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OFFICE OF SECRETARY
OF ENERGY
BRANCH
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 and 2))
_____)

)
)
) Docket Nos. 50-443-OL-1
) 50-444-OL-1
) On-site Emergency
) Planning Issues
)
)

APPLICANTS' RESPONSE TO NEW ENGLAND
COALITION ON NUCLEAR POLLUTION'S MOTION
TO COMPEL APPLICANTS TO RESPOND TO NECNP'S
SECOND SET OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS ON NECNP CONTENTION IV

Background

NECNP Contention IV reads as follows:

The Applicant must establish a surveillance and maintenance program for the prevention of the accumulation of mollusks, other aquatic organisms, and debris in cooling systems in order to satisfy the requirements of GDC 4, 30, 32, 33, 34, 35, 36, 38, and 39, which require the maintenance and inspection of reactor cooling systems. The design, construction, and proposed operation of Seabrook fail to satisfy these requirements.

The basis stated for the contention was:

Basis: On May 19, 1982, the Commission published in the Federal Register a notice of abnormal occurrences at a number of nuclear reactors around

the country. 47 FR 21653. The notice described the accumulation of asiatic clams, mussels, and other aquatic organisms in reactor cooling systems which had hitherto gone unnoticed. At one reactor, Brunswick Unit One, blockage of coolant flow paths resulted in the 'total loss of both redundant trains of the residual heat removal system.' 47 FR at 21653.

Noting that the dissipation of heat to the environment is an essential safety function, the Commission found that blockage of coolant systems by biological organisms and debris could cause 'possible degradation of the heat transfer capabilities of redundant safety systems to the point where system function is lost.' Id. at 21655.

The abnormal occurrences at the six reactors showed that 'preventive measures and methods of detecting gradual degradation have been inadequate in certain areas to preclude the occurrence.' Id. The licensees in each case agreed to improve design features and detection techniques to prevent future significant fouling.

The Seabrook reactor uses ocean water for cooling and is particularly susceptible to fouling by aquatic organisms. The fouling does not occur only in the intake pipes of reactors. Organisms may find their way into the entire cooling system and even into the heat exchangers. Id. at 21654. In addition, the buildup of fouling organisms or corrosion products on piping walls, although not severe enough to block water flow during normal operation, could be dislodged by seismic activity and 'collect in equipment bearing or seal coolers blocking the cooling water flow.' Id. Because it is particularly vulnerable to intrusion by aquatic organisms, the Seabrook plant should be equipped with a maintenance and inspection program adequate to prevent the kind of degradation which current measures obviously do not achieve.

It will be noted that in neither the contention itself nor the basis stated for it does either the word "biofouling" or the phrase "microbiologically induced corrosion" ("MIC") appear. It will also be noted that both in the contention

itself (once) and in the stated basis (thrice) the plant systems of concern are described as "cooling systems" or "coolant systems." Neither in the contention itself nor in the stated basis are the systems of concern described as "circulating water systems."

On December 23, 1987, NECNP attempted to expand the contention, as stated, by the device of serving interrogatories using defined terms "biofouling" and MIC.¹ In addition, NECNP proposed certain interrogatories seeking information as to "circulating water systems,"² a class of water systems larger in number than cooling water systems. In their response, the Applicants objected to the interrogatories concerning MIC (although they went on to respond anyway to most of them) and also to interrogatories seeking information as to circulating water systems other than cooling systems (as to which other systems no answers were provided).³

As a result of the foregoing, NECNP, under date of January 15, 1988, has brought "New England Coalition On Nuclear Pollution's Motion to Compel Applicants to Respond to

¹ NECNP Second Set of Interrogatories and Request for the Production of Documents to Applicants on NECNP Contention IV (Dec. 23, 1987) at 3, ¶¶ 7 and 8.

² E.g. Int. No. 2.t.

³ Applicants' Responses to New England Coalition on Nuclear Pollution's Second Set of Interrogatories and Request for Production of Document to Applicants on NECNP Contention IV. (Jan. 14, 1988), passim.

NECNP's Second Set of Interrogatories and Request for Production of Documents on NECNP Contention IV ("The Motion"). Herein the Applicants reply to The Motion.

Argument

The Motion begins by saying that discovery as to circulating water systems other than cooling systems is relevant because the presence of problems in such systems may indicate that problems would, in the future, occur in cooling water systems even if none, in fact, has occurred to date in the cooling water systems. NECNP's baseless speculation cannot expand the scope of its admitted contention. Next NECNP seeks, through a frankly ingenious piece of legerdemain, to get MIC into the case by showing that it is to be viewed as being encompassed within the term "biofouling" and therefore supposedly well within the contention. Motion at 5-7. NECNP's ingenuity lies in the fact that the word "biofouling" is, as noted earlier, also not in the contention or basis as drafted and thus its scope of definition cannot be used to buttress the argument for MIC being in the contention. This bootstrap operation should be rejected.

The law relied upon by NECNP consists of NRC cases making general statements as to the liberality of discovery. The Motion is strangely bereft of citations to the rules of procedure which confine discovery "to those matters in controversy which have been identified by the Commission or

the presiding officer in the prehearing order entered at the conclusion of [the special] prehearing conference . . .," 10 CFR § 2.740(a)(1), i.e., the admitted contentions, Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977). And it is settled that an intervenor is, in all respects, bound by the "literal terms" of the admitted contention. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station), ALAB-868, 25 NRC ____, Slip Op. at 37 n. 83 (June 30, 1987); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 545 and n. 60 (1986); Carolina Power & Light Co. (Shearon Harris Nuclear Power plant), ALAB-843, 24 NRC 200, 208 (1986); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2) ALAB-845, 24 NRC 220, 242 (1986); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2) ALAB-836, 23 NRC 479, 505 (1986); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 709 (1985).

The literal words of NECNP Contention IV do not come close to picking up MIC or circulating water systems in general. Since those are not matters in controversy under 10 CFR § 2.740(a)(1) and Barnwell Fuel Receiving and Storage Station, supra, discovery requests concerning them are inappropriate.

Conclusion

The motion should be denied.

By their attorneys,



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CERTIFICATE OF SERVICE

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I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on February 8, 1988, I made service of the within document by mailing copies thereof, postage prepaid to:

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