

DOCKETED  
USNRC

'98 NOV 24 A11 :08

OFFICE OF THE  
RECORDS  
ADJUTANT GENERAL

SERVED NOV 24 1998

Docket No. 50-443-LA  
50-443-LA2

CLI-98-24

The North Atlantic Energy Services Corporation (NAESCO) has filed a motion to withdraw two license amendment applications and to terminate related adjudicatory proceedings. The amendment applications were part of a series of proposed amendments to change the Technical Specifications for the Seabrook Nuclear Station to accommodate an extended fuel cycle. NAESCO is requesting withdrawal of the applications because it has revised its schedule to conduct its next refueling outage at the Seabrook Station consistent with the schedule in the existing Technical Specifications.

The adjudicatory proceedings were initiated by two intervention petitioners, the Seacoast Anti-Pollution League (SAPL) and the New England Coalition on Nuclear Pollution (NECNP). In one proceeding, the Atomic Safety and Licensing Board granted intervention to SAPL and denied intervention to NECNP. LBP-98-23, 48 NRC \_\_\_\_ (Sept. 4, 1998). The Board also requested the parties to provide further information on SAPL's argument against "segmentation," i.e., its claim that license amendment applicants should not be permitted to

DS02

effectuate a major operational change requiring several license amendments through separate amendment requests rather than through a single request. SAPL reasoned that without reviewing the change as a whole, the NRC may be unable to assess accurately the safety implications of the overall change. Id., slip op. at 21. The Board ordered the second Seabrook amendment proceeding held in abeyance pending resolution of the "segmentation" question.

Before the Board reached a decision on the admissibility of the "segmentation" issue, the Commission exercised its inherent supervisory authority over the conduct of adjudicatory proceedings to take sua sponte review. See CLI-98-18, 48 NRC \_\_\_\_ (September 17, 1998). The Commission stated that the segmentation issue is "novel and has broad implications for this and other proceedings." The Commission set a briefing schedule and held all further proceedings before the Board in abeyance. Subsequently, at the parties' joint request, the Commission deferred the briefing schedule to accommodate settlement negotiations. However, no settlement was reached. Instead, NAESCO filed the present motion to withdraw its amendment applications and to terminate adjudicatory proceedings.

SAPL and NECNP acknowledge that NAESCO's decision to withdraw the applications would "appear to moot the need for any further proceeding." Response to Motion By NAESCO to Withdraw Applications and to Terminate Proceeding, at 2 (Oct. 26, 1998).<sup>1</sup> Nevertheless, they "oppose mooting the proceeding," unless the Commission institutes a process to resolve the "segmentation" issue on a generic basis and affords meaningful public participation. Id. at 3.

---

<sup>1</sup> On October 30, 1998, NAESCO filed a Motion for Leave to File Reply to SAPL and NECNP's Response. That motion is hereby granted.

A moot adjudicatory proceeding is clearly not the forum to decide a novel issue like "segmentation."<sup>2</sup> As SAPL and NECNP themselves recognize, NAESCO's abandonment of its amendment requests has rendered the current adjudications moot. Based on the present record, we are disinclined to commit scarce Commission resources to the initiation of a public process to consider the segmentation issue on a generic basis outside the adjudicatory setting. Although a final adjudicatory decision on segmentation might have proved a significant adjudicatory precedent, the legal questions surrounding segmentation remain inchoate. The parties had not yet briefed the issue before the Commission at the time NAESCO decided to abandon its amendment requests, and neither the Board nor the Commission had considered whether "segmentation" was even an appropriate matter for litigation. We see no harm to SAPL or NECNP from our decision to terminate formal consideration of the segmentation issue. They remain free to challenge any future licensing action that they deem to involve segmentation, just as they did here.

In conclusion, we grant NAESCO's motion to withdraw its proposed amendments and dismiss the related adjudicatory proceedings as moot. We also follow our customary practice and "wipe the slate clean" by vacating the Board decision, LBP-98-23, that we had not yet reviewed at the time the case became moot. See Louisiana Energy Services (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114 (1998); Kerr-McGee Chemical Corp. (West

---

<sup>2</sup> Among other policy factors, we are reluctant to ask parties to a moot proceeding to incur the expense and inconvenience of preparing briefs and arguments.



Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13 (1996).

The proceedings are hereby terminated.

IT IS SO ORDERED.



For the Commission<sup>3</sup>

A handwritten signature in cursive script, reading "John C. Hoyle".

John C. Hoyle  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 27<sup>th</sup> day of November, 1998.

---

<sup>3</sup> Commissioner Diaz was not available for the affirmation of this Order. Had he been present, he would have affirmed the Order.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTH ATLANTIC ENERGY SERVICE  
CORPORATION  
(Seabrook Station, Unit No. 1)

Docket No.(s) 50-443-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-98-24) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
B. Paul Cotter, Jr., Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Linda W. Little  
ASLBP  
5000 Hermitage Drive  
Raleigh, NC 27612

Steven R. Hom, Esq.  
Office of the General Counsel  
Mail Stop - O-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Robert A. Backus, Esq.  
Backus, Meyer, Solomon, Rood & Branch  
P.O. Box 516  
Manchester, NH 03105

Lillian M. Cuoco, Esq.  
Senior Nuclear Counsel  
Northeast Utilities Service Company  
P.O. Box 270  
Hartford, CT 06141

David A. Repka, Esq.  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005

Docket No.(s)50-443-LA  
COMM MEMO & ORDER (CLI-98-24)

Dated at Rockville, Md. this  
24 day of November 1998

*Adrian T. Byrdson*  
Office of the Secretary of the Commission



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTH ATLANTIC ENERGY SERVICE  
CORPORATION  
(Seabrook Station, Unit No. 1)

Docket No.(s) 50-443-LA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-98-24) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
B. Paul Cotter, Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Linda W. Little  
ASLBP  
5000 Hermitage Drive  
Raleigh, NC 27612

Steven R. Hom, Esq.  
Office of the General Counsel  
Mail Stop - O-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Robert A. Backus, Esq.  
Backus, Meyer, Solomon, Rood & Branch  
P.O. Box 516  
Manchester, NH 03105

Lillian M. Cuoco, Esq.  
Northeast Utilities Service Company  
P.O. Box 270  
Hartford, CT 06141

David A. Repka, Esq.  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005

Docket No.(s) 50-443-LA-2  
COMM MEMO & ORDER (CLI-98-24)

Dated at Rockville, Md. this  
24 day of November 1998

*Adrian T. Byrdson*  
Office of the Secretary of the Commission