

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

DOCKETED
USNRC

'82 DEC 22 P4:11

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED DEC 23 1982

In the Matter of)
)
PUBLIC SERVICE COMPANY) Docket Nos. 50-443-OL
OF NEW HAMPSHIRE, et al.) 50-444-OL
) (ASLBP No. 82-471-02-OL)
(Seabrook Station, Units 1 and 2)) December 22, 1982

MEMORANDUM AND ORDER

(Re Motion of the State of New Hampshire to Compel Answers to its
First Set of Interrogatories to Public Service Company)

MEMORANDUM

The State of New Hampshire (NH) filed its First Set of Interrogatories to the Public Service Company (Applicants) on October 15, 1982. On November 3, 1982, Applicants responded to the Interrogatories. Thereafter, on November 15, 1982 NH filed a Motion to Compel Answers to its First Set of Interrogatories. Applicants answered the Motion on December 3, 1982,^{1/} while the NRC Staff took no position with respect to the motion. Finally, on December 9, 1982, NH withdrew its Motion to compel with regard to certain

1/ The parties agreed to and the Board concurred in an extension of the time in which Applicants were required to answer NH's motion. Ltr. fr. Applicants to the Board dtd November 29, 1982.

interrogatories and responded to Applicants' Answer with regard to remainder of the interrogatories in controversy.

This Memorandum and Order addresses NH's motions to compel; herein, the Board grants NH's motions with regard to certain interrogatories, and denies NH's motions with regard to others.

Interrogatory No. 9.1

In this interrogatory, Applicants were asked to "identify all persons who were and are responsible in a supervisory capacity for the design and installation of the radioactivity monitoring system for Seabrook." Applicants read "were and are" conjunctively, and answered accordingly, while NH advocates a disjunctive reading.

The Board finds Applicants' answer to be literal but niggardly. Were there no other means of relief, the Board would be inclined to grant Applicants' motion; however, as we have extended time for discovery,^{2/} NH can simply rephrase its interrogatory. Accordingly, NH's motion with regard to Interrogatory No. 9.1 is denied.

Interrogatory No. 9.8

In this interrogatory, Applicants were asked to:

Identify all aspects in which Seabrook Radiation Monitoring System is not in strict compliance with Regulatory Guide 1.97. For each aspect identified, indicate PSNH reason for non-compliance and the alternative method chosen by PSNH to comply with Criterion 64.

^{2/} Time for discovery was extended by Order of the Board in a conference call dtd December 22, 1982.

Applicants answered:

Seabrook Station's Radiation Data Managements System conforms to the guidance of Regulatory Guide 1.97 requirements as they pertain to Criterion 64, Effluent Releases.

NH asserts that this answer is incomplete because the interrogatory requested identification of all aspects in which the radiation monitoring system is not in compliance with Regulatory Guide 1.97. NH's position is that it did not limit its interrogatory to address compliance with Regulatory Guide 1.97 "as it pertains to Criterion 64."

Regulatory Guide 1.97 addresses three criteria of 10 C.F.R. Part 50, Appendix A: Criterion 13, Criterion 19, and Criterion 64. Of these, only Criterion 64 is relevant to NH Contention 9.^{3/} Furthermore, the Board finds it reasonable to read the two sentences of Interrogatory 9.8 together, rather than to bifurcate the interrogatory as NH suggests. The second sentence implies that NH was interested only in determining how Applicants were complying with Criterion 64. Therefore, the Board concludes that Applicants' answer was complete.

In addition, however, Applicants filed an Amended Answer to NH Interrogatory No. 9.8 on December 15, 1982, and that amended answer was not limited to compliance with Regulatory Guide 1.97 "as it pertains to Criterion 64." Therefore, the Board finds NH's motion to be moot.

3/ NH Contention 9 reads in pertinent part:

[T]he application is not in compliance with general design Criteria 63 and 64 of Appendix A, 10 C.F.R. Part 50, and the requirements of NUREG-0737 and NUREG-0800.

Accordingly, NH's motion with regard to Interrogatory No. 9.8 is denied.

Interrogatory No. 10.1

In this interrogatory, Applicants were asked to "identify all persons who were or are responsible in a supervisory capacity for the design and installation of the control room for Seabrook." Applicants answer identifies the persons who "are currently responsible."

The interrogatory was phrased in the disjunctive (unlike Interrogatory 9.1), and Applicants answer is incomplete. Accordingly, NH's motion with regard to Interrogatory 10.1 is granted, and Applicants are directed to identify all persons who were responsible in a supervisory capacity for the design and installation of the control room for Seabrook.

Interrogatories No. SAPL Supp. 3.7, 3.10, and 3.11

Applicants' answers to these interrogatories suggest that there are documents prepared in connection with the Seabrook Probabilistic Safety Assessment (SPSA) that may be relevant to the interrogatory and to SAPL Contention 3. Applicants assert, however, that the Board's rejection of NH's Probabilistic Risk Assessment Contention (NH Contention 1) exempts PRAs from discovery.

Applicants ascribe too much to our ruling on NH Contention 1. In our Prehearing Conference Order, we rejected NH Contention 1 as being without basis; we found no health and safety regulation requiring a PRA and no basis for imposing an extra-regulatory requirement. SAPL 3, however, raises a NEPA issue addressing the NRC Staff's assessment of

Class 9 accidents, and the test for discoverability is one of 'general relevancy." 10 C.F.R. § 2.740; Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240, 243 (1974).

Accordingly, we grant in part NH's motion with regard to Interrogatories No. SAPL 3.7, 3.10, and 3.11; Applicants are directed to identify and produce any documents, including those generated in the SPSA process, that are encompassed by the interrogatories.^{4/}

The Board denies, however, that part of NH's motion with regard to sufficiency of the first sentence of Applicants' answer to Interrogatory SAPL Supp. 3.11. We agree with Applicants' characterization of the question as unanswerable, and we find Applicants' answer sufficient. See Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980).

Interrogatories Nos. 9.6, 9.16, and 10.2

Motions to compel with regard to these interrogatories were withdrawn by NH in its December 9 filing.

ORDER

In light of the foregoing, it is this 22nd day of December, 1982

ORDERED

4/ The Board is not ruling that documents generated in the PRA process will be admissible at the hearings. PRAs are new and still-developing engineering tools, and their probativeness is therefore questionable. Moreover, permitting their introduction into evidence on the NEPA issue might discourage their use by utilities as a safety tool; therefore, PRAs may also be incompetent evidence. Nevertheless, inadmissibility does not prevent discovery. 10 C.F.R. § 2.740(b)(1).

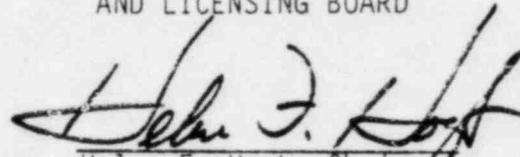
1. That Applicants identify all persons who were responsible in a supervisory capacity for the design and installation of the control room for Seabrook.

2. That Applicants identify and produce all documents, including those generated in the SPSA process, that are encompassed by NH Interrogatories Nos. SAPL Supp. 3.7, 3.10, and 3.11.

3. That all of the other NH motions to compel are denied.

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

Bethesda, Maryland