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RELATED CORRESPONDENCE
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUBLIC SERVICE COMPANY OF NEW)
HAMPSHIRE, et al.)
)
(Seabrook Station, Units 1 & 2))
_____)

Docket Nos. 50-443 OL
50-444 OL

APPLICANTS' FIRST MOTION FOR
SUMMARY DISPOSITION
(CONTENTIONS NECNP I.D.4 AND I.L)

Pursuant to 10 CFR § 2.749, the Applicants hereby
move for summary disposition of contentions NECNP I.D.4
and I.L. This motion is grounded upon answers to
interrogatories submitted by NECNP, NHAG and SAPL.

Pursuant to 10 CFR § 2.740 and this Board's orders,
the Applicants submitted identical interrogatories to

each of the admitted intervenors. Two of the interrogatories were:

"Does [name of intervenor] intend to litigate Contention NECNP I.D.4?"

and

"Does [name of intervenor] intend to litigate Contention NECNP I.L?"

In each case the term "litigate" was specially defined to include the introduction of direct testimony, the cross-examination of witnesses, the submission of proposed rulings and findings, or the exhortation that the pending application be denied or conditioned, all on the basis or in respect of the specified contention.

NECNP, NHAG and SAPL all answered that they did not intend to offer any evidence on these contentions.¹

With respect to contention I.D.4, NECNP (the proponent of both contentions) stated that "Unless the Applicants should alter their apparent commitment to meet IEEE

¹CCCNH did not respond to the interrogatories at all.

338-1977 or the Staff should make a determination of noncompliance with that standard, NECNP does not intend to pursue this contention."² With respect to contention I.L, NECNP stated that "Applicants' and Staffs' answers to NECNP's interrogatories indicate to us that Applicants have now abandoned the use of accoustic accelerometers. . . . NECNP is prepared to drop this contention upon assurance from Applicants that direct PORV position indicators are in use at Seabrook."³

²See "Applicants' Answers to 'NECNP Second Set of Interrogatories and Request for Documents to Applicants on Contentions I.D.1, I.D.4, I.F, I.I, I.L, and II.B' and Motion for a Protective Order" at 7, Interrogatory No. 7 (filed 1/29/83).

³The reference of NECNP to the Applicants' position is an amendment to the FSAR documents in a Response to a Staff "Request for Additional Information," which NECNP had, apparently, overlooked before filing this contention in the first place. Since the FSAR is the application, NECNP has all the assurance it could ever get; there is only one application pending and it no longer is premised upon the use of accoustic accelerometers for PORV indication. See "Applicants' Answers to 'NECNP First Set of Interrogatories and request for Documents to Applicants on Contentins I.D.1, I.D.2, I.D.3, I.D.4, I.F, I.G, I.I., I.L., I.M, I.N, and I.U'" at 65-67, Interrogatories Nos. I.L-1, I.L-4 and I.L-5 (filed 11/22/82).

With respect to both contentions, NHAG answered the interrogatory with the identical declaration:

"New Hampshire does not intend to offer direct testimony relating to this contention. However, the State reserves the right to cross-examine or offer proposed findings and ruling on the contention, depending upon the testimony presented."⁴

SAPL likewise replied as to both contentions in identical language, which consisted of the facially unqualified negative (i.e., "No."), plus a curious definition of the word "No." in the following terms:

"In answering "No." to any of the applicant's [sic] specific interrogatories, the Seacoast Anti-Pollution League does not waive its right to cross examine witnesses or to urge the denial (or allowance subject to conditions) of the pendency application on the basis of the topic or contention."

(On the other hand, neither NHAG nor SAPL answered any of the specific questions required to be answered of someone who proposes cross-examination, omissions that are the subject of separate motions.)

⁴It is not clear whence NHAG obtained the idea that it was privileged to offer direct testimony in respect of another intervenor's contention in the first place. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 869 n.17, reconsideration denied, ALAB-252, 8 AEC 1175 (1974), aff'd, CLI-75-1, 1 NRC 1 (1975); Project Management Corporation, (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392 (1976).

Plainly under these circumstances, there remains nothing to litigate under contentions I.D.4 and I.L. NECNP, as the proponent of the contentions, has the right to withdraw them; equally, it has had the candor and the common sense to withdraw them in this case upon discovering that neither has any basis. NECNP, on the other hand, is the only intervenor with the right to introduce direct testimony, in the absence of which there will be neither the need for a response by the Applicants⁵ nor an opportunity to cross-examine.

⁵"In a ruling that has received explicit Supreme Court approval, the Commission has stressed that an intervenor must come forward with evidence 'sufficient to require reasonable minds to inquire further' to insure that its contentions are explored at the hearing." Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 340 (1980), citing Consumers Power Company (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19, 30-32 & n.27 (1974), rev'd sub nom. Aeschliman v. NRC, 547 F.2d 622 (1976), rev'd sub nom. Vermont Yankee Nuclear Power Corporation v. NRDC, 435 U.S. 519, 553-54 (1978).

In a single sentence, there is no longer any controversy regarding these two contentions. For that reason, both should be dismissed on summary disposition.

Respectfully submitted,

S/ Thomas G. Dignan, Jr.

S/ R. K. Gad III

Thomas G. Dignan, Jr.

R. K. Gad III

Ropes & Gray

225 Franklin Street

Boston, Massachusetts 02110

Telephone: 423-6100

Dated: February 7, 1983

STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO DISPUTE

1. The Applicants have stated under oath in answer to interrogatories that "The Applicants meet all the requirements of IEEE 338-1977." ("Applicants' Answers to 'NECNP Second Set of Interrogatories and Request for Documents to Applicants on Contentions I.D.1, I.D.4, I.F, I.I, I.L, and II.B' and Motion for a Protective Order" at 7, Interrogatory No. 7 (filed 1/29/83).
2. NECNP has stated under oath in answer to interrogatories that "Unless the Applicants should alter their apparent commitment to meet IEEE 338-1977 or the Staff should make a determination of noncompliance with that standard, NECNP does not intend to pursue this contention." ("NECNP Response to Applicants' Interrogatories and Request for the Production of Documents" (hereinafter "NACNP Ans/Ints") at 10-11 (filed 1/24/83).)
3. The Applicants have stated under oath in answer to interrogatories that "The Applicants disagree with [NECNP Contention I.L] in that qualified valve position limit switches and open/closed indication lights are provided for the Power-Operated Relief Valves (PORV's), RC-PCV-456A and B. . . . Flow detection is not provided for each of the PORVs. Direct valve position indication is provided. . . . An Accoustic Accelerometer System for detecting flow through the Power-Operated Relief Valves (PORV's) is not provided." ("Applicants' Answers to 'NECNP First Set of Interrogatories and request for Documents to Applicants on Contentins I.D.1, I.D.2, I.D.3, I.D.4, I.F, I.G, I.I., I.L., I.M, I.N, and I.U'" at 65-67, Interrogatories Nos. I.L-1, I.L-4 and I.L-5 (filed 11/22/82).
4. NECNP has stated under oath in answer to interrogatories that it 'is prepared to drop this contention" (NECNP Ans/Ints at 13.)

5. Both NHAG and SAPL have stated under oath in answer to interrogatories that they do not intend to offer any evidence on these contentions. ("The State of New Hampshire's Response to the Applicant's Interrogatories and Requests for the Production of Documents" at 19, 20 (filed 1/17/83); "SAPL's Response to Applicant's Interrogatories and Request for the Production of Documents" at 1, 2 (filed 1/?/83)).

CERTIFICATE OF SERVICE

I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on February 7, 1983, I made service of the within "Applicants' First Motion for Summary Disposition (Contentions NECNP I.D.4 and I.L)" by mailing copies thereof, postage prepaid, to:

Helen Hoyt, Chairperson
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Rep. Beverly Hollingworth
Coastal Chamber of Commerce
209 Winnacunnet Road
Hampton, NH 03842

Dr. Emmeth A. Luebke
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

William S. Jordan, III, Esquire
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, DC 20006

Dr. Jerry Harbour
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

E. Tupper Kinder, Esquire
Assistant Attorney General
Office of the Attorney General
208 State House Annex
Concord, NH 03301

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Roy P. Lessy, Jr., Esquire
Office of the Executive Legal
Director
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney
General
Augusta, ME 04333

David L. Lewis
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Rm. E/W-439
Washington, DC 20555

Mr. John B. Tanzer
Designated Representative of
the Town of Hampton
5 Morningside Drive
Hampton, NH 03842

Roberta C. Pevear
Designated Representative of
the Town of Hampton Falls
Drinkwater Road
Hampton Falls, NH 03844

Mrs. Sandra Gavutis
Designated Representative of
the Town of Kensington
RFD 1
East Kingston, NH 03827

Edward J. McDermott, Esquire
Sanders and McDermott
Professional Association
408 Lafayette Road
Hampton, NH 03842

Jo Ann Shotwell, Esquire
Assistant Attorney General
Environmental Protection Bureau
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Ms. Olive L. Tash
Designated Representative of
the Town of Brentwood
R.F.D. 1, Dalton Road
Brentwood, NH 03833

Edward F. Meany
Designated Representative of
the Town of Rye
155 Washington Road
Rye, NH 03870

G. R. K. Gad III

R. K. Gad III