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UNITED STATES NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD 88-558 26 P3:49

In the Matter of)	
)	
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 SUPPORT OF APPEAL OF LICENSING BOARD'S
MEMORANDUM AND ORDER DATED AUGUST 8, 1988

Introduction

The New England Coalition on Nuclear Pollution ("NECNP") hereby appeals ASLB No. 88-558-01-OLR, dated August 8, 1988, in which the Licensing Board renewed authorization to operate the Seabrook nuclear power plant at low power. In that decision, the Licensing Board determined that the remanded issue relating to the environmental qualification of RG-58 coaxial cable was not relevant to low power operation "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." Slip op. at 13.

Statement of Facts

On July 1, 1988, in response to an order from the Commission dated June 29, 1988, the Licensing Board issued an order directing the parties to respond to the question of whether remanded issues in the Seabrook operating license proceeding, relating to the environmental qualification of coaxial cable, must be

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resolved before authorization of low power operation. In its brief, dated July 21, 1988, NECNP continued to advance 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.

Applicants filed a brief and affidavits, dated July 22, 1988, which purported to show that RG-58 and substitute RG-59 coaxial cable is not used in any of the automatic or manual functions necessary for safe shutdown from low power operation or accident mitigation. The NRC Staff responded on July 27, 1988, that as a general matter, compliance with environmental qualification requirements is required for low power operation. The Staff concluded that "based on the information currently available to it, the Staff considers remanded NECNP Contention I.B.2 relevant to low power operations."¹ NRC Staff Brief at 5-6. Nevertheless, the Staff argued that the operating license should be issued, because it considered that the remanded issues had been resolved on the merits.

¹ The Staff asserted the "possibility" that application of certain environmental qualification enforcement criteria to the particular applications of RG-58 coaxial cable at issue in this case might result in a determination that environmental qualification of RG-58 cable is not essential for safe operation of the facility at low power. However, the Staff considered such an analysis "unnecessary" because it considered the remanded contention to be resolved on the merits, and thus it did not perform the analysis. NRC Staff Brief at 6. The Staff also noted that due to time constraints, it had not reviewed Applicants' filings with respect to the relevance of the cable contention to environmental qualification. Id. at 2.

On August 8, 1988, the Licensing Board issued a Memorandum and Order which rejected NECNP's arguments and accepted in their entirety Applicants' assertions that the remanded cable issues are not relevant to low power operation. Slip op. at 13. The Licensing Board rejected the NRC Staff's merits arguments on the ground that it ignored the Appeal Board's ruling in ALAB-875, 26 NRC 251 (1987), that the acceptability of RG-58 coaxial cable has not been demonstrated, which is still the law of the case. The Board failed, however, to address the Staff's arguments that environmental qualification is relevant to low power operation, or to discuss the alternative criteria proposed by the Staff for judging the relevance to low power of particular applications of safety equipment.

ARGUMENT

I. ALL CONTESTED SAFETY ISSUES MUST BE RESOLVED BEFORE ISSUANCE OF A LICENSE PERMITTING LOW POWER OPERATION.

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 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.²

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 environmen-

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.³ 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 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

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tal 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.

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).⁴ Any 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,

⁴ Regulatory exemptions may be granted only where the applicant 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).

placing it instead on parties who seek to ensure compliance with valid regulations.

The Commission 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.

Even accepting the Commission's interpretation of the Atomic Energy Act and 10 CFR § 50.57(c), however, the Licensing Board has not made a supportable finding that the remanded cable issues are not relevant to low power operation.

II. EVEN IF LOW POWER OPERATION PRIOR TO RESOLUTION OF ALL SAFETY ISSUES IS PERMISSIBLE, RESOLUTION OF ENVIRONMENTAL QUALIFICATION ISSUES IS REQUIRED FOR LOW POWER OPERATION

A. Relevance of Cable Issue to Low Power Operation

Under the Commission's interpretation of 10 CFR § 50.57(c), low power operation may be authorized if the Licensing Board finds that a contested issue is not "relevant" to low power. Determinations of relevance to low power operation are made by examining "each regulation" to determine "its application and effect for fuel loading and for each phase of low-power operation." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-21, 20 NRC 1437, 1439-40.

In its brief to the Licensing Board, the NRC Staff asserts that, as a general matter, the environmental qualification

requirements of 10 CFR § 50.49 apply to low power as well as full power operation. NRC Brief at 5. As the Staff explains,

The basis for this position is that were an accident to occur at low-power (less than 5% rated power), there is the potential for failure of safety-related electrical equipment ... when subjected to a harsh environment. Such equipment is relied upon to remain functional during and following postulated events to ensure the integrity of the reactor coolant pressure boundary, to safely shut down the reactor and maintain it in a safe shutdown condition, and to prevent or mitigate the consequences of accidents that could result in potential offsite exposure.⁵

The Staff concluded, based on the information available to it, that "remanded NECNP Contention I.B.2 [is] relevant to low power operations." Id.⁶

Given that the NRC's regulations provide little or no guidance as to which regulatory requirements are or are not required for low power operation⁷, the Licensing Board must depend heavily

⁵ NRC Staff Brief at 5-6, quoting July 27, 1988 Affidavit of Harold Walker at par. A4.

⁶ The Staff attempts to vitiate the implications of this position by ignoring the present legal status of this issue. Rather than oppose low power operation, as its position on the significance of environmental qualification to low power operation requires, the Staff instead simply reasserts its oft-repeated and oft-rejected opinion that RG-58 cable has already been shown to be qualified. Thus, the Staff utterly ignores the repeated Appeal Board holding that RG-58 cable has not been shown to be qualified.

The fact is, at present RG-58 cable is not deemed qualified. Until that question has been finally resolved on the merits, the Staff may not use its opinion on the subject to dispense with the separate issue of relevance to low power operation. The instant question is not whether RG-58 cable is qualified, but rather the relevance of its qualification to low power operation.

⁷ The only provision which explicitly exempts low power license applicants from compliance with substantive requirements is 10 CFR § 50.47(d), which relates to offsite emergency planning issues. The regulations contain no guidance whatsoever as to which design-related regulations are considered "relevant" to low power operation.

on the parties, and especially on the expertise of the NRC's own staff, to evaluate a regulation's relevance to low power. Yet, in reaching its decision, the Licensing Board failed entirely to address the Staff's statement that the remanded issues are inherently relevant to low power operation. Moreover, the Board failed to even mention the alternative criteria offered by the Staff for evaluating individual applications of unqualified equipment. Instead, the Licensing Board renewed authorization to operate at low power, based solely on its acceptance of Applicants' arguments. Slip op. at 13.⁸ Absent a discussion of the inherent relevance of environmental qualification requirements to low power operation, and absent any attempt to justify a departure from that general policy, the Licensing Board's decision is arbitrary and capricious and must be reversed.

B. Applicants Have Not Adequately Demonstrated That RG-58 Cable Is Not Needed for Low Power Operation

The Staff notes that "a review of the particular applications of RG-58 at the Seabrook Station may result in a determination that the environmental qualification of RG-58 cable is not essential for safe operation of the facility at low power. The Staff states that the criteria it would apply in such a determination are "whether failure of the subject RG-58 cables under accident conditions during low-power operation would result

⁸ In apparent recognition of the infirmity of its decision, the Licensing Board withheld effectiveness of the low power renewal in order to give the Commission an opportunity to request the Staff to provide its evaluation of Applicants' arguments. Slip op. at 13.

in significant degradation of any safety function or provide misleading information to plant operators."⁹

Applicants have not demonstrated that the failure of RG-58 cable during low power operation could not mislead operators. Applicants' filings purport to show that failure of any RG-58 cables could not adversely affect the proper function of three plant systems that they claim are the only systems required for safe shutdown during low power operation: the Reactor Trip System, the Engineered Safety Features Actuation System, and the Category I Accident Monitoring Instrumentation.¹⁰ Applicants purport to show that RG-58 cables are not connected to any of those systems, and are not routed in harsh environments with cables connected to those systems that would be needed during low power operation.¹¹

Applicants make no showing with respect to whether the failure of RG-58 cables during low power operation could result in the presentation of misleading information to plant operators. The computer instrumentation and level detectors to which Applicants' claim the RG-58 cables are connected¹² are not, according to Applicants' criteria, required for safe shutdown of the plant. Nonetheless, it is likely that operators are in the habit of relying on those systems for information about plant

⁹ Id.

¹⁰ Applicants' Brief at 3-4.

¹¹ Id., passim, and supporting affidavits.

¹² Glowacky July 22, 1988 Affidavit at 2.

status during normal operation, and thus would be inclined to refer to them during the course of an accident, when they are going to need all the information they can get.

If the failure of any RG-58 cables during an accident could cause the computer system or level detectors to which they are connected to relay misleading information to operators, and that information could be consulted and relied on by operators, the standard propounded by the Staff would not be satisfied. This is the case whether or not the computer and cables are formally part of the Category I Accident Monitoring Instrumentation.

Moreover, the fact that Applicants have replaced 12 of 126 RG-58 cables with RG-59 cables does not dispense with this unresolved issue. It has still not been established that Applicants have identified all RG-58 cables which must be environmentally qualified. Applicants thus far have physically confirmed the in-plant locations only of the ends of the "spare" RG-58 cables. By their own admission, they have not "walked down" the cables from end to end to confirm that they are in fact routed as their documentation indicates is the case.¹³

The history of nuclear power plant construction is replete with countless instances of plants not being built in conformity with their documentation.¹⁴ Similarly, discrepancies in quality

¹³ Applicants' Responses to NFCNP Third Round Interrogatories 12, 13 and 14.

¹⁴ See, e.g., It Information Notice No. 85-66, Discrepancies Between As-Built Construction Drawings and Equipment Installations, August 7, 1985. (Over 7300 discrepancies and errors between as-built field configurations and associated design and construction drawings and specifications at Fermi Unit 2; supports not added to nitrogen supply line at Rancho Seco, although records indicated it had been done and inspected; similar problems identified at 10 other facilities between

control documentation at nuclear plants have been extremely widespread.

Thus, Applicants' claims that their cable-routing diagrams prove the actual routing of the relevant cables throughout the plant cannot simply be accepted as established fact. The possibility that some of the unreplaced RG-58 cables could actually be routed other than as indicated in "as-built" drawings, i.e., through harsh environments, cannot be considered remote. Applicants should establish the actual routing of each RG-58 cable by physical walkdowns.¹⁵ There are additional RG-58 cables, besides the 12 that were replaced, and not routed with SSI, whose routing has not been physically confirmed in the plant. Because some of those additional RG-58 cables might in fact be routed at least partially through a harsh environment, and could have the capability to mislead operators during an accident at low power, the Commission cannot make the findings in 10 CFR § 50.57(a).

Conclusion

For all the foregoing reasons, this Appeal Board should reverse the August 8, 1988 Memorandum and Order of the Licensing

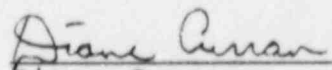
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1982 and 1985 by Construction Appraisal Team inspections.)

¹⁵ Applicants state they have "walked down" some of the cable raceways containing "Safe Shutdown Instrumentation" ("SSI") to confirm either that they do not contain RG-58 cables, or that if they do contain RG-58 cables, they are not routed in a harsh environment. Applicants' Brief at 6; Beuchel Affidavit at par. 14. These walkdowns did not physically confirm the location of each RG-58 cable in the plant and thus they did not address the issue of capability of failed RG-58 cables to mislead operators.

Board, ASLBP No. 88-558-01-OLR, and order the Licensing Board to deny low power authorization of the Seabrook plant pending final resolution of this cable environmental qualification issue.

Respectfully submitted,

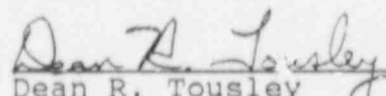

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Dated: September 23, 1988

Certificate of Service

I certify that copies of this N&CNP Brief in Support of Appeal of Licensing Board's Memorandum and Order Dated August 8, 1988 were served by first class mail on the parties on the attached service list on September 23, 1988.


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