

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of)
)
PUBLIC SERVICE COMPANY)
OF NEW HAMPSHIRE,)
et al.)
)
(Seabrook Station, Units)
1 and 2))

Docket Nos. 50-443
50-444



NECNP Motion to be
Excused From Evidentiary Hearings

The New England Coalition on Nuclear Pollution (NECNP or the Coalition) requests to be excused from participation in the evidentiary hearing on the Staff's analysis of alternative sites for the Seabrook Nuclear Power Plant which is scheduled for January 15, 1978. NECNP further requests permission to file proposed findings of fact and conclusions of law on the Staff's testimony and the record of the hearings as developed by the Staff, the Applicant and the Seacoast Anti-Pollution League/Audubon Society of New Hampshire (SAPL/Audubon).

NECNP makes this request because of the present circumstances surrounding Seabrook and the inability of the parties to reach an agreement which would have made hearings on the Staff's alternative sites analysis unnecessary. NECNP did not intend to request a hearing on the alternative site analysis prepared by the NRC Staff. NECNP reviewed the Staff testimony and found it to be an obvious improvement over

earlier alternative site examinations. It was apparent that considerable effort had been expended by the group of Staff members assembled for the purpose of conducting the analysis. Credit for this effort is due in large measure to the combined diligence of Jerry Klein, Section Leader of the Environmental Specialists Branch, who directed the group and Larry Brenner of the Office of the Executive Legal Director.

The testimony did not eliminate all of the Coalition's concerns about the methodology and analytical bases of the Staff's work. In particular, NECNP had questions about the operating definition and application of the "obviously superior" standard, and the degree to which both sunk economic and environmental costs were implicit in the Staff analysis. NECNP also disagreed with the Staff conclusion that the Phillip's Cove site is not obviously superior to Seabrook from an environmental standpoint. However, given that Seabrook is nearly 20% complete and the Court of Appeals for the First Circuit endorsed both the obviously superior principle and the attribution of sunk costs in the comparison of sites, the Coalition did not regard an evidentiary hearing as a necessary or fruitful effort to resolve these difficulties. Indeed, the exercise seemed, at best, hypothetical.

Recognizing the reality of the situation, and at the same time aware of the need for a decision by the Appeal Board which would resolve the outstanding question about the legal

adequacy of Staff's analysis, NECNP expended considerable effort to reach an agreement with the other parties which would have made any hearings unnecessary. Specifically, NECNP was willing to agree (1) that the statements of fact set forth in the Staff testimony are correct; (2) that when the economic costs involved in changing to an alternative site are taken into account, as directed by the NRC and approved by the First Circuit Court of Appeals, there is no site "obviously superior" to Seabrook, and (3) that on an environmental basis alone, when the Seabrook site as it is today is compared to alternative sites there is no justification for moving to another site. NECNP was also willing to agree that it would not contest the Staff's conclusion that no site is obviously superior to Seabrook even in the absence of sunk environmental costs, although it disagreed with this conclusion.

As an alternative approach, NECNP also discussed with the NRC Staff the preparation of a set of stipulated facts from the Staff testimony which could serve as the basis for proposed findings of fact and conclusions of law and would allow the parties to "try" the case on papers alone.

Unfortunately, despite the willingness of all the intervenors to do so, it was not possible to reach an agreement among the parties without jeopardizing the two Seabrook appeals of the Seacoast Anti-Pollution League/Audubon Society of New Hampshire (SAPL/Audubon) before the First Circuit

Court of Appeals. In one of these matters the application of the sunk costs principle is at issue. A change in the earlier ruling of the Court, which could result from the case, may well alter the relevant inquiry of the Appeal Board by changing the applicable legal standard. It is possible that the Court will direct the comparison of Seabrook to alternative sites to be made without assuming a benefit for sunk costs. This is, of course, entirely speculative at this time, although a decision on the case, which was argued in October, 1978 may be forthcoming soon.

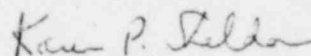
After seven years of fighting the reality of Seabrook, NECNP has few resources to take up the battle over what might be, particularly when the need to forge ahead with a hearing on the Staff's alternative site analysis is so debatable given the Court's scheduling of the SAPL/Audubon cases. The difficulty is that in the absence of an agreement among the parties which recognizes that, given the currently applicable legal assumptions governing the comparison of Seabrook to alternative sites, there is no justification for abandoning Seabrook for another site, NECNP is left with the choice of participating in a hearing on a hypothetical or withdrawing completely from this aspect of the case and risking the loss of the right to pursue possible significant legal issues in the future. Neither of these choice is satisfactory.

NECNP therefore requests the Appeal Board to permit it to prepare findings of fact and conclusions of law on the

Staff testimony and the record of the hearings as developed by SAPL/Audubon, the Staff and the Applicant. The Coalition is prepared to forego the opportunity to participate in the hearing, to present evidence and cross examine. NECNP will take the record as it finds it, and will argue that the Staff erred in defining and applying the obviously superior standard, that sunk economic costs are implicit in the analysis of Seabrook and its comparison to alternative sites and cannot be separated from it, and that the Staff methodology could not lead to a conclusion that a site was, in fact, obviously superior to Seabrook, even if this were so.

Should the Appeal Board deny this request Counsel for the Coalition must consult with the organization's Board of Trustees before advising the Board of what course of action the Coalition will take in the alternative. Counsel has not yet been authorized to inform the Appeal Board that NECNP will or will not withdraw from this part of the Seabrook proceedings.

Respectfully submitted,



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