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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
SP-111

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
}

NRC STAFF RESPONSE TO INTERVENORS' MOTION TO AMEND
INTERVENORS' MOTIONS OF SEPTEMBER 29, 1989 AND
OCTOBER 13, 1989 TO ADMIT CONTENTIONS ON THE
SEPTEMBER 27, 1989 ONSITE EMERGENCY PLAN EXERCISE

INTRODUCTION

Intervenors in this motion seek to amend earlier pleadings to make legal arguments they chose not to make before. The Intervenors show no good cause to be allowed to amend previous pleadings in this long, drawn out and complex proceeding, and the motion should be denied.

BACKGROUND

On September 28, 1989, Intervenors filed a motion to admit contentions on the onsite emergency exercise which had been conducted a day earlier. ^{1/} Intervenors chose not to specifically address any of the reopening criteria set forth in 10 C.F.R. 2.734 in that filing, deeming them inapplicable. Motion at 8-9. Intervenors again declined to address the reopening criteria in their second motion to admit contentions filed

1/ Intervenors' Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise, September 28, 1989 (Motion).

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on October 13, 1989, ^{2/} despite the fact that Applicants had argued that they must be satisfied. ^{3/}

In Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-28, 29 NRC ____, 1989, the Licensing Board rejected Intervenor's argument concerning the applicability of the reopening criteria to a low power testing contention. Slip op. at 14-15. Intervenor now wish to amend their earlier filings in order to address the reopening standards as they apply to the proffered contentions on the onsite exercise, a matter which has been extensively briefed by other parties.

DISCUSSION

Intervenor's motion to amend should be denied. They should not be permitted a second chance to argue matters they chose not to address before.

The question of whether the reopening criteria apply to contentions filed after the closing of the record has been vigorously contested by the parties in this proceeding for months. Even before the record was closed, the Massachusetts Attorney General (MAG) anticipated this argument and asked that the Board hold the record open pending the onsite exercise

^{2/} Intervenor's Second Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise, October 13, 1989.

^{3/} Applicants' Response to Intervenor's Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise, October 11, 1989, at 2-5.

because he expected to file contentions. ^{4/} After that request was denied, MAG requested that the record be reopened in order obtain a hearing on his proffered low power testing contention. ^{5/} Responsive pleadings also dealt with the question of whether reopening was necessary; the NRC Staff alone extensively briefed the applicability of the reopening criteria to all late-filed contentions sought to be admitted in a proceeding once the record has closed. ^{6/}

Thus, it is clear that MAG was well aware, before the issuance of LBP-89-28, that any contentions regarding the onsite exercise could be considered subject to the reopening standards of 10 C.F.R. § 2.734. This proceeding should not be burdened by attempts to reformulate pleadings to include arguments which should, and could have, been made the first time.

Aside from the fact that intervenors' filing is an improper attempt to argue matters that should have been argued before, it is also without substantive merit in that it fails to satisfy the provisions of 10 C.F.R. § 2.734. Specifically, intervenors have not raised a significant safety

^{4/} Motion of the Massachusetts Attorney General to Hold Open the Record Pending Low Power Testing and the Required Yearly Onsite Exercise and for Other Related Relief, May 31, 1989.

^{5/} Intervenors' Motion to Admit Contention, Or, In the Alternative, to Reopen the Record, and Request for Hearing, July 21, 1989; Intervenors' Motion for Leave to Add Bases to Low Power Testing Contention Filed on July 21, 1989, and to Admit Further Contentions Arising from Low Power Testing Events, or in the Alternative, to Reopen the Record and Second Request for Hearing, August 28, 1989.

^{6/} E.g., NRC Staff Response to Intervenors' "Motion to Admit Contention, or in the Alternative, To Reopen the Record, and Request for Hearing", August 18, 1989; NRC Response to Intervenors' Motion for Leave to Add Bases to Low Power Testing Contention, to Admit Further Contentions, or to Reopen the Record and Request for Hearing, September 14, 1989.

or environmental issue, established that a different result would have been obtained if the information had been considered initially, or filed the required supporting affidavits.

Intervenors' claim that the onsite exercise was inadequate in scope is premised upon a misapplication of the regulations. As discussed in the Staff response to the motion to admit onsite exercise contentions, ^{7/} only initial full-participation exercises must test all the major observable portions of the emergency plan. For licensing purposes, the onsite exercise held within one year before issuance of a full-power license is not the initial exercise and therefore is not subject to the full participation standard.

Thus it is not true, as Intervenors argue, that the failure to test certain portions of the plan during an onsite exercise necessarily raises a significant safety issue. In fact, the specific elements cited by the Intervenors do not represent deficiencies in the scope or performance of the onsite exercise. Response at 10-11. Not only did the exercise test the major aspects of the plan, it revealed no weaknesses in the Applicants' emergency preparedness. Id. at 9-10. Intervenors' contentions thus fail to raise an issue which has significant safety implications or which would have materially affected the outcome of the Seabrook proceeding if it had been considered initially. For these reasons alone, their motion should fail. However, their motion suffers from an even greater deficiency - it is not accompanied by any affidavits which could provide support for the ipse dixit assertions made.

^{7/} NRC Response to Intervenors' Motion to Admit Contentions on September 27, 1989 Exercise, October 16, 1989 (Response) at 4-6.

Under 10 C.F.R. § 2.734(b), motions to reopen must be accompanied by affidavits setting forth the factual and/or technical bases for the claim that the reopening criteria have been met. The affidavits must address each of criteria separately, with a specific explanation of why it has been met. The regulation does not contain any exception to this requirement, and Intervenors have cited no authority for one. Thus, their motion fails to comport with the Commission's regulations.

CONCLUSION

Intervenors' motion should be denied as an improper attempt to argue matters that could, and should have, been addressed before. As a substantive matter, the motion fails to establish that the onsite contentions raise a significant safety or environmental issue or that a different result would have been obtained if the information had been considered initially, and does not include the required supporting affidavits.

Respectfully submitted,

Lisa B. Clark

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th day of October, 1989

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NUCLEAR REGULATORY COMMISSION

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OFFICE OF PUBLIC AFFAIRS
DOCKETING SECTION
Docket Nos. 50-443 OL
50-444 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS' MOTION TO AMEND INTERVENORS' MOTIONS OF SEPTEMBER 29, 1989 AND OCTOBER 13, 1989 TO ADMIT CONTENTIONS ON THE SEPTEMBER 27, 1989 ONSITE EMERGENCY PLAN EXERCISE" 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, as indicated by double asterisks, by Express Mail, this 26th day of October 1989.

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