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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEALS BOARD  
OFFICE OF THE SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
	)	Docket Nos. 50-443 OL-01
PUBLIC SERVICE COMPANY OF	)	50-444 OL-01
NEW HAMPSHIRE, <u>et al.</u>	)	On-site Emergency Planning
	)	and Safety Issues
(Seabrook Station, Units 1 and 2	)	

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NRC STAFF'S RESPONSE TO  
NECMP MOTION TO REOPEN  
RECORD AND ADMIT NEW CONTENTION

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February 17, 1988

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NRC STAFF RESPONSE TO NECNP MOTION TO  
REOPEN RECORD AND ADMIT NEW CONTENTION

INTRODUCTION

On February 2, 1988, the New England Coalition On Nuclear Pollution (NECNP) filed a "Motion To Reopen Record And Admit New Contention" ("Motion") in which it requests that the evidentiary record in the onsite emergency planning and safety issues phase of this proceeding be reopened and a new contention admitted. The proffered contention alleges that the RG-59 coaxial cable used by Applicants in the Seabrook Station is not environmentally qualified as required by 10 C.F.R. § 50.49 and 10 C.F.R. Part 50, Appendix A. Motion at 2. As explained below, NECNP's motion (1) is untimely since it is based upon information which either was known to or reasonably ascertainable by NECNP for at least 16 months prior to the filing of the instant motion; (2) does not raise either an exceptional grave or significant safety issue; and (3) would not have led to a different result had the proffered evidence and contention been considered initially. For these reasons, NECNP's motion must be denied.

BACKGROUND

In Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177, aff'd in part, rev'd in part, ALAB-875, 26 NRC \_\_\_ (October 1, 1987) and ALAB-879, 26 NRC \_\_\_ (November 20, 1987), the Licensing Board rejected NECNP's proposed finding of fact that the relevant environmental qualification file did not establish that RG-58 coaxial cable was sufficiently similar to RG-59 coaxial cable such that the qualification tests results of the latter could serve to establish the environmental qualification of the former. 25 NRC at 210-211. At no time did NECNP raise an issue regarding the environmental qualification of either RG-59 coaxial cable or RG-11 triaxial cable. See Id.

NECNP appealed the Licensing Board's finding and conclusion with respect to the environmental qualification of RG-58 cable. See ALAB-875, supra slip op. at 36-37. NECNP, however, did not challenge the environmental qualification of either RG-11 or RG-59 cable on appeal. Id. at 36. On the contrary, as the Appeal Board noted, NECNP "does not dispute that the RG11 and RG59 coaxial cables were properly demonstrated to be environmentally qualified." Id.

In ALAB-875, the Appeal Board agreed with NECNP that the record did not disclose a sufficient evidentiary foundation for the Licensing Board's finding RG-58 coaxial cable to environmentally qualified. Id. at 38-39. Consequently, the Appeal Board returned the issue to the Licensing Board with instructions either (1) to identify the portion of the existing record that establishes that the dimensional differences between the two types of cable are not significant for environmental qualification

purposes; or (2) to reopen the record for a further exploration of the environmental qualification of RG58 cable. Id.

In an unpublished memorandum issued October 16, 1987, the Licensing Board stated that "differing requirements for insulation resistance (IR) provide a basis for justifying the similarity of the two cables whose primary insulation thickness differs by a factor of approximately 1.5." October 16, 1987 Memorandum at 3. NECNP and the Staff questioned this conclusion, observing that the Licensing Board's "proportionality theory" did hold when applied to RG-11 cable. See NECNP Supplemental Memorandum Regarding Environmental Qualification Of RG58 Coaxial Cable (November 4, 1987); NRC Staff Response To Memorandum Of Licensing Board And NECNP Regarding Environmental Qualification Of RG-58 Coaxial Cable (December 11, 1987). The Staff, however, explained why "this circumstance does not detract from the [the Licensing Board's] conclusion that the dimensional differences between RG-58 and RG-59 coaxial cable are not significant for environmental qualification purposes[.]" Id. at 5. <sup>1/</sup> The Appeal Board agreed that the Licensing Board's "proportionality theory" did not provide an adequate basis for concluding that RG-58 coaxial cable was

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<sup>1/</sup> In its response to the Licensing Board's October 16, 1987 memorandum, NECNP first questioned the environmental qualification of RG-59 coaxial cable. NECNP Supplemental Memorandum, supra, at 6. Noting that the "question was not presented on [NECNP's] appeal from the partial initial decision," the Appeal Board declined to consider it. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-882, 27 NRC        (January 8, 1988). The Appeal Board's determination was in accordance with settled case law. E.g. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 82-83 (1985).



environmentally qualified and returned the issue to the Licensing Board for further proceedings not here relevant. ALAB-882, supra, 8-9. Shortly thereafter, NECNP filed the instant motion to reopen the record to admit its late-filed contention.

### DISCUSSION

#### A. Legal Standards

In NRC proceedings, motions to reopen a record are governed by 10 C.F.R. § 2.734. Paragraph (a) of this regulation provides:

- (a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:
  - (1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
  - (2) The motion must address a significant safety or environmental issue.
  - (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

The "most important of these criteria is whether the motion raises a significant safety or environmental issue." Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-834, 23 NRC 263, 264 (1986). In addition, a motion to reopen which relates to a late-filed contention must also meet the standards governing late-filed contentions set forth in 10 C.F.R. § 2.714(a)(1). See 10 C.F.R. § 2.734(d). Reopening a closed record is, as the Commission has noted, an "extraordinary action" and thus requires the movant to bear a "heavy burden." See 51 Fed. Reg. 19535, 19538 (May 30, 1986); accord Kansas

Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 328 (1978). The reason a motion to reopen is not to be granted lightly is because of the public interest in ensuring that "once a record has been closed and all timely-raised issues have been resolved, finality will attach to the hearing process." 51 Fed. Reg. at 19539.

In passing upon a motion to reopen a board is to consider the moving papers and any opposing filings. Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). Filings in opposition, of course, may be accompanied by "affidavits or other evidence." 10 C.F.R. § 2.730(c) (emphasis added). If the affidavits or other evidence filed in opposition to the motion to reopen indicate that no significant safety issue is presented or that a different result would not have obtained if the movant's evidence had been considered initially, the motion to reopen must be denied. Vermont Yankee, *supra*, 6 AEC at 523. In such a case:

The 'record' (in the broad sense) will necessarily have been supplanted by the introduction of affidavits, letters or other materials accompanying the motion and the responses thereto. The 'hearing record,' however, has not been reopened. Typically, in this situation, the result will be designated a denial of the 'motion to reopen the record,' even though that description of the action taken does not precisely reflect what transpired. For clarity, the order denying the motion should state that the record has been supplemented and that the denial of the motion is based on the absence of a triable issue.

*Id.* at 523-24; *see e.g.*, Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), CLI-86-6, 23 NRC 130, 133-34 (1986) (motion to reopen denied based on Staff analysis prepared after closure of evidentiary record); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-879, 25 NRC \_\_\_\_ (November 20, 1987)

(denial of motion to reopen record upheld on basis of additional tests performed after close of evidentiary record).

B. NECNP's Motion Does Meet The Standards Set Forth In 10 C.F.R. § 2.734(a)

1. NECNP's Motion To Reopen Is Not Timely

It hardly can be disputed that NECNP's motion is not timely; indeed, NECNP's readily acknowledges this point. See Motion at 3. The evidence which NECNP claims establishes the failure of the RG-59 cable is not new; that information is contained in an exhibit received in evidence in October 1986, more than 15 months ago. NECNP Ex. 4, at Ref.1 and 2. Moreover, this exhibit was offered in evidence by NECNP itself. In these circumstances, it is clear the instant motion to reopen the record is not timely. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), ALAB-815, 22 NRC 198, 201 (1985) (motion to reopen denied as untimely where based on information in movant's possession for over one year); see Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1369, aff'd sub nom. San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287 (D.C. Cir. 1984), vacated in part and reh'g en banc granted on other grounds, 760 F.2d 1320 (1985); Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1325 n.3 (1983); Commonwealth Edison Company (Braidwood Nuclear Generating Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244-45 (1986) (late-filed contention untimely where filed 10 months late); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-884, 27 NRC \_\_\_\_ (February 4, 1988) (petition for directed

certification denied where petitioner delayed seven weeks in seeking review).

NECNP suggests that the untimeliness of its motion should not weigh heavily against it because the Staff and Applicants similarly failed to detect and notify the Licensing Board of the failure of RG-59 cable. Motion at 3. NECNP is wrong for two reasons. First, time period begins to toll from the date the information which forms the basis for the motion to reopen becomes available to the movant. Three Mile Island, supra, 22 NRC at 202. Thus, it would be of no consequence whether the Staff or Applicants also failed to detect and report to the Licensing Board the alleged failure of the RG-59 cable.

Second, and more important, NECNP is simply wrong in asserting that the information in question constitutes "clear evidence" of the failure of RG-59 cable and that this failure is "unquestionably an exceptionally grave issue." Motion at 3, 5. As explained in detail in the following sections of this response, the joint affidavit of Harold Walker and Amritpal Gill demonstrates that the evidence in the record -- including that relied upon by NECNP -- establishes that the RG-59 coaxial cable meets the requirements set forth in the Commission's environmental qualification regulations. See Attached Joint Affidavit of Harold Walker and Amritpal Gill ("Walker/Gill Affidavit"), passim. For these reasons, NECNP's untimely motion is not counterbalanced by an "exceptionally grave safety issue" as required by 10 C.F.R. § 2.734(a)(1). This reason alone is sufficient to deny NECNP's motion to reopen. Three Mile Island, supra, 22 NRC at 201; see 10 C.F.R. § 2.734(a) (reopening standards are conjunctive, not disjunctive).

2. NECNP's Motion To Reopen Does Not Present A Significant Safety Issue

As noted earlier, "most important" of the criteria governing motion to reopen "is whether the motion raises a significant safety or environmental issue." Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-834, 23 NRC 263, 264 (1986). As explained below, NECNP's motion also fails on this score. Contrary to NECNP's assertion, the evidence already in the record demonstrates that the PG-59 coaxial cable meets the standards set forth in 10 C.F.R. § 50.49, the Commission's environmental qualification regulation.

a. The Regulatory Scheme

Section 50.49 requires an applicant to establish a program for qualifying electrical equipment important to safety. Equipment is considered "important to safety" if it is "relied upon to remain functional during and following design basis events to ensure (i) the integrity of the reactor coolant boundary, (ii) the capability to shut down the reactor and maintain it in a safe shutdown condition, and (iii) the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the 10 C.F.R. Part 100 guidelines." 10 C.F.R. § 50.49(b)(1). Section 50.49(e) requires that an applicant's electrical equipment qualification program taken into the account the effects of the following: (1) temperature and pressure; (2) humidity; (3) chemical effects; (4) radiation; (5) aging; (6) submergence; (7) synergy; and (8) safety margins. An item of electrical equipment is considered to be environmentally qualified if the results of these qualification test indicate that it will remain functional during and after its postulated design basis event. Walker/Gill Affidavit at A.5-A.8.

In NUREG-0588, the Staff accepted that conducting qualification tests in accordance with IEEE Standard 383-1974, "IEEE Standard for Qualifying Class 1E Electrical Cable, Field Splices, and Connections for Nuclear Generating Stations," was an acceptable means of demonstrating the environmental qualification of electrical coaxial cable, such as RG-59. Id. at A.5. Applicant's RG-59 coaxial cable was tested in accordance with this standard. See Id. at 8; NECNP Ex. 4, Ref. 2 at 1 (The test objective was "to demonstrate performance of electrical cables for Class 1E service in nuclear generating stations in accordance with applicable guidelines presented in IEEE Stds 323-1974 and 383-1974"). Thus, there can be no dispute that Applicants used a proper test methodology to demonstrate the environmental qualification of the RG-59 cable, and NECNP does not argue otherwise. Therefore, the only pertinent issue is whether the test results obtained indicate that the RG-59 cable "will remain functional during and after the design basis event" as required by 10 C.F.R. § 50.49. As explained in the next section, the evidence in the record establishes that it will.

b. The RG-59 Test Results Are Satisfactory

The test results for the RG-59 coaxial cable (and the RG-11 coaxial cable, as well) are summarized in the RG-59 cable environmental qualification file ("EQF") on the "Qualification Evaluation Worksheet." See NECNP Ex. 4. That document, which already is in evidence, shows that RG-59 cable must be able to withstand a peak pressure of 60 pounds per square inch (psi) in the postulated design basis environment. Id. The test results indicate that the cable is capable of withstanding pressure of 113 psi. The postulated design basis environment requires that RG-59

cable be able to withstand relative humidity of 100 percent. See NECNP Ex. 4, Qualification Evaluation Worksheet. The test results show that RG-59 cable meets this requirement. Id.; NECNP Ex. 4, Ref. 2 at 10. The cable must remain functional in a postulated environment where it is exposed to chemical spray consisting of boric acid 1.2% in weight. NECNP Ex. 4, Qualification Evaluation Worksheet. Again, the test results show that the cable meets this condition. Id.; NECNP Ex. 4, Ref. 2 at 10. Similarly, the test results show that RG-59 cable meets the other environmental qualifying conditions. Id.; NECNP Ex. 4, Qualification Evaluation Worksheet. These results were reviewed by the NRC Staff and found to show that the cable meet environmental qualification requirements. Walker/Gill Affidavit, Answers (A.)8-A.12.

The RG-59 coaxial cable also met its functional requirement tests. Walker/Gill Affidavit at A.10. These required that the total leakage/changing current not be in excess of approximately one amp at any time during the environmental qualification tests and that the cable meet requirements for plant specific cable applications. Id.

The test results for the RG-59 coaxial cable established that the cable will remain functional during and after the postulated design basis accident. Walker/Gill Affidavit at A.9 - A.12. Accordingly, the RG-59 coaxial cable satisfies the environmental qualification standards set forth in 10 C.F.R. § 50.49. No significant safety issue exists regarding the environmental qualification of RG-59 coaxial cable. Thus, in addition to being untimely, NECNP's motion to reopen the record fails to show that a "significant safety issue" is presented and therefore must be denied.

c. The Pollard Affidavit

NECNP predicates its claim that a "significant safety issue" exists on an Affidavit of Robert Pollard where an assumption is made that the purchase specifications for new RG-59 coaxial cable are the same qualities which the cable must show after it has been subject to environmental testing. Motion at 4; Pollard Affidavit at 1-2. However, Mr. Pollard is wrong. The purchase specification describes the properties of new cable in air at ambient temperatures. Walker/Gill Affidavit at A.13 - A.14. The environmental qualification requirements are properties the cable show at elevated temperatures during tests where it is subject to steam, chemical sprays and high humidity. Id. <sup>2/</sup>

Thus, the supposed "significant safety issue" NECNP has postulated in regard to the RG-59 cable is based upon a misreading of purchase specifications which have no relevance to resistance the cable was to meet at elevated temperatures during environmental qualification tests. Id. The cable met the environmental qualification tests. Id. at A.9 - A.12. No significant safety issue is shown.

3. A Different Result Would Not Be Likely If The Newly Proffered Evidence And Late-Filed Contention Had Been Considered Initially

The third and final standard which must be met in order to prevail on a motion to reopen a closed evidentiary record is a showing that a

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<sup>2/</sup> Further, an examination and extrapolations from the environmental test results show that the new cable met the purchase specifications under ambient air and temperature conditions. Id.



"materially different result would be or would have been likely had the newly proffered evidence been considered initially." 10 C.F.R. § 2.734(a)(3). Had the Licensing Board considered NECNP's claim that RG-59 coaxial cable was not environmentally qualified because its insulation resistance during the second transient of the steam/chemical spray, high humidity test fell to 300 megohms, a different result would not have obtained. This fact would not have precluded the Licensing Board from concluding as it did that "there is reasonable assurance the Seabrook Station, Unit 1, can be operated at 5% of rated power without endangering the public health and safety, and that adequate protective measures can and will be taken in the event of an emergency." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177, 216 (1987). As Mr. Walker and Mr. Gill conclude, the RG-59 coaxial cable meets environmental qualification requirements. See Walker/Gill Affidavit at A10 - A.13.

Having failed to satisfy any of the criterion set forth in 10 C.F.R. § 2.734(a), NECNP's motion to reopen the record must be denied.

C. NECNP's Late-Filed Contention

As noted in Part (A)(1), a motion to reopen which relates to a late-filed contention must also meet the standards governing late-filed contentions set forth in 10 C.F.R. § 2.714(a)(1), 10 C.F.R. § 2.734(d); accord Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAP-883, 27 NRC \_\_\_\_, slip op. at 12 and n.20 (February 3, 1988). In view of the failure of NECNP to meet the standards governing motions to reopen, the Staff need only briefly explain why a balancing of the five factors listed in section 2.714(a) militate against admission of

NECNP's late filed contention regarding the environmental qualification of RG-59 coaxial cable.

As with a motion to reopen, there must be good cause for failing to file the proffered contention in a timely fashion. NECNP does not even attempt to justify its delay in raising the proffered contention. See Motion at 6. Instead, NECNP claims that "any lack of timeliness of this contention is overbalanced by its safety significance." Id. NECNP misunderstands the applicable legal standard. As the Commission made clear in Braidwood, supra, each of the five factors is to be evaluated on its own merit and it is proper to take into account the potential significance of a contention only in connection with the evaluation of the third factor -- the extent to which a petitioner can contribute to the development of a sound record. CLI-86-8, 23 NRC 241, 247-48. An evaluation of the first factor entails a consideration of the reasons offered by the petitioner for its failure to file its contention in a timely fashion. As noted above, NECNP has no good reason for not doing so and the lack of good cause weighs heavily against admission of its late-filed contention. Id. at 244.

The second and fourth factors -- the availability of other means and parties to protect petitioner's interest -- weighs in NECNP's favor but is accorded less weight than the first, third, and fifth factors. Id. at 245.

The third factor -- the extent to which petitioner can contribute to the development of a sound record -- also weighs against NECNP. NECNP claims it has met this standard because of its "track record" on the issue of RG-58 cable qualification and on the basis of Mr. Pollard's affidavit. NECNP is wrong. The case law is clear that the third factor

cannot be met on the basis of the past performance of a party's attorneys. Id. at 247. Rather, a petitioner must "set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony." Id. at 246, quoting, Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982) (emphasis added). NECNP has not identified any prospective witnesses. Assuming, however, that NECNP's affiant, Mr. Pollard, will be available to testify in a reopened proceeding, it is clear that his contribution to the development of a sound record will be negligible. Mr. Pollard does not claim in his affidavit that he has any expert knowledge concerning the environmental qualification of electrical equipment, and as the joint affidavit of Harold Walker and Amritpal Gill indicates, Mr. Pollard has misinterpreted the pertinent documents. See Walker/Gill Affidavit at A13 - A.14. The third factor weighs against NECNP as does the fifth and final factor -- the delay to the proceeding which would naturally result from the addition of this issue this late in the proceeding. Thus, on balance the factors listed in 10 C.F.R. § 2.714(a)(1) weigh against the admission of the late-filed contention.

CONCLUSION

For the reasons stated in this response, NECNP's motion to reopen the record and admit its late-filed contention must be denied.

Respectfully submitted,



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Edwin J. Reis  
Deputy Assistant General Counsel

Dated at Bethesda, Maryland  
this 17th day of February 1988