

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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September 24, 1982

Before the
ATOMIC SAFETY AND LICENSING BOARD

In the matter of:)

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE)
ET AL.)

Docket Nos.: 50-443
and
50-444

(Seabrook Station, Units 1 and 2))

STATE OF NEW HAMPSHIRE'S OBJECTION AND
MOTION FOR RECONSIDERATION
OF ATOMIC SAFETY AND LICENSING BOARD'S
ORDER OF SEPTEMBER 13, 1982

NOW COME the State of New Hampshire and Attorney
General Gregory H. Smith, pursuant to 10 C.F.R. Section 2.730,
and request that the Atomic Safety and Licensing Board
("Board") reconsider portions of its September 13, 1982
Memorandum and Order ("Order").

I. INTRODUCTION

The State of New Hampshire requests the Board to
reconsider its findings and conclusions relative to five of New
Hampshire's Contentions that the Board denied in its September
13, 1982 Order. The Contentions on which New Hampshire

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requests reconsideration are: NH Contentions 2 (Systems Interaction), 5 (Liquid Pathways), 6 (Environmental Qualification of Safety-Related Equipment), 12 (Quality Assurance), and 14 (Reliable Operation Under On-Site Emergency Power). New Hampshire asserts that it is error to deny these Contentions since they raise issues important to public safety, relate to the primary responsibility of the Licensing Board (i.e., to provide adequate assurance that the facility will operate in a manner consistent with public safety), provide adequate notice to the parties of the issues to be litigated, and are necessary to provide public confidence in the Nuclear Regulatory Commission (NRC) proceedings.

II. THE FUNCTION OF CONTENTIONS IN LICENSING BOARD PROCEEDINGS

The Licensing Board is charged, under the Atomic Energy Act, with ensuring that a nuclear facility will be operated without endangering public health and safety. 42 U.S.C. Section 2201, et seq.; see 10 C.F.R. Section 50.40(a); see also Power Reactor Development Corp. v. Electrical Union, 367 U.S. 396 (1961). This responsibility requires that the Board be more than an umpire "merely calling balls and strikes," but that it actively review the issues proposed to be litigated by the parties. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2) ALAB-443, 6 N.R.C. 741, 752 (1977). This review is for the purpose of judging

compliance with the formalities of NRC practice, and to ensure that there is a full and fair hearing on proposed contentions which raise legitimate concerns on compliance with regulatory requirements relating to safe operation of the facility.

In order to accomplish its important function, the Board has been vested with discretionary powers in determining the contentions to be litigated in a licensing proceeding. See 10 C.F.R. Section 2.718(m). It has the discretion not only to consider the contentions phrased by intervenors, but also to limit contentions which, though broadly phrased, may have valid parts. The Board may even form its own contentions, based on the suggestions of intervenors or its own motion. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station (Units 1 and 2), LBP 79-6, 9 N.R.C. 291 (1979)).

Where a contention has been offered that suffers only minor technical deficiencies but which raises a valid issue, it is necessary and proper for the Board to admit the contention, and rephrase or limit it in appropriate fashion. Although the Board, in the present proceedings, has indicated that it would not recast contentions, such a position, if exercised to prevent, based on mere formalism, a valid contention from being admitted, would run afoul of the Board's duties under the Atomic Energy Act. We do not understand that the Board intended to take such an inflexible position.

In summary, where the Board perceives that a valid issue of reasonable scope with adequate basis has been raised, it should admit the contention. If the contention proves to have little merit, the summary disposition procedures will address it. To deny the contention is to grant summary disposition without an opportunity for discovery or an opportunity to be heard.

Finally, the operating license proceeding is a "pleadings" practice which requires that contentions place the parties on adequate notice of the issues to be litigated. Philadelphia Electric Co. (Peach Bottom Atomic Power Stations, Units 2 and 3) ALAB-216, 8 A.E.C. 1, 20-21 (1974). If a contention places the parties on adequate notice, then it should be admitted.

III. THE NEW HAMPSHIRE CONTENTIONS ARE ADMISSIBLE UNDER THE POLICY AND PRACTICE OF THE NRC

A. NH 2, Systems Interaction

The problem of systems interaction, the interaction of safety and non-safety systems which results in the inability of safety systems to respond as designed, was recognized as an important contributing factor to the accident at Three-Mile Island. This issue has been admitted as a contention in at least one proceeding before a licensing board Long Island Lighting Company (Shoreham Nuclear Power Plant), Docket 50-322 (March 15, 1982)). New Hampshire has presented in this proceeding the same language which was accepted in the Shoreham proceeding (see NH Revised Contention 1).

This contention claims that the FSAR has not demonstrated compliance with the requirements of NUREG 0737, I(C)(1) and 45 Fed. Reg. 40101. NUREG 0737, I(C)(1) requires a reevaluation of transients and accidents because the present guidelines did not "address the availability of [certain safety] systems under expected plant conditions nor do they address corrective or alternative actions that should be performed to mitigate the event should these systems or components fail." NUREG 0737, I(C)(1)-2. This requirement is specifically referred to in the basis presented for NH 2. Further, 45 Fed. Reg. 40101 and 40103 require that "events or accident sequences that lead to releases shall include but not be limited to those that can reasonably be expected to occur." While it is admitted that these regulatory requirements are general in scope, nonetheless, they must be complied with and the FSAR does not demonstrate such compliance. Based upon the above requirements, it is clear that the NRC requires that the applicant consider the effect of the interaction of safety and non-safety systems on plant safety. To date, the FSAR and the draft SER omit adequate analysis of this important issue.

Though the applicant and staff may argue that New Hampshire's contention is not formalistically correct, it certainly places the parties on adequate notice of the precise requirements which the State alleges have not been met. The contention should be admitted.

B. NH 5, Liquid Pathway

This contention asserts that failure of the applicant to develop groundwater information regarding the Seabrook area makes the liquid pathway problem a major consideration which must be dealt with by the applicant. Public Service Company of New Hampshire (PSCO) has determined that no detailed liquid pathway analysis is required. This is contrary to the specific requirements of 45 Fed. Reg. 40101, 40102, which the State referred to in its refiled contention set forth below.

5. Liquid Pathway Impact

The Applicant has not satisfied the requirements of 10 C.F.R. Section 51.21 and the requirements of the Commission's Interim Policy Statement issued June 13, 1980, 45 Fed. Reg. 40101, by failing to consider adequately liquid pathway accident impacts and corrective measures.

While the Board states in its denial that "New Hampshire does not state a lack of compliance with Commission's interim policy statement on Class 9 accidents," in fact in its revision the State of New Hampshire did specifically declare in the contention lack of compliance with 45 Fed. Reg. 40101.

The absence of information related to a liquid pathway analysis in the FSAR provides the basis for this contention. This Licensing Board has indicated that the absence of information in the FSAR is an adequate basis for a contention. See Order at 80.

New Hampshire has raised a valid question with regard to compliance with NRC regulations, and certainly, the parties have been placed on notice of the State's concern on an issue appropriately limited in scope. To deny the contention amounts to summary disposition on this issue without the opportunity for discovery or hearing.

C. NH 6, Environmental Qualification of Safety Related Equipment

The Licensing Board has recognized that this issue is extremely important to plant safety (Order at 16). NH 6 has four important parts (see NH6 (a)-(d)). The Licensing Board has admitted as a contention (NECNP I(B)(2)) the issue of time duration over which equipment is qualified. This issue is similar to that which is raised in NH 6(b). New Hampshire believes that with regard to Parts a and c of NH 6, the Licensing Board appropriately requested further specificity which the State will attempt to provide at the earliest possible date. However, the State believes that Part (d) of the contention, relating to the effects of aging and cumulative radiation, is sufficiently specific and should be admitted.

The effect of aging and cumulative radiation is critically important to plant safety. The Licensing Board has admitted a similar contention which is no more specific (NECNP I(B)(2), Order at 39). NH 6(d) places the parties on adequate notice of the issue to be litigated. The Board has simply to limit the contention to that which is proposed in NH 6(d). As

previously pointed out by New Hampshire, NUREG 0737, II(B)(2) places requirements on applicants relating to the fact that "safety equipment may be unduly degraded by the radiation fields during post-accident operations of these systems." NUREG 0737, II(B)(2)-1. Clearly, the Board has discretion to limit the scope of the contention as it sees fit. Since New Hampshire has raised a legitimate issue for litigation and has alleged failure of the applicant to comply with NRC requirements, the contention as to effects of aging and cumulative radiation should be admitted.

D. NH 12, Quality Assurance

New Hampshire admits that the establishment of a quality assurance program is a construction permit proceeding issue. However, execution of such a quality assurance program is uniquely an operating license proceeding issue. The operating license proceeding is concerned with whether a facility is capable of operating as designed to adequately protect the public health and safety. 10 C.F.R. Section 50.40. A fundamental issue in whether the plant has been constructed properly is whether the quality assurance program has been properly executed.

Certainly, the specifics contained in NH 12 and NECNP 2(A)(2) place the Applicant, the Staff, and the Licensing Board on notice of the alleged problems which the intervenors seek to litigate. There can be no dispute that if the

allegations are proven to be symptomatic of a greater problem, then there is serious concern of the ability of the Seabrook facility to operate properly. Although the Licensing Board has objected to the useage of the word "design" within the NECNP 2(A)(2) contention, the Board has the discretion to limit the scope of the contention if it desires. To deny a contention on this issue is to ignore a potentially serious problem and to deny the parties an opportunity for discovery and hearing.

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

By submitting this contention and its basis, including the refiled statement, New Hampshire has identified a concern over the starting reliability of diesel generators. As stated, certainly this contention is sufficient to place the parties on notice of the issue to be litigated. This is a narrow issue which is suitable for summary disposition should discovery reveal no factual basis. As such, the contention should be admitted. Denial of the contention implies an overemphasis on the formalities of NRC pleadings without equal concern for the validity of issues sought to be raised. This appearance of overconcern for formality undermines the public confidence in the NRC proceeding.

F. The Board Should Reconsider its Proposed Discovery and Hearing Schedule

In scheduling the course of discovery and the hearing in Appendix A of its September 13, 1982 Order, the Board recognized the difficulty in setting a rigid schedule, and established only "target dates." Order at 5. While the State is committed to pursuing discovery expeditiously, the projected schedule appears likely to place impossible burdens on the intervenors.

The schedule adopted by the Board provides insufficient time for discovery. Even the schedule proposed by the staff at the July 16, 1982, prehearing conference allowed four months for discovery requests, whereas the Board's schedule permits only three months. The parties should not be required to rush through three short months of discovery without strong justification.

Given that the SER is not to be submitted until November and that the various emergency plans will only be in rudimentary, draft form by the end of the year, discovery on contentions admitted after the filing of these documents will have to extend at least several months into 1983. Ending a forced discovery period months earlier (on December 15, 1982) would, therefore, serve no useful purpose. Additional time for discovery should be provided now, so that the parties can plan accordingly, allowing for a more meaningful period of discovery and a fairer hearing. The proposed date for beginning hearings, June 14, 1983, need not necessarily be affected.

WHEREFORE, the State of New Hampshire respectfully requests that the Licensing Board reconsider its order of September 13, 1982:

- I. Admit NH Contentions 2, 5, 6, 12, and 14 as phrased; or
- II. Admit NH Contentions 2, 5, 6, 12, and 14 with such limitations or rephrasing as the Board believes are necessary for a fair and equitable treatment in light of the purpose of these proceedings; and
- III. Revise its Schedule for the Proceeding to allow at least four months for discovery on the contentions admitted by this Order.
- IV. Such other and further relief as may be just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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CERTIFICATE OF SERVICE

I, E. Tupper Kinder, Esquire, hereby certify that a copy of the foregoing Motion for Reconsideration has been mailed this 24th day of September, 1982, by first class mail, postage prepaid, to:

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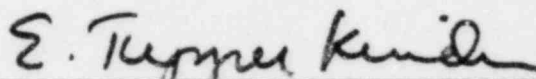
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