

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'89 OCT 23 P3:50

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Before Administrative Judges:

G. Paul Bollwerk, Chairman
Alan S. Rosenthal
Howard A. Wilber

In the Matter of)	Docket Nos. 50-443-OL
)	50-444-OL
PUBLIC SERVICE COMPANY)	
OF NEW HAMPSHIRE, <u>ET AL.</u>)	
(Seabrook Station. Units 1 and 2))	October 20, 1989

MOTION FOR EXPEDITED APPEAL

The Massachusetts Attorney General hereby moves for expedited appeal of LBP-89-28.

1/

The Mass AG requests this Board to order that this appeal be expedited on the following briefing schedule: Mass AG will file its brief by October 27, 1989; Applicants and Staff will file their briefs by November 3.

In support of this motion, Intervenors' state that consideration of this appeal on an expedited basis is appropriate, on grounds of public policy, since the Licensing

1/ Mass AG was served with a copy of this decision October 16, 1989. Between October 16 and October 20, Mass AG has been engaged in preparing and filing a motion to amend motions for admission of contentions on the September 27, 1989 onsite exercise, a motion and memorandum for summary disposition on these contentions, and a motion for reconsideration to this Board concerning the certified question to the Commission arising out of the appeal on the New Hampshire plans for Seabrook Station. The present motion has been filed as soon as possible under these circumstances.

Board improperly burdened Intervenor's hearing rights conferred under §189a of the Atomic Energy Act by applying the reopen the record standard,^{2/} as grounds to reject Intervenor's low power testing contentions. In these circumstances, the Court of Appeals has stated it would "presume bad faith on the part of the Commission and act accordingly". *San Luis Obispo Mothers For Peace v. NRC*, 751 F.2d 1287, 1317 (D.C. Cir. 1984). (Emphasis Supplied). A prompt resolution of this appeal therefore is appropriate.^{3/}

THE CONTENTIONS

Following events during low power testing at Seabrook Station on June 22, 1989, Intervenor's filed contentions alleging, inter alia, that Applicants' plant operators and management personnel are not adequately trained or qualified, and lack adequate managerial and administrative procedures and controls, to properly operate the facility, at any level of power.

As acknowledged by New Hampshire Yankee President Edward A. Brown to NRC:

^{2/} 10 CFR §2.734

^{3/} By conference call on October 19, 1989, the Licensing Board advised the parties of its intent to issue the PID on emergency planning for Massachusetts communities by November 10, 1989. The Board also indicated that Intervenor's remaining onsite exercise contentions, presently pending, would be ruled upon soon thereafter.

During the Natural Circulation Test the operating crew failed to follow procedures and did not trip the reactor when the pressurizer level decreased below the 17% manual trip criterion of Startup Test Procedure, 1-ST-22, Natural Circulation Test. Operations and Startup Test management personnel who were contacted during the test by NRC inspectors regarding the 17% reactor trip criterion did not take the appropriate actions in response to the inspectors' statements. Additionally, certain actions taken by NHY management personnel involved in the post-trip review, and certain statements made in subsequent discussions with the NRC, were inappropriate and did not reflect NHY policy.

New Hampshire Yankee recognizes the severity of the procedure non-compliance and has evaluated the circumstances and conditions surrounding the event. Additionally, NHY recognizes the seriousness of the statements made and the impressions conveyed to the NRC during the 1800 conference call on June 22nd. Corrective action will be completed prior to NHY conducting additional major integrated plant testing and prior to commencing the power escalation testing program.^{4/}

As a consequence of these failings, NRC suspended Applicants' low power operating license. That suspension remains in effect.^{5/}

^{4/} Letter of Edward A. Brown, NHY President to William T. Russel, NRC (July 12, 1989), Exhibit 1, pp. 2-6, Attached.

^{5/} VP asked if it would be acceptable to re-establish reactor criticality and then to hold in the standby mode.

NRC (Wiggins) responded no and VP-NP/NRC agreement was reached that reactor restart would be deferred pending NRC concurrence with the restart CAL response. New Hampshire Yankee Response To Confirmatory Action Letter 89-11, Attachment to Enclosure 4, p. 11.

Nevertheless, the Staff claims that Applicants have "voluntarily ceased operations".

Subsequently, Intervenors filed contentions and requested, in substance, a hearing on these issues, and on the adequacy of Applicants' corrective actions, "prior to NHY conducting additional major integrated plant testing and prior to commencing the power escalation testing program". See Exhibit 1, p. 2, 6.^{6/}

The Licensing Board rejected all low power testing contentions and denied Intervenors' request for hearing. Portions of these contentions were rejected solely for failure to meet the Commission's reopen the record standard. LBP-89-23, pp. 24-25, discussed Infra.

PUBLIC POLICY REQUIRES EXPEDITED REVIEW OF THIS APPEAL

Although the Licensing Board found that portions of Intervenors contentions "meet the threshold test for alleging 'fundamental flaws' as required by ALAB-903", LBP-89-28 p. 24, and were timely filed, Id. at 27, the Licensing Board rejected these contentions for failure to meet the Commission's reopen the record standard. Id. at 25-44; 10 CFR §2.734.^{7/}

^{6/} Following receipt of Applicants' CAL Response, on July 21, 1989, Intervenors filed their first contention on the above described issues. Upon later receipt of the NRC Augmented Inspection Team Report on these events, Intervenors filed on August 28, 1989 added bases and further contentions alleging, inter alia, defects in maintenance and quality control and potential design defects in certain steam dump valves.

^{7/} The Board never reaches a definitive conclusion as to whether Intervenors met the late filed contention standard, with respect to the contention filed July 21, 1989. 10 CFR §2.714. The Board found the contention timely filed, LBP-89-28 p. 27, yet also indicates factor iii (development of a sound record) and v (broadening of issues/delay) apparently weighed against admission. Id. at 44-45. Therefore, the sole ground supporting the Board's rejection of at least portions of Intervenors' contentions is the failure to meet the reopen the record standard. 10 CFR §2.734.

The Licensing Board therefore acted in disregard of the mandate of the DC Circuit Court of Appeals that application of the reopen the record standard to burden, and bar, Intervenor's rights conferred under §189a to a hearing on issues material to licensing violates the Atomic Energy Act and would be presumed to be "bad faith on the part of the Commission". San Luis Obispo Mothers For Peace v. NRC, 751 F.2d 1287, 1317 (DC Cir. 1984).

The Licensing Board did not dispute Intervenor's assertion that "the issues proffered in the contention are material and relevant to the grant of a full-power license".

The Massachusetts Attorney General argues that, since the Commission by regulation requires adequate operator training, management, procedures and performance before a full power operating license can issue, there is an absolute hearing right granted to intervenors on these matters under UCS and Mothers for Peace. (See Mothers for Peace, supra 751 F.2d at 1309 citing 10 CFR §§50.57 (a)(2)(3) and (4). The argument is augmented by the claim that since the NRC has "suspended" further plant operations at any level until there is a full examination and corrective action the NRC has operationally demonstrated that the issues proffered in the contention are material and relevant to the grant of a full-power license, citing UCS, supra, 735 F.2d at 1443.

Applicants respond that, even assuming that there is an absolute right to seek a hearing on such matters, it must be exercised at the time the original notice for an operating license hearing issues. That time has long since passed. Now the contention is both late filed, and being filed in a proceeding where the evidentiary record is closed. (Citations omitted). Therefore, according to Applicants, UCS, does not relieve the Massachusetts Attorney General of his burden to satisfy the criteria of 10 C.F.R. § 2.734 for reopening an evidentiary record. For the reasons set out below, we arrive at the same conclusion.
LBP-89-28, pp. 13-14.

The Licensing Board therefore does not dispute the materiality of the issues raised by contention to full power operation. Indeed, by constructively suspending Applicants' license to operate, based upon events during low power testing, the NRC staff has made resolution of these issues material to full power licensing.^{8/}

Nevertheless, the Licensing Board proceeded, over Intervenors' objections, to subject the contentions to the reopen the record standard as a "reasonable procedural rule". LBP-89-28, p. 15; 10 CFR §2.734. This violates the directive of the DC Circuit Court of Appeals.

We believe the denial of the request to reopen was proper in light of the Commission's high standards for reopening. Precisely because of the stringency of those criteria, however, we cannot conclude that the opportunity to seek reopening was an adequate substitute for the hearing guaranteed petitioners as a matter of right under section 189(a). In order to obtain reopening, petitioners were required to show that they possessed new evidence which was timely; material, in the sense that it would have resulted in a different outcome had it been known earlier; and safety-significant. None of these three criteria applies to requests for a hearing under section 189(a). Under the latter provision parties need only show that their "interest may be affected" by a proceeding to bring about one of eight specified types of Commission action. At most, parties must show that

^{8/} The suspension of Applicant's low power license remains in effect. Intervenors understand that the Staff has scheduled further testing and evaluation of Applicants' plant personnel for December, 1989, in view of their failed performance during low power testing. By opposing Intervenors contentions, the Staff thereby seeks, improperly, to "have it both ways", i.e. test the Applicants qualifications for an operating license, yet insulate these issues from public scrutiny. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2) ALAB-920, ___NRC___ (August 21, 1989) sl. op. 28-29. LBP-89-28 pp. 13-14.

a particular issue is "material" in order to prevent its exclusion from a hearing under section 189(a); this much our decision in Union of Concerned Scientists v. Nuclear Regulatory Commission establishes. But the material issue requirement implicit in section 189(a) is significantly different from the material evidence requirement of the Commission's reopening criteria. In most cases, as here, the latter requirement will impose a substantially more onerous burden on parties than the former. Our holding today that consideration of a request to reopen the record does not satisfy the requirements of section 189(a) should preclude such Commission error in the future. In the unlikely event the Commission repeats its mistake, this court would have no choice but to presume bad faith on the part of the Commission and act accordingly. Mothers For Peace, 751, F.2d at 1316-1317 (emphasis supplied).

These circumstances warrant expedited review by this Board, since the Licensing Board is plainly "steering what is bound to be a collision course with governing legal principles." See Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-330, 3 NRC 613, 617.^{9/}

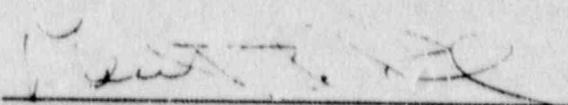
In addition, assuming, as Intervenors assert, that they will prevail on their right to a hearing on the low power

^{9/} The Licensing Board's application of the reopen the record standard appears to violate this own Board's position on the prohibitions announced in the UCS decision. See UCS v. NRC, 735 F.2d 1437 (D.C. Cir. 1984). "The Court (in UCS) also rejected the Commission's argument that a party's hearing rights were protected because a party could always seek to reopen the record if the exercise identified fundamental defects in the emergency plans." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2) ALAB-918 (June 20, 1989) sl. op. 13 N.21.

contentions, it is in the interest of all parties to avoid further delay in conducting that hearing, which must occur in advance of issuance of a full power license.

RESPECTFULLY SUBMITTED,

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BY: 

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EXHIBIT 1

New Hampshire Yankee

Edward A. Brown
President and Chief Executive Officer

NYN-89086

July 12, 1989

United States Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406

Attention: Mr. William T. Russell

References: a) Facility Operating License NPF-67, Docket No. 50-443
b) USNRC Confirmatory Action Letter (CAL) 89-11 dated June 23, 1989, W. T. Russell to E. A. Brown

Subject: New Hampshire Yankee Performance During and Following the Natural Circulation Test

Dear Mr. Russell:

This letter is in response to the USNRC Confirmatory Action Letter dated June 23, 1989. New Hampshire Yankee (NHY) provides in this letter a detailed chronology of exactly what occurred before, during and after the June 22, 1989, reactor trip, an analysis of management actions and communications during this period and a compilation of corrective actions already taken or that will be taken by NHY.

New Hampshire Yankee has conducted an Event Evaluation, an Operational Issues Evaluation and a Management Effectiveness Analysis addressing different aspects of the performance of Natural Circulation Test as well as the subsequent post-trip review and evaluation of the event. The reports documenting these three distinct and separate evaluations are provided in Enclosures 2 through 4 respectively. Additionally, NHY Executive Management has independently reviewed the above evaluations, the conduct of the Natural Circulation Test, the post-trip review and the management actions subsequent to the event. The conclusions of NHY Executive Management and the major corrective actions taken or planned are provided below. The recommendations provided in Enclosures 2 through 4 have been evaluated and incorporated, as appropriate, into the short term and longer term corrective actions that have been or will be taken by NHY. A corrective action plan with a schedule for completion of all corrective actions is provided in Enclosure 1.

On June 22, 1989, a manual reactor trip of Seabrook Station, Unit 1, was initiated during the Natural Circulation Test. At no time during the transient were any technical specification parameters or design limits exceeded nor was there any danger to public health and safety, to the safety of plant personnel or to plant equipment.

During the Natural Circulation Test the operating crew failed to follow procedures and did not trip the reactor when the pressurizer level decreased below the 17% manual trip criterion of Startup Test Procedure, 1-ST-22, Natural Circulation Test. Operations and Startup Test management personnel who were contacted during the test by NRC inspectors regarding the 17% reactor trip criterion did not take the appropriate actions in response to the inspectors' statements. Additionally, certain actions taken by NHY management personnel involved in the post-trip review, and certain statements made in subsequent discussions with the NRC, were inappropriate and did not reflect NHY policy.

CONCLUSIONS

The unplanned plant cooldown that occurred during the Natural Circulation Test was caused by the failure of a steam dump valve (MS-PV-3011) positioner on the non-nuclear side of the plant. The valve opened when the screw which fastens the valve position feedback linkage to the positioner loosened, allowing the linkage to disconnect. The steam dump valve was the subject of maintenance work completed prior to the Natural Circulation Test. The work request remained open however, because the follow-up post-maintenance testing had not been completed. The valve should have had this testing completed and accepted prior to the Natural Circulation Test.

The plant cooldown was subsequently terminated by closing the steam dump valve and the transient was terminated by the manual reactor trip. Throughout this plant transient, all systems and equipment operated as would be expected with the exception of the steam dump valve. A Licensee Event Report of the reactor trip will be submitted by July 24, 1989.

The Unit Shift Supervisor (USS) failed to comply with the Natural Circulation Test Procedure, 1-ST-22, by not immediately manually tripping the reactor when the pressurizer level decreased below the test's 17% manual trip criterion. The failure to strictly adhere to the Startup Test Procedure was an unacceptable deviation from NHY operating policy.

The Unit Shift Supervisor did not manually trip the reactor because he misinterpreted the 17% pressurizer level value to be test termination guidance, which was more conservative than the 5% pressurizer level safety injection requirement provided in Station procedures. The pre-test briefing given to the crew performing the Natural Circulation Test was not effective. The required information was presented to the crew but obviously the requirement to perform a manual reactor trip at 17% pressurizer level was not fully understood.

The three NHY personnel in the Control Room, with whom the NRC personnel discussed the requirement to trip the reactor at the 17% pressurizer level, did not respond in an effective manner. The first two NHY personnel contacted by the NRC did not specifically recommend that the USS trip the reactor in accordance with the test procedure requirement. The third individual contacted was about to recommend that the USS trip the reactor when the reactor was tripped.

Management personnel from the Operations chain of command were in the Control Room during the Natural Circulation Test to observe the plant response during natural circulation. They were not aware of the specific pressurizer level reactor trip test requirement and therefore, did not offer direction to the operating crew when the pressurizer level decreased below 17% and the reactor had not been tripped per the test procedure criterion.

The Shift Technical Advisor (STA) was acting as an additional member of the operating crew during the performance of the Natural Circulation Test. The shift staffing arrangement would not have delayed his assuming the functions of the STA, if such action had been required. However, the manning of the STA position will be re-evaluated to ensure that there are no potential conflicts to prevent STAs from assuming their duties.

The four hour verbal report made to the NRC per 10 CFR 50.72 was not precisely worded, and contained inaccurate information and consequently, contributed to the miscommunication between NHY and the NRC. While there was no intent to mislead the NRC, the communication inaccurately reported "While performing low-power physics testing, Startup Test Procedure 1-ST-22, Rev. #2 (Natural Circ) Tavg had reduced to below 541°F, pressurizer pressure at 2340 psig and pressurizer water level less than 17%. These were manual trip criteria per procedure. MS-P3011 stuck open causing initial cooldown." The information provided in the four hour report should have conveyed the following:

- The Natural Circulation Test was not part of low-power physics testing.
- The pressurizer level had been less than 17%, which was a manual reactor trip criterion per the test procedure, but had been recovered to 21% at the time of the manual reactor trip.
- The pressurizer pressure had not reached the manual trip criterion of 2340 psig. The manual reactor trip was initiated at 2310 psig with pressurizer pressure increasing.
- The reactor coolant temperature as indicated by Tavg had been less than 541°F for approximately five minutes when the manual reactor trip was initiated. The criterion in the procedure is to restore Tavg to greater than 541°F within 15 minutes or be in Hot Standby within the next 15 minutes.

Subsequent to the reactor trip, New Hampshire Yankee management took action to initiate a review of the Natural Circulation Procedure and the policies on procedure compliance. However, NHY management personnel who participated in the 1800 conference call with NRC Region I on June 22nd had not completed their analysis of the event and therefore did not yet have sufficient information to completely discuss the procedural non-compliance problem and the proposed corrective actions. In addition to being unable at that time to discuss specific details on the procedural inadequacies and the corrective actions:

- NHY management did not effectively communicate to the NRC their recognition of the seriousness of the procedure noncompliance and the actions planned to prevent recurrence.
- Statements made by some NHY personnel, which supported the actions taken or not taken by the operating crew, were inappropriate and did not represent the NHY procedure compliance policy.
- Statements made by some NHY personnel, which indicated NHY was considering restarting the reactor prior to the completion and evaluation of a total event analysis, were inappropriate and did not accurately represent NHY policy and the understanding of the NHY President.

MAJOR CORRECTIVE ACTIONS

On June 22nd, following the reactor trip, the Vice President - Nuclear Production directed the Station Manager to ensure that all operating personnel were aware of the NHY policy on procedure compliance. The Operations Manager met with each shift crew and reviewed the policy. This action was completed on June 29, 1989, when the relief crew returned to duty.

New Hampshire Yankee Executive Management ordered the plant cooled down to MODE 5 and postponed a maintenance related turbine-generator torsional test. The turbine-generator test requires the plant to be at operating temperature and pressure, and was scheduled to be completed after the low power testing program concluded. These actions were taken to allow the appropriate evaluations to be performed and to ensure that all required corrective actions are completed prior to reinitiating any major integrated plant testing. The cooldown was completed at 1254 on June 28, 1989.

The NHY policy on procedure compliance was reviewed and revisions were made to ensure that a misinterpretation, such as occurred during the Natural Circulation Test, will not be repeated. The initial revision to the Seabrook Station Management Manual was reviewed by the Station Operation Review Committee on June 28, 1989, and approved by the President on July 5, 1989. On July 10, 1989, the NHY President issued a memorandum to all site employees emphasizing the NHY policy on procedure adherence and the significance that NHY management places on adherence to the policy.

On June 29th, the Vice President-Nuclear Production was relieved of his duties at Seabrook Station and he subsequently resigned from Public Service Company of New Hampshire. He was relieved of his duties due to the inappropriate actions that he took directly and allowed to occur following the reactor trip. The actions primarily concern communications with the NRC during the 1800 conference call on June 22nd as well as subsequent incomplete communications with the President of New Hampshire Yankee regarding the subjects covered during that conference call. Those individuals who reported to the Vice President - Nuclear Production now report temporarily to the President. Organization changes will be made in the near future and will be provided to the NRC on or before July 28, 1989.

Additional disciplinary action has been taken in the form of letters of reprimand issued by NHY management to:

- the management personnel in the Operations chain of command who were present in the Control Room during the test,
- the personnel who were spoken to by the NRC inspectors regarding the 17% pressurizer level trip criteria during the test, and
- the operators and engineers on the shift crew involved in the test who had the authority or the responsibility to prevent the procedure violation.

The Nuclear Safety Audit Review Committee has reviewed the event and the corrective action plan and concurs with the evaluation and the proposed corrective actions.

The Startup Test Program will be revised to require that a more comprehensive pre-test briefing be provided prior to the test crew assuming the shift. In addition, the Startup Test Program will be reviewed to determine which tests require special classroom review and/or simulator rehearsals for the test crews prior to the test being conducted.

The NHY policy related to procedure compliance will be further improved to better define the conduct expected of all NHY personnel related to procedure compliance, and training will be provided to all NHY personnel on the enhanced NHY procedure compliance policy.

The failure of steam dump valve (MS-PV-3011) will be evaluated and corrective action will be taken to repair the valve. The open Work Request on the steam dump valve will be completed and the Startup Test Program procedures will be revised to preclude recurrence of a similar situation.

SUMMARY

New Hampshire Yankee personnel failed to follow procedures by not strictly adhering to the criteria specified in the Startup Test Procedure, Natural Circulation Test, (1-ST-22). Additionally, certain other actions taken by NHY management were inappropriate.

There was inappropriate management action in communications with NRC Region I personnel regarding recognition of the seriousness of the procedure non-compliance problem, statements in support of the operating crew's actions and statements indicating a readiness to restart the reactor. New Hampshire Yankee recognizes the severity of the procedure non-compliance and has evaluated the circumstances and conditions surrounding the event. Additionally, NHY recognizes the seriousness of the statements made and the impressions conveyed to the NRC during the 1800 conference call on June 22nd. Corrective action will be completed prior to NHY conducting additional major integrated plant testing and prior to commencing the power escalation testing program.

The Chief Executive Officers of the Joint Owners of Seabrook Station recognize the seriousness of the procedure non-compliance and subsequent events. The Executive Committee of the Joint Owners has had three separate meetings with NHY Executive Management to review the events, the corrective actions proposed and the proposed responses to the NRC.

I have personally met with the senior managers in the Operations chain of command and have clearly reinforced the responsibilities and requirements that are intrinsic in their assigned positions. I firmly believe that the NHY policy on procedure compliance is understood and will be adhered to by all NHY personnel.

New Hampshire Yankee recognizes the responsibility and trust that the NRC conveyed to NHY with the issuance of an operating license. It is the NHY mission to meet those responsibilities and NHY is committed to taking the actions that are necessary to regain that trust.

New Hampshire Yankee is prepared to discuss the events associated with the Natural Circulation Test, this evaluation and the resulting corrective actions with the NRC Staff. Additional information such as the Station Information Report and related data are available at Seabrook Station for your review.

Should you have any questions regarding this matter, please contact me at (603) 474-9521.

Very truly yours,



Edward A. Brown
President and Chief
Executive Officer

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD

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DOCKETING & SERVICE
BRANCH

G. Paul Bollwerk, Chairman
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In the Matter of)

PUBLIC SERVICE COMPANY)
OF NEW HAMPSHIRE, ET AL.)

(Seabrook Station, Units 1 and 2))

) Docket Nos. 50-443-OL
) 50-444-OL

) October 20, 1989

CERTIFICATE OF SERVICE

I, Matthew T. Brock, hereby certify that on October 20, 1989,
I made service of the enclosed NOTICE OF APPEAL and MOTION FOR
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first class mail to:

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Respectfully submitted,

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Dated: October 20, 1989