

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

*82 NOV 17 P2:09

Before Administrative Judges:
Helen F. Hoyt, Chairman
Dr. Emmeth A. Luebke
Dr. Jerry Harbour

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In the Matter of)	
)	
PUBLIC SERVICE COMPANY)	Docket Nos. 50-443-OL
OF NEW HAMPSHIRE, <u>et al.</u>)	50-444-OL
)	(ASLBP No. 82-471-02-OL)
(Seabrook Station, Units 1 and 2))	November 17, 1982

MEMORANDUM AND ORDER
(Addressing Intervenors' Motions for
Reconsideration of the Board's Prehearing
Conference Order and Motions for Certification)

MEMORANDUM

I. INTRODUCTION

On September 13, 1982, this Board issued a Memorandum and Order ruling on the admissibility of intervenors' contentions. Subsequently, the New England Coalition on Nuclear Pollution (NECNP) filed objections to the Order together with a Motion to Certify Objections to the Appeal Board; the State of New Hampshire (NH) filed objections and a Motion for Reconsideration; and Seacoast Anti-Pollution League (SAPL) filed objection and a Motion for Reconsideration and a Motion to Certify Objections to the Appeal Board. On October 1, 1982, this Board by Order permitted a party to reply to NECNP's and NH's objections.

Replies from Applicants and the NRC Staff were received on October 26 and November 1, 1982, respectively.^{1/} This Memorandum and Order addresses those motions and replies.

By this Memorandum and Order, the Board has reconsidered all objections and motions of Intervenors and the following contentions of the named Intervenors are by this Memorandum and Order accepted for litigation in this case:

<u>Intervenor</u>	<u>Contention</u>
New England Coalition on Nuclear Power	III.1. Emergency Classification
	III.2. Simultaneous Emergencies
	III.3. Shift Supervisor Training
	III.12. Evacuation Time Estimates
	III.13. Evacuation Time Estimates

All other motions and objections are denied.

II. CERTIFICATION TO THE APPEAL BOARD

Questions concerning certification by this Board to the Appeal Board of rulings on contentions by the Board objected to by the offering Intervenor will be disposed of before discussion of any reconsideration of contentions.

A. Legal Standards

The Commission's Rules of Practice contain a general prohibition against interlocutory appeal. 10 C.F.R. § 2.730(f). Nevertheless, there is an exception. The regulations permit discretionary interlocutory review, either by Licensing Board certification or Appeal

^{1/} Extension of time from those dates set by the Order to these actual filing dates was granted by telephone with Applicant on October 15, 1982. The NRC Staff, NH and NECNP concurred.

Board directed certification, where it is demonstrated that failure to resolve the issue immediately will cause "detriment to the public interest or unusual delay or expense." The Appeal Board, however, has left little doubt that such review is truly exceptional. The Appeal Board has stated that it will rarely take interlocutory review and only then where a Licensing Board's ruling "either (1) threatened the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal, or (2) affected the basic structure of the proceedings in a pervasive or unusual manner." Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1170, 1191 (1977). Moreover, certification is particularly inappropriate when the subject of the interlocutory review sought is Licensing Board rejections of contentions. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406 (1976). A Licensing Board may, however, treat an interlocutory appeal as a motion for reconsideration. Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-370, 5 NRC 131 (1977).

B. NECNP's Motion for Certification

NECNP, in support of its motion, asserts that the Board should certify its exceptions in order to avoid delay. NECNP does not, however, make the requisite showing that failure to resolve its objections immediately will cause "detriment to the public interest or unusual delay or expense." NECNP has made no showing that our rulings threaten NECNP with "immediate and serious irreparable impact."

Furthermore, this Board can perceive no such detriment or impact. Accordingly, the Board denies NECNP's motion for certification, and instead treats it as a motion for reconsideration.

C. SAPL's Motion for Certification

SAPL's motion for certification, proffered in the alternative, is similarly defective. SAPL simply fails to address the factors which might justify exceptional interlocutory review; furthermore, the Board perceives no such justification. Accordingly, the Board also denies SAPL's Motion for Certification.

III. NECNP's MOTION

As stated above, the Board is treating NECNP's motion as a motion for reconsideration. In reviewing NECNP's motion, the Board notes its general criticism that the Board gave little explanation in the Prehearing Conference Order of the standards applied to determine the admissibility of contentions. This Board will not engage in fruitless arguments and obvious disappointments suffered by an Intervenor, but will use this order to lay out clearly the concerns the Board considered in the initial order so no doubt remains as to the process this Board used in applying the Commission's legal standards to an Intervenor's proposed contention. When this Board is faced with the verbose or the succinct, the Board has and will choose the latter.

A. Legal Standard of Admissibility of Contentions

The standard for adjudging the admissibility of contentions is established by the Commission's Rules of Practice. Section 714 of the

Rules of Practice, 10 C.F.R. § 2.714, requires a petitioner to set forth the bases for each contention with reasonable specificity.^{2/} It is this standard that we have applied.

The Appeal Board has, on several occasions, addressed the standard. While the "basis with reasonable specificity" standard requires a contention to be stated with particularity, Alabama Power Co. (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), ALAB-183, 7 AEC 210, 216 (1974), it does not require a petition to detail supporting evidence. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Nor should a licensing board address the merits of a contention when determining its admissibility. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980). What is required is that an intervenor state the "reasons" for its concern. Id. at 548.

Unfortunately, despite the Appeal Board's guidance, the basis requirement remains somewhat nebulous and is often overstated. Nevertheless, this Board believes that a workable test can be obtained if the basis requirement is related to those ultimate findings a licensing board is required to make (i.e., "that operation of the plant

^{2/} The basis with specificity standard was upheld as a reasonable requirement in BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974).

is not inimical to the public health and safety, or to the national defense or security," 10 C.F.R. § 50.57(a)(3) and (6),^{3/} and that the provisions of the National Environmental Policy Act (NEPA) have been properly applied, 10 C.F.R. § 51.52). Therefore, in delineating the reason (i.e., basis) for its contention, an intervenor should establish a nexus between the substance of the contention and the statutory and regulatory scope of our concern.

With regard to safety issues, Applicant cited Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003 (1973) for the proposition that an applicant meets its burden in an operating license hearing when it demonstrates compliance with the regulations. See, e.g., Response of Applicants to Contentions Filed by Seacoast Anti-Pollution League (April 15, 1982) at p. 4. If this proposition were true, then in order to establish as a basis the nexus between a contention and the scope of our regulatory concern, an intervenor would have to allege with particularity that a part of Applicants' plant or operation thereof fails to comply with a specified regulation.

Applicants' interpretation of Maine Yankee is too narrow. Where the regulations are silent on a particular matter and that matter is in contention, compliance with the regulations is not by itself sufficient to satisfy an applicant's burden of proof. Maine Yankee, supra, at

3/ These requirements are also part of the Atomic Energy Act of 1954, § 104(d), 42 U.S.C. § 2134(d) (1980).

1010. However, in the case where there is a regulatory gap, we think it incumbent upon an intervenor, pursuant to the basis requirement, to allege that such a regulatory gap exists and to allege with particularity facts that if proven would warrant concern. In such a case, a Board must scrutinize the allegation carefully, in order to avoid frivolous and inconsequential contentions.^{4/} This scrutiny does not require a licensing board to rule on the merits of a contention. Rather, a licensing board should examine contentions objectively; when there is no allegation of non-compliance with a

4/ The "basis with specificity" requirement was added to 10 C.F.R. § 2.714 in order to avoid nuisance intervention; this fact was recognized by the U.S. Court of Appeals for the D.C. Circuit in its decision upholding the requirement. *BPI v. AEC*, 502 F.2d 424, 428 (1974). See also *Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, ALAB-216, 8 AEC I3, 20 (1974).

A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process. Another purpose is to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in that particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues.

Id. (footnotes omitted).

specified regulation, a board must discern whether a reasonably prudent person would be concerned by the particular contention.^{5/}

5/ Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19 (1974), rev'd sub. nom. Aeschliman v. NRC, 547 F.2d 622 (D.C. Cir. 1976), rev'd sub. nom. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Counsel, 435 U.S. 519, 553-554 (1978). "[T]he showing should be sufficient to require reasonable minds to inquire further." Id. at 32 n.27. Cf. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 583 (1982), and Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 NRC 674, 675 (1980), conditioning admissibility of safety contentions on the postulation of "credible" accident scenarios. See also Philadelphia Electric Co. (Peach Bottom Atomic Power, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). "The degree of specificity with which the basis for a contention must be alleged initially involves the exercise of judgment on a case by case basis." Id.

We realize that we are making a fine distinction between what we believe is a permissible objective scrutiny of a "regulatory gap" contention and an impermissible rejection on the merits. We stress, however, that we do not advocate an evaluation of the merits of a contention to determine its admissibility. What we do believe is proper is the rejection of inconsequential contentions, i.e. 1) those contentions about which a reasonably prudent person, accepting the facts as alleged, would not be concerned, and 2) those contentions that merely make bald allegations of which a reasonably prudent person would be highly skeptical.

We distinguish the latter from the factual situation in Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980), wherein the Appeal Board reversed a Licensing Board's rejection of a contention. In Allens Creek, the petitioner had pointed to an ongoing project in support of his allegation of the environmental superiority of a bio-mass energy alternative; the Appeal Board held that petitioner's allegation and reference to the project satisfied the pleading requirements, and that the Licensing Board had improperly rejected the contention on the merits. We do not believe this decision precludes our rejection of regulatory gap contentions that comprise mere conclusory allegations. Unless a bald allegation can stand by itself--i.e., withstands objective scrutiny--it is simply not a "reason" and does not supply the requisite basis for the admission of a "regulatory gap" contention, particularly when viewed against the complex and comprehensive safety parameters delineated by the NRC's regulations.

Only in this manner can a licensing board and the NRC marshal their resources to satisfy the mandate of the Atomic Energy Act. A standard that focuses a licensing board's review on relevant and substantial safety issues is consonant with that mandate and vindicates the public interest; therefore, the standard, though it may restrict intervention, is reasonable and proper.^{6/}

In conclusion, this Board believes that the basis with reasonable specificity standard requires that an intervenor include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity^{7/} that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. In the absence of a "regulatory gap," the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules (10 C.F.R. § 2.758).

6/ BPI v. AEC, 502 F.2d 424, 426-28 (D.C. Cir. 1974); Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1005-06 (D.C. Cir. 1966); Gelhorn, Public Participation in Administrative Proceedings, 81 YALE L.J. 359, 376-77 (1972).

7/ Particularity requires not only an allegation of the fact of non-compliance with a specified regulation, but also sufficient detail to permit the Board to determine how the regulation is supposedly being violated. This specificity is necessary to avoid admitting a contention that misstates a regulatory requirement or collaterally attacks that regulation by seeking to impose extra-regulatory requirements. See note 4, supra.

B. NECNP's Specific Objectives

NECNP objects to every Board ruling that denied admission of an NECNP contention. The Board has reviewed NECNP's objections and the replies of Staff and Applicants. With respect to certain of NECNP's on site emergency planning contentions, the Board grants NECNP's motion to include these in this litigation. In all other cases, the Board finds NECNP's objections to be without merit. In some instances where the Board has reaffirmed a prior ruling, there is some clarification; however, over fifty pages of the Prehearing Conference Order were devoted to rulings on NECNP contentions, the Board will not repeat that analysis.

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

The Board reaffirms its denial. In CLI-80-21, the Commission ordered that NUREG-0588 "form the requirements which . . . applicants must meet in order to satisfy those aspects of 10 C.F.R., Appendix A, General Design Criteria 4 which relate to environmental qualification of safety related electrical equipment." Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 711 (1980). NECNP seeks to impose regulatory requirements in excess of those established by EDC 4

and CLI-80-21. Therefore, it is an impermissible attack on the regulations.^{8/}

I.A.3. Environmental Qualification for Hydrogen Burn

The Board reaffirms its denial of NECNP Contention I.A.3.

I.E. Reactor Coolant Pump Flywheel Integrity

The Board reaffirms its denial. NECNP Contention I.E. asserts inter alia that the Reactor Coolant Pump Flywheel should be environmentally qualified because it is important to safety. There is no indication, however, that the flywheel is safety related (i.e., that it is necessary to a safe shutdown of the plant), and accordingly, the Board finds no regulatory requirement that the flywheel be environmentally qualified.

I.H. Decay Heat Removal

The Board reaffirms its denial of this contention. Generic safety issues may be the subject of a contention, but such a contention must establish a nexus between the issue and the particular license application. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977). In particular, the contention must show that 1) the generic issue has safety significance for the particular reactor and 2) "the fashion in which the application deals

^{8/} The Commission has permitted an exception to the general prohibition against collateral attack of its rules. It permits contentions addressing the sufficiency of TMI Action Plan requirements (NUREG-0737) supplementing NRC regulations. Statement of Policy; Further Guidance for Power Reactor Operating Licenses, 45 Fed. Reg. 85236 (1980). The exception, however, does not obviate the Commission's pleading requirements, and NECNP has advanced no reason for the Board to consider the sufficiency of the requirements of CLI-80-21 and of NUREG-0737.

with the matter in question is unsatisfactory . . . or the short term solution offered to the problem under study is inadequate." Id. at 773. NECNP has not provided this information. However, because the Staff's analysis of the generic study issue is not yet complete and NECNP is not yet in a position to address the "short term solution," this Board believes that the Appeal Board's decision in Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC ___ (1982), applies. It was cited to in the Prehearing Conference Order.

I.0.1. Emergency Feedwater

The Board reaffirms its denial of this contention. The Board has described supra the standard used in determining admissibility of contentions, and using this standard, has determined NECNP Contention I.0.1. to be without basis. There is no regulatory requirement that "the emergency feedwater system [be] single failure proof with respect to a rupture of the high-energy piping in the discharge header," and NECNP has not advanced with particularity a reason for imposing such a requirement.

I.0.2. Emergency Feedwater

The Board reaffirms its ruling on this contention.

I.P. Human Engineering

The Board reaffirms its ruling on this contention; NECNP provided no basis for the contention. The Board also notes that Applicants state they are amending the FSAR to indicate that the multipoint recorder with which this contention was concerned will not be located

on the back of the panel. Therefore, NECNP Contention I.P. will soon be moot.

I.Q. Systems Interaction

The Board reaffirms its ruling on this contention. The contention sought to raise an unresolved generic safety issue, but failed to provide a basis or specificity for the contention. The discussion of the pleading requirements for unresolved generic safety issues is set out in this order at page 11 and 12, supra, as is the discussion of the potential applicability of ALAB-687.

I.R. Hydrogen Control

The Board reaffirms its ruling.

I.S. Loose Parts Detection System

The Board reaffirms its ruling. NECNP provided no basis with specificity for its contention, and the Board iterates that Regulatory Guides do not impose regulatory requirements. Board notes, however, that Applicant has committed to install a loose parts detection system that complies with Reg. Guide 1.133, and this commitment will moot NECNP's contention.

I.T. Steam Generators

The Board reaffirms its ruling.

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

The Board reaffirms its rulings. Even if Applicants' compliance with Reg. Guide 1.83 is not conclusive as to compliance with the underlying regulations (10 C.F.R. Part 50, App. A, GDC 14, 15, 31, and 32), it is at least presumptive. Moreover, Intervenors have failed to

specify how Applicants are in non-compliance, and thus have failed to satisfy the pleading requirements.

I.W. Seismic Qualifications of Electrical Equipment

The Board reaffirms its ruling. NECNP Contention I.W. was vague and without basis. NECNP is directed to our discussion at page 11-12, supra, of the pleading requirements for unresolved generic safety issues and of the potential applicability of ALAB-687.

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

The Board reaffirms its ruling.

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

The Board reaffirms its ruling. NECNP's objection to this ruling takes our statement, that "design is not for litigation" out of context. A specific design deficiency, supported by adequate basis, could be a valid contention. The Board stated that "the design," i.e., all aspects of the Seabrook engineering and construction, could not be litigated, as NECNP was clearly seeking to do. NECNP's general allegation that Seabrook "has not been designed or constructed in accordance with applicable requirements" was fatally vague; and though NECNP offered specific instances of QA deficiencies, it made it clear that it did not intend its contention to be limited to these specific deficiencies. NECNP II.A.2. was vague and unlitigable.

NECNP also objects to the Board's refusal to rewrite its contention; NECNP asserts that this refusal was "excessively rigid." However, it had been made clear to the parties on numerous occasions that this Board would not rewrite an Intervenor's contentions. Refusal

to do so cannot constitute error. Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). Furthermore, the parties were afforded several opportunities to reformulate their own contentions to meet requirements.

II.B.2. Quality Assurance for Operations

The Board reaffirms its order. The Board inadvertently omitted the last sentence of NECNP's contention in the Prehearing Conference Order. The omission had no effect on the Board's decision. The contention, including the reference to NECNP Contention II.A.1., was not sufficiently specific.

NECNP III. Emergency Planning

Upon reconsideration, the Board amends its ruling on the Emergency Planning contention. The Prehearing Conference Order treated NECNP III, with its 15 subparts, as one contention. Because parts of it address not-yet existing offsite emergency plans and were, by necessity, fatally nonspecific, the Board denied admission of the contentions pursuant to ALAB-687. This approach has resulted in a disparity in our treatment of NECNP's and other intervenors' on-site emergency planning contentions. Accordingly, in order to rectify this disparity, the Board now addresses each subpart to NECNP as a separate contention.

III.1. Emergency Classification

The Board admits this contention. The Board perceives 10 C.F.R. § 50.47(b)(4) to be its regulatory basis, and reject Applicants' assertion that NECNP is seeking to elevate NUREG-0654 to the

significance and dignity of a regulation. NECNP's reference to NUREG-0654 is gratuitous and superfluous.

III.2. Simultaneous Emergencies

The Board admits this contention; neither Staff nor Applicants objected to its admissibility and the Board on reconsideration finds sufficient basis for admitting it.

III.3. Shift Supervisor Training

The Board admits this contention. Staff found the contention acceptable, and the Board rejects Applicants' assertion that 10 C.F.R. § 50.47(a)(2) precludes its admission. That section of the regulations merely precludes a Board from requiring completed preparedness exercises prior to a licensing decision; the section does not obviate planning requirements.

III.4. EPZ

The Board rejects this contention. The contention is vague. Moreover, the true thrust of the contention is with actual evacuation procedures. Indeed, the regulations anticipate that the EPZs will be determined "in relation to local emergency response needs and capabilities." 10 C.F.R. § 50.47(c)(2). These needs and capabilities will not be known until after the off-site emergency plans are completed; therefore, only after issuance of the off-site plans can the requisite degree of specificity be applied to NECNP's concern. Accordingly, pursuant to ALAB-687, NECNP will be permitted, if it so chooses, to submit a revised specific contention after issuance of the off-site plans.

III.5. EPZs

The Board rejects this contention. There is no regulatory requirement in support of, and hence no basis for, NECNP's bald assertion that beyond design basis accidents must be considered by Applicants in establishing the EPZs. In fact, such consideration is inherent in and obviated by the Commission's delineation of the bounds of the plume exposure pathway EPZ. 10 C.F.R. § 50.47(c)(2); 10 C.F.R. Part 50, App. E, fn. 2. Consideration of beyond design basis accidents is also inherent in the other emergency response requirements. Furthermore, the Board finds that this contention advocates a plume exposure pathway EPZ in excess of the regulatory requirements and is an impermissible collateral attack on those regulations.

III.6. Off-site Plans

The Board rejects this contention. ALAB-687 prohibits the admission of premature, nonspecific contentions. This Board will not admit contentions dealing with off-site plans until these are formulated and an intervenor has had an opportunity to examine them. Even NECNP admits this when it states that the present contention is subject to complete revision when these documents are issued.

III.7. Accident Sequences/Process Monitors

The Board rejects this contention. The contention alleges inter alia that "Applicants have failed to demonstrate that all possible accident sequences can be monitored." It is fatally vague. The contention also asserts that the process monitors do not comply with the regulatory requirements, but does not indicate how they fail to comply. NECNP's concern apparently rests on statement in the FSAR that the

Applicants "address" Reg. Guide 1.97. However, whether or not "address" means "comply with" is irrelevant, since the Reg. Guide is not a regulation and NECNP points to no specific deficiency.

III.8. Computerized Monitoring System

The Board rejects this contention. There is no regulatory requirement for a computerized monitoring system, and NECNP does not provide an adequate reason for the Board to consider imposing such a requirement. Accordingly, the contention is without basis.

III.9. Back-up Power Source for Computer Used in Dose Assessment

The Board rejects this contention. The Board notes that it had difficulty discerning if the first two sentences of the contention were prefatory, or if they were themselves contentions. However, NECNP's assertion in the third sentence, that computers used in making dose assessments must be provided a back-up power source, is without a regulatory basis.

III.10 Public Notification

The Board rejects this contention for lack of specificity. When the off-site plans are issued, NECNP may submit a contention that specifically addresses the planned public notification procedures. ALAB-687 applies.

III.11. Sheltering

The Board rejects this contention for lack of specificity. When the off-site plans are issued, NECNP may submit a contention that specifically addresses the planned sheltering provisions. ALAB-687 applies.

III.12. Evacuation Time Estimates

The Board admits this contention; both Staff and Applicants found it acceptable and the Board on reconsideration finds sufficient basis for admitting it.

III.13. Evacuation Time Estimates

The Board admits this contention. The Staff found it acceptable. Applicants' response goes to the merits. The Board finds sufficient basis for admitting it.

III.14. Emergency Plans

The Board rejects this contention. The contention calls for a conclusion based on not-yet existing off-site plans. It is fatally vague. When the off-site plans are issued, NECNP may submit specific contentions addressing those plans, pursuant to ALAB-687.

III.15. Baseline Data

The Board rejects this contention. NECNP is seeking to impose on Applicants an extra-regulatory requirement, and has failed to provide adequate reason for the Board to consider imposing the requirement.

IV. Blockage of Cooling Flow to Safety-Related Systems and Components by Build-up of Biological Organisms

The Board reaffirms its ruling.

V. Table S-3

The Board reaffirms its ruling.

IV. NH's MOTION

NH has filed objections to and moves that the Board reconsider five of the Prehearing Conference Order rulings. The Board has

reviewed these objections and the responses to them and finds NH position to be without merit.

NH-2. Systems Interaction

The Board reaffirms its ruling. NH-2 is without basis; there is no regulatory requirement that Applicants perform a systems interaction analysis, and NH fails to provide an adequate reason for the Board to consider the imposition of such a requirement. NH confuses the requirements of the NEPA with the safety requirements of the Atomic Energy Act. The Commission's requirement that a NEPA analysis include consideration of Class IX accidents cannot be equated with a health and safety requirement; however, neither the safety regulations nor the NEPA regulations impose what NH seeks.

NH-5. Liquid Pathway

The Board reaffirms its ruling. The contention is vague and without basis. Furthermore, NH is again confusing NEPA requirements with safety requirements, or is attempting to turn the former into the latter.^{9/}

NH-6. Environmental Qualification of Safety-Related Equipment

The Board reaffirms its ruling. Subpart (d) of this contention is no more specific than the other subparts.

NH-12. Quality Assurance

The Board reaffirms its ruling. NH-12 is absolutely devoid of specificity.

9/ In its Motion for Reconsideration, NH points to the absence of information in Applicants' final safety analysis; the contention, however, asserts that Applicants' environmental analysis is inadequate.

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

The Board reaffirms its ruling. NH-14 lacks basis and specificity.

Discovery Schedule

NH has also requested additional time for discovery. In part, this request appears predicated on the Board's admission on reconsideration of previously rejected NH's contentions. Since this Board has denied NH's objections, this basis for NH's request fails. However, NH also asserts that the present schedule should be extended to allow "a more meaningful period of discovery and a fairer hearing." NH makes a vague reference to forthcoming documents.

As stated in the Prehearing Conference Order, the Board will grant extensions of discovery schedule upon good cause shown. This Board will not, however, grant a request in vacuo; NH's request is a generalized statement of concern, is devoid of specifics on which the Board can make a reasoned judgment, and is therefore insufficient. Accordingly, NH's motion for an extension of the discovery schedule is denied without prejudice.

V. SAPL's MOTION

SAPL's objects only to our ruling denying SAPL's Supp. IV, an alternative source contention. SAPL has submitted affidavits which it asserts make a prima facie showing that application of the need for

power rule will not serve the purposes for which the rule was formulated. This Board disagrees. SAPL has only made a showing that another energy source exists. It has made no attempt to compare costs or environmental impact in order to show that Seabrook is a special case (i.e., that Canadian hydro-electric power is a viable alternative which could tip the NEPA cost benefit balance against issuance of the operating license). Furthermore, SAPL's motion indicated that it considers construction costs to be relevant to this inquiry; however, the appropriate economic analysis required by NEPA in this operating license proceeding is a comparison only of Seabrook's operating costs (including fuel and maintenance) with alternatives, because the decision of this licensing board concerns only whether Seabrook will or will not be permitted to operate. Construction has already been approved, and the Board must consider construction costs to be "sunk" costs and irrelevant to future operation.

Accordingly, SAPL's motion is denied.

ORDER

Based on the foregoing discussion, it is this 17th day of November, 1982

ORDERED

1. That NECNP's and SAPL's motion for certification are denied;
2. That this Board's Prehearing Conference Order of September 13, 1982 is vacated to the extent that the Board now admits NECNP Contentions III.1, III.2, III.3, III.12, and III.13.

3. That all other rulings on NECNP, NH, and SAPL contentions are reaffirmed;

4. That NH's request for an extension of the discovery schedule is denied without prejudice.

IT IS SO ORDERED

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

A handwritten signature in black ink, appearing to read "Helen F. Hoyt", written in a cursive style.

Helen F. Hoyt, Chairman
Administrative Judge

Dated at Bethesda, Maryland
this 17th day of November, 1982.