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June 3, 1988

UNITED STATES NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of)
)
Public Service Company of)
New Hampshire, et al.)
)
(Seabrook Station, Units 1 & 2))
_____)

Docket No. 50-443 OL-1

ONSITE EMERGENCY
PLANNING & TECHNICAL
ISSUES

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S
MOTION TO DEFER BRIEFING OF NECNP'S APPEAL
OF THE LICENSING BOARD'S MAY 12, 1988 ORDER,
OR, IN THE ALTERNATIVE, FOR EXPEDITED
CONSIDERATION OF NECNP'S MOTION FOR CLARIFICATION

The New England Coalition On Nuclear Pollution (NECNP) hereby requests that this Appeal Board issue an appropriate order deferring the briefing of NECNP's Appeal of the Licensing Board's May 12, 1988, Order, which dismissed NECNP Contentions IV and I.V as "abandoned," until thirty (30) days after this Board accepts the late filing of NECNP's Notice of Appeal. In the alternative, NECNP requests that the Appeal Board expedite its consideration of "NECNP's Motion for Clarification or, in the Alternative, for Leave to File A Notice of Appeal Out of Time," filed June 1, 1988.

Background

As of May 12, 1988, NECNP had three, unresolved onsite safety contentions pending before the Licensing Board: NECNP Contentions IV and I.V, regarding the accumulation of aquatic organisms in the cooling system, and in-service inspection of

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steam generator tubes, and NECNP Contention I.B.2, regarding environmental qualification of the RG58 coaxial cable. NECNP Contentions IV and I.V. were remanded to the Licensing Board on October 1, 1987, by ALAB-875.¹ In that Decision, the Appeal Board suggested that the Licensing Board's merits disposition of the remanded contentions should take the form of a "supplemental partial initial decision."² NECNP Contention I.B.2 was remanded to the Licensing Board on April 25, 1988 by ALAB-891. Both ALAB-875 and ALAB-891 reversed different aspects of the Licensing Board's March 25, 1987, partial initial decision in the onsite emergency planning and safety issues phase of the Seabrook operating licensing proceeding.³

On May 12, 1988, the Licensing Board dismissed NECNP Contentions IV and I.V. as "abandoned." Although NECNP disagreed with this Order, NECNP did not file a notice of appeal at that time because it believed that, due to the unresolved status and pendency of NECNP Contention I.B.2, an appeal of the Licensing Board's May 12, 1988 Order regarding NECNP Contention IV would be rejected as interlocutory, pursuant to 10 C.F.R. § 2.730(f).

1 Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-875, 26 NRC 251 (1988). Hereinafter, all administrative decisions in the Seabrook proceeding will be cited only by number and date. The agency's citation system denotes decisions of the Licensing Board Panel as "LBP" decisions, Appeal Board decisions as "ALAB," and Commission decisions as "CLI."

2 ALAB-875, 26 NRC 251, 276 n. 105.

3 LPB-87-10, 25 NRC 177.

On May 24, 1988, the Appeal Board filed a Decision in this proceeding which suggested, in dicta, that the Licensing Board's May 12, 1988, Memorandum and Order constitutes an initial decision appealable under 10 C.F.R. § 2.762.⁴ On June 1, 1988, NECNP filed a "Motion for Clarification or, in the Alternative, Motion for Leave to File a Notice of Appeal Out of Time." In that motion, NECNP requested that the Appeal Board clarify its opinion in ALAB-892, to correct any implication in that opinion that the Licensing Board's May 12, 1988 Order constitutes an initial decision appealable under 10 C.F.R. § 2.762. In the alternative, NECNP requested that the Appeal Board allow it to file the Notice of Appeal of the Licensing Board's May 12, 1988 Order out of time.

Discussion

Under 10 C.F.R. § 762(b), should the Appeal Board grant NECNP's alternative motion to file the Notice of Appeal of NECNP Contention out of time, Appellant's brief in support of its appeal will be due within 30 days of June 1, 1988. However, as NECNP stated in its "Motion for Clarification," this issue will not be ripe for review by the Appeal Board until such time as a new partial initial decision on the onsite emergency planning and safety issues is issued by the Licensing Board, and no such decision can be issued unless and until the remanded NECNP Contention I.B.2 is resolved. We note, in this regard, that the Appeal

4 ALAB-892, slip opinion at 6 n. 12.

Board itself suggested in ALAB-875, that the Licensing Board's merits disposition of the remanded contentions should take the form of a "supplemental partial initial decision."⁵

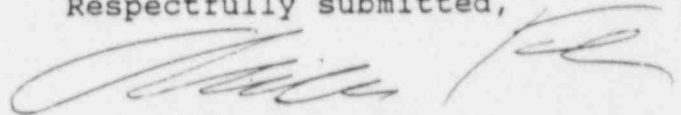
Should the Appeal Board issue the clarification requested by NECNP, or otherwise decline to accept NECNP's late-filed Notice of Appeal, no brief will need to be filed under 10 C.F.R. § 2.762(b). However, should the Appeal Board decide to grant NECNP's alternative motion for leave to file a notice of appeal out of time, that may leave very little time in which to prepare the supporting brief.

NECNP therefore requests that this Appeal Board issue an appropriate order deferring the briefing of NECNP's Appeal of the May 12, 1988 Order until thirty (30) days after the Appeal Board issues a decision granting NECNP's alternative motion for leave to file out of time a notice of appeal of the Licensing Board's May 12, 1988 Order. Counsel for NECNP have numerous other obligations with respect to the litigation of the offsite emergency planning phase of this proceeding, litigation of NECNP's remaining remanded onsite safety contention on environmental qualification of the RG58 coaxial cable, and low power authorization for Seabrook. Such a deferral will avoid diverting counsel away from these ongoing litigation obligations to prepare a brief that this Appeal Board may subsequently decide is premature.

5 ALAB-875, 26 NRC 251, 276 n. 105.

In the alternative, NECNP requests that the Appeal Board expedite its consideration of NECNP's Motion for Clarification or, in the Alternative, for Leave to File A Notice of Appeal Out of Time, in order to allow counsel for NECNP adequate time to prepare a supporting brief should the Board grant NECNP's alternative motion to file an appeal out of time.

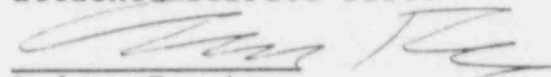
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on June 3, 1988, copies of the foregoing pleading were served by first-class mail or as otherwise indicated on all parties listed on the attached service list.


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