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August 31, 1982

Helen Hoyt, Esquire, Chairperson  
Dr. Emmeth A. Luebke  
Dr. Jerry Harbour  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

50-443

SUBJECT: Seabrook Operating Licensing Proceeding

Dear Members of the Board:

We are enclosing for your consideration NECNP's Motion for Leave to Respond to Applicants' Reply to NECNP's Supplemental Filing on Emergency Planning Contentions, and NECNP's Response to Applicants' Reply.

On a separate matter, we have recently received a copy of a letter from the Staff to the Board dated August 23, 1982, enclosing a copy of ALAB-687, the Appeal Board's decision reviewing the Licensing Board's handling of contentions in the Catawba proceeding. We have reviewed the decision and found that it does not detract from our previous assertions to this Board that NECNP should not suffer any prejudice when we eventually file contentions based on information which is not currently available. The Appeal Board, although rejecting the Licensing Board's procedure of conditionally accepting vague contentions until supporting documents became available, nevertheless allowed submission of contentions without prejudice whenever the documents did become available. The Appeal Board concluded that:

[A] contention cannot be rejected as untimely if it (1) is wholly dependent upon the content of a particular document; (2) could not therefore be advanced with any degree of specificity (if at all) in advance of the public availability of that document; and (3) is tendered with the requisite degree of promptness once the document comes into existence and is accessible for public examination.

Id., slip op. at 16. Although the 2.714(b) late filing factors are to be considered, the nonexistence or unavailability

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of relevant documents "must be deemed controlling." Otherwise the petitioner would be placed in a "classic 'catch-22' situation" in violation of the Atomic Energy Act and NRC regulations. Slip op. at 17-18. Based on this decision, therefore, NECNP expects to be able to file without prejudice additional contentions on parts of the emergency plan, FSAR, and SER which were not available before the prehearing conference. Further, the decision does not affect any of the contentions that we have filed to date since all are sufficiently specific to be admitted for litigation.

Sincerely,

  
William S. Jordan, III

  
Diane Curran

Enclosures

DJC:law

cc: Seabrook Service List