

DISCREET
USNAC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

Docket Nos. 50-443 OL-1

50-444 OL-1

Onsite Emergency Planning

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March 19, 1991

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	Docket Nos. 50-443 OL-1
PUBLIC SERVICE COMPANY OF)	50-444 OL-1
NEW HAMPSHIRE, <i>et al.</i>)	Onsite Emergency Planning
)	
(Seabrook Station, Units 1 and 2))	

NRC STAFF RESPONSE TO
INTERVENORS REPLY TO FEBRUARY 22, 1991 ORDER

INTRODUCTION

By Order of February 22, 1991 (unpublished),^{1/} the Appeal Board asked the parties to state their positions on questions related to the remand of ALAB-918 in *Massachusetts v. NRC*, No. 89-1306, ___ F.2d ___ (D.C. Cir. Jan. 25, 1991); certain rulings by the Appeal Board; whether the onsite exercise matters raised are now moot as a result of the December 1990 Seabrook full participation exercise, and, if not moot, what outcome should be reached upon reconsideration of ALAB-918; and whether there is any reason to alter the licensing status of Seabrook *pendente lite*. February 22 Order at 1-5. Responses to the Order have now been filed by the Intervenors, Licensees and Staff.^{2/} In their response to the February 22 Order, Intervenors argue (1) that the December 1990 exercise does not moot their 1988 onsite exercise contention (alleging that the Seabrook plant's operating personnel are not properly trained), (2) that the

^{1/} Hereafter referred to a "February 22 Order."

^{2/} Reply to Appeal Board Order of February 22, 1991, dated March 11, 1991 ("Intervenors Reply"); Licensees' Response to Appeal Board Order of February 22, 1991, dated March 11, 1991; NRC Staff Response to February 22, 1991 Appeal Board Order, dated March 12, 1991 ("Staff Response").

contention raised matters that are material to licensing, which require a hearing and (3) that the contention (as well as an affidavit previously filed in support of a request to stay the Licensing Board's authorization of full power license) provides a basis to vacate, or at least suspend, the Seabrook operating license pending resolution of the contention. Intervenor's Reply at 1-7. In accordance with the provision for reply memoranda, February 22 Order at 5, the Staff hereby responds to the Intervenor's filing.

DISCUSSION

A. Intervenor's Provide No Basis To Dispute That The Contention Is Moot

Intervenor's concede that "it is possible that the 1990 [full participation] exercise mooted the issues raised in the June 1988 On-site Exercise Contention," but argue that the present record is not adequate to make this conclusion since the exercise report does not contain sufficient detail regarding onsite operator responses during the 1990 exercise or onsite staff performance in accident analysis and mitigation, particularly actions taken to isolate the accident release path. Intervenor's Reply at 1-2.^{3/}

The Basis of Intervenor's proposed contention stemming for the 1988 exercise stated, in part, that:

The Seabrook Station Radiological Emergency Plan provides for the establishment at the time of an emergency of the Technical Support Center

^{3/} As the Staff has previously noted, Intervenor's failed to raise any factual issue as to the training of the onsite staff in regard to isolation of the release path. Indirect measures such as temperature, pressure and sump pump indicators were used to find the release path, and direct measurements were not made because of the high radiation doses that would have been sustained by as a result of such actions. See Staff Response at 12; NRC Inspection Report No. 50-443/88-10, issued October 6, 1988 ("Report 88-10") at 9; LBP-89-4, 29 NRC 62, 83 (1989). Mr. Pollard lacked direct knowledge concerning what was or was not done during the 1988 exercise or to dispute the findings in Report 88-10; and he based his conclusions wholly on conjecture. See Affidavit of Robert Pollard at 5-7, appended to Memorandum of Joint Intervenor's in Response to October 25, 1988 Order of Licensing Board, dated November 9, 1988.

("TSC") and the Emergency Operations Facility ("EOF"). . . The personnel at the TSC and EOF are expected to use the emergency operating procedures to assist in recognizing an emergency condition in order to prescribe the actions necessary to correct the condition. Plan at 1-2. A demonstration of the ability of these personnel to analyze station condition and parameter trends and to develop potential solutions for placing the reactor in a safe stable condition was one of the objectives of the June, 1988 graded exercise in order to establish the adequacy of this fundamental aspect of onsite emergency preparedness.

Motion to Admit Exercise Contention or, in the Alternative, to Reopen the Record, dated September 16, 1988 ("Motion") at Exhibit 1. The basis incorporated by reference a discussion in an affidavit of Robert Pollard purportedly showing that the TSC and EOF personnel had demonstrated inadequate training and poor performance in a 1988 full participation exercise.

NRC Inspection Report No. 50-443/90-85, dated January 30, 1991 ("Report 90-85"), which contained the Staff's evaluation of the results of the December 1990 exercise, found: "No exercise weakness or plan deficiencies were identified. The licensee demonstrated the ability to implement their [sic] emergency plan in a manner which would protect the health and safety of the public." Report 90-85 at 1. The accident scenario is set forth in the report and the activities the staff observed are listed. *Id.* at 3-4. The activities included use of operating and emergency procedures; detection, classification and assessment of scenario events; direction and coordination of emergency response; and accident analysis and mitigation. *Id.* at 4. In regard to actions to these activities, Report 90-85 (at 6) stated:

The following exercise strengths were identified:

1. Excellent command and control was demonstrated and frequent staff briefings were conducted.

2. Data were trended and extrapolated. Problems were anticipated. As a result, the time to reach conditions justifying a Site Area Emergency declaration were accurately predicted.
3. The need to identify plant vulnerabilities as early as possible led to a request to use probabilistic risk assessment.
4. Support resources from Yankee Nuclear Service Division engineers were appropriately requested and utilized.

No exercise weaknesses or areas for improvement were identified.

In regard to the EOF, Report 90-85 (at 7) concluded:

The following exercise strengths were identified:

1. There was excellent support of and interaction with representatives of the New Hampshire Yankee Massachusetts Off Site Response Organization.
2. There was prompt and correct response to a simulated loss of main electrical supply to the EOF.
3. Dose assessment personnel anticipated possible release pathways and performed a "what if" calculation based on possible containment breach in anticipation of a possible release.
4. There was good command and control, frequent staff briefings and EOF manager's meetings which included government representatives and the NHY Massachusetts Off-Site Response Organization.
5. Environmental monitoring teams were repositioned to minimize mission dose.
6. Feedback was obtained regarding implementation of off site protective actions. This information was announced to EOF staff and relayed to other Emergency Response Facilities and Seabrook Station staff.

No exercise weaknesses were identified.

The following areas for improvement were identified:

1. The responsibilities of the NHY staff member processing inhalation pathway samples should be reviewed to ensure that activities which might impede his performance are assigned to other response personnel.

2. The procedure for processing of inhalation pathway samples could be streamlined by restricting concerns to iodine and noble gas concentrations.

Thus, this inspection report shows that no matter what facts existed in 1988 with respect to training of TSC and EOF personnel, the 1990 report showed only strengths in "using operating procedures, recognizing emergency conditions, analyzing station conditions, developing solutions and taking necessary actions." *Compare Motion, Exhibit 1 with Report 90-85 at 4, 6, 7.* Thus, Intervenor's have not shown any basis for concluding that the matters are not now moot.

Moreover, the affidavit provided by the Staff on March 12, 1991, is additional evidence of the ability of the Technical Support Center and Emergency Operation Facility staffs to analyze station conditions, parameter trends and develop potential solutions for placing the unit in a safe, stable condition. Staff Response, Affidavit of Edwin F. Fox, Jr. ("Fox Affidavit"), at ¶¶ 6-8. The affidavit further explains that, although the scenario of the 1990 exercise necessarily differed from that used in the 1988 exercise in order to adequately test emergency preparedness, it nevertheless tested the ability of the emergency response personnel to implement the plan under comparable plant conditions and involved response activities comparable to the activities which resulted in the weaknesses initially identified in the 1988 exercise. Fox Affidavit at ¶¶ 7-9. Whatever questions the Intervenor's have about the 1990 exercise, that exercise demonstrated that the weaknesses purportedly existing in the 1988 exercise have been resolved.^{4/}

^{4/} In an attempt to keep their 1988 exercise contention alive, Intervenor's complain that the 1990 exercise report is too general to indicate what emergency response actions
(continued...)

In short, Intervenor's do not provide an adequate basis to dispute the Staff's position that the training matters raised by 1988 exercise contention are now moot as a result of the clean record on the subsequent full participation exercise. See *Massachusetts v. NRC*, *supra* at 47; *Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)*, ALAB-900, 28 NRC 275, 284 (1988); Staff Response at 2-6.^{4/}

B. The Matters Intervenor's Raise Are Neither Material Nor Safety Significant

Intervenor's argue that (1) a material issue is "one that is relevant to a licensing proceeding such as issues raised by emergency preparedness exercises," (2) factual allegations supporting a material issue, when disputed, must be resolved in a hearing and (3) the application of the fundamental flaw test in ALAB-918, 29 NRC 473 (1989), would apparently "exclude deficiencies in emergency personnel performance from ever being considered a fundamental flaw" since a training deficiency "could virtually always

^{4/}(...continued)

occurred during 1990 exercise or to demonstrate that the onsite weaknesses listed in NRC Inspection Report No. 50-443/88-09, dated July 6, 1988 ("Report 88-09"), and later resolved in Report 88-10, were actually corrected. However, they ignore that Report 90-85 is essentially comparable in detail to Report 88-09, on which they built their proposed onsite exercise contention alleging the failure of TSC and EOF training. The Intervenor's' complaint about the brevity of Report 90-85, without setting forth any facts as to why the report's conclusions should be questioned, fails to show that the matters raised in their 1988 onsite exercise contention have not been mooted.

^{5/} Intervenor's also seem to complain that the 1990 exercise was not specifically designed to be "remedial" or to specifically test the weaknesses purported shown in the 1988 exercise. Remedial exercises are only required if a test of an emergency plan is not adequate to enable a finding of reasonable assurance. 10 C.F.R. Part 50, Appendix E, § IV.F.4. The 1988 exercise did not preclude such a finding.

be readily correctable by further training." Intervenor's Reply at 4-5.^{6/} These arguments should be rejected.

As stated in the Staff's previous filing, Staff Response at 15-19, a "material" issue is one that is not merely relevant to licensing, but one that is material to licensing. As the Appeal Board stated in answer to the same arguments made by the Intervenor's in this proceeding:

Contrary to intervenor's apparent belief, *UCS[I]* does not stand for the broad proposition that the Commission must allow any and all information arguably relevant to licensing, whenever raised, to be the subject of a hearing. Rather, *UCS[I]* teaches that the agency cannot generically exclude from operating license hearings issues that its own regulations make material to the licensing decision.

ALAB-940, 32 NRC 225, 240 (1990). Thus, Intervenor's arguments (Intervenor's Reply at 4-6) that all matters relevant to licensing must be subject to a hearing were specifically rejected in this case. As the Staff has previously detailed, *Union of Concerned Scientists v. NRC*, 735 F.2d 1443 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1132 (1985) ("UCS I"), *San Luis Obispo Mother for Peace v. NRC*, 751 F.2d 1287 (D.C.

^{6/}Intervenor's state that their contention alleged that the onsite emergency plan failed to meet planning standards 10 C.F.R. § 50.47(b)(2) (adequate staffing and response function specification), (b)(14) (correction of exercise deficiencies), and Part 50, Appendix E, § IV.F.2 (annual onsite exercise). Intervenor's Reply at 4. The only basis stated for the contention, including the Pollard affidavit incorporated therein, was that the June exercise revealed fundamental deficiencies in the preparedness of TSC and EOF personnel (as identified by the NRC inspection) that showed onsite staff training was inadequate. See, e.g., Motion to Admit Exercise Contention or, in the Alternative, to Reopen the Record (September 16, 1988) at 2-3, 7-8, Exhibit 1. The Licensing Board, the Appeal Board, and the Court of Appeals, each found that the contention, in essence, raised training deficiencies that allegedly precluded a favorable finding with respect to the requirements of 10 C.F.R. § 50.47(b)(15) (radiological emergency response training). LBP-89-4, 29 NRC 62, 66 (1989); ALAB-918, 29 NRC 473, 477-78 (1989); *Massachusetts v. NRC*, *supra* at 44-45. Any attempt by Intervenor's to expand the scope of its onsite contention (beyond the basis initially provided) at this juncture should be rejected.

Cir. 1984), *vacated in part and rehearing en banc*, 760 F.2d 1320 (1985), *aff'd*, 789 F.2d 26 (1986), and *Massachusetts v. NRC*, *supra*, each held that, although a right to a hearing exists on material licensing matters, contentions may be rejected for hearing where the proponent of the contention cannot show he can establish a *prima facie* case. See Staff Response at 19-22, 15-17.

The Commission, itself, has addressed the Licensing Board's determination of the significance of the safety issues raised by Intervenor's onsite emergency exercise contention at issue here, in the context of rejecting an application to stay a low power license for Seabrook. Without passing on the merits of the ongoing appeal of LBP-89-4, 29 NRC 62 (1989), the Commission stated that the "Board's diligent threshold examination of the significant safety question provides important assurance that no significant safety matter has been overlooked. See LBP-89-4, 29 NRC at 72-86." CLI-89-8, 29 NRC 399, 414 (1989) (footnote omitted). The Commission also noted that Intervenor's evaluation of the adequacy of onsite staff training and knowledge appeared largely conclusory and simply reflected a disagreement with Staff expert evaluation that did not warrant further consideration. *Id.* at 414-15.

A material issue concerning an emergency preparedness exercise is one that is significant to licensing (*i.e.*, shows a fundamental flaw in the plan), and a hearing need not be held unless there is a genuine issue as to a material fact concerning whether the alleged deficiencies show that there is a fundamental flaw in the plan. See *Long Island Lighting Co.* (Shoreham Nuclear Power Station), CLI-86-11, 23 NRC 577 (1986); *id.*, ALAB-903, 28 NRC 499, 505-06 (1988); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523-24 (1973). As the Staff has previously explained, none of the matters raised are safety significant, material or show

that there is a fundamental flaw in the onsite emergency plan. See Staff Response at 15-28; see also CLI-90-3, 31 NRC at 255-56 (1989 onsite exercise contention does not indicate that there is a fundamental flaw in the plan). Intervenor's contention does not identify any pervasive performance problems which would require substantial revision of the emergency plan to correct or which raise a legitimate doubt as to whether the Seabrook can be operated safely.

In sum, Intervenor's 1988 exercise contention does not raise matters that are material, safety significant or would require a hearing.

C. The Contention Provides No Basis To Alter Seabrook's License

Intervenor's argue that "[u]ntil there is a complete resolution of the issues raised in the June 1988 On-Site Exercise Contentions as to the competence of the plant's operating personnel, . . . assurance of the emergency response capabilities of the plant personnel remains an open question" and therefore "the license should be vacated, or at least suspended, pending resolution of the matter." Intervenor's Reply at 6-7.

In CLI-89-8, 29 NRC at 414-15 (1989) (footnote omitted), the Commission, in considering a previous motion for stay filed by Intervenor's, determined:

The Commission is also satisfied that, whether it was required or not, the Board's diligent threshold examination of the significant safety question provides important assurance that no significant safety matter has been overlooked. See LBP-89-4, 29 NRC at 72-86.

As we have noted *supra*, this onsite exercise contention is the only issue relevant to the safety of Seabrook low-power operations where appellate review of the Licensing Board decision has not been concluded. If the Intervenor's showing raised a meaningful doubt whether key plant personnel, who had met NRC operator-licensing requirements, were insufficiently trained and knowledgeable to operate Seabrook safely at low power, then the Commission itself would want to examine this matter further. But both FEMA and the NRC Staff have found that the level of training and knowledge is adequate and that the onsite exercise did not show otherwise, even though some problems were observed. The

Intervenors' differing evaluation appears largely conclusory and at most simply reflects their disagreement with FEMA and with the Staff's expert evaluation. The Licensing Board's opinion remains under review but the likelihood that the Staff's and FEMA's judgment will be overturned seems small and is certainly not enough to support a stay.

Intervenors provide no reason why the determination should be different now so as to cause a revocation or suspension of the Seabrook license, as opposed to staying issuance of the license. The state of the record, as the Commission recognized, shows no significant safety matter has been overlooked.

In an attempt to show "the risks inherent in having unresolved training issues," Intervenors provide a November 30, 1989 affidavit by Gregory Minor and Steven Sholly, which accompanied Intervenors' request that the Commission stay the effectiveness of LBP-89-32, and cites the 1988 onsite exercise weaknesses, as well as lowing power testing problems which formed the basis for a previous motion to reopen the record. See Intervenors Reply, Exhibit B. The only portion of the affidavit that is relevant to the 1988 exercise is the discussion of the purported exercise weaknesses identified in Report 88-09 (and later resolved in Report 88-10) to the effect that plant management showed poor judgment in trying to restore an emergency feedwater (EFW) pump since "EFW availability would have had no impact whatsoever on the steam generator cooldown in the recovery phase." *Id.*, Exhibit B at ¶ 9 and n.3. The affidavit further alleges that the declining operational performance is a very serious matter which while unresolved, would pose an unacceptable risk to public health and safety. *Id.* at ¶¶ 14-18.^{2/}

^{2/} The Minor and Sholly Affidavit appended to Intervenors' reply to the Appeal Board's February 22 Order was before the Commission when it denied Intervenors' request to stay the effectiveness of LBP-89-32, 32 NRC 667 (1989), which authorized
(continued..)

In CLI-90-3, 31 NRC 219, 260 (1990), the Commission refused to stay the issuance of the full power license for Seabrook on the basis of the incidents recounted in this affidavit and the affidavit itself, stating:

We find the Board's careful discussion and evaluation [LBP-89-28, 30 NRC 281-82, 284-92] of the safety significance of [the low power testing] event entirely reasonable and, based upon this and on Staff's and Applicants' own follow-on corrective actions, fail to see how the event evidences any increased risk of accident at Seabrook. In fact, we think that Intervenor's own affidants demonstrated that the Commission is holding the public safety in high regard. [footnote omitted]

The Appeal Board in ALAB-940, 32 NRC 225, 243-44 (1990), affirmed the Licensing Board's refusal in LBP-89-28 to reopen the record, finding that no safety significant matter was raised.

Intervenor's arguments fail to show that the matters raised are safety significant, likely to lead to a materially different result if the onsite training matters were heard or raise a legitimate doubt that the plant can be operated safely. Consequently, Intervenor has not shown that the matters raised in its contention alleging that onsite training deficiencies were revealed by the 1988 full participation exercise would warrant any suspension of the Seabrook license *pendente lite*.

CONCLUSION

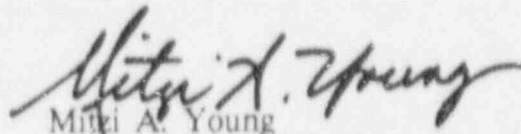
Intervenor fails to show that the issues raised by the 1988 onsite exercise contention are not now moot as a result of the clean record on the later exercise which tested the plan areas challenged by the contention or that there is any basis to alter Seabrook's licensing status. If the Appeal Board cannot find the matters moot, it should

2/(...continued)

issuance of the full power license. See CLI-90-3, 31 NRC 219, 255-56, 259-60 (1990). Low power testing issues are not relevant to the current proceeding and do not provide a basis for the Intervenor's 1988 exercise contention.

analyze the Licensing Board's analysis of the record below under the standards applicable to summary disposition and conclude that none of the matters raised were safety significant, likely to lead to a different result, established the existence of a fundamental flaw in the plan, or presented a serious question as to the safe operation of the facility. In any event, there is no basis upon which to suspend or vacate the Seabrook license.

Respectfully submitted,


Mitzi A. Young
Senior Supervisory
Trial Attorney

Dated at Rockville, Maryland
this 19th day of March, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	Docket Nos. 50-443 OL-1
PUBLIC SERVICE COMPANY OF)	50-444 OL-1
NEW HAMPSHIRE, <i>et al.</i>)	Onsite Emergency Planning
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(Seabrook Station, Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS REPLY TO FEBRUARY 22, 1991 ORDER" in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisks, by facsimile transmission, or, as indicated by triple asterisks, by express mail, this 19th day of March 1991:

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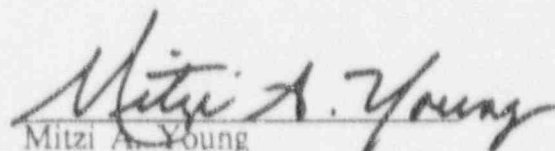
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