September 23, 1982



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NECNP OBJECTIONS TO PREHEARING CONFERENCE MEMORANDUM AND ORDER AND MOTION TO CERTIFY OBJECTIONS TO THE APPEAL BOARD

On September 13, 1982, the Atomic Safety and Licensing Board issued a Memorandum and Order in which it ruled on the contentions offered by the various intervenors in this proceeding. In so doing, it denied a number of contentions filed by the New England Coalition on Nuclear Pollution ("NECNP"). All of those denials are in error. NECNP hereby submits its objections.

We will address below the errors in the Board's ruling with respect to each of the various contentions. Generally, the Board has made the following errors with respect to NECNP's contentions: it has denied contentions on the basis of a factual conclusion despite NECNP's having provided sufficient basis to raise a factual dispute; it has incorrectly interpreted the

regulations; or it has established a factual threshold for litigation that is impossible to meet, and therefore an invalid interpretation of 10 CFR 2.714(b) and a denial of due process. The practical result of the Board's improper rulings will be a disruption of the hearing process, and ultimately an extended delay in the licensing decision since most of these rulings would be summarily overturned on appeal. Accordingly, these objections are appropriate for certification to the Appeal Board. We move that they be so certified.

I.A.1. Environmental Qualification--Electrical Equipment (Memorandum and Order page 34)

The Board has rejected this contention with the terse statement that it is "a challenge to the Regulations and lacks specificity." The Board fails to provide any reasons supporting this conclusion, making it extremely difficult for NECNP to respond to the Board's concerns. The Board may have adopted the objections of the Applicants and Staff, but NECNP has no way of discerning which of those objections are adopted, and how they are interpreted by the Board after months of filings, arguments, and rewording. We are, accordingly, hampered in our response.

NECNP, as stated in its reworded contention, seeks compliance with General Design Criterion 4, which flatly requires that

> Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, including loss of coolant accidents.

NECNP has not attacked GDC 4. We have simply asserted that the Applicants have not complied with it. The Board has cited the Staff's objection that NECNP may not assert TMI-related requirements that go beyond CLI-80-21. Under the reworded contention, this objection is no longer valid. At the request of the Staff and Applicants, we deleted any specific reference to a need for TMI-related measures beyond compliance with CLI-80-21. It is certainly clear that GDC 4 requires compliance with CLI-80-21, and NECNP has made a prima facie case that Applicants did not meet CLI-80-21. On that basis, the contention must be admitted.

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.

The Board has also concluded that this contention lacks specificity. We do not understand what greater specificity the Board could require than that contained in the Applicants' FSAR, which states that all equipment classified as "IE" by the Applicants (with only two exceptions which were qualified to an even lower standard) was qualified to Reg. Guide 1.89, declared by the Commission in CLI-80-21 to be inadequate to

satisfy GDC 4. In fact, the NRC has no list of equipment important to safety. The issue in this contention is not which pieces of equipment are unqualified, but the standard to which all equipment has been qualified. The requisite specificity is provided by Applicants' own statement that safety-related equipment was not qualified to current Commission standards.

We object to the Board's ruling and urge that it be certified to the Appeal Board. The need for certification is particularly great here due to the safety significance of environmental qualification issues as shown by the Sandia tests which prompted the original Petition for Remedial and Emergency Relief and the Commission's decision in CLI-80-21 and by the failure of unqualified equipment in the Three Mile Island accident.

I.A.3. Environmental Qualification for Hydrogen Burns (Memorandum and Order page 37)

In this contention, NECNP asserts that equipment inside the containment should be qualified to withstand the effects of a hydrogen release and burn such as that which occurred at Three Mile Island Unit 2. The Board rejects this contention on the basis that there is no regulatory requirement either for environmental qualification for hydrogen burn, or for consideration of hydrogen releases higher than those specified in 10 CFR 50.44. The Board has succinctly summarized NECNP's argument, and we stand by it. The Board's assessment of this issue is simply incorrect. The language of GDC 4 is in no way

limited to exclude the effects of a hydrogen release. The Board fundamentally misunderstands the concept of environmental qualification, which requires equipment to function in spite of the accident environment. Alleged control of the accident environment may not be relied upon to avoid compliance with the independent requirements of GDC 4, and rule 50.44 is irrelevant to the issue of environmental qualification. By ignoring the need for environmental qualification for hydrogen burn, the Board's ruling violates the principle of defense in depth which is at the heart of nuclear safety regulation.

We object to the denial of this contention and urge that it be certified to the Appeal Board. The Commission recognized in the Sequoyah and McGuire licensing decisions that there is a need to defend against a hydrogen release greater than the 5% metal-water reaction stipulated in 10 CFR 50.44. In light of that recognition, the issue of environmental qualification with respect to hydrogen burn is of vital safety significance and should be addressed by the Appeal Board.

I.E. Reactor Coolant Pump Flywheel Integrity
(Memorandum and Order page 44)

The Board has rejected this contention on the sole ground that there is no basis for the assertion that the reactor coolant pump flywheel should be environmentally qualified because it constitutes equipment important to safety. The Board gave no reason for its conclusion that we had provided

no basis for an allegation that the flywheel is important to safety and therefore governed by GDC 4.

However, before reaching its barren conclusion, the Board did cite the Staff's assertion that it was not aware of any requirement that the flywheel be environmentally qualified. We remain unable to determine why there is no such requirement in light of the language of GDC 4.

GDC 4 requires that all equipment "important to safety" be environmentally qualified. This is a pure question of fact under the regulation. The regulation itself does not establish either an inclusive or exclusive list of the equipment that is to be considered "important to safety." Accordingly, it is left to the parties to litigate the issue. Whether the Applicants or the Staff have included the flywheel on some list of equipment that they think is the universe of items important to safety is irrelevant. NECNP explained in its filing of April 21, 1982, at page 19, that the flywheel is a source of damaging missiles, that it provides inertia to ensure a slow decrease in coolant flow in order to protect against fuel damage if power is lost to the pump motors, and that Reg. Guide 1.14 recognizes that the safety consequences of flywheel failure

> could be significant because of possible damage to the reactor coolant system, the containment or other equipment or systems important to safety.

This information provides far more than a sufficient basis for the factual contention that the flywheel is "important to safety." NECNP is entitled to litigate that factual issue,

which will determine whether or not GDC 4 requires the flywheel to be environmentally qualified. The contention must be admitted in full.

We object to the Board's ruling and urge that it be certified to the Appeal Board. The particular need for certification arises from the Board's gross procedural error in rejecting the contention on factual grounds when the allegations of the contention are more than sufficient to raise a factual dispute. In essence the Board has ruled on the facts, which it may not do at this stage. Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2) ALAB-130, 6 AEC 423, 426 (1973).

I.H. Decay Heat Removal
(Memorandum and Order page 47)

In this contention, NECNP claims that Applicants' heat exchanger capacity is inadequate. The Board has rejected the contention without any statement of reasons, but with a cryptic reference to ALAB-687. The implication is that NECNP should refile this contention after the SER becomes available.

The Board is incorrect. We have stated a valid contention with sufficient specificity and basis, which should have been accepted by the Board. The fact that the Staff has not yet commented on the issue does not affect the admissibility of this contention. We object to the Board's denial and urge the Board to certify this contention to the Appeal Board for resolution of the question whether a contention based on an unresolved safety issue is unripe before the SER is issued.

I.0.1. Emergency Feedwater
(Memorandum and Order page 54)

Here we contend that the emergency feedwater system must meet the single failure criterion in the common discharge header to protect against rupture of high-energy piping in the dischange header and that the Applicants have not adquately protected against passive system failure with respect to the common discharge header. The Board denied the contention "as not having a regulatory basis." However, it failed to explain why it reached that conclusion, although NECNP had explained the specific regulatory basis for the contention in detail in its previous filings. While it apparently relied on the arguments of the Applicants and the Staff, it did nothing more in this decision than restate their assertions that there is no regulatory basis for the contention. Accordingly, we are unable to respond to the Board's denial.

We reassert the arguments made in our filings of April 21, 1982, and June 17, 1982. This is a high-energy system when it is in operation, and in any event the Applicants have failed to consider essential design requirements even if the common discharge header is considered to be a passive system.

I.O.2. Emergency Feedwater
(Memorandum and Order page 56)

In this contention, NECNP asserts that a break in the common discharge header between Valve 65 and Valve 125, coupled with a single failure, would result in a loss of feedwater to all steam generators. The Board cryptically denies the contention for "lack of regulatory basis." Once again, it is difficult to respond to the Board's concerns absent more explicit notice of what they are.

As we have already stated, the regulatory basis for this contention lies in GDC 17, which requires that safety functions must be carried out in the event of a loss of offsite power. The duration of such a loss of power is irrelevant--it must simply be assumed, and the onsite system must be capable of taking over the safety function. The contention also relies on the Applicants' own FSAR, which states that "The system has been designed to provide the required flow following a single active failure coupled with a passive failure in the high or moderate energy piping and a loss of offsite power."

Regulatory basis for this contention also exists in the Staff's Standard Review Plan (SRP), which characterizes the emergency feedwater system as a high energy system, and requires that a break in the emergency feedwater system must be contemplated in the design of the plant. Paragraph 5 of Branch Technical Position 10-1 of the SRP provides that

> When considering a high energy line break, the system should be so arranged as to assure the capability to supply necessary emergency feedwater to the steam generators, despite the postulated rupture of any high energy section of the system, assuming a concurrent single active failure.

The Applicants state that passive failures must only be considered for piping that is high or moderate energy during normal operation, and that the EFS piping does not qualify because it is empty during normal operation. However, the Standard Review Plan defines normal operation as including startup, shutdown and cooling, when the EFS will be filled with water.

NECNP has stated a viable contention supported by basis in the General Design Criteria and the Standard Review Plan. The Board appears to have judged this contention on its merits, which is not permissible under NRC rules of practice. We object to the denial of this contention and urge certification to the Appeal Board.

I.P. Human Engineering
(Memorandum and Order page 57)

The Board has rejected NECNP's contention that the placement of a multipoint core temperature recorder on the back of the control panel constitutes poor human engineering that would detract from the operator's ability to take prompt corrective action. The contention is denied on the ground that "Petitioner has not shown factual or regulatory basis for the existence of a significant safety issue." In denying this contention, the Board simply ignores the prima facie case established by NECNP, and sets an impossible threshold for an acceptable contention.

The Board apparently finds a lack of factual basis for the contention in NECNP's statement at the Prehearing Conference that the exact position of the multipoint recorder is unknown, and implies that NECNP would use the discovery process to seek support for an unsubstantiated contention. To the contrary, the fact that the FSAR states that the recorder is placed on the back of the control panel makes a prima facie case that it is impossible for an operator to read the instrument without leaving the control panel. While discovery might serve to confirm the basis for this contention, it is not required to support the contention at this point.

The Board also cites the Staff's objection that NECNP has not shown that the location of the multipoint recorder is a "significant" problem under NUREG-0737. Few instruments could be more significant than one which records the temperature of the core, signalling the success of core cooling and warning of meltdown temperatures. The placement of this instrument where the operator must leave his or her position to observe changes in core temperature is a serious safety risk which NUREG-0737 was designed to correct. In fact, the placement of any monitoring instrument where it is impossible to see without disruption of the operator's concentration is dangerous. The Board acts capriciously in belittling the significance of this problem.

We object to this denial and urge certification to the Appeal Board.

I.Q. Systems Interaction
(Memorandum and Order page 59)

Here we content that it is not possible to demonstrate compliance with various General Design Criteria because the methodology used to determine the design basis of the plant has been inadequate to determine whether the design basis chosen is the correct one or whether the plant is adequately designed to protect against every accident sequence within the correct design basis. This was acknowledged by the Staff in discussion with the Board to be an unresolved safety issue.

The Board appears to have no difficulties with the substance of this contention and NECNP's arguments concerning its legal foundation. The Board's denial is based solely on the fact that the Staff is now studying the matter, and the relevant analysis will not be available until November 8, 1982. Under Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, August 19, 1982, the Board concludes that the contention is premature and should await further factual information. While we believe the contention to be admissable as stated, we do not object on the premise that we will be able to refile the contention, refined if appropriate, when the SER is issued. It may well be that the Staff's analysis will help to narrow the issues or even alleviate our concerns, and we see no need to burden the Board further at this point.

I.R. Hydrogen Control
(Memorandum and Order page 61)

The Board denied two versions of this contention. The first argues the simple proposition, clearly established by the Three Mile Island accident and later Commission requirements with respect to the Sequoyah and McGuire reactors, that Seabrook is unsafe because the hydrogen control system would protect against the hydrogen produced by a metal-water reaction involving only 1.5% of the fuel cladding. Although the Board's conclusion is contrary to the Atomic Energy Act and the facts, and thus is arbitrary and capricious, it may well be consistent with Commission decisions that bind the Board regardless of their underlying validity. Accordingly, we object to the denial of this contention for the reasons stated in our previous filing and in order to preserve our ability to appeal the Commission decisions on which the Board's ruling is based.

In the second version of this contention, NECNP asserted a credible accident scenario in order to justify litigation of hydrogen control under 10 CFR Part 100, as called for in the Commission's Order in the Three Mile Island Unit 1 restart proceeding. Metropolitan Edison Co. (Three Mile Island, Unit 1), CLI-80-16, 11 NRC 674 (1980). The Board denied the contention on the ground that NECNP had not carried what the Board viewed as its burden of proving that a particular credible accident scenario will result in the production of excessive hydrogen.

The Board has misplaced the burden of proof. Nothing in the Commission's decision places the burden of proving the credibility of a cognizable accident scenario on the intervenor. The accident at Three Mile Island demonstrated that an accident scenario such as that presented by NECNP is credible. Moreover, it demonstrated that the NRC and the nuclear industry have not been able to determine the bounds of credible accidents. Despite the same assurances for TMI Unit 2 as for all other plants, the reactor suffered what had previously been considered to be an "incredible" accident. The true lesson of Three Mile Island is not that a specific accident could occur, but that our technical limitations are such that we are unable to determine with sufficient confidence that severe accident consequences, including massive hydrogen releases beyond the limits of 10 CFR 50.44, are of such low probability that they need not be considered. Accordingly, NECNP has presented a prima facie case that the asserted accident scenario and its hydrogen release consequences are credible. The contention may not be denied out of hand. The Applicants, under established principles, bear the burden of proof, including the burden of demonstrating that the scenario is not credible. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-315, 3 NRC 101, 103 (1976). Only if they can do so, which we doubt, the hydrogen control issue need not be reached under the Commission's Three Mile Island decision.

For these reasons, as well as the more fundamental premise that the limitation on litigation of hydrogen control is itself illegal, we object to the Board's denial of this contention in its alternative form. Due to the safety significance of the hydrogen control issue, and to the Board's gross procedural irregularity in misplacing the burden of proof, we urge that this denial be certified to the Appeal Board.

I.S. Loose Parts Detection System
(Memorandum and Order at page 67)

The Board rejects this contention, which calls for the development of a loose parts detection system, on the ground that there is no such regulatory requirement, and that NECNP must provide more of a basis than failure to comply with a Regulatory Guide.

As the Board is aware, NRC regulations are broadly worded, and the detail which gives them meaning is provided in part by Regulatory Guides containing the Staff's position on their implementation. The fact that the term "loose parts detection system" does not appear in a regulation itself does not mean that such a system may not be required in order to satisfy the regulation. The Board's interpretation of the regulations renders them uselessly general and thus incapable of enforcement.

As provided in the preamble to the Regulatory Guides, an applicant may forego compliance with a Regulatory Guide only by substituting some alternative means of satisfying the

regulation. Here, the Applicants have neither complied nor established an equivalent alternative means of satisfying the regulation. They have therefore failed to meet the cited regulatory requirements.

NECNP disputes the Board's conclusion that we must provide more basis for this contention than the failure to comply with a Regulatory Guide. However, we have in fact provided additional basis, which the Board has ignored. In our April 21 filing, we cited NUREG-0909, which found that loose parts and foreign objects detected inside the steam generators at the Ginna plant may have caused the tube rupture which led to the accident at Ginna. Our contention is therefore based in an actual event which showed the importance of a loose parts detection system. For the Board to require more is a blatant and arbitrary violation of NRC rules or practice, and abridges NECNP's right under the Atomic Energy Act to litigate legitimate safety concerns.

We object to the Board's ruling on this contention. Because of the importance of this safety issue, and of the dispute between NECNP and the Board concerning the role and significance of Regulatory Guides in framing contentions, we urge certification to the Appeal Board.

I.T. Steam Generators
(Memorandum and Order page 68)

The Board has denied NECNP's contention with respect to the dangers of the proposed Westinghouse Model F steam generators on the ground that NECNP has not provided information specific to that particular model of steam generator produced by Westinghouse. The Board has imposed an impossible litigation threshold that denies NECNP a fair opportunity to litigate issues clearly supported by the history of Westinghouse steam generators and that invites industry to avoid review by simply renaming their equipment with new model numbers in order to make it impossible for intervenors to develop a basis for challenging its safety.

We have presented these arguments clearly and at length in our filings of April 21, 1982, and June 17, 1982. The burden is improperly placed here in light of the widespread and consistent history of failure in Westinghouse steam generators. At a minimum, the burden must be on the Applicants to prove that past difficulties will not arise with respect to this model and that this model is unique in some way that will prevent it from succombing to the failings of its predecessors.

If the Board's ruling should 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. This would be particularly tragic and ironic since steam generators were involved in the most serious recent

accident at the Ginna facility, and they appear to be one of the weakest points of the nuclear system.

The purpose of Atomic Energy Act as implemented by 10 CFR Part 2 is not to exclude as many contentions and issues as possible, but to assure a thorough public airing of those issues for which the public has presented a reasonable basis for concern. The Board's ruling violates the Act and the regulations. We object and request reconsideration. In the alternative, we urge certification to the Appeal Board.

I.V. In-Service Inspection of Steam Generator Tubes
(Memorandum and Order page 70)

This contention asserts that the Applicants have not instituted an adequate program of in-service inspection of steam generator tubes. In our filings of April 21, 1982, and June 17, 1982, we presented a factual basis for this contention, in essence that the long history of steam generator failures and the recent steam generator tube failure at Ginna, which involved a release of radiation to the atmosphere, demonstrate that the provisions of Reg. Guide 1.83 are inadequate to protect the public health and safety. The Ginna accident, in particular, was not prevented by a steam generator tube inspection that complied with the Reg. Guide and that occurred shortly before the accident.

The Board denied the contention on the sole ground that the Applicants had voluntarily agreed to comply with the Reg.

Guide. According to the Board, when this occurs an intervenor may not argue that compliance with the Reg. Guide is insufficient to achieve compliance with the underlying GDC.

We object. The Board has treated the Reg. Guide as if it were a binding regulation. It is not. It is simply the Staff's opinion concerning how the regulation could be complied with. We disagree and have provided a factual basis for a contention that the actions recommended by the Staff are not enough. The Board has expressed no concern with the adequacy of that basis or the specificity of the contention. We are entitled to litigate the issue.

It is particularly ironic that the Board should transmute a Regulatory Guide into a regulation after having required NECNP to reword many, if not most, of its contentions to assure that NECNP has not treated them in the same manner. NECNP agrees with the Board that a Reg. Guide is not a regulation. As the Board has stated, the Reg. Guide is not mandatory for the Applicants. Neither is mandatory for NECNP. If the Applicants have the option of taking a different approach, NECNP has the option of arguing that the Reg. Guide approach is not enough. See Gulf State Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977).

This ruling involves a fundamental question of the treatment of Regulatory Guides in Commission proceedings. As such, it is particularly appropriate for certification to the Appeal Board.

I.W. Seismic Qualification of Electrical Equipment
(Memorandum and Order page 71)

The Board has denied this contention on the ground that the Staff has not completed a supplementary report on the unresolved safety issue. The Board relies upon ALAB-687.

In our view, the Board misreads ALAB-687. The question is not whether the Staff has completed some review of the matter in issue, but whether the intervenor has provided sufficient specificity and basis for a contention. ALAB-687 applies and requires denial of a contention only where the contention is essentially hypothetical and depends upon the receipt of new information, such as local emergency plans, to determine whether there is a basis for challenging those plans. Slip op. at 18, fn. 17. That is not the case here. We have provided a sufficient basis for these contentions in our filings of April 21, 1982, and June 17, 1982.

If there were any prospect of the Staff completing its review of this issue and issuing its report in a time frame similar to that projected for the local emergency plans, we would not object. However, this issue has been "under review by the NRC" for several years, and that review may not be completed before this licensing hearing closes. This would deny NECNP the right to litigate this issue in the operating license proceeding. Accordingly, in the absence of any assurance that the NRC Staff's review will be available in time to refile this or a refined contention and have that contention

litigated here, we must object to the Board's ruling and request certification to the Appeal Board.

II.A.1. Quality Assurance-Design and Construction

This contention challenges the adequacy of the Applicants' quality assurance program in light of the fact that it does not extend to all aspects of the facility that are "important to safety." There is no dispute that the QA program at Seabrook extends only to items that are "safety related," and that this is a smaller universe of items than those that are "important to safety." There is also no dispute that the scope of the QA program must include those items that are important to safety.

The sole basis for the Board's rejection of the contention is that the quality assurance program was litigated in the construction permit proceeding, in which NECNP was a party. According to the Board, NECNP has not met the standard for relitigating here an issue that was heard below.

The Board is wrong, and its ruling virtually assures that there is no way to require that the quality assurance program at Seabrook meet the requirements of Commission regulations, as it clearly has not to date.[1/] Since the Seabrook construction permit was issued, the Commission has clearly indicated that

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1/ This ruling would also assure that the QA program at other reactors would never be required to comply with Commission regulations.

earlier interpretations of its regulations have been incorrect, that major systems have imporperly been excluded from QA programs, and that the correct interpretation requires the programs to extend to all items important to safety. See our filings of April 21, 1982, and June 17, 1982. We object to tis ruling and request certification to the Appeal Board. Certification is particularly important in light of the safety significance of failure to extend the QA program to those items for which the Commission believes it to be necessary.

II.A.2. Quality Assurance-Design and Construction (Memorandum and Order page 74)

The Board has made its most astonishing and fundamental error in rejecting this contention. Its decision appears to reflect a profound ignorance of the design and construction of a nuclear reactor.

This contention challenges the implementation of the quality assurance program for the design and construction of Seabrook. The sole basis for the Board's rejection of the contention is the fact that it extends to the QA program for design as well as construction. According to the Board,

> The thrust of NECNP's contention is the design of the plant. Clearly the design is not up for litigation in this proceeding.

The first sentence quoted above is absurd. The thrust of NECNP's contention is vastly broader than design-related issues. It extends to the failure of quality assurance for all aspects of construction of the facility. If the Board meant what it said in that sentence, it was ignoring the contention.

More important, the Board is incorrect that no issue related to reactor design is "up for litigation" in an operating license proceeding. The OL proceeding extends to all issues related to reactor design and construction except those that were fully resolved at the CP stage and for which there is no basis for reopening litigation. Accordingly, those aspects of the design of the reactor and of the implementation of QA for the design that were litigated below may not be litigated here. However, all design-related issues that had not arisen as of the CP hearing could not be litigated at that stage and are not precluded here.

There has not been a nuclear plant in this country in recent years, least of all Seabrook, for which the design and design-related quality assurance were completed at the time the construction permit was issued. The design is not even close to completion at that point. Moreover, even where there is a basic design in place, the design changes and evolves throughout the period of construction. Many new safety requirements have been imposed since the Seabrook CP was issued. All require additional design work and related quality assurance. In addition, the design of any nuclear reactor constantly evolves during construction as it becomes apparent that an aspect of the design is unworkable, that piping or other equipment must be moved, or that other methods may be more efficient or less expensive. All of those changes occur after the CP is issued, and all involve

the implementation of a quality assurance program. We explained all of this during the prehearing conference and in our written filings.

The Board's ruling would effectively shield from public review an extremely significant aspect of reactor design. Perhaps 50% or more of the design work for a nuclear reactor takes place after the construction permit is issued. Clearly, it would not be possible to litigate the adequacy of that design work or of related quality assurance activities at the CP stage. The only forum where it is even physically possible to consider the issue is the OL proceeding. The principles of ALAB-687 apply by analogy here. The information was not available at the CP hearing, so we could not litigate these issues there. They must be litigated now.

We object to the Board's ruling on this contention, and we urge that this issue be certified to the Appeal Board. Of all of the Board's errors, this is by far the most significant. Quality assurance failures have been a major concern of Licensing Boards, the Commission, and Congress for several years. They have been the subject of extensive hearings at several reactors, notably the South Texas Project and Comanche Peak. Perhaps the most infamous quality assurance failure was the use of the wrong design at Diablo Canyon, a massive and crucial error that was discovered after a low-power testing license had been approved. It would be unconscionable if this contention were to be excluded from the Seabrook proceeding because this Board did not understand the evolutionary and continuous nature of reactor design.

In addition, the Board's reponse to this contention raises a concern. Although it would have been error to do so for the reasons stated above, the Board itself could simply have deleted the reference to design and admitted the contention. We recognize that the Board admonished the intervenors that all contentions would be admitted or rejected on the basis of the proferred wording. However, the Board's treatment of these matters has been excessively rigid and contrary to the public interest. Certainly we could have proposed two separate contentions with two separate sets of argument, with the resulting additional contribution to the mountain of paper that already exists in this case. That approach would not have added one iota of reasoned discussion to the record. It would simply have burdened us and the Board unnecessarily. The Board's role here is not to maximize the difficulty of public participation by excessive nit-picking. It is to assure that all issues for which a sufficient basis and specificity have been provided are fully litigated in order that the public may be assured of the safety of Seabrook. The Board's refusal to delete the single word to which it objected, or under Contention I.E. to delete the final sentence when the first two were agreed to by both the Applicants and Staff, is unduly arbitrary and contrary to the fundamental purposes of section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a).

II.B.2. Quality Assurance for Operations
(Memorandum and Order page 78)

This contention challenges the scope of the quality assurance program for operations on the ground that it extends only to "safety related" items and not to all items that are "important to safety." The Board rejected the contention for lack of specificity because the language of the contention itself did not contain the examples that support the contention.

This is an excellent example of the Board's excessive rigidity and arbitrary treatment of intervenor contentions. However, in this case the Board chose not only to be rigid in its approach, but also to ignore the language of our contention as it was actually stated. For reasons we cannot discern, the Board chose to delete the last sentence of the contention, which stated, "Examples are discussed in Contention II.A.1."

It is incredible that the Board would refuse to delete the single word "design" from our contention II.A.2. in order to justify rejecting that contention, but would then choose on its own to delete the last sentence of this contention to assure that it is rejected as well.

The last sentence of this contention incorporated specific examples by reference, putting all of the parties and the Board fully on notice of the information on which we relied. In doing so, we saved paper, ink and time. All of the bases for fair and thorough litigation were set out in

the papers that we filed. If the Commission's own regulations, which establish binding requirements of extreme importance, may incorporate requirements by reference, surely we may incorporate requirements by reference in one contention material that appears only a few pages earlier in the same filing.

We object strenuously to this ruling and to this treatment by the Board. We urge certification to the Appeal Board and immediate summary reversal.

III. Emergency Planning

(Memorandum and Order page 81)

In the area of emergency planning, NECNP originally submitted a broad general contention with sixteen supporting bases. At the initiation of the Board, we filed a revised version of that contention in which we presented the bases in the form of 15 subcontentions.

The Board has denied our general contention and all 15 subcontentions based on its ruling with respect to the contentions filed by the Commonwealth of Massachusetts. This reference is not at all clear to us since our contentions differ considerably from those posed by Massachusetts. However, it appears that the Board has denied our contentions on the ground that many relevant documents, particularly local plans and FEMA reviews, are not yet available. The Board appears to rely on ALAB-687.

The Board has treated our emergency planning contentions in a manner inconsistent with its treatment of the State of New Hampshire and it has misapplied ALAB-687. We object and urge the admission of all contentions.

The Board admitted New Hampshire Contention 20, which involved the requirement that Applicants assess and classify an accident and make proper notification to public officials, on the ground that it involved on-site planning, which is now ripe for litigation. NECNP Contentions III(1) raises essentially the same issue, yet it was summarily denied with no specific reason given.[2/] Moreover, NECNP Contentions III(2), (3), and (9) all involve on-site responsibilities of Applicants. All are ripe for litigation under even a narrow reading of the Board's own ruling as applied to New Hampshire Contention 20.

In addition, Contentions III(7), (8), and (15) involve radiological and consequence monitoring, which are the responsibility of the Applicants. They are adequately supported by the existence of the FSAR and NECNP's assertion of a basis for each contention. They should be treated in the same fashion as strictly on-site planning.

The remaining contentions, III(4), (5), (6), (10), (11), (12), (13), and (14), all relate to off-site planning. However, they relate to Applicants' responsibilities and do not depend on the plans required of state and local authorities. In each instance NECNP has provided sufficient specificity and basis to support admission of the contention. Under III(4), the Applicants have failed to meet the requirements of the

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2/ Since the Board did not repeat the language of our subcontentions, we have included our filing of July 23, 1982, as Appendix A.

regulations in delineating the plume exposure EPZ.[3/] Similarly, under III(5), the Applicants have failed to consider the effect of beyond design basis accidents in delineating the plume exposure EPZ. Under III(6), the Applicants have failed to comply with various aspects of the regulations because local off-site emergency plans have not been provided, nor has it been demonstrated that the necessary coordination and effective emergency action will be taken if required.

In all three of these contentions, NECNP has provided adequate specificity and basis to require that they be admitted. The only reason that the Board has denied the contentions is that the local emergency plans and FEMA reviews are not yet available. The Board's reason is invalid. Whatever information may be contained in those documents, these contentions are valid as they stand today. Issuance of those documents may cause changes in these contentions. Presumably they would cause complete revision of III(6).

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3/ We note that in Amendment 46 to the FSAR, Applicants have redrawn the EPZ along jurisdictional boundaries. By so doing, they have admitted the validity of NECNP's argument concerning contention III(4). They have not, however, eliminated the factual basis for this contention. It remains valid with respect to other factors which must be considered in delineating the EPZ. Those other factors, including demography, weather, and evacuation routes, may require the inclusion of other jurisdictions within the EPZ. For example, the town of Haverhill, because of its large population, should also be included inside the EPZ. In addition, the towns of Rowley and Ipswich encompass a penninsula from which evacuees would have to enter the EPZ in order to leave the area. Because evacuation of the penninsula would require coordination with towns inside the EPZ, the towns of Rowley and Ipswich should also be included in the EPZ.

However, the absence of those documents does not render these contentions insufficient as now written.

The same arguments apply to III(10), (11), (12), (13), and (14). Those contentions are valid as they now stand. We have presented sufficient specificity and basis to require that each be admitted.

The Board's reliance on ALAB-687 is misplaced. That decision involved the question of whether a contention could be conditionally admitted <u>despite the absence of sufficient specificity or basis</u> pending receipt of local emergency response plans that would provide the information necessary to evaluate the contentions. That is not the situation here. NECNP has provided sufficient specificity and basis, and the Board has not found the contrary. These contentions cannot be denied on the basis of ALAB-687 unless the Board finds that they do not meet the specificity and basis requirements of 10 CFR 2.714(b). The mere fact that relevant documents will become available at a later date does not justify the Board's ruling.

We object and request certification to the Appeal Board. In particular, there is a need to clarify the import of ALAB-687.

IV. Blockage of Coolant Flow to Safety-Related Systems and Components by Buildup of Biological Organisms

In this contention, NECNP asserts that the Applicants must establish a surveillance and maintenance program to prevent the buildup of aquatic organisms and debris in the cooling tunnels at the Seabrook reactor. The Board has rejected the contention with the brief statement that the contention lacks basis and that "this cooling system authorized by the CP was litigated to a conclusion at that time." The Board also cites assertions by the Applicants and Staff that the cooling tunnels are not a safety grade system. The Board gives us such scant notice of its actual reasons for dismissing this contention that it is difficult to respond.

NECNP is unable to understand how the Board has concluded that this contention "lacks basis." NECNP has cited the Board to the notice of abnormal occurrences indicating that buildup of biological organisms and debris in safety equipment has seriously affected cooling systems at no less than six nuclear plants. Since the Seabrook reactor uses ocean water to cool safety equipment, we have more than adequate basis to contend that some kind of surveillance and maintenance program is needed.

The fact that the cooling system for the Seabrook reactor may have been litigated at the construction permit stage has no preclusive effect on this contention. What the abnormal occurrences showed was that previously acceptable maintenance

and surveillance programs have been ineffective in detecting or preventing dangerous damage to safety related cooling systems. In fact, the issue of biofouling control has not been resolved, and the Board has rejected SAPL Contention 2 as premature, based on the fact that EPA is not expected to approve Applicants' change of biofouling methods for several months. The Board's position on this issue is strangely inconsistent with respect to SAPL and NECNP.

The question of whether the cooling tunnels are safety grade is irrelevant to the admissibility of this contention. The FSAR states in plain terms that the cooling tunnels will be used in the event of an accident, and that only if a seismic or other unusual event blocks over 95% of the intake tunnel area will the cooling towers be relied on. See FSAR at 9.2.5.1. This means that the cooling tunnels will be circulating seawater into the safety systems of the plant, with the risk of carrying biological fouling organisms into those systems.

NECNP has found substantial factual basis for this contention in the Applicants' FSAR. The Applicants have answered this contention with factual arguments which are irrelevant or which contradict their own FSAR. They have not overcome the fact that the FSAR clearly states that the tunnels will be used for cooling safety systems in the event of an accident. For the Board to accept Applicants' characterization of the tunnels as non-safety grade as justification for rejecting this contention constitutes a judgment on the mertis.

The Board is forbidden from reaching the merits of a contention in judging its admissibility. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

NECNP objects to the dismissal of this contention and urges certification because of the proven gravity of the safety issue, and because the Board has denied the contention in part based on a judgment on the merits.

V. NEPA Cost/Benefit Analysis

The Board has denied this contention as premature, because "technically the S-3 Table is still valid." The Board also noted that the Applicants and Staff recommended deferral until the issuance of a policy statement by the Commission.

The Board's conclusion that the S-3 Table is still valid is apparently based on the information provided at the prehearing conference that the mandate had not yet issued. Since then, the mandate has been stayed pending disposition by the Supreme Court of the NRC's petition for certiorari. The non-issuance or staying of the mandate, however, does not affect the enforceability of the judgment. See Deering V. Milliken Inc. v. F.T.C., 647 F.2d 1124 (D.C. Cir. 1978). Only a stay of the Court of Appeals' order based upon the well established stay standards of Virginia Petroleum Jobbers' Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958), could suspend its effect. No such stay has been issued. NECNP's contention is therefore valid and capable of litigation now.

Respectfully submitted,

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September 22, 1982

## CERTIFICATE OF SERVICE

I hereby certify that a copy of NECNP Objections to Pre-hearing Conference Memorandum and Order and Motion to Certify Objections to the Appeal Board were mailed by first-class, postage pre-paid, and hand delivered or federal expressed where indicated this 23rd day of September, 1982.

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*** NECNP's Supplemental Filing on Emergency Planning Contentions has been attached to the Board Member's copies of this filing for their convenience. It is not included in the filings sent to other parties, who should have already received copies.