be designed to withstand the SSE. This is incorrect. In the event that the "once-through" cooling tunnels are totally blocked (e.g., by an earthquake), the seismic category I mechanical draft cooling tower system will be the "ultimate heat sink" relied upon to supply sufficient cooling water. Initial Decision, supra at 3 NRC 877-78.

570 092



Ms. Elizabeth H. Weinhold  
3 Godfrey Avenue  
Hampton, NH 03842

Robert A. Backus, Esq.  
O'Neill, Backus, Spielman and Little  
116 Lowell Street  
Manchester, New Hampshire 03101

\*Mr. Samuel J. Chilk  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas G. Dignan, Jr., Esq.  
John A. Ritsher, Esq.  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110

Norman Ross, Esq.  
30 Francis Street  
Brookline, Massachusetts 02146

\* Leonard Bickwit  
Office of the General Counsel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Karin P. Sheldon, Esq.  
Sheldon, Harmon & Roisman  
1025 15th Street, N.W.  
5th Floor  
Washington, D.C. 20005

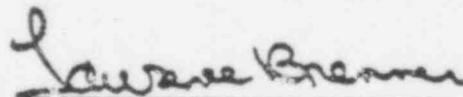
\* Atomic Safety and Licensing  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

\* Atomic Safety and Licensing  
- Appeal Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

\* Docketing and Service Section  
Office of the Secretary  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

E. Tupper Kinder, Esq.  
Assistant Attorney General  
Office of Attorney General  
State House Annex, Room 208  
Concord, New Hampshire 03301

Laurie Burt, Esq.  
Assistant Attorney General  
Commonwealth of Massachusetts  
Environmental Protection Division  
One Ashburton Place, 19th Floor  
Boston, Massachusetts 02108



Lawrence Brenner  
Counsel for NRC Staff

520 094

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Victor Gilinsky, Acting Chairman  
Richard T. Kennedy  
Peter A. Bradford  
John F. Ahearne

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, ET AL.

(Seabrook Station, Units 1 and 2)

Docket No. 50-443  
50-444

ORDER

Elizabeth Weinhold has filed a petition requesting us to suspend construction at Seabrook and to impose higher seismic protection standards for the facility. Ms. Weinhold offers no evidence that has not been considered and rejected by a majority of our Appeal Board in ALAB-422, 6 NRC 33 (1977), and she offers us no adequate basis for staying the effectiveness of that decision pending our review. Her request for suspension of construction is therefore denied.

We have deferred review of the seismic questions addressed in ALAB-422 until we have received Appeal Board Member Michael C. Farrar's dissenting opinion. However, we are increasingly concerned about the length of time it has taken to complete administrative action on this aspect of the Seabrook proceeding. In order to advance our consideration of this issue, we request Mr. Farrar to give priority to completion

520 095

of his supplemental opinion. Once we receive that opinion we will promptly address the petition for review of ALAB-422 on seismic grounds that has been filed by the New England Coalition on Nuclear Pollution. In view of the time that has passed since ALAB-422 was decided, we will also consider pleadings discussing the seismic portion of ALAB-422 and the supplemental opinion filed by the Coalition, or by Ms. Weinhold, and any replies thereto filed by staff, or by the utilities involved in the Seabrook project. Any such supplemental papers should be filed on a basis and schedule similar to that provided in 10 CFR 2.786 for petitions for review, and for replies to petitions for review.

It is so ORDERED.

For the Commission

---

SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, DC,  
this        day of        1979.

520 096