10/29/82

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<br>50-444 OL |
| | ) | |
| (Seabrook Station, Units 1 and 2) | ) | |

RESPONSE OF THE NRC STAFF TO "NECNP OBJECTIONS TO PREHEARING CONFERENCE MEMORANDUM AND ORDER AND MOTION TO CERTIFY OBJECTIONS TO THE APPEAL BOARD" AND "STATE OF NEW HAMPSHIRE'S OBJECTION AND MOTION FOR RECONSIDERATION..."

## I. INTRODUCTION

By "Order" dated October 1, 1982, this Licensing Board noted that Intervenors New England Coalition on Nuclear Pollution ("NECNP") and the State of New Hampshire filed objections to this Board's "Memorandum and Order" of September 13, 1982, (hereafter "Memorandum and Order"), which ruled upon the standing, petitioners, admissibility of contentions, delineation of parties and schedule for this proceeding. NECNP filed its objections, which consisted exclusively of attempts to reargue the admissibility of those of its contentions denied by the Licensing Board, together with a "Motion to Certify Objection to the Appeal Board." The State of New Hampshire filed its objections in the form of a motion for reconsideration. In its October 1, 1982, Order, this Board authorized replies

DESIGNATED ORIGINAL

Certified By _____

D507

to such objections in accordance with 10 C.F.R. § 2.751a(d). It may be helpful to set out the procedural history into which the Board's Memorandum and Order fits.

NECNP filed on April 21, 1982 the bulk of its proposed contentions. The Applicant and the Staff filed written responses to those contentions on April 26, 1982 and May 19, 1982, respectively. Without specific leave of the Board, NECNP filed a detailed reply to both the Applicant and Staff responses on June 17, 1982. On approximately June 17, 1982, NECNP filed supplemental, late-filed contentions. On June 28, 1982, the Applicants responded to both NECNP's late-filed contentions as well as responded to NECNP's June 17th reply. The Staff responded to NECNP's supplemental contentions and its June 17th reply on July 1, 1982. At the second Special Prehearing Conference on July 15-16, 1982, each of NECNP's contentions was subject to rather extensive oral argument. On July 23, 1982, NECNP redrafted its emergency planning contentions. On July 26, 1982, NECNP filed a written rewording of the contentions it had amended during the July 15-16 Special Prehearing Conferences. On August 2, 1982, Applicants responded to the more specific emergency planning contentions filed by NECNP; on August 31, 1982, NECNP replied to the Applicants' response. This rather complex history clearly demonstrates the numerous opportunities this Board permitted NECNP, as well as the other parties, to address the issue

of the admissibility of NECNP's contentions,[1/] and to cure any defects in those contentions.

The organization of this pleading is as follows. The Staff will first respond to NECNP's objections to its denied contentions, many of which objections are mere reiterations of previously advanced NECNP positions regarding its recommendations as to what the Commission's regulations should provide. Next, the Staff will address the request in NECNP's pleading, otherwise not generally embellished, that if the Board does not agree with NECNP's arguments this time around, the Board should certify NECNP's objections to the Appeal Board (See NECNP Objections, p. 2). For the reasons therein discussed, the Staff opposes the request for certification. Finally, the Staff will respond to New Hampshire's motion for reconsideration of its denied contentions.

---

1/ A similar, though not so extensive, procedural history is extant with respect to the State of New Hampshire. On April 5, 1982, New Hampshire filed fifty-two pages of contentions. On April 5, 1982, New Hampshire filed fifty-two pages of contentions. The Applicant responded on April 15, 1982 and the Staff responded on April 21, 1982. New Hampshire filed amended contentions on May 24, 1982, with responses also filed by the Staff and Applicant. Oral argument on New Hampshire's proposed contentions was held on May 6, 1982 at the first Special Prehearing Conference, and the contentions were also discussed to some extent at the Second Special Prehering Conference on July 16, 1982.

## II. DISCUSSION

### A. Objections By NECNP

#### I.A.1 Environmental Qualification--Electrical Equipment

In this contention, NECNP asserts that electrical equipment has been environmentally qualified under an incorrect standard. Unfortunately, it is still not clear what standard NECNP insists be applied. As the Staff pointed out in its Response to Refiled and Supplemental Contentions of NECNP dated July 1, 1982 (at pp. 18-19), the Commission has established standards for the environmental qualification of electrical equipment in its decision in Petition For Emergency and Remedial Action, CLI-80-21, 11 NRC 707 (1980). NECNP apparently believes that a more strenuous standard is required because of the events at Three Mile Island. The Commission has addressed the requirements to be imposed because of Three Mile Island in NUREG-0737. It remains unclear whether NECNP is challenging the standard imposed by CLI-80-21 and NUREG-0737 or whether it is alleging that the qualification at Seabrook doesn't measure up to that standard. A look at NECNP's Motion for Reconsideration (at p. 3) leaves the Staff convinced that NECNP is in part challenging the Commission's standard:

> The question of what other measures are necessary to satisfy GDC 4 is a factual issue to be resolved during litigation. To the extent that the facts establish that measures beyond CLI-80-21 are required in order to comply with GDC 4, GDC 4 governs. Neither CLI-80-21 nor the Commission's Policy Statement has been issued pursuant to the rulemaking provisions of the Administrative Procedure Act, and neither can be relied upon to limit the scope of GDC 4.

As the Staff pointed out in its filing of July 1, the Commission allows challenges to the sufficiency of NUREG-0737. See Revised Statement of Policy, 45 Fed. Reg. 85236 (December 24, 1980). But to quote from our earlier pleading (at pp. 18-19): "That Revised Statement of Policy does not, however, relieve a proponent of such a contention of the burden of demonstrating that compliance with the Commission's regulations, as supplemented, is not a sufficient basis upon which to grant a license. See Maine Yankee Atomic Power Company (Maine Yankee Nuclear Power Plant, Unit 2), ALAB-161, 6 AEC 1003 (1973), aff'd sub nom. Citizens for Safe Power v. NRC, 524 F.2d 1291 (D.C. Cir. 1975)." NECNP has at no time attempted to show why the Commission's standards for environmental qualification of electrical equipment are insufficient or how they should be changed. We still do not know what standards NECNP would have us apply to the Seabrook qualification. The contention remains inadequate; reconsideration should therefore be denied.

I.A.3. Environmental Qualification for Hydrogen Burn

In this contention, NECNP asserted its belief that electrical equipment must be environmentally qualified to withstand the effects of a hydrogen release such as occurred at Three Mile Island. The Board correctly denied this contention on the ground that "there is no regulatory requirement for electrical equipment inside the containment to withstand the effects of a hydrogen release and burn as occurred at TMI." (Board Order, p. 38). The Commission has established requirements for dealing with hydrogen gas generated during loss-of-coolant accidents in 10 C.F.R. § 50.44. There simply is no requirement that environmental

qualification of equipment be subject to higher hydrogen release assumptions than those included in that Section. In its objections filed June 17, 1982 (at pp. 4-5), NECNP pointed out that the Commission is considering imposition of a requirement that equipment be qualified to operate during and after a hydrogen burn. This however provides no support now for NECNP's position. The fact that the Commission is considering changing its regulations in the future does not mean that the proposed regulation can be imposed today.[2/] NECNP's Contention I.A.3 seeks to impose a requirement presently beyond those contained in the Commission's regulations and should therefore be rejected. If the regulation is changed in the future and made applicable to Seabrook, NECNP can then seek to file a supplemental contention pursuant to the requirements of 10 C.F.R. § 2.714(b).

I.E. Reactor Coolant Pump Flywheel Integrity

This contention was rejected because the Licensing Board found no basis for the proposition that the reactor coolant pump flywheel must be environmentally qualified. In its motion for reconsideration, NECNP still relies largely on Reg. Guide 1.14 as the basis for establishing a generic requirement that all reactor coolant pump flywheels be environmentally qualified; however, NECNP makes no reference to the specific flywheels used at Seabrook. NECNP Motion at 6. The Staff submits that

---

2/ See 46 Fed. Reg. 62281 (December 23, 1981). The Commission is considering amending § 50.44 to address, in a two-step process, the qualification of equipment during hydrogen burn. As a first step, equipment would only have to be demonstrated to meet a "survivability" standard. After more information is developed, the Commission might then require "qualification" of essential equipment.

the Board was correct in rejecting this contention. As a general matter, flywheels are not environmentally qualified. If NECNP wished to argue that the Seabrook flywheel be treated differently, it should have presented the Board with an explanation as to why the Seabrook flywheel deserves special treatment. It has failed to do so. There is no reason for the Board to reconsider its ruling on this contention.

I.H. Decay Heat Removal

In this contention, NECNP has alleged that the Applicant should be required to install additional heat exchanger capacity. As basis, NECNP notes that decay heat removal is an unresolved safety issue and that there has now been established a "principle of expanded and improved heat removal capacity." NECNP Supplemental Petition for Leave to Intervene, April 21, 1982, p. 24. The Staff opposed, and continues to oppose, this contention. NECNP has pointed to no regulatory basis (other than the designation of decay heat removal as an unresolved safety issue) for a requirement that Seabrook's decay heat removal capabilities be enlarged. At no time has NECNP addressed the specifics of decay heat removal at Seabrook; the Coalition has never alleged why the decay heat removal capabilities at Seabrook are inadequate or what additional capability is needed.

The Board denied this contention with a reference to Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, (August 19, 1982). NECNP asserts in its motion for reconsideraton (at p. 7) that it sees no need to await the Staff's treatment of this unresolved safety issue in the SER; in essence, NECNP would like the

Board to rule on its contention now. The Staff has no objection to the Board giving NECNP a ruling before the SER is issued. The Staff believes, however, that the only ruling that would be proper at present is rejection of the contention. The contention as presently framed is nothing more than a general and generic assertion that decay heat removal capacities be expanded. The Staff submits that there is no such regulatory requirement, and that NECNP has provided nothing indicating that decay heat removal at Seabrook in particular may be inadequate. The contention should be rejected.

I.0.1 Emergency Feedwater: Common discharge header should be single-failure proof

In this contention, NECNP asserts that the common discharge header in the emergency feedwater system must be single-failure proof. Further, NECNP argues that if the header is not found to be covered by the single failure criterion, the Applicant has not adequately considered the factors necessary to protect against passive system failure. As basis, NECNP points to the preamble to 10 C.F.R. Part 50, Appendix A. The Preamble states that certain matters, for which design criteria have not yet been developed, must be considered. Nowhere in the Preamble is there established a blanket requirement that passive components in fluid systems important to safety meet the single failure criteria. There being no generic requirement, it falls upon NECNP to allege why it believes the discharge header at Seabrook must be held to the single failure criterion. NECNP made no such showing. As for the second part of the contention, the allegation that the Applicant has failed to adequately consider the factors necessary to protect against passive

system failure, NECNP has neither identified these factors nor explained the alleged significance of Applicant's failure to consider such factors. The contention was properly rejected.

I.O.2. Emergency Feedwater: Break in common discharge header coupled with a single failure

The Staff in its July 1, 1982 Response to the Refiled and Supplemental Contentions of NECNP (at p. 22) and at the prehearing conference (Tr. 375) stated that it had no objections to the admissibility of this contention. The Staff would therefore not oppose admission of this contention.

I.P. Human Engineering

In this contention, NECNP asserts that a multipoint recorder located on the back of the main control panel must be relocated to the front of the panel. In its June 17 filing, NECNP argued that the regulatory basis for this requirement is found in Clarification Item I.D.1 of NUREG-0737. At the prehearing conference, NECNP submitted GDC 19 as additional basis for the requirement. (Tr. 380). The Board found that no factual or regulatory basis was shown to support this contention; the Staff believes this finding to be correct. As NECNP recognized in its June 17 filing (at pp. 20-21), Clarification Item I.D.1 applies to "significant human factors and instrumentation problems." GDC 19 requires that the control room be capable of providing for safe operation of the plant under normal conditions and safe maintenance of the plant during accident conditions. At no point did NECNP attempt to show why the information provided by the multipoint recorder must be considered significant or necessary for the safe operation or shutdown of the

facility. NECNP did not explain why in its view the operator needs this information or whether the operator could get similar information by other means. The contention lacked sufficient basis and was properly rejected.

I.Q. Systems Interaction

The Staff continues to oppose this contention on the grounds that it lacks regulatory basis and it is impermissibly vague. However, the Staff notes that NECNP in its motion for reconsideration (at p. 12) stated that it did not object to the Board's ruling and saw "no need to burden the Board further at this point." That being the case, the Staff will restrict itself to the suggestion that there is nothing for the Board to reconsider (or certify) on this contention.

I.R. Hydrogen Control

NECNP proposed, and the Board rejected, two versions of this contention. As to the first version, NECNP was clearly attacking the Commission's decision in Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674 (1980). NECNP has recognized that the Board's rejection of the first version "may well be consistent with Commission decisions that bind the Board . . ." (NECNP Objections, p. 13), and does not press the matter further before this Board.

As to the second version, NECNP was required to first demonstrate a credible scenario for the generation of hydrogen in excess of the § 50.44 design basis. CLI-80-16, supra; see also Cleveland Electric Illuminating Co.

(Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114-16 (May 17, 1982). Thus, NECNP must demonstrate, as a prerequisite to litigating a hydrogen contention, that:

1. the hydrogen generation scenario is, in fact, credible;

2. hydrogen control measures will not be successful, and

3. offsite releases will exceed the guideline values of 10 C.F.R. Part 100.

The Board was not persuaded that the scenario proposed by NECNP was credible for the Seabrook reactor (Slip Op. p. 66). In its objections, NECNP has sought not to contend that it had demonstrated a credible scenario,[3/] but rather to argue that the Board has misplaced the burden of proof.

The initial burden that NECNP has under CLI-80-16 is the ". . . burden to establish a credible accident scenario involving hydrogen production resulting in offsite doses in excess of 10 C.F.R. Part 100 limits." Duke Power Company (Wm. B. McGuire Nuclear Station, Units 1 and 2), LBP-81-13, 13 NRC 652, 660 (1981), aff'd, ALAB-669, 15 NRC 453, 462-66 (1982). This burden is more akin to the burden of going forward than to the burden of proof. The Board ruled that NECNP had failed to articulate a credible scenario at Seabrook that would satisfy the three aforementioned requirements as set forth by the Commission in CLI-80-16, supra, and necessarily followed by the Appeal Board in McGuire, supra, and by the licensing board in Perry, supra. In

---

3/ NECNP simply asserts that it has presented a credible scenario (NECNP Objections, p. 14).

essence, therefore, NECNP with respect to its alternate hydrogen contention is also disagreeing with the prerequisites delineated by the Commission in CLI-80-16 to permit previously forbidden challenges to the Commission's regulations. The Board having determined that NECNP had failed to meet those prerequisites, NECNP has in its objections focused upon the issue of "burden," rather than upon the Board's finding of the lack of credibility in the contention of NECNP's hydrogen scenario. NECNP has placed nothing new before this Board and reconsideration of this ruling is not warranted.

I.S. Loose Parts Detection System

In this contention, NECNP has sought to require of the Applicants a loose parts detection system based on Reg. Guide 1.133. Although the Staff did not object to this contention, the Applicant did on the ground that the Commission's regulations do not require such a system.

The issue is essentially moot. The Applicants have committed in FSAR Paragraph 4.4.6.4 to purchase and install a loose parts monitoring system pursuant to the recommendations of Reg. Guide 1.133 Revision 1.[4/]

I.T. Steam Generators

This contention concerns the new Model F Westinghouse steam generator designed for Seabrook. In this contention, NECNP has sought "to litigate issues clearly supported by the history of Westinghouse steam generators . . ." (NECNP Objections, p. 17). The

---

4/ See "Applicants' Response To 'NECNP Objections To Prehearing Conference Memorandum And Order And Motion To Certify Objections To The Appeal Board,' p. 40 n.23 (October 26, 1982).

Staff originally objected inasmuch as none of the examples mentioned in the stated basis for the contention incorporated the Model F Westinghouse steam generator which will be used at Seabrook. The Staff thus objected to the contention as being vague, speculative and lacking in sufficient specificity to litigate. The Board denied admissibility of the contention for similar reasons. In its Objections to the Prehearing Conference Order, NECNP now argues that "if the Board's ruling were to stand, it will be impossible for intervenors to litigate the safety of steam generators, and that exclusion will undoubtedly spread to other equipment as manufacturers simply make minor alterations and change model numbers" (NECNP Objections, p. 17). NECNP has failed to allege or compare the new Model F Westinghouse steam generator with any prior steam generators where there have been degradation problems. NECNP had an obligation to find out something regarding the new Model F before it sought to litigate the capability of that model to resist degradation. As it stands, NECNP is seeking to litigate the issue because the steam generator was built by Westinghouse. The contention remains speculative, vague, and improper and was properly denied by the Board.

I.V. In-Service Inspection of Steam Generator Tubes

In this proposed contention, NECNP asserts that the Applicant has not instituted an adequate program for in-service inspection of steam generator tubes. NECNP acknowledges that the method selected by the Applicants for compliance with GDC 14, 15, 31 and 32 and Appendix A to 10 C.F.R. Part 50 is compliance with Reg. Guide 1.83.

In its initial response to this contention, the Staff pointed out that while it is true that compliance with a Regulatory Guide is not mandatory,[5/] Applicants have stated in the FSAR that the inspection program will be performed in accordance with the Reg. Guide. The Staff opposed the contention inasmuch as NECNP had made no allegation or showing that Applicants, by complying with the Reg. Guide, would not meet the applicable GDC. The contention thereby lacks basis.

In its June 17, 1982 response, NECNP did not explain how, in its view, compliance with the Reg. Guide failed to meet the criteria of the relevant GDC, but alleged, as a sole basis for the Seabrook contention, that:

> . . . the long history of problems with steam generators and the recent accident at Ginna show a need for improved in-service inspection of steam generator tubes beyond the requirement of Reg. Guide 1.83. The Ginna inspection program, which was in compliance with Reg. Guide 1.83, failed to reveal the damage which caused the accident a short time after an inspection.

NECNP has still failed to explain with specificity why GDC 14, 15, 31, and 32 have not been met. The above two sentences, the sole basis proffered by NECNP for this contention, are mere conclusionary statements. This is not to say that a more detailed reference to steam generator tube problems at Ginna could not form a satisfactory basis for a contention. But NECNP has taken a fatal shortcut. It has neither referenced the Seabrook inspection program nor compared it with the Ginna program. It has not even alleged that the Ginna accident was caused by a

---

5/ Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-73 (1977).

deficiency in the inspection procedures called for by the Reg. Guide, or actually used at Ginna. NECNP appears, in fact, not to have reviewed the inspection program or the use of the Reg. Guide at Ginna. The only thread this contention hangs on is the naked assertion that something happened at Ginna, and there Reg. Guide 1.83 was used. As to the broad allegation that "the bases for this contention remains . . . the long history of problems with steam generators" (NECNP June 17 Reply, p. 30), no additional information has been supplied by NECNP and this summary conclusory statement fails to satisfy the basis requirements of 2.714. Thus, the issue is not the treatment by this Board of Reg. Guides, but the failure of NECNP to satisfy the basis requirements of 2.714. Reconsideration of this contention is not warranted.

I.W. Seismic Qualification Of Electrical Equipment

In this proposed contention NECNP alleged that the Applicant has not demonstrated that it has seismically qualified electrical equipment at Seabrook in accordance with Reg. Guide 1.100, Rev. 1 nor has Applicant developed an adequate alternative. The Staff originally stated that it would not object to such a contention provided NECNP specify which electrical equipment (or categories of such equipment) it believes is not qualified. Rather than specifying such equipment, NECNP has made a number of legal arguments about the subject matter of this contention, such as:

1. A 1977 Westinghouse topical report has been under review by the NRC and has been revised three times; and

2. Seismic qualification is an unresolved safety issue.

However, NECNP has not provided specificity by amending its contention.

The Licensing Board rejected this contention, not on the grounds of lack of specificity, but on the ground that since the Staff supplementary report on this topic is not yet out, the contention as framed is inadmissible under Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687 (August 19, 1982). NECNP now objects to this ruling, based on Catawba, supra. In Catawba, the Appeal Board concluded that a contention should be denied "where the nonexistence of relevant documents made it impossible for a sufficiently specific contention to have been asserted at an earlier date." (ALAB-687, Slip Op. at 17) (emphasis added). Whether the Licensing Board is incorrect regarding its interpretation of Catawba as urged by NECNP, and the Staff does not read Catawba as the Board does, the Board's denial of the contention on the basis of Catawba is more to NECNP's advantage, than the denial of the contention on the ground of lack of specificity as urged by the Staff. NECNP should have before it sufficient information to list specific equipment or even categories of equipment, and so amend its contention, as required by this Licensing Board in accordance with 10 C.F.R. § 2.714. NECNP did not so amend its contention and the Licensing Board could have simply denied the contention. However, the Board has denied the contention based on the unavailability of a not-yet-issued Staff report on the subject. This gives NECNP the opportunity to satisfy the Catawba requirements in the future to the effect that it was impossible to draft a contention prior to the issuance of the report. Thus, NECNP is in a better position than it would have been had the Board simply applied the specificity requirements of 10 C.F.R. § 2.714 as urged by the Staff. If

the Board does grant NECNP's request to rule now on the contention, the Staff's position is that the contention should be denied for lack of specificity.

A.II. NECNP's Quality Assurance Contentions

NECNP originally sought to litigate seven Quality Assurance ("QA") and Quality Control ("QC") contnetions. The Board admitted the following contentions: (1) NECNP Contention II.B.1 concerning "Quality Assurance for Operations"; (2) NECNP Contention II.B.3 concerning the independence of the "Quality Assurance Organization"; and (3) NECNP Contention II.B.5 concerning minimum staffing levels of the QA program. The Board rejected four proposed QA/QC contentions which will be discussed seriatim below.

II.A.1. Breadth of QA Program

In this Contention, NECNP sought to litigate the scope of the previously approved Seabrook Quality Assurance (QA) program. NECNP contended that the Seabrook QA program has been too narrow in scope, applying only to items considered "safety-related" rather than to the category of "important to safety" which NECNP contends is broader. The Licensing Board presiding over the construction permit application found that Applicant's QA program met NRC requirements. LBP-76-26, 3 NRC 857 at 866-67 (June 29, 1976). This Board noted this finding in its Prehearing Conference Order (Slip Op. p. 74). Moreover, NECNP was a party to the CP proceeding, and in the absence of either "significant supervening developments having a possible material bearing upon previously adjudicated issues" or "the presence of some unusual factors having special public interest implications," NECNP is estopped from

raising the issue in the subsequent operating license proceeding. Alabama Power Co. (Farley Nuclear Plant, Units 1 and 2), ALAB-122, 7 AEC 210, 216 (1974); remanded on other grounds CLI-74-12, 7 AEC 203 (1974).

Moreover, this Board noted in its ruling the recent decision in Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-674, 15 NRC 1101, 1102-03 (1982) where the Appeal Board concluded:

> A licensing board for an operating license proceeding, such as the one involved here, is limited to resolving matters that are raised therein as legitimate contentions by the parties or by the board sua sponte. 10 C.F.R. 2.760a; Consolidated Edison Co. of New York (Indian Point, Units 1, 2, & 3), ALAB-319, 3 NRC 188, 190 (1976). Pursuant to that mandate, a board can authorize or refuse to authorize the issuance of an operating license. It does not, however have general jurisdiction over the already authorized ongoing construction of the plant for which an operating license is pending; and it cannot suspend such a previously issued permit (footnotes omitted (emphasis added)).

NECNP in its objections to the Special Prehearing Conference Order failed to address the relevant precedent of the Farley and Midland decisions above. While NECNP vaguely refers to changes in QA requirements, it has not even addressed the question of whether those changes meet the threshold for reopening the matter delineated by the Commission and Appeal Board. Moreover, NECNP has given insufficient specificity or examples as to those matters which it has alleged have been changed, so no one else can do NECNP's job of judging whether the Farley criteria have been satisfied. The Board's ruling should not be disturbed.

II.A.2. Quality Assurance-Design and Construction

In this proffered contention, NECNP alleged that the Applicant has failed to meet the requirements of 10 C.F.R. Part 50 Appendix B with respect to its Quality Assurance ("QA") and Quality Control ("QC") program at Seabrook. NECNP continues in its allegations, and has alleged that a complete audit of all design and QA documentation, a reinspection (although we are not told of what), and an appropriate engineering analysis (again, we are not told of what, but presumably of everything) is required.

Given this broad brush and unspecific approach of NECNP, the Staff opposed the contention as framed. The Staff, however, suggested a rewording of this contention[6/] which NECNP would not accept.[7/]

There are, in essence, two issues relating to this contention which should be commented upon in light of the motion for reconsideration. The first focuses upon the thirteen examples of either I&E citations or Applicant reports pursuant to 10 C.F.R. § 50.55(e) which NECNP has listed as bases for its contention. The Staff's position with respect to twelve of the thirteen bases (all but item 7) is that so long as the contention as framed is limited to those specific areas, the Staff would not object to this contention. Such a contention would put the Board and the parties on adequate notice of the scope of the contention. If newly

---

6/ See May 19, 1982 Staff Response, p. 20.

7/ See NECNP Reply, p. 34.

discovered evidence indicated that these specific areas need be expanded, 10 C.F.R. § 2.714 clearly provides a procedure to do so.

The second point that need be examined, and which highlights the incorrectness of NECNP's position in this regard, is that not only does NECNP apparently insist upon a virtually unbounded QA/QC contention, but the contention is limitless as to the extent it can examine, and thus reopen, QA design issues. However, in its Objections to the Prehearing Conference Order, NECNP seems to really be focusing upon only two categories of design issues; viz:

(1) QA/QC design issues which were not within the scope of the prior CP proceeding.

(2) Changes in the design of the plant that have evolved since the CP proceeding.

Unfortunately, the contention NECNP is now pressing does not appear to be so limited. A close examination of this in light of the proffered contention is that this issue is more theoretical than real, in that only one of the proposed fourteen categories, category 7 involves issues relating to the design of the QC program. And in this regard, NECNP has not stated whether those reports relate to previously approved or more recent design changes. Thus, so long as NECNP insists that its QA/QC contention be virtually unbounded the contention as drafted would remain inadmissible.

At the Special Prehearing Conference, NECNP appeared to limit the scope of this contention to the thirteen specific areas delineated in its basis, together with the clarification, that the "design" issues it was really seeking to litigate were heretofore unreviewed design changes. See Tr. 450-51. With such limitations and subject to that clarification, the Staff's position was (Tr. 451) and remains that such a contention

would be admissible.[8/] However, NECNP does not appear to have re-asserted this offer in its objections.

II.B.2. Quality Assurance for Operations

With respect to this contention, NECNP failed to follow the Board's clear statements to counsel for petitioners that it would not rewrite contentions. For example, the Chairman stated:

> JUDGE HOYT: Let me follow through on one thing you brough[t] up . . . That is, this particular Board has no intention of rewriting Intervenors' contentions. You will stand and fall on your own wording.
>
> With that in mind, let me suggest to you, Ms. Shotwell, that we get your contention in your words, the way you want it because you are either going to get in . . . [or] out of this based upon that" (Tr. 299).

The Chairman also stated:

> JUDGE HOYT: Perhaps your contention with the specificity that Mr. Lessy has suggested to you, gives us a copy of it after lunch. If that is what you want to have your case stand on. I am not going to reword your contention for you. You will submit it to us. We will vote it up or down on this Board, based upon what you give us.

---

8/ The transcript reference is:

> JUDGE HOYT: Then you would be willing to accept that Contention, Mr. Lessy, if it read after Appendix B with respect to either the design . . . [or] construction of the Seabrook Plant? Does that make any difference to you?
>
> MR. LESSY: Yes, that would be acceptable. (Tr. 451).

> In the present form we do not feel that we want to commit ourselves to it but I would strongly urge that you make the additions . . . . (Tr. 302).

Similarly, the Board stated:

> JUDGE HOYT: . . . As I indicate to you, we want your wording of your contention because when we memoralize this contention in our order, it will be stated in your words. We are not going to reword any contention of any intervenor (Tr. 304).

With respect to this contention, NECNP responded to arguments that the contention lacked specificity in a pleading, but failed to follow the Board's direction to amend the contention. Having failed to follow the Board's instruction, the contention was rejected.

In this contention, NECNP alleged:

> The Quality Assurance Program for Operations extends only to matters considered to be "safety-related," and not to all structures, systems, and components important to safety.

In its response of May 19, 1982, the Staff objected to this contention as it failed to meet the basis and specificity requirements of 10 C.F.R. § 2.714. The basis, which was only one sentence, was inadequate, in the Staff's analysis, because we were not specifically advised of the alleged deficiencies of the Seabrook QA program for operations in light of GDC 1, or other regulatory requirements. While NECNP alleged that a comparison could be made between the Seabrook QA program and GDC 1, NECNP in its original contention failed to inform the parties or the Board as to the alleged results of that comparison.

When NECNP filed its reply on June 17, 1982, it gave in its argument "several examples of this discrepancy including Applicant's failure to perform QA for in-care instrumentation, reactor pump coolant motors, reactor coolant pump power cables, and radioactive waste system pumps, valves, and storage tanks" (NECNP Response, p. 36). However, NECNP refused to limit this contention to these items, and appeared to return to its original contention. It stated:

> We provide sufficient specificity by establishing that the classification system is deficient ("Response," p. 37).

By voluntarily refusing to amend its contention, NECNP ran afoul of the Board's admonition that it would rule only upon the formal language as submitted. While the Staff may not have objected to a specific contention that enumerated the specific QA deficiencies, NECNP elected to press its position that such specificity was not required. Thus, the contention was denied and having made such a choice, the Staff cannot agree with NECNP's charge that this represents "an excellent example of the Board's excessive rigidity and arbitrary treatment of intervenor contentions" (NECNP Objections, p. 26). The Staff continues to object to the contention as submitted.

NECNP-III. Emergency Planning

In its Supplemental Petition to Intervene dated April 21, 1982, NECNP submitted a single emergency planning contention with 16 subparts

identified under "Specification and Basis." NECNP later agreed to have the 16 specifications treated as separate contentions. The Staff responded to these 16 contentions in its July 1 Response (at pp. 27-30). Subsequently, NECNP filed Supplemental Emergency Planning Contentions on July 23. In this document, NECNP merged its Emergency Planning ("EP") Contentions 1 and 2, leaving 15 contentions before the Board. In its Order, the Board applied ALAB-687 and rejected all of NECNP's contentions until additional emergency planning documents are produced. Board Order at p. 82. In its Motion for Reconsideration, NECNP asserts that its contentions are ripe for a ruling on their admissibility now. The Staff has no objection to the Board reconsidering its decision to defer ruling on NECNP's EP contentions. If the Board does determine not to defer a ruling, the Staff takes the following positions with respect to each of NECNP's 15 EP contentions:

EP 1

EP 1 challenges Applicants' emergency classification and action level scheme. The Staff does not object to the admissibility of this contention. The contention can be admitted now without awaiting the receipt of additional documents. However, the Staff does believe a comment about the role of NUREG-0654 is appropriate. In 1(f), NECNP asserts that the emergency action levels, for a stated reason, violate the emergency planning criteria of NUREG-0654. The Staff recognizes that

the planning standards of NUREG-0654 closely track the provisions of 10 C.F.R. § 50.47(b). However, it should be clearly understood that NUREG-0654 does not possess "the legally binding mantle of a regulation." Metropolitan Edison Company (Three Mile Island Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1460 (1981); aff'd, ALAB-698, 16 NRC ___ (October 22, 1982) (slip op. at 13-15). The planning standards of NUREG-0654 constitute guidance, but as is the case with Reg. Guides, parties may attempt to show that the Commission's regulations can be satisfied without meeting provisions of NUREG-0654 or, conversely, that reliance upon NUREG-0654 is insufficient to satisfy the regulations. Ibid. At all events, it is the regulations that must be met, not the provisions of NUREG-0654.

EP 2

EP 2 deals with simultaneous emergencies at both Seabrook units or the effect of an emergency at one unit on the safety of the other. The Staff does not object to the admissibility of this contention, now, without awaiting the receipt of additional documents.

EP 3

This contention deals with the training of unit shift supervisors. Applicants argue in their filing of August 2, 1982 (at p. 4) that this contention should be excluded "because the training requirements of 10 C.F.R. Part 50, Appendix E, § F 'are part of the operational inspection process and are not required for any initial licensing decision.' 10 C.F.R. § 50.47(a)(2), as amended through 47 Fed. Reg.

30,232 (July 13, 1982)." The Staff disagrees with the Applicants. Section 50.47(a)(2), insofar as is here relevant, states:

> Emergency preparedness exercises (required by paragraph (b)(14) of this section and Appendix E, Section F of this part) are part of the operational inspection process and are not required for any initial licensing decision.

This provision means emergency preparedness exercises are not required for an initial licensing decision; we do not read the Section as prohibiting an intervenor from raising an otherwise valid contention that various training requirements grounded in Section F of Appendix E are not being met. As the Staff finds EP 3 is otherwise valid, it does not object to the admissibility of the contention.

EP 4

EP 4 is similar to contentions raised by Massachusetts, New Hampshire, and CCCNH, asserting that the EPZ boundaries selected by Applicants are improper. The Staff opposes this contention for the same reasons it opposed the contentions raised by the other three parties. See Staff Response to Massachusetts dated May 19, 1982, pp. 23-24; Staff Response to New Hampshire dated April 21, 1982, pp. 21-22; and Staff Response to CCCNH dated July 1, 1982, pp. 6-7. NECNP provides nine pages of support for this contention. NECNP Filing of July 23, 1982, pp. 10-18. To summarize NECNP's argument, the Intervenor takes the position that Applicants have not considered certain factors in their establishment of the EPZ boundaries and that until these factors are considered, NECNP need not identify inadequacies in the chosen boundaries themselves. The Staff submits that more is required from an intervenor

on this score. The regulations establish a generic, "approximate" figure for the EPZ boundaries. The figure in the regulations is not sacrosanct; an intervenor may assert that, for the reasons listed in 10 C.F.R. § 50.47(c)(2), the specific boundaries for any facility should be different. But that intervenor must then specifically allege why the approximate EPZ boundaries are inadequate in the given case. NECNP has resolutely refused to identify the inadequacies in the designated EPZ boundaries for Seabrook; it has neither identified more appropriate boundaries nor indicated why the current boundaries will not do. The contention should, therefore, be rejected as lacking basis.

EP 5

This contention asserts that Applicants have not adequately taken into account beyond design basis accidents in establishment of the EPZ or in the design, establishment, and evaluation of local emergency response capabilities. This contention is unacceptable largely for the same reasons as EP 4. If anything, EP 5 is even more infirm; in EP 4, NECNP at least hints at factors specific to Seabrook. In EP 5, NECNP alleges that a generic threat (beyond design basis accidents) will have drastic effects on local response capabilities and should have an effect on the EPZ boundary. What is missing from this contention is any reference to the Seabrook EPZ or local response capabilities. In terms of the EPZ boundary, there seems to be no (and NECNP points to no) reason why beyond design basis accidents should affect Seabrook differently than other plants. Inasmuch as NECNP concedes such accidents were considered in developing the generic EPZ boundaries, NECNP must explain why

specifically the Seabrook EPZ is now inadequate. NECNP has offered no such explanation.

As to the alleged inadequacy in the evaluation of local response capability, NECNP again eschews its responsibility to allege any specific inadequacies in Applicants' planning. If NECNP wishes to assert that the consideration of local planning is inadequate, it must describe the inadequacies it wishes to litigate. The contention is bereft of any consideration of the local response capabilities or how Applicants assertedly miscalculated such capabilities. This contention lacks any basis and should be rejected.

EP 6

In this contention, NECNP asserts that Applicants have failed to provide off-site plans of state and local governments. However, NECNP concedes that once plans are provided, this contention will become obsolete (NECNP Supplemental Filing on Emergency Planning Contentions, p. 22). The Staff does not oppose a contention addressing the failure to develop off-site plans. It does, however, submit that such a contention will become moot when plans are developed.

The Intervenor also asserts that Applicants have not demonstrated how they will coordinate with and assure necessary action by state and local governments in the event of an emergency. As NECNP points out on Page 22 of its July 23 filing on emergency planning contentions, "[a]rguments that particulars of the plans of local arrangements are inadequate are premature when the plans have not been provided." The Staff contends that the manner in which Applicants will coordinate with local and state governments is a matter that will be covered in off-site plans and that any assertion of inadequacies in such coordination should await the

preparation of off-site plans. The Staff therefore objects to that portion of the contention concerned with Applicants' relationship with local and state governments.

EP 7

In this contention, NECNP asserts that there is no indication that process monitors comply with GDC 13, 19, or 64, or that they are environmentally qualified as required by GDC 4. As a basis, NECNP states that Applicants have admitted to "addressing" Reg. Guide 1.97, not meeting that Reg. Guide. So long as it is clear that it is the regulations and not regulatory guides that must ultimately be satisfied, the Staff does not object to the admissibility of the contention.

EP 8

The Staff is uncertain as to what NECNP is asserting in this contention. If NECNP wishes to litigate specific inadequacies in Applicants' monitoring program, it must identify those alleged inadequacies and provide a basis for the assertion that more is required. NECNP has not done so. However, the Staff believes that a fair reading of EP 8 reveals that NECNP's real contention is that an automated, computerized monitoring system is required at all nuclear facilities. The Staff is unaware of any such regulatory requirement, and NECNP has not provided the regulatory basis for imposing such a requirement. In the absence of allegations of specific inadequacies with the Seabrook monitoring program, the contention lacks specificity and basis; in its attempt to impose a non-existent regulatory requirement upon Seabrook, it lacks basis. The contention should be denied.

EP 9

This contention deals with two separate issues: a dose assessment model and a backup power source for the computer used for making dose assessments. The Staff in its filing of July 1, 1982 (at p. 29) stated that the first two sentences of the contention (dealing with the dose assessment model) appeared acceptable but that the third sentence (dealing with backup power source) lacked basis. On further examination, the Staff finds the first part of the contention relating to dose assessment models, if meant to stand by itself, is fatally flawed. The contention provides NECNP's interpretation of the requirements for dose assessment models, but it does not indicate how Applicants' model fails to measure up. Indeed, it is unclear whether NECNP has any complaint about Applicants' dose assessment model at all; it may well be that NECNP directed this contention solely at the backup power source. As for the allegation that a backup power source is necessary for the computer making dose assessments, the Staff objects to this for the same reason it objected to EP 8. Again, instead of examining the Seabrook plan and alleging that a particular aspect of it is inadequate, NECNP wishes to impose a generic requirement of its own making on the Seabrook facility. We don't know from this contention what measures in this area Applicants plan to take to deal with a power failure; it is these measures that are the proper subject for litigation. Since NECNP is seeking to impose a regulatory requirement (that computers for making dose assessments be hooked up to a backup power source) that does not exist, this contention must be rejected for lack of basis.

EP 10

In this contention, NECNP addresses notification procedures. Again, NECNP has given a lengthy summation of what it believes is required in this area. What it has omitted is any discussion of what Applicants have provided for in their plans and why these provisions are inadequate. We are told that Applicants do not meet NECNP's interpretation of 10 C.F.R. § 50.42(b)(5), but we are never told how or why. Without addressing NECNP's interpretation of the Regulation, the Staff submits NECNP has failed to provide the requisite specificity and basis for this contention.

EP 11

This contention alleges that Applicants have failed to demonstrate the existence of off-site emergency plans with adequate sheltering provisions. This contention is similar to EP 6; the Staff does not object to its admissibility.

EP 12

This contention challenges the evacuation time estimates provided by the Applicants. The Staff does not object to the admissibility of this contention.

EP 13

This contention asserts inadequacies in Applicant's preliminary evacuation time estimates. The Staff does not necessarily agree with NECNP that worst case estimates were not used, but it does not object to the admissibility of the contention.

EP 14

In this contention, NECNP asserts that Applicants have not demonstrated that their plan, coupled with local plans (not yet produced), will protect the public from unacceptable radiation doses. Nothing in 10 C.F.R. § 50.47 or any other NRC regulation points to any radiation exposure level against which emergency plans are to be judged. Further, NECNP has not pointed to any specific inadequacies in the plans (nor, in the case of local plans, could it at this time). Thus the contention fails both to set forth any regulatory requirement which has not been met, or any specific way in which a regulation is not met. The contention must be rejected.

EP 15

In this contention, NECNP asserts that Applicants must develop baseline data on local health conditions in order to determine immediate and long-term health effects of radiation exposure. Again, NECNP is seeking to impose an additional requirement on all nuclear power plants without making any specific references to the Seabrook facility. The contention lacks basis and should be rejected.

IV. Build-up of Biological Organisms At Seabrook Cooling Tunnels

In this proffered contention, NECNP alleged that the cooling system for Seabrook may not function due to a potential build-up of biological

organisms. NECNP appears to recognize that the cooling system for Seabrook was previously litigated at the CP stage of this proceeding. The Board rejected this contention on essentially two grounds:

> (1) That the assumption in the contention that the cooling tunnels use a "system essential to safety" was factually incorrect at Seabrook, in that the cooling tunnels are not the ultimate heat sink for Seabrook (Slip Op. p. 83) and
>
> (2) The issue was previously litigated at the CP stage.

NECNP argues that the Board went impermissibly to the merits of its contention. The Staff does not agree. The Board pointed out that the contention as advanced by NECNP was based upon a basic factual misunderstanding as to what the ultimate heat sink is at Seabrook. Moreover, the Board noted that "[a] special cooling tower was built [at Seabrook] for this purpose. The water that is used to cool during an accident sequence may come from the Atlantic Ocean but it is not necessary that it come from the ocean" (Slip Op. p. 83). Certainly, the Licensing Board is not precluded from using its knowledge of the facility (and common sense) in evaluating whether a petitioner has satisfied the basis requirements of 10 C.F.R. § 2.714. In addition, the Commission has determined that OL proceedings should not be utilized to rehash issues ventilated and resolved at the construction permit stage. Alamaba Power Company (Joseph M. Farley Nuclear Plant, Units 1 & 2), CLI-74-12, 7 AEC 203 (1974).

Finally, NECNP contends that the "Board's position on this issue is strongly inconsistent with respect to SAPL and NECNP "(NECNP Objections, p. 32), in that the Board denied SAPL's request to relitigate this issue

because the Applicants had not amended the present design of its cooling system, but is considering preliminary approval for such a change before E.P.A. (See Slip Op. at 93). The Staff does not agree with NECNP that these rulings are inconsistent. On the one hand, the SAPL proposed contention was denied as premature because the application has not been amended at the NRC, and the Staff is not aware that a decision has been made as to whether to pursue this matter. On the other hand, NECNP's contention was denied because it was posited on incorrect information, and because NECNP failed to address the role of the prior litigation on this question, as well as the Commission's precedent governing relitigation of such matters If, of course, the application is amended before the NRC in the manner previously described, both SAPL and NECNP would have an opportunity to pursue this matter further, in accordance with the provisions of 10 C.F.R. § 2.714.

V. Table S-3

In this contention, NECNP has sought to relitigate the environmental cost-benefit in light of a relatively recent decision by the U.S. Court of Appeals for the D.C. Circuit that questioned the accuracy of the Commission's S-3 Table, set forth in 10 C.F.R. § 51.20(e). See Natural Resources Defense Council v. NRC., ___ F.2d ___, No. 74-1586 (D.C. Cir. April 27, 1982). As NECNP notes, the Court of Appeals has stayed its mandate, and a petition for certiorari has been filed by the Department of Justice before the United States Supreme Court. In addition, the Commission is still expected to issue a Statement of Policy in the near future that will address the effect of this decision and its aftermath

upon ongoing licensing proceedings, thereby giving direction to its Licensing Boards regarding this matter. Therefore, the Staff believes the prudent course is for this Board to defer finally ruling upon the admissibility of this contention pending issuance of the Commission's Statement. Since we are still in the early phases of this proceeding, this procedure should work no harm against NECNP. If the Commission's Policy Statement does permit relitigation of the NEPA cost/benefit analysis, the Staff will endeavor to cooperate with NECNP regarding any legitimate discovery opportunities lost as a result of this deferral.

B. NECNP'S Motion To Certify Objections To The Appeal Board

At the end of the introduction to its objections, NECNP, without addressing either the relevant precedent or the applicable regulations, makes the virtually naked statement that any denied objections "are appropriate for certification to the Appeal Board" (NECNP Objections, p. 2). The Staff does not agree.

The Commission's Rules of Practice permit an appeal by a petitioner for leave to intervene where the petition has been wholly denied. See 10 C.F.R. § 2.714(a); 10 C.F.R. § 2.730(b); Public Service Company of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977). The threshold of circumstances for either a licensing board certifying questions to the Appeal Board or of the Appeal Board directing certification is very high indeed, particularly in the case of partially rejected contentions. Generally, discretionary interlocutory review is undertaken by the Appeal Board only where the ruling below either: (1) threatened the party adversely with immediate and serious irreparable

impact which could not be alleviated by a later appeal; or (2) affected the basic structure of the proceeding in a pervasive or unusual manner.[9/] The controlling regulation, moreover, provides that the matter presented must be one where a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense. 10 C.F.R. § 2.730(f). The gravity of the type of issue contemplated for certification is embodied in the further holdings, though not requirements for certification, that the ruling should be one which is reviewable by its nature, "now or not at all." Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 413 (1976); Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-639, 13 NRC 469, 473 (1981). For this reason, issues relating to the admissibility of contentions, except in the case of a complete denial of an intervention petition, rarely meet these requirements. See Project Management Corp. and Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406 (1976); id., ALAB-330, 3 NRC 613 (1976), rev'd in part on other grounds, CLI-76-13, 4 NRC 67 1976; Public Service Company of Indiana, Inc. (Marble Hill Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20, 22-23 (1976).

The significance and urgency of the questions presented in NECNP's request fall well below the aforementioned criteria. The availability of appellate review of initial decisions of licensing boards (10 C.F.R. § 2.762) virtually forecloses the arguments that the ruling be "irreparable," not able to be alleviated by a later appeal, and

---

9/ Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station), ALAB-405, 5 NRC 1190, 1192 (1977).

reviewable "now or not at all." Similarly, the denial of certain contentions does not affect the basic structure of the proceeding in a pervasive or unusual manner where numerous other contentions of the same petitioner on the same or related subjects have been admitted.

A review of NECNP's objections indicates more than anything else a rehashing of arguments previously made to the Licensing Board. It also indicates that many times NECNP insisted on litigating a particular contention in instances where objections to the contention would have only caused its resubmittal by NECNP in slightly modified form. As the previous discussion indicates, in addition, NECNP has rejected in a number of instances suggested rewording of certain of its contentions by the Applicant and the Staff. Finally, NECNP has pressed contentions or arguments in support of contentions which it had every reason to believe could not be accepted by the Licensing Board. For these reasons, the Staff concludes that certification to the Appeal Board of the rejected contentions is not warranted.

C. Objections By The State Of New Hampshire In The Form Of A Motion For Reconsideration

NH-2. Systems Interaction

In this contention, New Hampshire essentially asserts that the Applicants must perform a comprehensive analysis of systems interaction. The Staff opposed this contention on the grounds that there is no regulatory requirement that all plants conduct the analysis called for by the State, and the State has not established (or even attempted to establish) that special circumstances exist at Seabrook or that specific

interactions should be examined. "NRC Staff Response to Amended Petition of New Hampshire dated April 21, 1982," p. 13. New Hampshire has not provided any additional material in its Motion for Reconsideration which would cause the Staff to change its position. We do, however, feel bound to make one comment on New Hampshire's most recent filing. In that document (at p. 5), New Hampshire expresses a belief that the Staff (and Applicants) opposed this contention because it was not "formalistically correct." Certainly a contention such as this one without an adequate regulatory basis is "formalistically" improper. But the Staff wishes to make very clear that it did not oppose this contention because it was inartfully phrased. The problem with the contention, as was made evident during the Prehearing Conference (Tr. 54-59), is that there is no regulatory requirement that the analysis sought by New Hampshire be performed. It was incumbent upon New Hampshire to show that a basis for imposing such a requirement could be found in the Commission's regulations. The State failed to make such a showing. Reconsideration should therefore be denied.

NH-5. Liquid Pathway

In this contention, New Hampshire asserted that Applicants have not adequately considered the liquid pathway consequences of a core melt accident. The Staff responded to this in its filing of April 21 (at pp. 15-16). The Board agreed with the Staff that New Hampshire had not provided an adequate basis for its contention in that it did not allege a lack of compliance with the Commission's Interim Policy Statement on Class 9 Accidents nor did it indicate why liquid pathways deserved

special treatment at Seabrook. Board Order, p. 14. In its Motion for Reconsideration, the State complains that its "refiled" contention did, in fact, assert noncompliance with the Commission's Interim Policy Statement. This argument fails for two reasons.

In the first place, the "refiled" contention submitted by New Hampshire on May 24, 1982 was not properly before the Board. The Board had not given the State permission to reword its Contention 5 and indicated at the Prehearing Conference (Tr. 635-36) that it would not consider the rewording. Inasmuch as New Hampshire does not challenge that ruling of the Board, the Staff submits that it is improper for the State to advance its reworded contention in its Motion for Reconsideration.

Second, the bare allegation that Applicants are not in compliance with the Commission's Interim Policy Statement does not a good contention make. New Hampshire did not address the Commission's requirements or attempt to show why the Applicants' treatment of Class 9 accidents failed to measure up. Both the original and reworded contention are without basis; reconsideration should be denied.

NH-6. Environmental Qualification Of Safety Related Equipment

Although its Contention 6 has four parts, the State apparently seeks reconsideration of Part (d). Motion for Reconsideration, pp. 7-8. Accordingly, the Staff will restrict its comments to Part (d). Contention 6(d) asserts that the effects of aging and cumulative radiation on safety-related equipment has not been adequately considered. The Staff twice objected to this contention on the grounds that New

Hampshire has not identified the equipment covered by this contention. See Staff Responses of April 21 (P. 16) and July 1 (pp. 14-15). New Hampshire has still not cured this defect. In its Motion for Reconsideration (at p. 8), the State now invites the Board to "limit the scope of the contention as it sees fit." Quite simply, it is not the Board's job to identify equipment that New Hampshire contends is improperly qualified. This contention has always lacked the requisite specificity; reconsideration is unwarranted.

NH-12. Quality Assurance

In this contention, New Hampshire seeks to litigate the adequacy of the Applicants' quality assurance program. The Staff opposed the contention because New Hampshire failed to specify the quality assurance inadequacies it wished to litigate. Staff Responses of April 21 (p. 18) and July 1 (pp. 15-16). The Board agreed with the Staff's position:

> This Board rejects refiled contention number 12 because it does not advise this Board what QA system NH wishes to litigate for this operating license. It appears to this Board that without detailing information NH is not in fact looking for a mechanism by which to litigate a safety contention but to launch upon an expedition seeking information as to whether such a contention could ever be framed. In light of the vagueness with which this contention is framed, the Board hereby rejects Refiled Contention NH-12.

Board Order, p. 24.

In its Motion for Reconsideration, New Hampshire does not challenge the Board's ruling, but instead points out: "the Board has the discretion to limit the scope of the contention if it desires." Motion at p. 9. A Board is under no obligation to rewrite an intervenor's

contentions to make the contentions acceptable. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1979). This Board, on numerous occasions, made it clear that it would not rewrite contentions. The State had two opportunities to frame a proper contention. It is the State, not the Board, that knows which areas of the Applicants' quality assurance program the State wishes to litigate. The Board correctly rejected the contention; reconsideration should be denied.

NH-14. Reliable Operation Under On-Site Emergency Power

In this contention, New Hampshire identified a concern with the Seabrook diesel generators. As a basis, New Hampshire relied on "generic, unresolved, safety problems aris[ing] from the unreliability of emergency on-site diesel generators." Amended Contentions of May 24, 1982, p. 18. The Staff objected to this contention as lacking basis. In particular, New Hampshire at no point discussed the on-site power system at Seabrook. The State simply made no attempt to tie in the generic problem with the Seabrook facility. In rejecting the contention, the Board stated:

> With the FSAR before it this Intervenor could not frame a contention which specifically identifies in what manner the on-site emergency power failed. With drawings and engineering data in the FSAR, NH still did not lay out in its contention the basis upon which it found the on-site emergency power to be defective. For this reason this Board rejects Refiled Contention NH-14.

Board Order, p. 26.

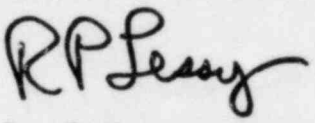
In its Motion for Reconsideration, New Hampshire argues that the parties are on notice that New Hampshire questions the reliability of the

diesel generators and that "[t]his is a narrow issue which is suitable for summary disposition should discovery reveal no factual basis." Motion at p. 9. In essence, New Hampshire seeks permission to engage in a fishing expedition to determine whether or not it has any problems with the Seabrook diesel generators. That is hardly the proper purpose of discovery. If New Hampshire has a specific complaint about the Seabrook diesel generators, it was incumbent upon the State to voice its complaint. As the State did no such thing, the contention was properly rejected. Reconsideration should be denied.

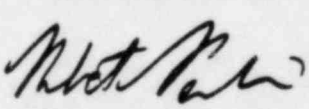
## III. CONCLUSION

For the reasons stated within, the Staff concludes that certification to the Appeal Board of NECNP's objections is not warranted, that the Board adhere to its rulings on all NECNP contentions with the exception of I.O.2 and I.S, and Emergency Planning Contentions 1-4, 7, 11-13, and that the Board review the status of Contention II.B.2 in light of the Staff's discussion. The Staff also concludes that New Hampshire's motion for reconsideration should be denied in its entirety.

Respectfully submitted,



Roy P. Lessy
Deputy Assistant Chief
Hearing Counsel



Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of October, 1982.

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<br>50-444 OL |
| | ) | |
| (Seabrook Station, Units 1 and 2) | ) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF THE NRC STAFF TO 'NECNP OBJECTIONS TO PREHEARING CONFERENCE MEMORANDUM AND ORDER AND MOTION TO CERTIFY OBJECTIONS TO THE APPEAL BOARD' AND 'STATE OF NEW HAMPSHIRE'S OBJECTION AND MOTION FOR RECONSIDERATION...'" 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, through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of October, 1982:

Helen Hoyt, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Lynn Chong
Bill Corkum
Gary McCool
Box 65
Plymouth, NH 03264

E. Tupper Kinder, Esq.
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
State House Annex
Concord, NH 03301

Dr. Emmeth A. Luebke*
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jo Ann Shotwell, Asst. Attorney
Office of the Attorney General
Environmental Protection Division
One Ashburton Place, 19th Floor
Boston, MA 02108

Beverly Hollingworth
7 A Street
Hampton Beach, NH 03842

Nicholas J. Costello
1st Essex District
Whitehall Road
Amesbury, MA 01913

Robert L. Chiesa, Esq.
Wadleigh, Starr, Peters, Dunn & Kohls
95 Market Street
Manchester, NH 03101

Robert A. Backus, Esq.
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

Ms. Patti Jacobson
3 Orange Street
Newburyport, MA 01950

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Wilfred L. Sanders, Esq.
Lawrence M. Edelman, Esq.
Sanders and McDermott
408 Lafayette Road
Hampton, NH 03842

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Atomic Safety and Licensing
Appeal Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jane Doughty
Field Director
Seacoast Anti-Pollution League
5 Market Street
Portsmouth, NH 03801

David R. Lewis*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

William S. Jordan, III, Esq.
Ellyn R. Weiss, Esq.
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006

Phillip Ahrens, Esq.
Assistant Attorney General
State House Station #6
Augusta, ME 04333

Donald L. Herzberger, MD
Hitchcock Hospital
Hanover, NH 03755

Edward J. McDermott, Esq.
Ann C. Thompson, Esq.
Sanders and McDermott
408 Lafayette Road
Hampton, NH 03842

Sen. Robert L. Preston
State of New Hampshire Senate
Concord, NH 03301

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Brian P. Cassidy
Regional Counsel
FEMA, Region 1
John W. McCormack Post Office &
Courthouse
Boston, MA 02109

Alan S. Rosenthal, Esq., Chairman*
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RPLessy

Roy P. Lessy
Deputy Assistant Chief
Hearing Counsel