UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF APPLICANTS
TO THE CONTENTIONS FILED
BY SEACOAST ANTI-POLLUTION LEAGUE

On March 12, 1982, the Board issued a Memorandum and Order Setting Special Prehearing Conference ("Order"). The Order required the filing of amended petitions by April 6, 1982. On April 5, 1982, Seacoast Anti-Pollution League ("SAPL") submitted a document entitled "Response of Intervenor Seacoast Anti-Pollution League to Memorandum and Order Setting Special Pre-Hearing Conference" ("SAPL Supp."). Therein, inter alia, while "reserving to itself the right to amend this statement of contentions",* SAPL set out four contentions it seeks to have admitted

* But see Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 & 2), LBP-80-30, 12 NRC 683, 689-90 (1980).

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to litigation in this proceeding. As contemplated by the Order, the Applicants hereby respond to, and set out their position with respect to the admissibility of, each of SAPL's contentions.

Contention No. 1

SAPL's first contention is stated thus:

> "Emergency planning cannot reasonably assure that public health and safety will be protected at the Seabrook site." SAPL Supp. at 4.

The major basis for this contention is stated as being that:

> ". . . no determination has ever been made that the Seabrook facility can be evacuated in time to avoid adverse effects from radiation in the event of a major accident." Id.

Applicants readily concede that the subject of emergency planning is one which is a fit candidate for exploration in this operating license proceeding. However, SAPL's contention, as framed, has a number of infirmities which preclude its admission as the emergency planning contention.

To begin with, as framed, the contention assumes that emergency planning is the only thing that works to provide reasonable assurance that the public health and safety will not be endangered. See 10 CFR § 50.57(a)(3). This is not so. A number of regulatory requirements, if adhered to, together provide that assurance. For example, such assurance is grounded in part upon conformance to the siting criteria in 10 CFR 100, conformance to the GDC, 10 CFR 50, App. A, and inclusion of engineered safeguards such as an ECCS, 10 CFR § 50.46; 10 CFR 50 App. K.

This is not to say that emergency planning does not also make a contribution to the overall reasonable assurance, but it is not the only support therefor.

Second, as framed, the contention only attacks emergency planning "at the site" and the basis refers to evacuation of "the Seabrook facility". It is difficult to believe that SAPL means this as written because the "reasonable assurance" of protection of the "public health and safety" requirement has nothing to do with employees on the site and in the plant. Their protection is found in other parts of the regulations. Thus, if SAPL means to raise only the evacuation of the plant and emergency planning only at the site, the contention references the wrong regulation. If SAPL means to raise the issue of emergency planning in its broad sense beyond site boundaries, the contention must be recast to do so.

Third, from the statement of basis, the contention appears to be premised upon the concept that the regulations require a demonstration that evacuation can be accomplished within a certain time frame. This simply is not the law. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), DD-81-14, 14 NRC 279, 282-83 (1981); NRC Brief in Seacoast Anti-Pollution League v. U.S. Nuclear Regulatory Commission, No. 81-2146 (D.C. Cir.) at 45-46.

Finally, the contention seeks to frame the evacuation issue in terms of the penultimate "reasonable assurance" finding.

This is inappropriate. Emergency planning is now governed by specific regulations. 10 CFR § 50.34(b)(5)(v); 10 CFR § 50.47; 10 CFR 50 App. E. It is settled law that an applicant meets its burden in an operating license hearing when it demonstrates compliance with the regulations; no amorphous additions can be required in the name of additional safety. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003 (1973).

In light of all the foregoing, the Applicants' position is that SAPL Contention No. 1, as framed, should be rejected. If an emergency planning contention is admitted, it should be:

> "The applicants have failed to comply with the applicable provisions of 10 CFR § 50.47 and 10 CFR 50 App. E."

Contention No. 2

SAPL's second contention is stated thus:

> "The operation of the proposed condenser cooling system will have an unreasonable adverse effect on the quality of the aquatic environment." SAPL Supp. at 4.

In recognition of the fact that collateral estoppel would otherwise operate (see discussion of Contention No. 3, infra) on this issue, SAPL, while acknowledging that the effect of the operation of the condenser cooling system has been extensively litigated to a conclusion at the construction permit hearing, relies upon the Applicants' present consideration of substituting chlorination for back-flushing to control fouling in the intake tunnel as grounds for reopening the aquatic effects issue.

Id. at 4-5. However, the issue of what the effects will be, and the appropriateness, of a nuclear power plant's condenser cooling system is exclusively one for EPA to decide. Consolidated Edison Co. (Indian Point Unit No. 2), CLI-81-7, 13 NRC 448, 449 (1981); Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1 (1978), affirmed generally and as to this point sub nom. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978). When, as and if EPA approves additional use of chlorine in the system,* the environmental effects, if any, of that decision will be factored into the cost/benefit analysis for this proceeding. Thus, if a contention is to be admitted as to this matter, it should be:

> "If EPA and other appropriate authorities approve chlorination to control fouling in the intake tunnel, the adverse effects of such activity will be sufficient to tip the cost/benefit analysis against the allowance of operation of the plant."

The contention, as framed at present, should not be admitted.

Contention No. 3

SAPL Contention No. 3 is:

> "The operation of the proposed nuclear plant will have an unreasonable adverse effect upon the economic well-being of the seacoast area." SAPL Supp. at 5.

The apparent basis of the contention is the theory that the existence of the Seabrook plant will cause anxiety in the public

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* The use of some chlorine to control fouling from the pumphouse to the condenser and in the service water system has already been approved at the CP stage.

at large and thus reduce tourism in the area. Id. This contention was raised by SAPL at the Seabrook construction permit hearing, was fully litigated, and decided adversely to SAPL. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), LBP-76-26, 3 NRC 857, 881-82 (1976). "[A]n operating license proceeding should not be utilized to rehash issues already ventilated and resolved at the construction permit stage." Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), CLI-74-12, 7 AEC 203 (1974). SAPL alleges no significant intervening change in circumstances which would provide a basis for relitigating this issue. Such being the case, classic principles of collateral estoppel apply. See Houston Lighting and Power Co. (South Texas Project, Units 1 & 2), LBP-79-87, 10 NRC 563 (1979), affirmed summarily, ALAB-575, 11 NRC 14 (1980). The contention should be excluded.

Contention No. 4

SAPL's Contention No. 4 is:

> "The decommissioning of the Seabrook plant, should it receive its operating permit and actually operate, will have a major long-term negative impact on the health and well-being of the citizens in the area of the facility." SAPL Supp. at 5.

The major basis for this contention is alleged to be that if the plant is not fully removed, it will have a long-term negative effect on the area. Id. at 6.

This same issue was fully litigated to a conclusion adverse to SAPL in the construction permit proceeding. Public Service

Company of New Hampshire (Seabrook Station, Units 1 & 2), LBP-76-26, 3 NRC 857, 884 (1976). On the same reasoning set forth above with respect to Contention No. 3, Contention No. 4 should also be excluded.

In addition, as an additional part of its basis, SAPL contends that there is no assurance that the Applicants have the financial capability to decommission the plant. SAPL Supp. at 6. Financial qualification of Applicants have been completely eliminated as an issue in operating license proceedings for electric utilities such as these applicants. 10 CFR §§ 50.33(f)(1), 50.40(b) as amended by 47 Fed. Reg. 13750 (March 31, 1982).

CONCLUSION

SAPL Contentions 3 and 4 should be excluded. SAPL Contentions 1 and 2 as framed should be excluded although the Applicants concede that properly framed contentions with respect to these subject matters would be admissible.

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April 15, 1982

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