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Docket Nos.
50-443, -444

Introduction

In a recent decision, the United States Court of Appeals for the District of Columbia Circuit overturned the March 24

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amendment. New England Coalition on Nuclear Pollution v. Nuclear Regulatory Commission, No. 82-1581 (February 7, 1984). The Court's determination that the amendment was invalidly promulgated has the effect of reinstating the original financial qualifications rule. NECNP therefore takes the opportunity, formerly denied by the illegal amendment, to file this challenge to Applicants' financial qualifications to operate and decommission Seabrook.

The Financial Qualifications Rule

Pursuant to 10 C.F.R. § 2.104(c)(4), the scope of issues that can be raised in an operating license hearing includes:

Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the regulations in this chapter...

See also 10 C.F.R. §§ 50.40(b), 50.57(a)(4). To obtain an operating license, an applicant must submit to the NRC "information sufficient to demonstrate to the Commission the financial qualifications of the applicant" to carry out the activities for which the license is sought. 10 C.F.R. § 50.33(f). This information includes a demonstration

that the applicant possesses the funds necessary to cover estimated operating costs or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two.

Id. More specifically, the operating license applicant must show that it

possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs of operation for the period of the license or for 5 years, whichever is greater, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition.

Id. Ordinarily, it is sufficient to show that an applicant can obtain the necessary funds to operate the plant for the first five years of operation, plus the estimated costs of permanent shutdown. 10 C.F.R. Part 50, Appendix C, § I.

The establishment of adequate financial qualifications by a utility is essential to a finding that a nuclear plant can and will be operated safely during its life. As the Licensing Board recognized in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 196 (1981):

The current rule has an important purpose. It is possible for an applicant to scrape by financially during the construction stage. That is, due to unanticipated cost increases and backfit requirements, it might barely manage to complete construction. If it does just scrape by, then the company's financial straits could interfere with its sound judgment in safety matters. Safety measures that might be taken by a financially healthy company might not be taken.

Thus, the financial health of a utility is integrally related to its ability to operate a plant safely.

Contention VII

Applicants have not demonstrated that they are financially qualified to operate and decommission the Seabrook nuclear power plant in compliance with 10 C.F.R. §§ 50.33(f), 50.40(b), 50.57(a)(4), and Appendix C to Part 50.

Basis

Public Service Company of New Hampshire (PSCO), the major stockholder (35%) and lead owner of the Seabrook plant, is teetering on the brink of financial disaster. A number of factors, including mushrooming construction cost estimates, the suspension of construction on Unit 2, faltering commitments by other investors to the project, and loss of investor confidence in Seabrook, have dimmed and all but extinguished the prospect that PSCO will be able to successfully complete and operate the Seabrook facility. There is thus no reasonable assurance that Applicants will have the financial resources to operate the Seabrook plant safely throughout its life, or even for a period of several years.

When PSCO first undertook the construction of the Seabrook plant, it estimated the cost at less than a billion dollars. New Hampshire Public Utilities Commission, "Public Service Company of New Hampshire, Investigation into the Supply and Demand for Electricity," Docket No. DE 81-312, April 29, 1983 (hereafter "DE 81-312"), at II-1. The company now estimates the cost of the plant at \$5.24 billion¹, and the New Hampshire Public Utilities Commission recently set the cost at \$8-9 billion, depending on the timing of completion of Unit 1. DE81-312 at II-2, II-39. The Maine Public Utilities Commission has made a similar finding. DE 81-312 at II-39. More

¹PSCO is scheduled to submit an updated cost estimate for the plant on March 1, 1984.

recently, Central Maine Power Company submitted to the Maine PUC a consultant's report containing a cost estimate of \$10.3 billion for the Seabrook plant. National Economic Research Associates, Inc., "An Evaluation of Capacity Planning and Load Forecasting for Central Maine Power Company," February 17, 1984, at I-6.

As construction cost estimates increase, PSCO's debt-equity ratio also increases, creating serious financial risks for the company. Assuming the PUC's cost estimate of \$8-9 billion, PSCO's total Seabrook investment will equal 80-90% of its assets. DE 81-312 at II-4. According to the PUC, this degree of asset concentration in one project is the heaviest within the electric utility industry. Id. Moreover, the PUC found that the level of external financing being used to fund the enormous project is "unsurpassed in the industry." DE 81-312 at III-4. As the PUC concluded,

In light of this greatly increased construction program, it is likely that further financial problems will arise for a utility with one of the worst set [sic] of financial ratios in the country.

DE 81-312 at II-39.

PSCO's decision of September 8, 1983 to reduce construction on Unit 2 to the "lowest feasible level" has further jeopardized the financial health of the company. Before the decision to stop Unit 2 construction, the New Hampshire PUC predicted that Unit 2 would not be completed until March of 1990, 2 years later than PSCO's prediction. DE 81-312 at

II-33. With the postponement of construction on Unit 2 until Unit 1 is completed, Unit 2's completion date will be pushed off even further. This lengthy and open-ended postponement of Unit 2's completion will only increase the eventual cost of the plant, due to the inefficiency of separate construction efforts and the burden of increased interest payments.

Pressures by other investors to cancel Unit 2 create a strong possibility that Unit 2 will be never be completed, thus raising even graver financial problems for Applicants. As PSCO admits in a recent prospectus, New Hampshire's anti-CWIP (Construction Work in Progress) statute might prohibit recovery for most of the \$279,700,000 invested in Unit 2. Prospectus for sale of \$100,000,000 in debentures, November 14, 1983, at 7. The collapse of Unit-2 could well lead to bankruptcy for the entire company. In PSCO's own words,

. . . the amount of charge against earnings would probably eliminate the Company's retained earnings, thereby effectively precluding the Company from paying dividends on its common and preferred stocks and threatening the continuance of the Company's construction program and business operations.

Id.

Considering the high level of pressure against completion of Unit 2, cancellation is a likely prospect. We understand that the companies that own forty-four percent of Seabrook, including New England Power Pool, United Illuminating, Northeast Utilities, Central Maine Power, Eastern Maine Electric Cooperative and Maine Public Service, want

cancellation of Unit 2. Some are under order from their state governments to divest themselves of holdings in Unit 2. Two Connecticut utilities have been ordered by the Connecticut Department of Public Utility Control to "make every effort to disengage" from Unit 2, including taking active steps to bring about cancellation of Unit 2. Prospectus at 2. The Maine Public Utilities Commission has instructed Maine Public Service Company to divest itself of half its Seabrook interest (Docket 81-114, November 30, 1982); and has set long-term cogeneration rates for Central Maine Power that are based on the assumption that CMP will end its involvement in Unit 2. Docket 82-174, February 9, 1984. Central Maine Power announced on February 17, 1984, that it would vote to cancel construction of Unit 2 at the Seabrook owners' meeting of March 1, 1984, and that it would exert "every effort to bring about the termination of Unit 2 without jeopardizing the completion of Unit 1." Central Maine Power, press release, February 17, 1984. Other utilities and electric cooperatives, including Northeast Power Company and Eastern Maine Electrical Cooperative, are attempting to sell their shares in all or part of the Seabrook plant. Under these circumstances, it is very unlikely that Unit 2 will ever be completed.

As Public Service Company concedes, it will require special administrative, judicial, or legislative relief if Unit 2 is cancelled, or the cancellation "will have serious consequences for the continuation of the Company's construction program and

business operations." Prospectus, November 14, 1983, at 4. PSCO is unlikely to obtain judicial relief for the costs of Unit 2. In 1982, the New Hampshire Supreme Court allowed PSCO to continue construction on Unit 2 over the objection of the New Hampshire PUC; but warned PSCO that the PUC could deny recovery of unreasonable costs. Appeal of Public Service Company of New Hampshire, 454 A.2d 435, 443 (N.H. 1982)

Public Service Company's financial problems have had a shattering effect on its viability in the marketplace. PSCO stock prices have plunged from \$20 a share in 1983 to \$12 a share in 1984. Simison, "Nuclear Utilities' Money Raising is Disrupted by Industry Problems," Wall Street Journal, February 14, 1984, at 35. PSCO is now resorting to the "junk bond" or high interest market to attract investors. Id. The added interest points increase the heavy financial burden on the Company. Of the six major brokerage houses that NECNP telephoned in February, only 1 recommended investing in Public Service Company of New Hampshire.

PSCO's ratings in the bond market have suffered as a result of its financial setbacks. According to the New Hampshire PUC, PSCO stocks were downgraded "to levels achieved only by the owners of Three Mile Island" after PSCO revised cost estimates and predicted further increases. DE 81-312 at III-1. The PUC also cited a report by Dean Witter Capital Markets, entitled "Electric Utility Industry Financial Handbook" (Summer, 1982),

which ranked PSCO at the bottom among 116 electric utilities. The Dean Witter study reached the following sobering conclusions about PSCO:

1. Over the past five years, 1977-1981, no electric utility measured in the study had a larger construction program vis-a-vis its net plant than did PSNH.
2. Over the past five years, 1977-1981, PSNH's construction program compared to its net plant was 147% larger than the average of the 116 electric utilities measured in the survey.
3. In 1981, PSNH's construction program as compared to its net plant was 189% larger than the average of the 116 electric utilities measured in the survey.
4. Over the past five years, 1977-1981, PSNH has the worst internal generation of cash.
5. In 1981, PSNH had the worst coverage ratios, both pre-tax and after tax excluding AFUDC² of every electric utility measured except Metropolitan Edison, a subsidiary of GPU, the owners of Three Mile Island.
6. PSNH and the subsidiaries of General Public Utilities, the owners of Three Mile Island, have the lowest bond rating of the 116 electric utilities measured.
7. In 1981, PSNH had the worst ratio of AFUDC as a % of earnings for common of all the electric utilities measured.

DE 81-312 at III-3. The PUC concluded that "three downgrades in a year to the speculative category, worsening financial ratios and an expanding construction program all place PSNH in a category by itself." Id. at III-4. Indeed, PSCO has conceded that it is the "riskiest utility in the industry."

² AFUDC, or allowance for funds used during construction, consists of the carrying charges for construction of the plant.

DE 81-312 at III-4.

Need for Consideration of
Financial Qualifications

The financial information cited above demonstrates a utility perched on the brink of financial disaster. The likely cancellation of Unit 2 threatens the continued operation of the entire business operations of Public Service Company, let alone the smooth and safe operation of Unit 1. Even if total disaster is averted, the company's serious financial problems are likely to impinge on its ability to manage and maintain the plant in a safe condition.

Given the dire condition of PSCO's finances, the first five years of operation may be especially difficult. The technical problems that may be expected during initial operation may seriously jeopardize the financial health of the plant. As PSCO concedes in its November 14, 1983, Prospectus, delays in the startup of Unit 1 would require the Company to maintain high levels of financing; and any outages after startup resulting in removal from the rate base "could impose significant financial burdens on the Company." at 6.

Considering the severity of its financial crisis, Public Service Company cannot provide the Commission with a reasonable assurance that it is financially qualified to operate the Seabrook nuclear facility in compliance with NRC safety requirements. Therefore, the Licensing Board should admit this

contention and take evidence from the parties on the issue of Applicants' financial qualifications.

Satisfaction of Requirements
for Late-Filed Contentions

NECNP meets the requirements specified in 10 C.F.R. §§ 2.714(b) and 2.714(a)(1) for admission of this late-filed contention.

1) NECNP has good cause for filing this contention after the expiration of the original time period for submission of contentions. The Commission removed the financial qualifications requirement in March of 1982, a month before NECNP was required to file its first set of contentions in this case. On February 7, 1984, the U.S. Court of Appeals for the District of Columbia held the Commission's action to be invalid in NECNP v. NRC, No. 82-1581. This is therefore the first opportunity that NECNP has had to raise the financial qualifications issue.

2) There is no other means by which NECNP's interest can be protected. The Licensing Board is the only tribunal empowered to consider the question of whether Applicants are financially qualified to operate the Seabrook plant with a reasonable assurance of safety and in compliance with NRC regulations.

3) NECNP can be expected to assist in developing a sound record on this case. We have already assembled a substantial

quantity of information on the financial health of Public Service Company of New Hampshire. We expect to call on experts to testify on the issue before the Licensing Board. Much information has already been gleaned from proceedings before state public utilities commissions. NECNP also expects to use these excellent resources in presenting its case.

4) NECNP's interest in this issue is not represented by any other party, since the Board has not accepted contentions on financial qualifications by any other party.

5) NECNP's litigation of the financial qualifications issue will broaden the scope of the proceeding into a new field. That field, however, has limited scope, and will not lead to further broadening of the issues.

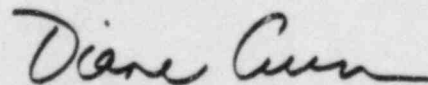
The litigation of financial qualifications cannot be expected to substantially delay the licensing proceeding. The litigation of offsite emergency planning is still the greatest limiting factor in the timing of the Seabrook hearings. The emergency plans for Massachusetts have not yet been submitted to the parties for the preparation of contentions. Therefore, the submission at this time of a contention on financial qualifications cannot be expected to delay the conclusion of the hearing past the date when the Massachusetts plans will be litigated.

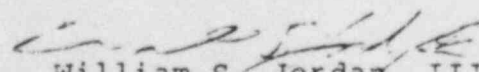
Although NECNP satisfies the NRC's standards for late-filed contentions, we contend that under the circumstances, this standard cannot be used to bar litigation of a contention that

satisfies the requirements of 10 C.F.R. §2.714(b) for timely filed contentions. The only reason that NECNP did not challenge Applicants' financial qualifications in April of 1982 was that we were illegally barred from doing so by the Commission's amendment to the financial qualifications rule. The Court of Appeals has now restored the right that was illegally withheld. NECNP cannot legally be penalized now for such factors as broadening or delaying the proceeding, when those problems arose simply as a result of the Commission's own illegal actions.

If the Licensing Board is entitled to consider any factor that would mitigate NECNP's right to litigate this contention, it is the question of whether the litigation could have a substantial effect on the outcome of the case. NECNP has submitted sufficient information here to conclude that Applicants' severe financial problems could disqualify them from receiving an operating license; or at the least, that license issuance must be accompanied by strict conditions regarding financial reporting to the Commission. The contention should be accepted.

Respectfully submitted,


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February 29, 1984

CERTIFICATE OF SERVICE

DOCKETED
USNRC

I certify that on February 29, 1984, copies of NENCP CONTENTION VII: FINANCIAL QUALIFICATIONS OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE TO OPERATE AND DECOMMISSION THE SEABROOK NUCLEAR POWER PLANT were served on the following by first-class mail or as otherwise indicated:

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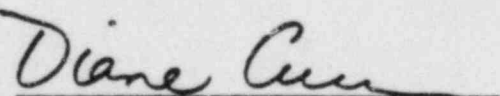
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