

October 30, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
North Atlantic Energy Service Corporation) Docket Nos. 50-443-LA
) 50-443-LA-2
(Seabrook Station))

REPLY TO PETITIONERS' RESPONSE
TO MOTION TO TERMINATE PROCEEDINGS

On October 15, 1998, pursuant to 10 C.F.R. 2.107(a), North Atlantic Energy Service Corporation ("NAESCO"), the applicant in the above-captioned proceedings, filed a motion requesting issuance of an order terminating these two proceedings. NAESCO requested this action because it has withdrawn the license amendment applications at issue. NAESCO also stated its position that the issues raised in the Commission's Order of September 17, 1998, CLI-98-18, are moot.

On October 26, 1998, Seacoast Anti-Pollution League ("SAPL") and New England Coalition on Nuclear Pollution ("NECNP"), the petitioners to intervene with respect to these matters, filed a response to NAESCO's motion, stating a qualified objection to termination of the proceeding. The petitioners maintain that the issue it has raised related to "segmentation" of license amendment requests "is an issue that not only may be of importance for Seabrook in the future, but for the entire industry." The petitioners oppose "mooting of this proceeding, unless the Commission provides another forum for development of policy guidance on how licensees should present requests to

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amend technical specifications so as to assure the Commission can review related changes to assure all safety issues are properly resolved in favor of the public health and safety.”

NAESCO opposes further consideration of the “segmentation” issue in the context of these proceedings. NAESCO is no longer seeking the approvals that give rise to the proceedings and to the petitioners’ argument. The legal issue, therefore, at least as between these parties in this forum, is truly moot. While it may be true -- as petitioners maintain -- that NAESCO may request similar license amendments in the future, this is highly speculative and does not alter the facts that 1) the issue is not presently joined, and 2) there is nothing to prevent the issue from being addressed if and when it arises again. Moreover, even if license amendments were requested in “segmented” fashion in the future, there is nothing to prevent any petitioner from requesting a hearing on each “segment” and thereby protect its interests.

Mootness is, in part, a jurisdictional doctrine rooted in the “case” or “controversy” requirement of Article III of the United States Constitution.¹⁷ It is also founded in part on policy

¹⁷ *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192 (1993)(observing, “The mootness doctrine derives from the ‘case’ or ‘controversy’ requirement of article III of the Constitution”); Charles H. Koch, Jr., *Administrative Law and Practice* § 14.30, at 440 (2d ed. 1997); Laurence H. Tribe, *American Constitutional Law* § 3-11, at 82 (2d ed. 1988).

considerations.^{2/} The doctrine has been firmly established in NRC precedent.^{3/} In Comanche Peak, the Commission recognized that it “generally follows the doctrine absent *the most compelling reasons*.” CLI-93-10, 37 NRC 192, 200 at n.28 (emphasis added). Such compelling reasons do not exist here. As discussed above, the “segmentation” issue can be addressed if and when it again arises. The “segmentation” issue, if addressed in this proceeding, would involve an academic exercise with no live factual context and no potential for impacting the current legal interests of the parties.

The petitioners suggest that the “segmentation” issue is a generic issue affecting the entire industry. NAESCO does not necessarily agree with this premise. However, even if true, this does not support addressing the issue in the context of this proceeding at the expense of NAESCO (and indeed these petitioners as well). The Commission is of course free to pursue generic policy issues and has a variety of means by which to do so. NAESCO offers no opinion on whether and how the Commission should proceed in that regard.

^{2/} 1A C.J.S. *Actions* § 40, at 418 (1985) (listing the “prevention of the useless expenditure of judicial resources and maintaining flexibility in the law by not creating unnecessary precedent” (citations omitted)); Charles H. Koch, Jr., *Administrative Law and Practice* § 14.30, at 440 (2d ed. 1997); Laurence H. Tribe, *American Constitutional Law* § 3-11, at 82 (2d ed. 1988) (observing that the doctrine “satisfies related prudential concerns”).

^{3/} *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192 (1993); see also *Louisiana Energy Services (LES), L.P.*, (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113 (1998) (granting LES’s motion to withdraw, terminating the licensing proceeding, rendering moot all outstanding issues in the proceeding, and dismissing pending petitions for review, including those of the intervenor); *Kerr-McGee Chemical Corporation* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13 (1996) (order terminating the proceeding as moot and vacating all three underlying Licensing Board decisions).

In conclusion, NAESCO views the "segmentation" issue as moot and requests termination of these proceedings.

Respectfully submitted,


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Dated in Washington, D.C.
this 30th day of October, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'98 NOV -2 P12:31

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)
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North Atlantic Energy Service Corporation)
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Docket Nos. 50-443-LA
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CERTIFICATE OF SERVICE

I hereby certify that copies of "REPLY TO PETITIONERS' RESPONSE TO MOTION TO TERMINATE PROCEEDINGS" and "MOTION FOR LEAVE TO FILE REPLY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk (*) by hand delivery service, or as marked by two asterisks (**), by overnight delivery, this 30th day of October, 1998. For those parties marked by a diamond (◇), a copy has also been provided this same day by e-mail.

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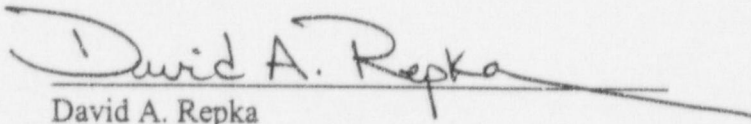
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