

7092

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 SEP 19 P2:59

ATOMIC SAFETY and LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

In the matter of)
)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)
)
(Seabrook Station,)
Units 1 and 2))
_____)

Docket Nos. 50-443-OL
50-444-OL
(Onsite EP)
September 16, 1988

MOTION TO ADMIT EXERCISE CONTENTION OR,
IN THE ALTERNATIVE, TO REOPEN THE RECORD

INTRODUCTION

The Massachusetts Attorney General ("Mass AG"), New England Coalition Against Nuclear Pollution ("NECNP") the Seacoast Anti-Pollution League ("SAPL") and the Town of Hampton, New Hampshire ("Intervenors") file this motion with the onsite Licensing Board to admit the contention set forth in full in Exhibit 1 attached hereto. In the alternative, the Intervenors seek to have this Board reopen the record for the purpose of admitting this contention which raises an issue not previously in controversy between the parties.

8809210018 880916
PDR ADOCK 05000443
G PDR

JS03

THE CONTENTION AT ISSUE

On review of the exercise conducted at the Seabrook Nuclear Power Station on June 27 - 29, 1988, it appears that serious defects and inadequacies exist in the licensee's current onsite emergency response staff including the Technical Support Center ("TSC") and Emergency Operating Facility ("EOF") staff, with regard to their fundamental capacities to comprehend and diagnose existing plant conditions and to identify and perform the necessary and essential corrective actions in the event of a nuclear accident as prescribed in the Seabrook Station Radiological Plan and Emergency Operating Procedures. These defects and inadequacies in the current staff reflect an inadequate staff training program. They provide concrete evidence that the present predicament in which Public Service of New Hampshire ("PSNH"), the Lead Owner of Seabrook, finds itself has had a deleterious effect on the quality and competence of the existing Seabrook Staff.^{1/} Moreover, it is

1/ The Chief Executive Officer of PSNH, Robert J. Harrison, filed an affidavit with the United States Bankruptcy Court for the District of New Hampshire on August 12, 1988. At paragraph 9.1 Harrison stated:

Instability in the willingness or ability of Public Service and other Joint Owners to meet their financial responsibilities to the Seabrook project jeopardizes the confidence and morale of the existing staff at Seabrook station.

The present levels of staff competence revealed by the June exercise may reflect personnel changes as well as the effects of lowered confidence and morale among the remaining staff.

obvious that a poorly trained onsite emergency staff unable to quickly and accurately interpret the reactor's status and take appropriate and required mitigating actions represents a serious and unacceptable increased level of risk to the public particularly under conditions of low power operation. See NRC Final Rule, 47 Fed. Reg. 30232, 30234 (July 13, 1982)(because "operators should have sufficient time to prevent a radioactive release from occurring" at low power operation, only a finding as to adequacy of onsite but not offsite emergency planning and preparedness is required).

JURISDICTION

This newly filed contention arises out of the June 1988 exercise which included in addition to an exercise of the offsite plans of the State of New Hampshire and the utility for the Seabrook EPZ, an exercise of the Licensee's own onsite Seabrook Station Emergency Plan. As a consequence, this contention is appropriately filed at this juncture with this onsite Board.^{2/}

2/ Ostensibly, the offsite Board has taken jurisdiction over the litigation of the June 1988 exercise. However, the offsite Board indicated in its July 29, 1988 Order ruling on the admissibility of certain contentions filed in respond to the SPMC, that its jurisdiction was limited to purely offsite emergency planning issues, and did not extend to onsite emergency planning issues even if they had offsite planning consequences. Moreover, this exercise contention runs to a material issue involved in the authorization to issue a low power license, a subject historically within the province of this Board.

THE CONTENTION IS TIMELY FILED

This contention should be admitted for adjudication because it clearly identifies the regulations that are violated, describes in detail the nature of that violation^{3/} and provides the requisite factual basis and specificity to insure proper notice to the Staff and Applicants of the matters to be litigated. Moreover, the contention is timely filed and not subject to any higher standard for admissibility.^{4/} That this contention is timely filed flows from the following considerations:

1) 10 CFR 50.47(d) makes clear that a low power license may issue only after the NRC has determined that the "state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken." (emphasis supplied).

3/ As an "exercise" contention, the attached contention identifies planning standards set forth at 10 CFR 50.47(a), (b) and (d) and Appendix E and avers that the actual conduct of the exercise has revealed fundamental defects or flaws in the state of emergency preparedness as to those standards.

4/ Two distinct out-of-time arguments might be raised: 1) the exercise was on June 27 - 29, 1988 and this contention is filed on September 16; and 2) a PID on onsite issues has been issued and the record "closed" as to the matters raised in this contention. On the first point, the deadline for "exercise contentions" is September 21, 1988. The Intervenor's file this single contention, as it were, a few days early because of their increasing concern about the possibility of precipitous action resulting in low power operation. The text above addresses the second point in extended detail.

2) This determination is made by the NRC on the basis of an evaluation and review not only of the licensee's onsite plan but of the exercise of that plan. First, the finding required is that adequate protective measures can "and will" be taken, indicating that the implementation capability of the onsite plan is at issue. Second, 50.47(d) states further that "[t]he NRC will base this finding on its assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this part." 50.47(b)(14) states that "[p]eriodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities" Appendix E states that the licensee's emergency "plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods. . . . and ensure that emergency organization personnel are familiar with their duties." Appendix E. IV. F. Third, the Staff's Standard Review Plan makes clear that onsite preparedness findings require review of licensee plan exercises in addition to the evaluation of the plans themselves. See Safety Evaluation Report ("SER"), NUREG 0896 (March 1983) at 13-20 which states that an onsite preparedness adequacy finding requires "[a]cceptable findings from an onsite appraisal to establish that the applicant's plan is capable of being implemented." As a consequence, the licensee's onsite plan

exercise results are relevant to a material issue necessarily addressed and decided by the Commission prior to the issuance of a low power license.

3) It follows, therefore, that the Intervenor has a right rooted in the Atomic Energy Act to a hearing on the issue of whether the exercise of the licensee's onsite emergency plan does or does not reveal a fundamental flaw in that plan and that an opportunity for such hearing must be provided prior to the issuance of a low power license. See Union of Concerned Scientists v. NRC, 735 F.2d 1437, 1443 (D.C. Cir. 1984) ("UCS v. NRC").

4) It also follows from UCS v. NRC, *id.* at 1443-1444 that hearing rights that attach to an emergency plan exercise may not be lawfully restricted by requiring an intervenor to seek to reopen closed proceedings in order to secure those rights if no earlier opportunity to raise issues presented by the relevant exercise was provided.

5) Finally, the June 27 - 29, 1988 exercise of the licensee's onsite emergency plan is the only relevant exercise on the basis of which the Commission could now find that for purposes of low power operation there is reasonable assurance that the state of onsite emergency preparedness is adequate.

a) There have been earlier exercises of the Licensee's onsite emergency plans. See SER, WUREG 0896, Supp. 4 (May, 1986) at 13-8. These exercises were reviewed and evaluated and a finding made by the NRC Staff at that time that

licensee onsite emergency preparedness was acceptable and met the standard for issuance of the low-power license. SER, Supp. 4 at 13 -17.^{5/}

b) However, at least until a low power license actually issues, each licensee onsite plan exercise is and should be treated by the NRC as superceding its predecessor for purposes of satisfying the requirement that there be adequate licensee onsite preparedness. First, Appendix E requires that the licensee plan be exercised yearly. If a low power license has not issued within a year of such an exercise, a new exercise would be required for this pertinent Appendix E standard to be met as is required by 50.47(d). Obviously, this required new exercise would be evaluated by the NRC and form the basis of any finding that would support subsequent issuance of a low power license. Second, an adequate exercise of onsite emergency staff two or three years ago does not support a present finding of adequate preparedness if a later exercise reveals fundamental flaws in the training of the present staff and a current inability to implement the licensee's onsite

^{5/} This Board in its March 1987 Partial Initial Decision at 67 also reiterated that the "state of onsite emergency preparedness" met the applicable standard and that a low-power license was, therefore, authorized. This Board's iteration of the earlier May, 1986 Staff conclusion was not itself a "finding" on the record. In fact, no contention was ever before this Board on this issue. Thus, as a technical matter, this issue was never jurisdictionally shifted for purposes of 10 CFR 50.57(c) from the Director of Nuclear Reactor Regulation to this Board. As a result, no record before this Board opened or closed on this issue.

plan. Thus, a subsequent fundamentally flawed exercise must form the basis of an NRC finding that onsite preparedness is not adequate because any other finding will simply be unsupported by the record and otherwise be arbitrary and capricious. Third, the NRC evaluation document generated after the June 27 - 29, 1988 licensee onsite plan exercise stated:

Although there were areas identified for corrective action, the NRC team determined that within the scope and limitations of the scenario the Licensee's performance demonstrated that they could implement their Emergency Plan . . . in a manner which would adequately provide protective measures for the health and safety of the public. Licensee management acknowledged the findings (Report No. 50-443/88-09 at 6 attached as Exhibit A to Affidavit of Robert Follard submitted with the Contention)

c) As a result, any NRC finding of adequate licensee onsite emergency preparedness which would support the issuance of a low power license pursuant to 10 CFR 50.57(c) would now be based on the June 27 -29, 1988 exercise and the NRC's inspection report.

6) Because the June, 1988 exercise is the relevant exercise with regard to the issue of onsite preparedness and this issue is material to low-power licensing as acknowledged by the Commission, the Intervenors have a right to fully litigate the onsite planning aspects of that exercise prior to low-power operation. To require an otherwise well-pleaded

contention presenting these issues to meet further or higher standards of admissibility based on some notion that the opportunity to raise these issues has long since come and gone in light of earlier exercises which are now irrelevant to licensing would deny those participational rights.

REOPENING THE RECORD

In the alternative, this proffered contention meets the procedural standards for reopening a record to admit a late-filed contention after the issuance of a partial initial decision. 10 CFR § 2.734 and § 2.714(a)(1)(i)-(v).

The 5-Part Late-Filed Contention Standard (§ 2.714(a)(1))

(i) As noted, as an exercise contention this contention is timely filed although it is filed after an onsite PID has issued. Even if it is deemed to be late-filed, there is good cause for the failure to file on time. This contention obviously could not have been filed before the results of the June 27-29, 1988 exercise, on which any issuance of a Seabrook low power license will now be based, became available. The NRC inspection report referenced in the contention and in the accompanying Pollard Affidavit was received by the Intervenor or or about July 15, 1988. The exercise scenario documentation (the 1988 FEMA/NRC Graded Exercise) which provides the factual context for a proper technical understanding of the Station

Staff's actions and responses was not received by the Mass AG until the week of August 15, 1988. Finally, as noted above, by order of the offsite Licensing Board dated August 19, 1988, the deadline for submission of exercise contentions was set at September 21, 1988.

(ii) There is no means other than by filing and admission of this contention whereby the Intervenor's interest in ensuring that the licensee's onsite Station Staff is adequately trained and able to respond to an accident will be protected before the issue of a low power license. The NRC Staff, acting through the Inspection Report has already made its finding on July 7, 1988 that notwithstanding the noted exercise weaknesses, the level of onsite preparedness is adequate for low power operation.

(iii) The Intervenor will contribute to the development of a sound record by providing an expert witness who will analyze the emergency response actions taken by the Seabrook Station staff and describe in detail the manner in which those actions reflect the failure of that staff to comprehend the significance of plant conditions and identify the appropriate measures needed to prevent any further plant deterioration and/or further offsite radiological releases.

(iv) No other party has raised or is raising this issue.

(v) At the moment, admission of this contention will not delay issuance of a low power license which is presently stayed

pending resolution of the Massachusetts EPZ siren issues. The contention will broaden the proceeding to encompass the issue of licensee onsite preparedness but is an area absolutely vital to the safety of the public particularly in the absence of adequate offsite emergency plans during low power operation.

The Standard for Re-Opening the Record (§ 2.734)

(1) A motion at this juncture to reopen the record for the purpose of litigating an exercise contention arising out of the June 27-29, 1988 exercise is timely filed.

(2) The inadequate state of onsite preparedness at the Seabrook Station raises fundamental and significant safety and environmental issues particularly for low power reactor operation. If, as alleged, the Station response staff is not adequately trained to respond appropriately to a reactor accident then the public is directly put at risk by low power operation.

(3) Finally, although no contention had been admitted raising the issue of the adequacy of the state of onsite training and preparedness, had the issue been open before this Board, the evidence set forth in the accompanying affidavit would have likely resulted in the absence of a finding by this Board that onsite preparedness is adequate at the Seabrook Station.

For all of the reasons set forth above, this Board should admit the Contention set forth as Exhibit 1.

Respectfully submitted,

JAMES M. SHANNON
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS

SEACOAST ANTI-POLLUTION LEAGUE

John Traficante
Assistant Attorney General
Nuclear Safety Unit
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Robert A. Backus, Esquire
Backus, Meyer & Solomon
116 Lowell Street
P.O. Box 516
Manchester, NH 03105
(603) 668-7272

TOWN OF HAMPTON, NEW HAMPSHIRE

NEW ENGLAND COALITION ON
NUCLEAR POLLUTION

Matthew T. Brock, Esquire
Shaines & McEachern
24 Maplewood Avenue
P.O. Box 560
Portsmouth, NH 03801
(603) 436-3110

Ellyn Weiss, Esquire
Harmon & Weiss
2001 "S" Street N.W.
Suite 430
Washington, DC 20009
(202) 328-3500

Dated: September 16, 1988

EXHIBIT 1

JOINT INTERVENORS ON-SITE EXERCISE CONTENTION

The present state of onsite emergency preparedness at Seabrook, as revealed by the results of the June 27 - 29, 1988 graded exercise does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency pursuant to 10 CFR 50.47(d), and does not support a finding that low power operation "can be conducted without endangering the health and safety of the public" pursuant to §50.57(a)(3). That exercise disclosed fundamental deficiencies in the onsite emergency plan (the Seabrook Station Radiological Emergency Plan, the "Plan") with respect to the following pertinent planning standards:

1) 10 CFR 50.47(b)(2) which requires "adequate staffing to provide initial facility accident response in key functional areas . . . at all times, [that] timely augmentation of response capabilities is available and [that] the interfaces among various onsite response activities and offsite support and response activities are specified";

2) 10 CFR 50.47(b)(14) which requires that "[p]eriodic exercises [be] conducted to evaluate major portions of emergency response capabilities . . . and [that] deficiencies identified as a result of exercises or drills [be] corrected";

3) 10 CFR 50.47(b)(15) which requires that "[r]adiological emergency response training [be] provided to those who may be called on to assist in an emergency"; and

4) 10 CFR Appendix E, IV.A.2a. which requires that a licensee onsite emergency plan provide a "detailed discussion of: a. Authorities, responsibilities and duties of the individual(s) who will take charge during an emergency"; and IV. F. which requires that "[e]xercises shall test the adequacy of timing and content of implementing procedures and methods . . . and ensure that emergency organization personnel are familiar with their duties."

BASIS: The Seabrook Station Radiological Emergency Plan provides for the establishment at the time of an emergency of the Technical Support Center ("TSC") and the Emergency Operations Facility ("EOF"). Plan at Sections 6.1.1 and 6.1.3 The personnel at the TSC and EOF are expected to use the emergency operating procedures to assist in recognizing an emergency condition in order to prescribe the actions necessary to correct the condition. Plan at 1-2. A demonstration of the ability of these personnel to analyze station conditions and parameter trends and to develop potential solutions for placing the reactor in a safe stable condition was one of the objectives of the June, 1988 graded exercise in order to establish the adequacy of this fundamental aspect of onsite emergency preparedness. As described in more detail in the accompanying Affidavit of Robert D. Pollard, which is incorporated herein by reference as a portion of the basis of this contention, the exercise revealed that fundamental deficiencies exist in the current state of onsite emergency preparedness precluding the NRC finding which is prerequisite to issuance of a low power license.