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July 21, 1988  
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UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 88-01-25 A11:40

In the Matter of	)	OFFICE OF SECRETARY
	)	DOCKETING & SERVICE
	)	BRANCH
Public Service Company of New Hampshire, et al.	)	Docket Nos. 50-443 OL-1
	)	50-444 OL-1
(Seabrook Station, Units 1 & 2)	)	ONSITE EMERGENCY
	)	PLANNING & TECHNICAL
	)	ISSUES

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S  
BRIEF IN OPPOSITION TO AUTHORIZATION OF  
LOW POWER OPERATION AT SEABROOK NUCLEAR POWER PLANT

Introduction

Pursuant to the Board's order of July 1, 1988, the New England Coalition on Nuclear Pollution ("NECNP") hereby responds to the question of whether the remanded coaxial cable issue need be resolved before low power operation. NECNP continues to press the legal arguments made in its brief of January 4, 1988 before the Licensing Board and reiterated in its brief of April 7, 1988, before the Appeal Board. Rather than repeat those arguments verbatim, NECNP adopts and incorporates them by reference, and briefly summarizes them below.<sup>1</sup>

In essence, NECNP's position is as follows. First, the Atomic Energy Act does not authorize licensing for any level of nuclear power plant operation before completion of the prior adjudicatory hearings guaranteed by Section 189a of the Atomic

1 Copies of NECNP's April 7 appellate brief are attached for the convenience of the Licensing Board.

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Energy Act. Thus, the Licensing Board must complete hearings on the remanded coaxial cable issue before it can authorize the Staff to issue a license permitting low power operation.<sup>2</sup>

NECNP also maintains that 10 C.F.R. § 50.57(c) provides the Licensing Board with no authority to authorize low power operation prior to the resolution of contested safety issues. If a pending contention relates to the safe operation of a nuclear power plant, it is necessarily "relevant" to the operation of the plant, whether it is at low power or full power. Aside from 10 CFR § 50.47(d), which relates only to offsite emergency planning, the regulations make no distinction between the level of regulatory compliance required for low power operation and for full power operation.<sup>3</sup> Moreover, both the regulatory history of § 50.57(c) and past licensing decisions reinforce the conclusion that the Commission has no authority to grant the equivalent of

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2 It is also NECNP's position that all other contested issues, including NECNP's appeal of the Board's ruling on Contention IV, the remanded litigation on the adequacy of public notification, and offsite emergency planning issues, must be resolved before low power operation may be authorized. We note also that the Appeal Board has ruled that authorization to operate at low power cannot be given effect pending the outcome of litigation on remanded contentions concerning the siren systems for Seabrook. ALAB-883, 27 NRC \_\_\_\_ (February 3, 1988), slip op. at 24. Thus, even if hearings on environmental qualification were to be concluded, the Licensing Board would still lack authority to issue a license for low power operation.

3 For instance, there is no provision in the regulations, equivalent to § 50.47(d), which would allow low power operation prior to the resolution of environmental qualification issues.

ad hoc, case-by-case "exemptions" from mandatory licensing requirements in the context of low power authorization, outside of the normative process of petitioning for regulatory waivers.

NECNP has placed into contention the question of whether Applicants meet basic regulatory standards for nuclear power plant operation, i.e. whether they have properly identified all RG-58 coaxial cables which require environmental qualification, and whether those cables which must be qualified have been adequately qualified or replaced with acceptable substitutes. The question of whether an operating license applicant meets the environmental qualification requirements or any other safety requirements is inherently "relevant" to the safe operation of the plant. In fact, the Commission has accorded these particular regulations extraordinary importance in its regulatory scheme, calling the principle of environmental qualification "fundamental to nuclear reactor regulation." Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 710 (1980). The question of whether Applicants comply with these regulations must be resolved before operation at any level of power.

Finally, NECNP argues that the only alternative means available to Applicants that would enable them to bypass litigation of outstanding contentions prior to receiving authorization to operate at low power is to petition for a regulatory waiver of the General Design Criteria and regulations that are the subject of NECNP's contentions, pursuant to 10 C.F.R. § 2.758(b).<sup>4</sup> Any

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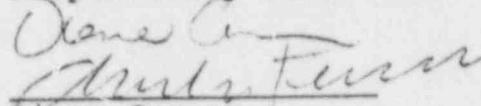
4 Regulatory exemptions may be granted only where the applicant

other standard would violate the presumption of the validity and general applicability of all regulations that is embodied in 10 C.F.R. § 2.758, and unlawfully shift the burden of proof away from the party seeking a waiver of a regulatory requirement, placing it instead on parties who seek to ensure compliance with valid regulations.

CONCLUSION

The Licensing Board lacks authority, under either the Atomic Energy Act or NRC regulations, to permit operation of the Seabrook nuclear power plant at low power levels before completing litigation of contested safety issues. The remanded hearings on the RG-58 coaxial cable must therefore be completed before issuance of a license to operate Seabrook at low power.

Respectfully submitted,



Diane Curran  
Andrea Ferster  
HARMON & WEISS  
2001 S Street, N.W., Suite 430  
Washington, D.C. 20009  
(202) 328-3500

July 21, 1988

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can demonstrate special circumstances with respect to the subject matter of the proceeding such that application of the regulation would not serve the purposes for which it was adopted, or upon a showing of "exceptional circumstances." 10 C.F.R. §§ 2.758(b) and 50.12. Under both exemption standards, "the burden is on ... the petitioner for a waiver." Carolina Power & Light Company, et al. (Shearon Harris Nuclear Power Plant), LBP-85-5, 21 NRC 410, 443 n.16 (1985), aff'd, ALAB-837, 23 NRC 525 (1986)