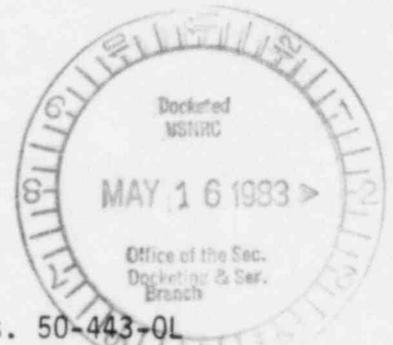


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

SERVED MAY 16 1983

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Helen F. Hoyt, Chairperson  
Emmeth A. Luebke  
Jerry Harbour



In the Matter of	)	Docket Nos. 50-443-0L
	)	50-444-0L
PUBLIC SERVICE COMPANY	)	(ASLBP No. 82-471-02-0L)
OF NEW HAMPSHIRE, <u>et al.</u>	)	
	)	
(Seabrook Station, Units 1 and 2)	)	May 13, 1983

MEMORANDUM AND ORDER  
(Denying NECNP Motion to Amend Petition to Intervene)

MEMORANDUM

On April 21, 1983, NECNP filed "NECNP Motion to Amend Petition to Intervene." NECNP seeks the admission of a new contention, NECNP VII. This proposed contention addresses environmental qualification of electrical equipment important to safety. Answers opposing NECNP's motion were filed by Applicants and the NRC Staff on April 29, 1983 and May 9, 1983 respectively. Based on these pleadings and as discussed below, the Board denies NECNP's motion.

Discussion

NECNP's proposed contention is as follows:

NECNP Contention VII. Environmental Qualification  
of Electrical Equipment Important to Safety

Applicants' program for the environmental qualification of electrical equipment at Seabrook does not comply with 10 C.F.R. § 50.49 or General Design Criterion 4 in the following respects:

D 502

a) Applicants' program does not provide for the qualification of all electrical equipment "important to safety" as defined by 10 C.F.R. § 50.49(b).

b) Applicants have not met the requirements of 10 C.F.R. § 50.49(d) in that they have not prepared a list of all electrical equipment important to safety, including the following required information:

(1) The performance specifications under conditions existing during and following design basis accidents.

(2) The voltage, frequency, load, and other electrical characteristics for which the performance specified in accordance with paragraphs (d)(1) of this section can be ensured.

(3) The environmental conditions including temperature, pressure, humidity, radiation, chemicals, and submergence at the location where the equipment must perform as specified in accordance with paragraphs (d)(1) and (2) of this section.

10 C.F.R. § 50.49(d)(1)-(3). This information is only partially supplied with respect to safety related equipment, and not supplied at all for nonsafety related equipment that is important to safety.

c) Applicants have not performed an analysis to ensure that the Seabrook plant can be safely operated pending environmental qualification of those components important to safety which Applicants have not yet qualified or as to which the documentation for qualification is not complete.

The basis for this proposed contention is a newly promulgated rule, 10 C.F.R. § 50.49, "Environmental qualification of electric equipment important to safety for nuclear plants." This rule was promulgated on January 21, 1983 and became effective on February 22, 1983. Of particular significance to the present motion, the rule redefines the previous environmental qualification requirement. In the past, "important to safety" has been equated with "safety-related." Compare 10 C.F.R. Part 50, Appendix A, General Design Criteria 4 with Petition

for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 710 (1980).  
Under the new rule, environmental qualification is required of electrical equipment important to safety; and equipment important to safety is defined as not only safety-related equipment but also "nonsafety-related equipment whose failure under postulated environmental conditions could prevent satisfactory accomplishment of [certain specified] safety related functions." 10 C.F.R. § 50.4(b)(2).

NECNP offers the recentness of the new rule and the subsequent issuance of the SER as good cause for the late filed contention. NECNP further argues that no other means exists whereby NECNP's interest can be protected; that litigation of the issues will assist the Board in developing a sound record; that no other party will represent NECNP's interest; and that litigation of the issue will not cause significant delay or broaden the issues already being litigated.

Both the Applicants and Staff submit that the contention is untimely and that good cause has not been shown. Both assert that the proposed contention could have been filed several months earlier and would, if admitted, cause considerable delay. In addition, both the Applicants and the NRC Staff argue that part (a) of proposed NECNP contention VII lacks specificity. Finally, Applicants assert that parts (a) and (b) of NECNP VII are without basis because the sections of the new rule to which they relate, 10 C.F.R. § 50.49(a) and (d) respectively, do not impose conditions precedent to the operation of the plant.

Pursuant to the Commission's Rules of Practice, a nontimely filing will not be entertained unless the Board determines that five specified factors so militate. The factors are: 1) good cause, if any, for failure to file on time; 2) the availability of other means for protecting the petitioner's interest; 3) the extent to which the petitioner's participation might reasonably assist in developing a sound record; 4) the extent to which petitioner's interest will be represented by existing parties; and 5) the extent to which petitioner's participation will broaden the issue or delay the proceeding. 10 C.F.R. § 2.714(a)(1)(i)-(v). The burden of showing that these factors militate toward admitting a late-filed contention lies with the petitioner. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-615, 12 NRC 350, 352 (1980).

In this case, it is the Board's determination that NECNP has not demonstrated good cause for its late filing. NECNP VII could easily have been filed in early March 1983; NECNP, which has been sponsoring another contention on environmental qualification of electrical equipment, must certainly have been aware of the new rule. Furthermore, the Board completely rejects the argument that NECNP needed to await issuance of the SER before filing its new contention.

In addition, the Board does not believe that litigation of this contention will assist in developing a sound record. In essence, NECNP VII is merely the obvious assertion that Applicants have not yet demonstrated compliance with several newly imposed substantive and

procedural requirements. However, as pointed out by NECNP itself, the NRC Staff has already called for additional information on environmental qualifications from Applicants. NECNP Motion at 5, citing NUREG-0896, Safety Evaluation Report Related to the Operation of Seabrook Station, Units 1 and 2 at 3-42 (March 1983). The Board is confident that the Staff, a party in this proceeding, will reasonably protect NECNP's interest by requiring the information specified in 10 C.F.R. § 50.49.<sup>1</sup>

Based on these determinations and on the obvious delay an additional contention would cause, the Board finds that the five factors specified in 10 C.F.R. § 2.714(a)(1) greatly militate against admitting NECNP VII.

ORDER

Based on the foregoing, it is this 13th day of May

ORDERED

---

<sup>1</sup> The real, substantive contention that the Board might consider is that a certain specified piece of equipment is not environmentally qualified and should be. The Board agrees with both Applicants and the Staff that NECNP VII is fatally vague with respect to its assertion that equipment is not properly qualified. If, after Applicants' submission of the information necessary to comply with the reporting requirements of 10 C.F.R. § 50.49, NECNP can point to specific instances of noncompliance (and if NECNP can show that it could not do so earlier), the Board would consider entertaining a new contention.

1. That the NECNP Motion to Amend Petition to Intervene is denied.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

A handwritten signature in black ink, appearing to read "Helen F. Hoyt", written in a cursive style.

Helen F. Hoyt, Chairperson  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 13th day of May, 1983.