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UNITED STATES OF AMERICA
UNITED STATES NUCLEAR REGULATORY COMMISSION

before the
NUCLEAR REGULATORY COMMISSION

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

APPLICANTS' RESPONSE TO NEW ENGLAND
COALITION ON NUCLEAR POLLUTION'S
PETITION FOR REVIEW OF ALAB-899

Pursuant to 10 C.F.R. §2.786(b)(3), Applicants herein respond to New England Coalition on Nuclear Pollution's Petition for Review of ALAB-899¹ ("NECNP Petition").

A. Summary of ALAB-899

The Appeal Board, in ALAB-899, finally disposed of the issue of whether NECNP Contention IV, entitled "Blockage of Coolant Flow to Safety-Related Systems and Components by Buildings of Biological Organisms" embraced the issue of microbiologically-induced corrosion ("MIC"). Consistent with

¹ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2) ALAB-899 ___ NRC ___ (1988).

the rulings of the Licensing Board,² the Appeal Board held that the issue of MIC was outside the scope of NECNP Contention IV.³

B. Why NECNP's Petition Should Be Denied

Commission review of an Appeal Board decision is granted only in the limited instances set out in 10 C.F.R. §2.786(b)(4). Unless the petition raises important matters of public policy or demonstrates that the Appeal Board committed clear legal error, the petition should be denied.

In this case, NECNP argues that the Appeal Board "committed fundamental legal error with respect to the application of the Commission's standards for the admissibility of contentions." NECNP Petition at 10. On the contrary, there is no question that the Appeal Board applied the correct legal standard in determining that the issue of MIC was not within the scope of NECNP Contention IV. After noting that the purpose of the requirement that the bases of a contention be set forth with reasonable specificity is to

² MEMORANDUM AND ORDER (Granting NECNP's Motion for Leave; Denying NECNP's Motion to Compel) (unpublished) (Feb. 17, 1988); MEMORANDUM AND ORDER (Denying NECNP Motion for Reconsideration; Denying NECNP's Request for Entry upon land; Granting NECNP's Motion for Leave to file a Reply; Directing §2.749 filings) (March 18, 1988); ORDER (Denying NECNP's Motion to Compel of March 27, 1988) (April 1, 1988).

³ For a detailed review of the evolution of the issue presented in ALAB-899, see Applicants' Brief filed with the Appeal Board (July 27, 1988).

put the other parties on notice as to what issues they will have to defend against or oppose,⁴ the Appeal Board, looking at Contention IV and its stated bases, held "[i]n this case, therefore, a fair reading of [NECNP's] Contention IV and its stated basis compels us to conclude that that contention was intended to embrace only cooling system blockage." ALAB-899 at 7, citing Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-869, 26 NRC 13, 20-25, reconsideration denied, ALAB-876, 26 NRC 277 (1987); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 270, 229-33 (1986); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 709 (1985) aff'd in part and review otherwise denied, CLI-86-5, 23 NRC 125 (1986); ALAB-216, supra.⁵

NECNP's real gripe is not with the standard applied by the Appeal Board, but with the outcome of the Appeal Board's analysis. Neither the Licensing Board nor the Appeal Board

⁴ ALAB-899 at 6 citing 10 C.F.R. §2.714(b) and Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, modified on other grounds, CLI-74-32, 8 AEC 217 (1974).

⁵ While NECNP argues in its brief that "[t]he scope of the contention is determined by the language of the contention itself, and not by the contention's title," NECNP Petition at 5, it is obvious that the Appeal Board based its ruling on the language of the contention and its basis and did not rely solely on the contention's title.

apparently found that analysis to be particularly challenging, however, as the rulings on this matter have variously stated: "it is clear to this [Licensing] Board from a reading of the contention that it is limited to asserting concerns that Applicants must establish a surveillance and maintenance program for the prevention of the accumulation of mollusks, other aquatic organisms, and debris in Seabrook's cooling systems in order to satisfy certain General Design Criteria"⁶; "[NECNP's] instant motion [for reconsideration] has no merit whatsoever"⁷; and "the divergent path [NECNP] chose to follow instead was doomed to certain failure from the very outset."⁸

NECNP also argues that the Appeal Board committed error by failing to reach other issues raised in NECNP's appeal. This argument is without any merit because the vitality of the other issues raised is contingent upon the determination of whether or not MIC is within the scope of Contention IV. Having determined that Contention IV does not include MIC, it was unnecessary for the Appeal Board to resolve any other issue.

⁶ MEMORANDUM AND ORDER (February 27, 1988) at 5 supra (emphasis in original).

⁷ MEMORANDUM AND ORDER (March 18, 1988) at 3 supra.

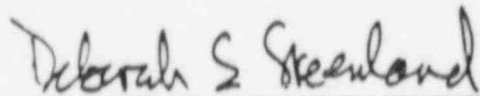
⁸ ALAB-899 at 11.

Finally, NECNP argues that the Commission should review ALAB-899 because it raises significant safety issues in that there has been an occurrence of MIC in the cooling systems. NECNP Petition at 10. Yet, as noted by the Appeal Board, "[t]his disposition of [NECNP's] appeal does not, of course, relieve the staff of its obligation to ensure the adequacy of the applicants' program for detecting and controlling microbiologically-induced corrosion. Stated otherwise, the admission or rejection of a particular contention advanced by an intervenor (or petitioner for intervention) has no bearing upon the nature and extent of staff's responsibilities in the fulfillment of its general regulatory function." ALAB-899 at n.18. Therefore, no significant safety issue is raised by NECNP's petition.

Conclusion

For the foregoing reasons, NECNP's petition should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

88 SEP 29 P2:47

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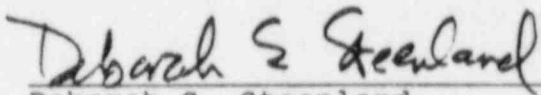
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