

RELATED CORRESPONDENCE

Filed: February 7, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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' THIRD MOTION FOR
SUMMARY DISPOSITION
(CONTENTION NECNP I.F.)

Pursuant to 10 CFR § 2.749, the Applicants hereby
move for summary disposition of contentions NECNP I.N.
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. One of the interrogatories was:

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

NECNP, the proponent of this contention, responded as follows:

"NECNP does not intend to pursue this contention because Applicants have stated that they comply with IEEE 323-1974. If NECNP should determine that Applicants do not in fact comply with IEE 323-1974, we will renew this contention and answer Applicants' interrogatories relating to it."¹

Prescinding from the rectitude of NECNP's "reservation," it is plain that for the present the contention has been withdrawn and is without basis.

SAPL responded in the negative.²

¹"NECNP Response to Applicants' Interrogatories and Request for the Production of Documents" (filed 1/24/83) at 11.

²SAPL purported to reserve the right to cross-examine witnesses presented by other parties and to submit proposed findings on the contention. However, SAPL did not, as the interrogatories required, answer any of the subsidiary questions required to be answered by a person who intended to cross-examine or offer proposed findings; moreover, SAPL has revealed no basis whatsoever for the continued vitality of the contention.

Curiously, NHAG answered the question in the affirmative, implying that it intends to litigate a contention of NECNP which NECNP has determined should be and has been withdrawn. NHAG, which did not advance this contention itself, does not have this privilege, since it may not introduce direct testimony on the contention. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 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).

Moreover, even if NHAG had the right to litigate the contention, it is wholly in default of its obligations to disclose any basis for retaining the contention. As NECNP has noted, the Applicants in their answers to interrogatories have stated under oath that they are in compliance with IEEE 323-1974, the standard that bounds the scope of the admitted contention.³ Notwithstanding

³The admitted contention was:

"The Applicants have not met the requirements of GDC 17 or Criteria III, Appendix B in that [they have] not indicated compliance with IEEE 323-1974."

"Memorandum and Order (September 13, 1982) at 45 (emphasis added).

its answer to Applicants' interrogatory No. XIV-1, NHAG responded to the balance of the Applicants' interrogatories on this contention with the single response:

"New Hampshire has not yet finalized its position on this contention. Therefore, it is unable to answer these Interrogatories at this time. . . ."4

NHAG is totally in default under the Rules of Practice and the Orders of this Board to supply any revelation of what it is that would propose to adduce by way of evidence (if it had the right to adduce anything); moreover, the response that it has submitted reveals that, at least at the present, it has identified nothing that warrants further consideration of this contention. Prescinding for the compliance of NHAG's responses with the discovery rules, they establish that NHAG lacks any sufficient basis for defeating summary disposition on the withdrawn contention.

⁴ "The State of New Hampshire' Response to the Applicants' Interrogatories and Requests for the Production of Documents Filed December 8, 1982" (filed 1/17/83) at 19.

CCCNH did not respond to the interrogatories at all.

On this record, Contention NECNP I.F stands wholly abandoned and should be dismissed.

Respectfully submitted,

15/ Thomas G. Dignan, Jr.

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 comply with IEEE 323-1974.
2. NECNP has withdraw contention I.N.

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' Third Motion for Summary Disposition (Contention NECNP I.F)" 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

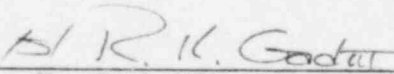
Mrs. Sandra Cavutis
Designated Representative of
the Town of Kensington
RFD 1
East Kingston, NH 03827

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



R. K. Gad III