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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
LBP-88-20

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Emmeth A. Luebke
Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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In the Matter of

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-0L-1
50-444-0L-1

(On-Site Emergency Planning
and Safety Issues)

(ASLBP No. 88-558-01-OLR)

August 8, 1988

MEMORANDUM AND ORDER
(Re Low Power Authorization)

I. Background¹

¹ We have set out the background in a rather lengthy, detailed manner in order to make it clear that two discrete matters are pending before us. The first matter involves the coaxial cable environmental qualification issue, the thrust of which was changed in part by the Applicants' shift in position advanced in their "Suggestion of Mootness" filed on May 19, 1988. The merits of this first matter, pursuant to our Order of June 23, 1988, will be resolved pursuant to summary disposition proceedings and/or after a hearing, and is not the direct subject of this issuance. The second matter, which is the subject of this issuance pursuant to the Commission's Order of June 29, 1988, involves only the question of whether the remanded coaxial cable issue (which was changed in part by the Applicants' shift in position on May 19, 1988) need be resolved before low power operations.

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As of June 29, 1988, on three occasions,² the Appeal Board had remanded NECNP Contention I.B.2,³ the coaxial cable issue, to this Board. On May 19, 1988 Applicants filed a "Suggestion of Mootness," which was revised on May 27. Applicants' "Suggestion," supported by three affidavits, stated that (1) 126 nonsafety-related RG-58 coaxial cables, grouped into five categories, had been identified as having been installed at the Seabrook Station, (2) only 12 of the nonsafety-related RG-58 cables, which were routed at least partially through a harsh environment within the nuclear island, were required to meet the environmental qualification set forth in 10 C.F.R. § 50.49, (3) environmentally qualified RG-59 coaxial cable was an acceptable substitute for the 12 RG-58 cable located in a harsh environment within the nuclear island, and that (4) for the 12 RG-58 coaxial cable applications, the RG-58 coaxial cable was being replaced by RG-59 coaxial cable. Applicants requested that the Board should enter an order finding that the issue regarding the environmental qualification of RG-58 coaxial cable was moot.

On May 23, 1988, the Board requested that NECNP and the Staff file comments. In a response dated June 2, 1988, the Staff stated that, in

² ALAB-875, 26 NRC 251 (1987); ALAB-882, 27 NRC 1 (1988); ALAB-891, 27 NRC 341 (1988).

³ As pointed out in ALAB-875 at 270, as litigated, the contention focused upon whether the RG-58 coaxial cable was environmentally qualified.

the absence of source material being provided by the Applicants, it was unable to confirm or deny the accuracy of the representations in the "Suggestion of Mootness" that (1) 126 RG-58 cables had been installed, (2) the particular category groupings were appropriate -- i.e., that 19 of the 126 installed RG-58 coaxial cables were spares, that 76 of the 126 installed RG-58 cables were located in mild environments, and that 10 of the RG-58 cables routed with other nonsafety-related cables outside the nuclear island would not be exposed to a harsh environment -- and that (3) 9 of the 126 installed RG-58 cables were routed in mild environments within the nuclear island and routed with nonsafety-related cables outside the nuclear island. Finally, while agreeing that, since the environmental qualification of RG-59 coaxial cable had already been established, the substitution of 12 RG-59 cables for the 12 RG-58 cables would satisfy the environmental requirements of 10 C.F.R. § 50.49, the Staff stated that it remained to be considered whether the RG-59 coaxial cable is a "technically acceptable replacement" for the RG-58 cable. The Staff requested that we should deny Applicants' motion for an order dismissing remanded NECNP Contention 1.B.2 as moot and, in effect, requested that, after reopening the record, we should invoke summary disposition procedures and that, if we determined that there were outstanding, unresolved genuine issues of material fact, we should schedule a hearing to resolve those issues.

On June 9, 1988, NECNP filed a response, supported by an affidavit. NECNP opposed the "Suggestion" since it was in effect a motion for summary disposition which was inappropriate since the parties had not

had discovery on the "entirely new set of facts" presented by the Applicants. Citing the discussion in its expert's attached affidavit, NECNP asserted inter alia that the Applicants' three affidavits failed to establish inter alia that (1) Applicants have identified all uses and locations of RG-58 cable, (2) Applicants know what qualification requirements the RG-58 cable must meet, and that (3) the RG-59 cable is an adequate substitute. While NECNP's three assertions tracked those of the Staff, it disagreed with the Staff in arguing that a hearing, rather than summary disposition procedures, should be ordered and in arguing that the environmental qualification of RG-59 cable has not been "established."

Leave having been granted in an Order of June 10, Applicants filed a reply on June 17, 1988. Therein, while not conceding that such additional information was necessary, Applicants attached an affidavit of Richard Bergeron (hereafter cited as Bergeron Affidavit of June 16) which they maintained met the Staff's statements that the affidavits of Applicants' three experts had failed to supply sufficient information to substantiate certain claims. Further, Applicants argued inter alia that the sole issue remanded to this Board and within its jurisdiction was whether the RG-58 cable was environmentally qualified, and that that issue had been mooted by Applicants' agreement to remove all RG-58 cables presently required to meet the environmental qualification requirements of § 50.49. Finally, it argued that the environmental qualification of RG-59 cable had already been established.

During the course of a transcribed telephone conference of June 23, 1988 (Tr. 1159-1186), the Board heard oral arguments of the parties. NECNP continued to oppose the "Suggestion" (Tr. 1162-65). The Staff stated that, after its review of the Bergeron Affidavit of June 16 attached to Applicants' reply of June 17, it deemed at least as of the time of the conference call that the record contained all the information necessary for the Board, pursuant to summary disposition procedures, to issue a determination favorable to the Applicants (Tr. 1165-66). The Board rejected Applicants' Suggestion of Mootness (Tr. 1177). Among other reasons for its rejection, the Board stated that:

In shifting their position from initially asserting before us and before the Appeal Board that all RG-58 cables had to be and were environmentally qualified but in now arguing that only 12 RG-58 cables had to be environmentally qualified, and that 12 environmentally qualified RG-59 cables would be substituted, applicants cannot now be heard to argue that the issue of environmental qualification of RG-58 cable is now entirely mooted.

And further in so shifting their position, applicants we find and conclude must prove that the RG-59 cable is a technically acceptable replacement for the RG-58 coaxial cable.

(TR. 1178-79)

The Board also ruled that it would not permit litigation upon NECNP's argument that the RG-59 cable is not environmentally qualified (Tr. 1179). The Board further ruled that (1) discovery should be initiated immediately and be completed by August 15, 1988, (2) by no later than August 22, the parties will advise whether each intends to file a motion for summary disposition, and that (3) any motions for summary disposition should be served by express mail on or before

September 12, and that any opposing or supporting answers should be served by express mail (Tr. 1181).

Thereafter, in an Order of June 29, 1988, the Commission directed this Board to determine whether the remanded coaxial cable issue need be resolved before low power operation. This Board's Order of July 1, 1988 directed that Applicants and NECNP should file responsive briefs by July 22 and that the Staff should file by July 27, 1988. NECNP filed its brief and attachment on July 21, Applicants filed a memorandum and attachments on July 22, and the Staff filed its response and attachment on July 27.

II. DISCUSSION

A. Applicants' Memorandum

Applicants' memorandum of July 22, supported by the attached affidavits of five experts and documentation, argues in substance that the remanded coaxial cable issue (which was changed in part by the shift in position reflected in the "Suggestion of Mootness" filed on May 19, 1988) is not relevant to low power operations because the safety concerns raised therein would not adversely impact upon the public health and safety if Seabrook, Unit 1, were to be authorized to operate only up to 5% of rated power. First, Applicants assert that, even if it be assumed for the sake of argument that the 12 RG-59 coaxial cables are not technically acceptable as substitutes for the 12 RG-58 cables, it is not necessary that they function in order to accomplish a safe shutdown

of the reactor. Relying upon the affidavits of their experts, at pages 3 and 4 of the memorandum, Applicants assert as follows:

...there are two systems which contain the instrumentation necessary to provide for the automatic actions necessary for accident mitigation (The Reactor Trip System (RTS) and the Engineered Safety Features Actuation System (ESFAS)); in addition, Category I Accident Monitoring Instrumentation (AMI) is the instrumentation necessary to achieve the required manual operator actions required to safely shut down the plant. (Beuchel Aff., ¶¶ 6-9) The RTS, ESFAS and Category I AMI will hereinafter be referred to as the "Safe Shutdown Instrumentation" or "SSI." Assuming the availability of the SSI, then, in the event of the occurrence of the bounding design basis LOCA or Steam Generator Tube Rupture event during low power operation, no off-site dose requiring off-site protective actions would result (Littlefield Aff., passim). And indeed, the off-site doses which would result to the public would be extremely small percentages of those set forth in 10 CFR 100. (Littlefield Aff., ¶¶ 6, 17)

None of the 126 coaxial cables at issue herein, including the 12 RG-59 cables, are connected to any of the devices included within the SSI. (Beuchel Aff., ¶10)

Second, Applicants assert that, even if it be assumed that, through oversight or improper classification, any RG-58 cables were in fact located in a harsh environment, and even assuming that they failed and caused the failure of all safety-related cable routed in the same raceway, the Safe Shutdown Instrumentation would still be available. Relying upon the affidavits of one of their experts, at pages 5-6 of the memorandum, Applicants assert as follows:

Analysis has shown, that such an event would not compromise the SSI because: (1) some of the instruments are simply not required during low power operation; (2) some of the instruments have no input from the raceways of interest; and (3) with respect to all other instruments within the SSI, walkdowns have been performed to verify that the raceways of interest either (a) are in a mild environment, or (b) do not contain RG-58 cable in fact. In connection with the latter,

it was also physically verified that, for those cables in a mild environment, active RG-58 cable does not cross the boundary from an area which could be subjected to a harsh environment into those areas. (Beuchel Aff., ¶¶ 12-15)

Finally, as noted earlier, the design basis accident doses to the public are small percentages of the doses set forth in 10 CFR 100 and, therefore, the safety concerns raised do not adversely impact on the public health and safety.

Finally, Applicants assert that there are other factors which militate against the need to resolve the coaxial cable issue before operation at low power. Relying upon certain affidavits of their experts, Applicants assert as follows:

In the first place, the cables involved are all relatively new. Further, at the 5% testing levels, the resulting aging and accident environmental factors are much less severe than during full power operation. (Bergeron Aff., ¶¶ 4-6)....

Finally, the largest current which any of the cables will see is 400 milliamps. (Glowacky Aff., ¶ 7) Tests were conducted with new unaged RG-58 cable and new unaged LOCA tested RG-58 cable to ascertain whether shorting to shield of these cables, while carrying currents of one amp and ten amps, would result in degradation of adjacent cables which had been bundled around them to simulate the conditions of an RG-58 cable located in the middle of a cable tray. (Jamison Aff., ¶¶ 3-5) The results of these tests show that a failure cannot generate sufficient heat to cause damage or degradation to adjacent cables. (Id., ¶¶ 6-9)

Based upon our review of the memorandum, and in light of our discussions of NECNP's and the Staff's submissions infra, we conclude that Applicants have shown that the remanded coaxial cable issue is not relevant to low power operations inasmuch as the safety concerns raised therein would not adversely impact upon the public health and safety if Seabrook, Unit 1, were to be authorized to operate only up to 5% of rated power.

B. NECNP's Brief

NECNP's brief of July 21, 1988 deserves no more than passing mention. Therein, NECNP states that it "continues to press the legal arguments made in its brief of January 4, 1988 before the Licensing Board and reiterated in its [attached] brief of April 7, 1988 before the Appeal Board," and adopts and incorporates them by reference. Since these are admittedly the self-same legal arguments previously advanced by NECNP in arguing that authorizing a low power license should not be considered prior to a determination on the merits of two remanded contentions (NECNP Contention I.V was concerned with inservice inspection of steam generator tubes and NECNP Contention IV addressed the accumulation of aquatic organisms and other foreign matter in cooling systems), we reject them again for the same reasons as set forth in LBP-88-6, 27 NRC 245 (1988). Indeed, in affirming our decision, the Appeal Board rendered a definitive appellate ruling that, should NECNP raise the same legal arguments with respect to the recently remanded issue of the environmental qualification of certain coaxial cable, such arguments would be deemed to be without merit. ALAB-892, 27 NRC 485, 489 (1988). Other than conclusionally arguing at page 2 of its brief that, 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, NECNP does not comply with § 50.57(c) in failing to show that the coaxial cable issue is relevant to the requested license -- i.e., it has failed to show that the safety concerns alleged in the contention would adversely impact upon public

health and safety if the plant were to be authorized to operate only up to 5% of rated power. This showing of relevancy is required by §50.57(c) because it is not every contention that need be heard or decided prior to the authorization of a low power license. ALAB-892, 27 NRC 485, 490 (1988).

C. The Staff's Response

In the introduction to its response of July 27, 1988, the Staff states that it "is not now in a position to state unequivocally that remanded NECNP Contention 1.B.2 is relevant to low power operations" because, on the one hand, the environmental qualification requirements of 10 C.F.R. §50.49 are as a general matter applicable to low power operations but, on the other hand, Applicants' memorandum of July 22 and attachments took the position that the coaxial cable issue was not relevant to low power operations because the safety concerns raised thereon would not adversely impact upon the public health and safety if the facility were to be authorized to operate up to 5% of rated power. The Staff asserts that because of the shortness of time, it had not reviewed or evaluated Applicants' memorandum of July 22. It states, however, that it is unnecessary to comprehensively review and evaluate Applicants' memorandum because, if the Board were to find that the remanded coaxial cable issue is relevant, the Board, as required by 10 C.F.R. §50.57(a), could make the reasonable assurance findings required before reauthorizing low power operations based upon the existing record and upon the attached affidavit of its expert, Mr. Harold Walker (Staff response, pp. 1-2).

The Staff, relying upon the Walker affidavit, proceeds to amplify its position. Staff states first that the requirements of §50.49 apply to low power (as well as to full power) operation because, were an accident to occur at low power, there is a potential for failure of safety-related and nonsafety-related electrical equipment (as discussed in §50.49(b)) if subjected to a harsh environment. Thus, the Staff considers that the remanded coaxial cable contention is relevant to low power operations. However, in light of information received from the Applicants in 1986, and, as a result of its review of Applicants' Environmental Qualification File No. 113-19-01, it concluded that R-58 coaxial cable is environmentally qualified by similarity to tested RG-59 cable in accordance with 10 C.F.R. §50.49(f)(2). Second, Staff states that, apparently after the conference call of June 23, 1988, (a) it reviewed its records which revealed that 126 RG-58 cables had been installed, (b) based upon its review of Applicants' reply and attachments of June 17, it accepted the methodology by which Applicants assigned each RG-58 cable to one of the five category groupings, (c) it agrees with Mr. Bergeron's affidavit of June 16, 1988 that the 19 RG-58 cables used as spares need not be environmentally qualified because they are not "important to safety", that the 76 RG-58 cables located in mild environments are not subject to the requirements of 10 C.F.R. § 50.49, that the nine RG-58 cables in mild environments within the nuclear island and routed with other nonsafety related cables outside the nuclear island are not required to be environmentally qualified in accordance with §50.49, and that the 10 RG-58 cables routed with other

nonsafety related cables outside the nuclear island are not required to be qualified, and that (d) after reviewing the Kotowski affidavit attached to Applicants' Suggestion of Mootness of May 19, 1988, it believes that Applicants' evaluation is adequate in determining that RG-59 cable is a functionally acceptable replacement for RG-58 cable in a harsh environment.

However, even if we were to accept the Staff's premise that the remanded coaxial cable contention is relevant to low power operations, we disagree with and reject the Staff's position that, based upon the existing record and upon the attached Walker affidavit, we then could and should make the reasonable assurance findings required in § 50.57(a) before reauthorizing low power operations. We are baffled by the Staff's position. It ignores the ruling in ALAB-875, 26 NRC 251 (1987)⁴ that the Applicants had not demonstrated that the test of the RG-59 cable proved that the RG-58 cable was acceptable. This ruling constitutes the law of the case. Further, in requesting that we accept as having been established the factual allegations set forth in Applicants' Suggestion of Mootness of May 19, 1988 and in their reply of June 17, it ignores our transcribed ruling of June 23, 1988 wherein we

⁴ See also ALAB-891, 27 NRC 341, 350-51 (1988).

directed the initiation of discovery and the subsequent resolution of these factual matters pursuant to summary disposition procedures.⁵

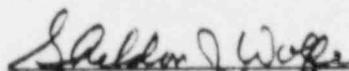
ORDER

Subject to two conditions, we renew our authorization to operate Seabrook, Unit 1, up to 5% of rated power. We so renew our authorization because the remanded coaxial cable issue is not relevant to low power operations inasmuch as the safety concerns raised therein would not adversely impact upon the public health and safety if the Seabrook facility were to be authorized to operate only up to 5% of rated power. However, we cannot give effect to our renewed authorization until such time as the Commission via rulemaking may remove the public notification issue as an obstacle to low power. Further, in light of the fact that the Staff has not reviewed or evaluated the Applicants' position, presented in their memorandum of July 22, 1988 (and deemed it unnecessary to do so) that the coaxial cable issue is not relevant to low power operation, and despite our conclusion that Applicants have made the necessary showing that the remanded coaxial cable issue is not relevant to low power operations, the Staff shall provide to the Commission, should the Commission so desire, its evaluation of the Applicants' July 22, 1988 position prior

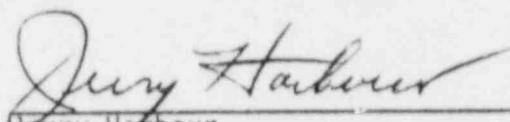
⁵ Obviously, if we determine that there are any unresolved, outstanding genuine issues of material fact, we will then schedule a hearing.

to issuance of the low power license. In light of these conditions, we do not give effect to our renewed authorization, and thus do not authorize the Director of NRR, when making the findings required by 10 C.F.R. § 50.57(a), to issue the low power license.

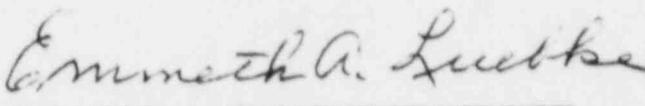
THE ATOMIC SAFETY AND LICENSING BOARD



Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE



Jerry Harbour
ADMINISTRATIVE JUDGE



Emmeth A. Luebke
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 8th day of August, 1988.