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

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| In the Matter of                               | ) |                         |
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| PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE et al. | ) | Docket Nos. 50-443-OL   |
|  | ) | 50-444-OL               |
| (Seabrook Station, Units 1 & 2)                | ) | (Filed: August 2, 1982) |

APPLICANTS' REPLY TO "SOCIETY FOR THE PROTECTION OF THE ENVIRONMENT OF SOUTHEASTERN NEW HAMPSHIRE SUPPLEMENTAL PETITION FOR LEAVE TO INTERVENE"

Pending before the Board is a petition under 10 C.F.R. § 2.714 of the Society for the Protection of the Environment of Southeastern New Hampshire ("Society") for leave to intervene. The Society's petition stands upon three proposed contentions, all of which involve the Seabrook transmission lines. Two of those contentions urge explicitly that the Seabrook transmission lines be rerouted in some fashion or another, and are plainly barred by the prior litigation

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of the Seabrook transmission line routes. The third contention purports on its face to be a safety-related contention; at the prehearing conference on July 16, 1982, the Society was afforded an opportunity to restate that contention and, by its pleading dated July 23, 1982, the Society had proposed a reworded "Contention B." To that proposed reworded contention, the Applicants respond herein.

In proposed Contention B the Society would litigate the supposedly "safety"-related effects of a portion of one of the transmission lines. The Applicants believe that, in fact, this contention is at bottom simply another variant of the exhortation that the transmission lines be routed elsewhere, and for that reason the Applicants believe that it is barred by the prior litigation. What was litigated before was whether the lines should be rerouted; Society proposed Contention B is simply another reason why a line should be rerouted.

In an effort to avoid the effect of the prior litigation, which was based on the Commission's jurisdiction under the National Environmental Policy Act ("NEPA"), the Society has attempted to draft its proposed contention under the Atomic Energy Act ("AEA")

and it disclaims any NEPA basis for it. Thus, as now reworded the Society has limited the regulatory basis for its proposed contention be to the "health and safety of the public" font of NRC jurisdiction. Because that jurisdiction is limited to matters involving radiological health and safety, the contention fails.

The Society's statement of a regulatory basis for its proposed contention is limited to 10 C.F.R. Part 2, Appendix A, § VIII(b)(3)(i). In fact, Appendix A to Part 2 is not itself a regulatory requirement, but rather is a description of the paractice and procedure employed in NRC hearings. Section VIII(b)(3)(i) of Appendix A refers to the issues that are litigable in an operating license proceeding, and thus is in fact a paraphrase of other sections of the regulations. In particular, the language of Appendix A upon which the Society fixes refers to 10 C.F.R. § 50.57(a)(3)(i). This section, which is an application of the NRC's Atomic Energy Act jurisdiction (as opposed to its NEPA jurisdiction) refers only to radiological health and safety.

Prior to the advent of NEPA, it was not disputed that NRC jurisdiction as to all matters was limited to

questions related to the radiological implications of nuclear power plants. New Hampshire v. AEC, 406 F.2d 170, 175 (1st Cir. 1969). "Before the National Environmental Policy Act became effective on January 1, 1970, "Congress [had] viewed the responsibility of the Commission as being confined [under the Atomic Energy Act] to scrutiny of and protection against hazards from radiation,' and the Commission was not expected to freight construction permits or operating licenses with conditions to guard against non-radiological disruptions of the environment." Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 938 (1974). Thus, apart from NEPA, a contention that the reactor cooling system would have adverse non-radiological impacts was found to be outside of the agency's jurisdiction under the Atomic Energy Act and, hence, inadmissible. It is no less so that a contention that proposed transmission lines will yield adverse electromagnetic -- but concededly non-radiological -- impacts is outside of the agency's Atomic Energy Act jurisdiction and is not, apart from NEPA, a litigable contention.

Under the Atomic Energy Act the only safety implications of transmission lines involved their

sufficiency to insure a supply of off-site power for reactor control functions. General Design Criterion 17 requires that the off-site power "be supplied by two physically independent circuits (not necessarily on separate rights of way) designed and located so as to minimize to the extent practical the likelihood of the their simultaneous failure under operating and postulated accident and environmental conditions." See Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 942 (1974). As a result of this limited AEA jurisdiction, the Appeal Board and the Courts have ruled that the enactment of NEPA gave the Commission general routing jurisdiction over transmissions lines, under and by virtue of its NEPA authority (and taking into account all environmental impacts), and it was precisely this jurisdiction that was exercised in the Seabrook operating license proceeding. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 82-90 (1977). Of necessity, Society proposed Contention B seeks a reexamination, relitigation, and re-exercise of this same NEPA function, since NEPA is the Commission's only involvement with the non-radiological impacts of transmission lines.

The Society cannot have matters both ways. If the contention it proposes is a NEPA-based contention, it is barred by the prior litigation and resolution of the transmission line routing question; if the contention is not that NEPA-based contention, then it is outside of the Commission's jurisdiction.

Conclusion

For the foregoing reasons, proposed Society Contention B, as reworded, should be excluded.

Respectfully submitted,

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Dated: August 2, 1982



CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for the applicants herein, hereby certify that on August 2, 1982, I made service of the within documents by mailing copies thereof, postage prepaid, to:

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