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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

'88 JUL -1 P5:24

before the

OFFICE OF SELECTARY DOCKETING & SERVICE BRANCH

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, ET AL.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-0L-1 50-444-0L-1

(Onsite Emergency Planning and Safety Issues)

APPLICANTS' APPEAL AND PETITION FOR
DIRECTED CERTIFICATION OF AN ORDER
OF THE ATOMIC SAFETY AND LICENSING
BOARD REJECTING APPLICANTS' SUGGESTION
OF MOOTNESS WITH RESPECT TO THE ISSUE
OF ENVIRONMENTAL QUALIFICATION OF RG-58 CABLE

To The Atomic Safety and Licensing Appeal Board:

The Applicants, pursuant to the provisions of 10 CFR §2.718(i); 10 CFR §2.785(b), 10 CFR §2.714a and otherwise according to law, hereby request the Atomic Safety and Licensing Appeal Board to review and reverse an order of the Atomic Safety and Licensing Board herein issued on the record during a telephone conference call on June 24, 1988¹, which order rejected a Suggestion of Mootness filed by the Applicants with respect to the issue of the environmental

¹The entire transcript of the telephone conference is filed herewith as Appendix 1 hereto. The order appears at pages 1177-79 of Appendix 1.

qualification of RG-58 cable, and in support thereof, respectfully represent as follows:

STATEMENT OF PRIOR PROCEEDINGS AND FACTS

Under date of April 21, 1982, the New England Coalition on Nuclear Pollution (NECNP), filed a contention in this proceeding denominated "NECNP I.B.2" which read in its entirety as follows:

"The Applicant has not satisfied the requirements of GDC 4 that all equipment important to safety be environmentally qualified because it has not specified the time duration over which the equipment is qualified." (Emphasis added)²

The contention was admitted for litigation by the Licensing Board on September 13, 1982.3

At the hearing, and over the objection of the Applicants that the only issue open for litigation under the contention as admitted was whether the Applicants had specified time durations for the equipment, A NECNP was permitted to cross-examine upon, and raise, the issue of whether the qualification files in fact demonstrated that various pieces of equipment were environmentally qualified. As part of this

²This text of the contention, which is as it was originally filed, is set out in <u>Public Service Company of New Hampshire</u> (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1050 (1982).

³ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, supra, n.2.

⁴Tr. (9/30/86) at 392-94

effort NECNP introduced NECNP Exhibit 4, which is Electrical Equipment Qualification File No. 113-19-01. At the time NECNP offered its Exhibit 4, and a number of other multidocument exhibits, a colloquy of some length occurred with respect to the purpose of the offer and, in particular, whether the documents were being offered for the truth of the matters contained. During this colloquy, NECNP made the following representation as to the purpose of the offer:

"I am offering these documents for the truth of the matter asserted therein, but I also believe that in some instances they did impeach the testimony of the witnesses. They are not utterly for the purpose of impeaching the witnesses. They are also for the purpose of fleshing out the basis upon which these representations are made regarding the qualification of the equipment. I think they are very relevant to the contention." (Emphasis added).6

on the basis of this statement as to the purpose of the offer, the Applicants stated that there was no objection to, inter alia, NECNP Exhibit 4,7 and the Exhibit was admitted.8 Included in the documents contained in NECNP Exhibit 4 was a letter dated February 11, 38 from ITT Suprenaut Division (Joel T. Sibly) to United 193 leers and Constructors (George Morris), stating that on the basis of tests performed on RG-

⁵m. (9/30/86) at 460- 1.

⁶Tr. (9/30/86) at 460.

⁷Tr. (9/30/86) at 460.

⁸Tr. (9/30/86) at 473.

59 cable the vendor was confident that RG-58 cable was qualified. 9 Also included in NECNP Exhibit 4 was a memorandum, dated October 10, 1985, which purports to describe how cables may be identified as being required to perform a safety function. 10

In a Fartial Initial Decision issued on March 25, 1987, 11 the Licensing Board found that RG-58 Cable had been adequately qualified on the basis of the February 11, 1983 letter described above and other materials in Exhibit 4.12 NECNP appealed this finding arguing, in essence, that the documentation which it had introduced for the truth of the matters contained should not be believed and could not and should not be relied upon by the Licensing Board. 13 In response, the Applicants pointed out in their brief that the evidence telied upon by the Licensing Board had been introduced without restriction by NECNP itself, 14 and argued

⁹NECNP Ex. 4 Ref. 4.

¹⁰ NECNP Ex. 4 Ref. 6. Also reproduced as an Appendix to this Appeal Board's decision of April 25, 1988. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-891 __ NRC __ (April 25, 1988).

¹¹ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177 (1987).

¹²LBP-87-10, supra n.9, Findings Nos. 68-70.

¹³ New England Coalition on Nuclear Pollution's Brief in Support of Appeal of Partial Initial Decision Authorizing Issuance of a License to Operate at Low Power (May 8, 1987) at 22-23.

¹⁴ Brief of Applicants (June 3, 1987) at 18.

that in any event the entire subject was well beyond the contention which had been admitted. 15

This Appeal Board issued a decision on October 1, 1987 in which it, inter alia, reversed the Licensing Board on the RG-58 Cable issue. 16 In so doing, this Appeal Board never addressed the Applicants' argument that the contention, as filed and admitted, did not encompass the issue. Rather, this Appeal Board simply stated in passing:

". . . as litigated, the contention focused upon the capability of equipment subject to GDC 4 to continue to perform its intended function for such period after the accident as might be necessary -- i.e., whether the equipment is 'environmentally qualified.'"17

The reversal was based upon the Appeal Board's agreement with NECNP that the February 11, 1983 memorandum was insufficient to establish environmental qualification of the RG-58 Cable. 18 However, this Appeal Board never addressed the question of how NECNP could be heard to attack evidence which it itself offered for the truth of the matters contained.

¹⁵ Brief of Applicants (June 3, 1987) at 19.

¹⁶ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-875, 26 NRC 251, 269-71 (1987).

¹⁷²⁶ NRC at 270. Accepting the description of the contention as litigated, the fact remains that this Appeal Board simply did not address the briefed and preserved issue of whether it should have been litigated that way in the first place.

¹⁸²⁶ NRC at 270-71.

This Appeal Board described the remand as follows:

". . . the segment of the environmental qualification issue concerned with the RG58 cable must be returned to the Licensing Board. If unable to point to anything in the existing record that establishes that the differ nces in the two cabl s are unimportant for present purposes, the Board is to reopen the record for a further exploration of the question whether RG59 cable test results can serve the foundation for the environmental qualification of the RG58 cable." (Emphasis added) 19

In response to this remand, the Licensing Board issued an unpublished "Memorandum to the Appeal Board" on October 16, 1988. Therein, the Licensing Board gave a technical explanation based upon materials in the record as to why it believed that had the RG-58 cable been tested, it would have revealed results "similar to those obtained for Cable RG-59, which were acceptable." On January 8, 1988, after receiving comments from the Applicants, NECNP and the Staff, this Appeal Board issued a decision rejecting the Licensing Board's analysis. However, this Appeal Board also took note of the fact that in their filings with the Appeal Board, the Applicants had raised a new argument, not previously passed upon by the Licensing Board. The argument, as

¹⁹²⁵ NRC at ____.

²⁰ Memorandum to the Appeal Board (unpublished) (Oct. 16, 1988) at 4.

²¹public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-882, 27 NRC 1 (1988).

^{22&}lt;sub>27</sub> NRC at 4-5.

described by this Appeal Board was to the effect that since there was no dispute that the "high potential" test of RG-58 Cable would likely have produced results similar to that produced by such a test of RG-59, this meant the RG-58 was qualified. This was so, Applicants argued because RG-58 cable need only retain its integrity to the extent necessary to avoid compromising the fulfillment of safety functions by other components. Noting that this argument had never been presented to the Licensing Board, this Appeal Board remanded the matter to the Licensing Board to give it an opportunity to do so, noting that if the argument was rejected this Appeal Board's rejection of the previous reasoning of the Licensing Board:

". . . will necessitate a reopening of the record to pursue further the question whether RG59 cable test results can serve as the foundation for the environmental qualification of the RG58 cable." (Emphasis added).²³

On March 2, 1988, the Licensing Board issued a decision upholding the Applicants' argument. 24 In so doing it relied, inter alia, upon the October 8, 1985 memorandum described

²³²⁷ NRC at _.

²⁴Memorandum to the Appeal Board on Environmental
Qualification of Coaxial Cable RG-58 (unpublished) (March 2,
1988).

earlier.²⁵ With respect to that memorandum, the Licensing Board observed:

"NECNP's arguments against the Applicants' response are, in effect, that documents in the Applicants' environmental qualification file do not provide an evidentiary basis for determining the truth of the matters contained therein. . . .

"In addition to the fact that the document in question, EQF 113-19-01, was offered and admitted into evidence without limitations as NECNP Exhibit 4 (see Tr. 460), the Applicants' witness, in responding to cross examination by NECNP's counsel, testified that the purpose of the [EQF] files is to keep a verifiable record that the equipment is indeed qualified for the environment to which it might be subjected in an accident. [citation omitted]. . . . the entries in the various documents are brief, or that the size of the purchase order is for 60,000 feet (11.36 miles), does not detract from their probative value. They are part of the record introduced by NECNP and not challenged by NECNP during their cross examination." (Emphasis added). 26

On April 25, 1988, this Appeal Board again reversed. 27
This Appeal Board upheld NECNP's argument that the documentation relied upon by the Licensing Board was in error

²⁵ see n.10, supra, and accompanying text.

²⁶Memorandum to Appeal Board on Environmental
Qualification of Coaxial Cable RG-58 (unpublished) (March 2,
1988) at 6-7. Indeed, as noted earlier, the documents were,
in fact, expressly offered by NECNP for the "truth of the
matter asserted therein." See n.6, supra, and accompanying
text.

²⁷Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-891, 27 NRC ___ (April 25, 1988).

in attaching any weight to the October 10, 1985 memorandum without it being sponsored by a competent witness. 28 Again this was done with no mention of the fact that, or analysis as to why it made no difference that, the document was offered by NECNP, itself, expressly for the truth of the matters asserted. 29 This Appeal Board concluded its decision by stating that for the reasons expressed therein, the Partial Initial Decision rendered March 25, 1987 was:

"... reversed to the extent that it found that the environmental qualification of the RG58 coaxial cable had been established. That issue is remanded to the Licensing Board for further proceedings consistent with this decision." 30

After the last remand, the Applicants made a decision to moot the entire issue by removing all of the RG-58 cable that was required to be environmentally qualified and replace it with RG-59, the qualification of which was not at issue.

After that decision was made, the Applicants filed a "Suggestion of Mootness" with supporting affidavits. 31 The thrust of this filing was to show that there were only 12 RG-58 cables in the facility which had to be environmentally qualified under the regulations, that a management decision

²⁸ALAB-891, Slip Op. at 19-22.

²⁹ See n.6, supra, and accompanying text.

^{30&}lt;sub>27</sub> NRC , Slip Op. at 25-26.

³¹The Suggestion of Mootness and supporting Affidavits are filed herewith for the Appeal Board's convenience as Appendix 2.

had been made to replace these with RG-59 cable and that therefore the issue of the environmental qualification of RG-58 cable was moot. 32

On June 2, 1988, the Staff filed a reply to the Applicants' Suggestion of Mootness. 33 This reply seemed to raise no quarrel with either the legal theory or the facts as stated in the Suggestion; however, the Staff did fault the Applicants for not giving sufficient detail with respect to certain of the matters dealt with in the affidavits. The Staff suggested a course of action which in essence amounted to the treatment of the Suggestion of Mootness as a motion for summary disposition and advocated giving itself and NECNP sufficient time to reply to the Suggestion in that framework. 34 On June 9, 1988, NECNP replied to the

³²⁰n May 27, 1988 the Applicants filed a correction to the original filing which arose from a recatigorization of one of the cables from being "located within mild environments within the nuclear island" to "spare." This filing is filed herewith as Appendix 3.

³³NRC Staff Response to Applicants' Suggestion of Mootness (June 2, 1988). This document is filed herewith as Appendix 4.

³⁴The Staff has persisted in its view that what is involved here is a summary disposition motion. This is a correct view, only if one prejudges the question of whether the Licensing Board has jurisdiction and authority to delve into the questions of whether the correct cable: were replaced and whether the replacement cable is the appropriate one. The thrust of the Applicants' position hower, as set forth in Section II of the Argument, infra, is that there exists no jurisdiction or authority to reach these questions, or, if there is, the proper and necessary procedures have not been followed.

Suggestion of Mootness.³⁵ The gravamen of this filing is a list of questions contained therein which NECNP claims must be resolved prior to this matter being put to rest.³⁶ of note is the fact that in the long list of questions dealing with such matters as how the Applicants determined which RG-58 cables had to be qualified, and whether RG-59 is qualified to replace RG-58, nowhere is there a question, "Is RG-58 environmentally qualified?"; the only issue that was remanded to the Licensing Board.

On June 9, 1988, the Applicants requested, ³⁷ and, on June 10, 1988, were granted, ³⁸ leave to reply to the Staff and NECNP filings. On June 17, 1988 the reply was filed. ³⁹ Inter alia, the reply pointed out:

"The issue remanded to the Licensing Board concerns only whether the RG-58 cable is environmentally qualified. This is the only issue remanded to this Licensing Board and therefore the sole issue over which the Licensing Board has jurisdiction [citation footnote omitted]

³⁵New England Coalition on Nuclear Pollution's Response to Applicants' Suggestion of Mootness Regarding Environmental Qualification of RG58 Cable (June 9, 1988). This document is filed herewith as Appendix 5.

³⁶ Appendix 5 at 3-4.

³⁷Applicants' Motion for Leave to File Reply to Staff and NECNP Responses to Applicants' Suggestion of Mootness (June 9, 1988).

³⁸ ORDER (Granting Applicants' Motion For Leave to Reply) (June 10, 1988).

³⁹Applicants' Reply to NRC Staff and NECNP's Response to Applicants' Suggestion of Mootness (June 17, 1988). This document is filed herewith as Appendix 6.

and the sole issue which NECNP properly may litigate. Applicants have mooted that issue by agreeing to remove all RG-58 coaxial cable presently required to meet the environmental qualification requirements of 10 CFR 50.49. There is no contention in this case, and never has been, that Applicants were not capable of selecting what components have to be environmentally qualified. Indeed, there has never been a contention that the Seabrook organization was not fully technically qualified."40

On June 23, 1988, a telephone conference was held. 41 Again NECNP argued its concerns, all of which were of the same nature as outlined in their written reply, i.e. questions going to the Applicants' technical ability to determine which cables needed to be qualified and their ability to select proper replacement cable. 42 The Staff adhered to its position that this was basically a matter for summary disposition, stating that on the basis of what had been filed, it was now the Staff's position, subject to further study, that:

"[T]he record contains all the information necessary for the Board to issue a determination favorable to the applicants on this remanded contention."⁴³

Applicants reiterated the jurisdictional argument alluded to

⁴⁰ Appendix 6 at 5.

⁴¹ Appendix 1, passim.

⁴²Appendix 1 1162-65.

⁴³ Appendix 1 at 1166.

above. After deliberation, the Licensing Board then issued the order at bar which rejected the suggestion of mootness and opened discovery and placed the matter on a track where resolution, even by way of summary disposition, will be impossible prior to October of this year. The Licensing Board also refused to certify the questions presented by this Appeal and Petition to this Appeal Board. As articulated by the Licensing Board, the issues to be tried are whether Applicants have selected the correct cables to be replaced, and whether RG-59 is an acceptable substitute.

It is in the foregoing posture that this matter comes before this Appeal Board.

ARGUMENT

- I. The Appeal Board Should Address the Appeal.
- A. There Exists an Appeal as of Right in the Circumstances of this Case.

As appears from the statement of facts, the order at bar amounts to an order granting the admission of new contentions directed at the technical qualifications of the Applicants.

That is to say the original remanded issue of whether or not

⁴⁴ Appendix 1 at 1169-73; 1174-75

⁴⁵ Appendix 1 at 1177-79.

⁴⁶ See Appendix 1 at 1181.

⁴⁷ Appendix 1 at 1178.

⁴⁸ Appendix 1 at 1178-79. The Board specifically stated that it would not be issuing any further formal order. Appendix 1 at 1182.

RG-58 cable is, in fact, environmentally qualified is gone. What is to be litigated is whether or not the Applicants know how to find the correct cables and select a proper substitute. The posture of this case is no different than if NECNP had filed a new set of contentions and they had been allowed by the Board. For the reasons set forth in Section II hereof, it is the Applicants contention that none of these new contentions should be admitted for litigation. Thus the Applicants are entitled to an appeal of right under 10 CFR \$2.714a. If the Applicants prevail in this Appeal, this will bring this discrete matter to a close. In such circumstances, where the contention to be litigated is wholly changed by the Licensing Board, an appeal of right should be held to lie.

B. In any Event, Directed Certification Should Be Granted

The general rule as to directed certification is that normally it is not granted except:

"where the ruling below either (1) threatened the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by later appeal or (2) affected the basic structure of the proceeding in a pervasive or unusual manner."49

In addition, while not dispositive of the issue, an order

⁴⁹ Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

which must be reviewed promptly or not at all is a fit candidate for directed certification. 50 As argued below, the order at bar has resulted in a proceeding, or discrete portion thereof, not being wholly terminated when it should have been. As such, it does not merely affect the structure of a proceeding, it creates it. In addition, if there is no review granted now, the legal issues of jurisdiction, violation of the <u>sua sponte</u> rules, and violation of 10 CFR 52.734 (reopening) raised by this filing will never be reviewed. The substantive issues will have been tried as ordered by the Licensing Board, and the issue of whether they should have been tried will be most and of academic interest only. If the legal position of the Applicants is correct, and we believe it is, it is only by immediate review of the order at bar that the position can be vindicated.

II. The Order Should be Reversed on the Merits

A. The Licensing Board is Without Jurisdiction to Entertain the Contentions now Contemplated for Litigation

It is fundamental to NRC jurisprudence that a Licensing Board which receives a matter back on remand has jurisdiction only over those particular issues remanded to it. 51 As is

⁵⁰ See Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 413 (1976).

Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 and n.3 (1979); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 N.6 (1979).

clear from the Statement of the case above, the only issue which was remanded to the Licensing Board was the issue of whether RG-58 cable was in fact environmentally qualified. This is clear from the various statements or remand quoted above. 52 By their filing, and subsequent replacement of the RG-58 cables of concern, 53 the Applicants have mooted that issue. The Licensing Board was given no writ to explore the Applicants' ability to find cables or select replacements. No one ever contended in this case that these Applicants were incapable of performing such tasks. Thus in putting to hearing these issues, the Licensing Board has exceeded its jurisdiction on remand.

B. The Order of the Licensing Board Violates the Sua Sponte Rules.

It may be argued that the Licensing Board, in issuing the order was, in essence, raising these issues of the Applicants ability to locate and replace cable <u>sua sponte</u>. However, such an argument is without merit. To begin with, the Licensing Board, if, indeed, it intended to act <u>sua sponte</u>, has failed to follow the procedure of advising the office of the General Counsel as it is required to do. 54 Prescinding from this procedural problem, the fact is that

⁵² Supra, pp.6, 7, 9.

⁵³Appendix 1 at 1162.

⁵⁴ Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614 (1981); id., LBP-81-23, 14 NRC 159 (1981).

there could be no exercise of <u>sua sponte</u> authority in this setting, because the necessary prerequisite of a serious safety question⁵⁵ simply is not present. The affidavits show the methodology that was used to select the cables to be replaced, and, indeed the Staff has indicated preliminarily that they find the materials adequate. More importantly, in deciding whether to raise an issue <u>sua sponte</u> an NRC tribunal may, and should, take into account the efficacy of Staff review with respect to the matter.⁵⁶ The issues of whether all the right cables have been replaced and whether the cable used to replace them is appropriate are issues wholly objective in nature to be judged by objective standards; as such, they are classically issues properly left to Staff resolution.⁵⁷ In short, there can be no justification under the <u>sua sponte</u> rules for what has taken place here.

C. The Order Violates the Rules Governing the Reopening of Closed Issues.

As indicated above, the hearing that the Licensing Board contemplates holding will be a hearing on the technical

⁵⁵¹⁰ CFR §2.760a

⁵⁶ See Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982). reconsideration denied, CLI-83-4, 17 NRC 75 (1983).

⁵⁷ See Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1104-05 (1983); Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1,2,3, and 4). CLI-74-22, 7 AEC 939, 951-52 (1974).

qualifications of the Applicants, i.e., their ability to select cables for replacement and their ability to select a competent replacement cable. The technical qualifications of the Applicants to construct Seabrook Station was litigated and resolved in the Applicants' favor in the Construction Permit phase of the Seabrook proceeding. 58 No technical qualifications issue was ever raised in the operating license proceeding. The technical qualifications of the Applicants were found adequate by the Director, NRR, acting for the Commission when the presently outstanding operating license was issued.

It is highly questionable whether the Licensing Board would even have jurisdiction at this point to open the issue of technical qualifications. ⁵⁹ But in any event, no proper motion has been filed and no attempt has been made by anyone to satisfy the requirements of the Rules of Practice regarding reopening. ⁶⁰

CONCLUSION

The instant order exceeds the jurisdiction of the Licensing Board; it violates the <u>sua spont</u> iles of the Commission; it constitutes an improper reopening of an issue

⁵⁸ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), 3 NRC 857, 866-67 (1976)

⁵⁹Houston Lighting & Power Co. (South Texas Project, Units 1 nd 2), ALAB-381, 5 NRC 582 (1977); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), CLI-80-12, 11 NRC 514, 516.

⁶⁰¹⁰ CFR §2.734.

fully litigated in the construction permit stage and as to which no contention has ever been raised in the operating license stage. We respectfully suggest it should be reversed and the RG-58 cable issue declared moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for thep5:25 Applicants herein, hereby certify that on June 28 0 1988, I made service of the within document and appendices thereto by depositing copies thereof with Federal Express, prepaid, for delivery to (or where indicated, by depositing in the United States mail. first class, postage paid, addressed to) : RANC

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Adjudicatory File
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East West Towers Building
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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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6	(Seabrook Station	(On-Site EP&S)
7	Units 1 and 2)	
8		Thursday, June 23, 1988
10		Room 424, West Tower 4350 East West Highway Bethesda, Maryland
11		
12	The abov	e-entitled matter came on for hearing,
13	pursuant to notice	, at 3:26 p.m.
14	BEFORE:	Atomic Safety & Licensing Board
15		U.S. Nuclear Regulatory Commission East West Towers Building
16		4350 East West Highway
17		Bethesda, Maryland 20814
		JUDGE JERRY HARBOUR
18		Atomic Safety & Licensing Board U.S. Nuclear Regulatory Commission
19		East West Towers Building
		4350 East West Highway
20		Bethesda, Maryland 20814
21		JUDGE ENGETH A. LUEBKE
22		Atomic Safety & Licensing Board U.S. Nuclear Regulatory Commission
22		East West Towers Building
23		4350 East West Highway Bethesda, Maryland 20814
24		Dechesda, maryrand 20014
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1	APPEARANCES:
2	For the Applicant:
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5	
	For the NRC Staff:
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7	U.S. Nuclear Regulatory Commission
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.0	For New England Coalition Against Nuclear Pollution:
1	FOLIAGE ON:
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1	PROCEEDINGS
2	(3:26 p.m.)
3	JUDGE WOLFE: All right. This is Sheldon Wolfe.
4	Judges Harbour and Luebke are in my office and we're
5	listening in on a loudspeaker. And I would also advise that
6	this Conference is being transcribed.
7	When counsel speak, would you identify yourselves
8	so that the Reporter will know who is speaking.
9	We have read all the comments and arguments of the
10	Staff's and NECNP's that were filed respective on June 2 and
11	June 9th, with regard to Applicant's suggestion of mootness,
12	and there is no need for counsel to repeat those written
13	comments and arguments.
14	Pursuant to our Order of June 10th, we will hear
15	first from NECNP's Ms. Curran, and then the Staff's Berry
16	will then present his arguments and comments upon
17	Applicant's reply of June 17th.
18	But before we get into that, I would address a
19	question to Mr. Dignan.
20	Have the Applicants proceeded to direct the
21	substitution of the 12 RG-59 cables in place of the 12 RG-5
22	cables, and has this work been accomplished?
23	Mr. Dignan?
24	JUDGE HARBOUR: I think we've lost Mr. Dignan. We
25	had a bleep and usually when you hear that bleep, somebody

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1	just got dropped.
2	JUDGE WOLFE: Hello?
3	JUDGE HARBOUR: Ms. Curran, are you still on?
4	MS. CURRAN: Yes, I'm still here.
5	JUDGE HARBOUR: Mr. Berry, are you still there?
6	MR. BERRY: Yes, I am, Your Honor.
7	JUDGE HARBOUR: Mr. Dignan, or anybody at Ropes &
8	Gray?
9	(No response)
10	JUDGE HARBOUR: They were the ones that dropped
11	off.
12	JUDGE WOLFE: Hold on. We'll see what the problem
13	is here.
14	Mr. Dignan? What was the last thing you heard?
15	MR. DIGNAN: I heard you saying, Your Honor, that
16	counsel need not repeat the arguments they've made in their
17	prior filings.
18	JUDGE WOLFE: All right. And I indicated that we
19	would hear first from Ms. Curran, and then from Mr. Berry
20	addressing the Applicant's reply of June 17th.
21	And then I proceeded while you were off the air, I
22	proceeded to ask you, Mr. Digman, have the applicants
23	directed the substitution of the 12 RG-59 cable in place of
24	the 12 RG-58 cable, and whether this work has been
25	completed?
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1	MR. DIGNAN: I'm advised, Your Honor, and I have a
2	technical person with me here, Mr. Daly, who's a licensing
3	engineer, that the RG-58 cables have all been deenergized,
4	that the RG-59 cables have been installed and energized.
5	The field work in short is all done. I am advised there's
6	certain paper work that still has to be done. And they
7	expect the paper work will be finished Monday or Tuesday of
8	next week. But the field work is all done.
9	JUDGE WOLFE: All right.
10	All right, Ms. Curran, you may address the
11	applicant's reply of June 17th.
12	MS. CURRAN: All right. I'd just like to at first
13	introduce Dean Tousley who is with me on the telephone
14	today.
15	JUDGE WOLFE: Who is that, please?
16	MR. TOUSLEY: Dean Tousley.
17	JUDGE HARBOUR: How do you spell it?
18	MR. TOUSLEY: Tousley.
19	JUDGE WOLFE: I see. And Mr. Tousley is an
20	attorney, Me. Curran?
21	HS. CURRAN: Yes.
22	JUDGE WOLFE: All right.
23	MS. CURRAN: We have had a chance to have our
	consultant take a preliminary look at the material submitted
	by applicants. And as a result, we're still in a position

1 wher	. We	still	have	a	number	of	questions	about	this	issue.
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- 2 They're basically the same questions that are raised in our
- 3 filing of June 9th.
- 4 And I can just summarize the three basic points
- 5 for you. We still are not satisfied with the applicant's
- 6 statements regarding their method for identifying all the
- 7 RG-58 cable. Mr. Pollard gave me two pages of very
- 8 technical questions that he has about the method that was
- 9 used, whether the review is truly independent.
- 10 I don't feel comfortable not having him here and
- 11 not having this written down in a very exact form going
- 12 through each of those questions, but basically they are
- 13 questions about the independence of the review. It's not
- 14 clear whether the applicants looked for all the possible
- 15 purchase orders involving RG-58 cable.
- 16 We're unclear as to whether all 12,000 schematic
- 17 drawings were reviewed, whether those drawings were
- 18 independent of the CASP program, or possibly derived from
- 19 that program.
- 20 And also whether the applicants compared the
- 21 drawings to the actual conditions in the plant.
- 22 Those are questions that remain open.
- 23 The second major issue is that we still don't
- 24 exactly what functions are served by RG-58 cable. We've
- 25 gotten some more information on the computers that are

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- 2 the signals that are being conveyed. And we just don't have
- 3 enough information to satisfy ourselves that the functions
- 4 performed by the cable are not safety related.
- 5 And finally, we don't know what the environmental
- 6 requirements for RG-58 cable are, and hence, we can't
- 7 evaluate whether RG-59 cable actually would meet those
- 8 requirements. And we're assuming that they must be
- 9 different or certainly there's a reasonable inference that
- 10 there is some difference between the requirements for the
- 11 two cables, given that two separate cables were ordered in
- 12 the first instance, and that RG-58 cable is more expensive
- 13 than RG-59. There must have been a reason for the purchase
- 14 such that it's worth inquiring into what are the different
- 15 requirements for these two cables.
- 16 We don't think that given the number and
- 17 seriousness of the questions that we have here that this is
- 18 susceptible to any kind of ministerial solution as the
- 19 applicants suggest.
- 20 What we think we need is more discovery, including
- 21 an opportunity to review these documents that the applicants
- 22 are relying on, the task documents, the schematic drawings,
- 23 an opportunity to look at the cable in the plant, and it's
- 24 possible that when discovery is completed, we can resolve
- 25 this on the basis of affidavits, although, as I stated in

1	ou	filing.	We	have	questions	about	the	credibility	of	the
- 4				****						

- 2 applicants' statements, given the change in position here.
- JUDGE WOLFE: I see. Well, you've fairly well
- 4 tracked what you've stated in your June 9th submission.
- 5 Isn't that correct, Ms. Curran?
- 6 MS. CURRAN: Yes, but with the addition that we
- 7 have within at least a preliminary review of Mr. Bergeron's
- 8 affidavit, and it continues to raise questions for us, and
- 9 has not answered those questions.
- 10 JUDGE WOLFE: I see.
- 11 Mr. Berry?
- 12 MR. BERRY: Yes, this is Mr. Berry. Thank you,
- 13 Your Honor.
- 14 Like Ms. Curran, the Staff also after having
- 15 reviewed applicants' June 17th response would basically
- 16 track what we've stated before in our June 2nd response.
- 17 You'll notice that the position that the Staff
- 18 took in that response was that we viewed the Bergeron
- 19 affidavit and applicants' filing as the nature of evidence
- 20 tantamount to a metion for summary disposition. It
- 21 indicated some additional information that applicants should
- 22 consider introducing in order to bolster and supplement that
- 23 which we regard as a motion for summary disposition.
- 24 Having made a preliminary review of the June 17th
- 25 filing, the Staff at this time is basically inclined to the

1	view	that	a	motion	for	summary	disposition	would	be
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- 2 appropriate and probably should be granted, although we'd
- 3 have to study it further. And the Staff would file an
- 4 affidavit of its own.
- 5 But our review of that supplemental information
- 6 contained in Mr. Bergeron's affidavit leads the Staff to the
- 7 view at least held at least at this time that, one, that the
- 8 RG-59 cable would be an adequate substitute for the RG-58.
- 9 And, two, that the RG-58 cable has been removed from all
- 10 places where it would otherwise be required to be qualified
- 11 under 10 CFR 50.49.
- 12 So, in short, Your Honor, the Staff position at
- 13 this time is that the record contains all the information
- 14 necessary for the Board to issue a determination favorable
- 15 to the applicants on this remanded contention.
- JUDGE WOLFE: All right.
- 17 Is there anything else now to be added?
- 18 MS. CURRAN: Well, I would just like to emphasize
- 19 that we think a motion for summary judgment is premature at
- 20 this point, because we really haven't had a complete
- 21 opportunity to review the record that applicants are
- 22 apparently basing this change in position.
- JUDGE WOLFE: Yes.
- 24 MS. CURRAN: It's not the same information that we
- 25 had in the former hearings, and I think we're entitled to

1 explore the basis for their change in position thoroughly

- 2 before we go through the summary judgment process. And I
- 3 think at this point, it's still premature.
- JUDGE WOLFE: Yes.
- 5 MR. BERRY: This is Mr. Berry, Your Honor.
- 6 Just briefly in response to the question as to
- 7 whether discovery ought to be permitted on this remand
- 8 proceeding, and if so, how much or how extensive. I would
- 9 state at this time that the Staff view on that is, number
- 10 one, I believe that the applicants have indicated that the
- 11 source materials and underlying records and documents here
- 12 are available to the parties.
- 13 Two, I believe that the June 17th submission by
- 14 the applicants contains a lot of the information that would
- 15 be sought in the discovery.
- 16 Three, the Staff doesn't believe that this is a
- 17 case where wide-reaching, far-ranging, open-ended discovery
- 18 is either necessary or appropriate. I think we're dealing
- 19 with a limited, with a narrow issue here, namely, whether
- 20 RG-58 is environmentally qualified or in the event that it's
- 21 going to be replaced, whether RG-59 cable is an acceptable
- 22 substitute.
- 23 So the Staff is not opposed to the party's NECNP,
- 24 the Staff having the opportunity to discover documents, but
- 25 I think we ought to be clear here that this is not a case

1	where	wide-ranging,	far-reaching,	open-ended	discovery	is

- 2 either necessary or appropriate.
- 3 MS. CURRAN: May I respond to that?
- 4 JUDGE WOLFE: Okay, Ms. Curran.
- 5 MS. CURRAN: What we're asking for is discovery
- 6 that is relevant to the new information that has been and
- 7 the new position that applicants have taken in this
- 8 proceeding. Obviously, we're only entitled to relevant
- 9 discovery but their position's completely changed, and I
- 10 think we're entitled to explore the basis for that change.
- 11 JUDGE WOLFE: Well, I'm not going to rule on
- 12 discovery matters now. But I suggest -- well, let me get
- 13 into that a little bit later. But I'm not going to rule on
- 14 any matters of discovery.
- 15 If such matters do come up during the course of
- 16 any discovery, we would hope that the objections to produce
- or the objections to respond would be phoned in to the
- 18 Board, to me, upon proper and timely notice, so that the
- 19 other Judges could be here. And you lay out what the
- 20 objections are and what the movant has to say, and then the
- 21 Board without more will rule on the objection and order
- 22 production, or whatever, or disallow production.
- 23 I would think that would tend to expedite matters
- 24 and we wouldn't have this blizzard of papers that we've all
- 25 been inundated with.

1	All right, anything else now?
2	All right. As I said, I was going to give
3	MR. DIGNAN: Your Honor, this is Tom Dignan.
4	JUDGE WOLFE: Yes?
5	MR. DIGNAN: I was wondering is it appropriate for
6	me to have an opportunity to reply to the arguments you've
7	just heard?
8	JUDGE WOLFE: Well, how say you, Mr. Berry? Ms.
9	Curran?
10	MS. CURRAN: Fine.
11	JUDGE WOLFE: Okay.
12	Mr. Berry? Mr. Berry?
13	MR. BERRY: The Staff would be interested in
14	hearing what Mr. Dignan has to say.
15	JUDGE WOLFE: All right. Proceed, Mr. Dignan.
16	MR. DIGNAN: My problem is that the central legal
17	argument we made in our filing has not been addressed by
18	anything we have heard.
19	To me, there's a fundamental jurisdictional
20	question out here. As I read the Appeal Board's decision,
21	it sent back a single issue to the Licensing Board and that
22	is, is RG-58 qualified, or is it not. Now, we eluded this
23	by removing it from the harsh environment.
24	Now, any argument that says that they can litigat
25	the meetics of whether we found the right cables. We know

1	what	cable	to	put	in	its	place.	is	not	a	contention	8.3	to
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- 2 environmental qualification; it is a contention of technical
- 3 qualifications of the applicant.
- 4 No such contention has ever been raised in this
- 5 proceeding. A technical qualification contention would have
- 6 been properly raised way back at the outset of the
- 7 proceeding. And I respectfully suggest that while we've
- 8 addressed all the concerns of the Staff and those, we
- 9 thought we'd addressed NECNP's too on this matter by filing
- 10 the Bergeron affidavit, I don't want lost sight of the fact
- 11 that I don't think there's any jurisdiction in this Board,
- 12 respectfully, to entertain a technical qualifications
- 13 contention, which is essentially what NECNP is asking you to
- 14 do here. Because NECNP wants to litigate whether we know
- 15 how to find cable.
- 16 Now, that being the case, unless the Board is
- 17 persuaded by my argument to declare this thing moot in light
- 18 of the filings we have made, and in light of the fact the
- 19 field work has been done, that I would respectfully ask the
- 20 Board to certify to the Appeal Board the question of whether
- 21 or not the Board has jurisdiction to entertain what I
- 22 respectfully suggest is a brand new, unrelated contention as
- 23 to the applicant's technical qualifications.
- 24 And I think before we embark on any discovery or
- 25 any summary judgment type proceeding, this threshold

1 question of jurisdiction should be ruled upon. And I would

- 2 ask that if it's not favorable to us, that it be sent to the
- 3 Appeal Board as to whether the Appeal Board intended this
- 4 sort of thing to be litigated in light of the fact that
- 5 we've changed the cable out.
- 6 MS. CURRAN: I'd like to respond to that, if I
- 7 could.
- 8 JUDGE WOLFE: All right, Ms. Curran.
- 9 MS. CURRAN: The applicants could have come back
- 10 to the Licensing Board and provided some additional evidence
- 11 that this cable was qualified, or it could have come up with
- 12 some test results, or whatever, but it didn't. It decided
- 13 to replace the cable, and not even all the cable, just some
- 14 of the cable.
- 15 That doesn't make the issue go away. I think
- 16 we're entitled to know whether or not they have correctly
- 17 identified what is not safety related cable, and whether
- 18 they have substituted it with cable which qualifies with the
- 19 application.
- I think they have completely changed the basis to
- 21 their position, and I think that is a legitimate grounds for
- 22 this litigation here. I don't think there's any need to
- 23 certify anything to the Appeal Board.
- 24 MR. DIGNAN: Your Honor, I would renew the bidding
- 25 on this issue. NECNP has gotten much more out of

1	environmental	qualification	then	they	were	entitled	to.	The
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- 2 original contention was that we hadn't put times on that.
- 3 If you recall, we objected to them even getting
- 4 into the issue on cross examination, and the Board let them
- 5 try that out. But by no stretch of the imagination, is
- 6 NECNP or anybody else ever raised a contention as to the
- 7 technical qualifications of my clients to find cable, remove
- 8 it, or do anything else of a technical nature. There has
- 9 not been even a technical qualification contention raised in
- 10 general with respect to the Seabrook project, and that is
- 11 what is being raised now.
- 12 And the only issue that you've got on remand, and
- 13 under those cases you're confined to the jurisdiction of
- 14 that issue, is is RG-58 environmentally qualified, and I
- 15 respectfully suggest that that question has been in fact
- 16 mooted.
- 17 JUDGE HARBOUR: Is there RG-58 cable in a plant
- 18 that's not covered by these 12?
- 19 MR. DIGNAN: Yes, of course there is. But our
- 20 position is, as for the reasons we state in the affidavit,
- 21 none of it is in a harsh anvironment where it has to be
- 22 environmentally qualified.
- 23 And no one has ever taken the position that my
- 24 clients are incapable of determining the difference between
- 25 the two. That's a technical qualification issue.

That's the reason I say, jurisdiction isn't
there. This is no longer an EQ issue, it's a technical
qualifications issue that they're arguing.
JUDGE WOLFE: Anything more, Mr. Berry?
MR. BERRY: Yes. This is Mr. Berry.
Staff sees some merit to Mr. Digman's argument as
well as Ms. Curran's. I think the fundamental point,
though, Your Honor, that has to be addressed is that as I
believe one of the Judges just pointed out, there does
remain in the plant right now some RG-58 cable.
Applicants have stated that they are removing the
RG-58 cable or substituting the RG-58 cable that is located
in a harsh environment. Now, if that's so, if all those
instances of RG-58 cable located in harsh environments have
been replaced, then the Staff would be inclined to agree
with applicants that there is no longer an issue in
controversy.
On the other hand, if there is still some RG-58
cable that is located in harsh environment that's not being
replaced, then we would, then Ms. Curran would be corrected
and the issue wouldn't be mooted. We do believe, however,
that the Bergeron affidavit fully explains why all the RG-5
cable located in harsh environments has been identified and
has been replaced.

25

So in that sanse, we believe that the Board can

1 make a finding and should make a finding to that effect that

2 those environments where RG-58 cable previously was located

3 have been replaced by RG-59. Those are the only instances

4 which 50.49 applies.

5 And so therefore the concern raised by the

6 contention that's been remanded has been satisfactorily

7 addressed. There's no longer a controversy now between the

8 parties, and the Board should issue a determination

9 favorable to the applicant. They could do that either

10 claiming that the contention is now moot, or that the safety

11 concern has been adequately resolved.

12 So it's our position that before the issue can be

13 determined to be mooted, the Board would have to determine

14 that all those harsh environments where RG-58 had previously

15 been located have been replaced with the qualified RG-59.

16 MR. DIGNAN: Your Honor, with great respect to my

17 brother who represents the Staff, I have to disagree with

18 that analysis. The point I'm trying to make is let's assume

19 what the applicants have done is instead of filing this

20 technical material trying to address all the questions that

21 have been raised, we had just come to the Board and said,

22 we're not going to use RG-58 in the harsh environment

23 anymore. We're withdrawing it, we're pulling it.

24 And we did no more than that. Then in order for

25 this litigation to continue, the Board or somebody would

- 1 have had to raise, and the Board would have had to approve a
- 2 sua sponte issue of technical qualification of my client to
- 3 find cable.
- 4 Now, the Board has not raised that sua sponte and
- 5 gone through the procedures that have to be gone through to
- 6 do it, and no intervenor has ever raised technical
- 7 qualifications. Because the only issue up for grabs now,
- 8 whether you take the Staff's explanation or Ms. Curran's
- 9 explanation, is can the applicant find the cable.
- 10 And that doesn't go to whether the cable is
- 11 qualified. It has nothing to do with environmental
- 12 qualifications. You are then questioning the technical
- 13 qualifications of people that construct the plant and
- 14 operate the plant, and that issue simply has never been
- 15 placed in litigation.
- 16 And it is too late for somebody to raise it now,
- 17 unless the Board chooses to raise it sua sponte, and that
- 18 will require going through the procedures necessary,
- 19 including notifying the Commission that the Board has
- 20 elected to do so.
- 21 JUDGE WOLFE: I would like to hear your thoughts
- 22 on that, Mr. Berry. What would happen under that
- 23 hypothetical situation that Mr. Dignan posed, namely de-
- 24 energizing all the RG-58 cable in the harsh environment and
- 25 just replacing it, period?

1	MR. BERRY: All of the cable? This is Mr. Berry
2	speaking. Do I understand correctly that if they de-
3	energized all RG-58 cables and replaced them with RG-59?
4	JUDGE WOLFE: No, I think Mr. Dignan meant in the
5	12
6	MR. DIGNAN: Harsh environment.
7	JUDGE WOLFE: In the harsh environment, yes.
8	MR. DIGNAN: And to say that we can't identify the
9	harsh environment cables is to say that we're not
10	technically qualified, and that is a different issue than
11	what has been remanded to this Board from the Appeal Board.
12	MR. BERRY: I understand Mr. Dignan's position,
13	Your Honor. Again, the Staff would just adhere to the
14	statement of its position that I just previously expressed,
15	that I don't believe that in the context of this remand
16	proceeding that it injects a new contention or injects a new
17	issue, but what we're trying to determine is whether in fact
18	you know this action proposed by the applicant in fact moots
19	the issue.
20	And the Staff would agree that it would moot the
21	issue either, if on the one hand, all RG-58 cables were de-
22	energized and replaced with RG-59. In that case, it would
23	be clear that the issue would be moot. Or on the other
24	hand, if only those RG-58 cables were replaced with the RG-
2.5	

1	universe of the cables located in harsh environments.
2	But what the Staff is suggesting, Your Honor, is
3	that before you can make that determination that the issue
4	has been mooted, that you have to have some basis to sqree
5	that all of the cables located in harsh environments have
6	been identified.
7	We're suggesting that the Bergeron affidavit
8	provides the basis to make that determination. But we do
9	believe that that determination has to be made.
10	JUDGE WOLFE: All right. I think that the Board
11	has heard enough.
12	Agreed?
13	All right. I'll put you on moot for a couple of
14	minutes. Hold on.
15	(Board confers.)
16	JUDGE WOLFE: Hello? Are we back on?
17	MR. BERRY: This is Mr. Berry for the Staff.
18	JUDGE WOLFE: Mr. Dignan?
19	MR. DIGNAM: This is Mr. Dignam, yes, Your Honor.
20	JUDGE WOLFE: And Ms. Curran?
21	MS. CURRAN: I'm here.
22	JUDGE WOLFE: All right.
23	We've been discussing this and the Board rejects
24	applicant's suggestion of mootness as filed on May 19th, and
25	revised on May 27th which requested that we issue an order

1 finding that the issue regarding environmental qualification

- 2 of RG-58 cable is moot.
- And further, we reject applicant's request that we
- s certify this question to the Appeal Board. We have decided
- 5 that discovery procedures shall be allowed. And that if
- 6 we're notified by one or more of the interested parties that
- 7 they want to proceed via summary disposition, why then
- 8 summary disposition procedures will be invoked.
- 9 I would state that we agree with the Staff and
- 10 NECNP who pointed out that it must be established by the
- 11 applicants that a total of 126 RG-58 cables have been
- 12 installed at Seabrook, and it also must be established by
- 13 the applicants how it was determined that a particular RG-
- 14 58 cable belonged in one of the five groupings or
- 15 categories.
- 16 In shifting their position from initially
- 17 asserting before us and before the Appeal Board that all RG-
- 18 58 cable had to be and were environmentally qualified but in
- 19 now arguing that only 12 RG-58 cables had to be
- 20 environmentally qualified, and that 12 environmentally
- 21 qualified RG-59 cables would be substituted, applicants
- 22 cannot now be heard to argue that the issue of environmental
- 23 qualification of RG-58 cable is now entirely mooted.
- 24 And further in so shifting their position,
- 25 applicants we find and conclude must prove that the RG-59

- 1 cable is a technically acceptable replacement for the RG-58
- 2 coaxial cable.
- I believe, Judge Harbour, you had something to add
- 4 here?
- JUDGE HARBOUR: On the Appeal Board remand, if the
- 6 Appeal Board told us, gave us guidance on the issues to be
- 7 considered which included the applications of the RG-58,
- 8 which included the circuits, that is, what's attached to
- 9 each end of it, and suggested that we should find out why
- 10 the operability code that was assigned did not seem to apply
- 11 to the use for which the cable was being made.
- JUDGE WOLFE: All right.
- I would add, however, that we will neither allow
- 14 nor give consideration to any arguments or to any efforts to
- 15 contend that the RG-59 cable is not environmentally
- 16 qualified. Such an argument or contention was not raised
- 17 before us in the proceeding, resulting in the partial
- 18 initial decision of March 25, 1987, and was not briefed and
- 19 argued by NECNP on its appeal to the Appeal Board from the
- 20 PID.
- 21 Before us and before the Appeal Board, NECNP
- 22 solely contended that the environmental testing of the RG-59
- 23 cable did not serve to environmentally qualify the untested
- 24 RG-58 cable. During that time, NECNP did not also contend
- 25 in addition, as it could have, that in any event the tests

- 1 applied to the RG-59 cable were insufficient even to qualify
- 2 that cable.
- 3 In ALAB-882 at 27 NRC 1, the Appeal Board refused
- 4 to consider that newly raised question because it had not
- 5 been presented in NECNP's appeal from the partial initial
- 6 decision.
- 7 And again in ALAB-886 at 27 NRC 74, after noting
- 8 that for the entire period that contention 1-B-2 was in
- 9 litigation before the Licensing Board, as well as during the
- 10 appeal from the PID, NECNP accepted implicitly if not
- 11 explicitly the environmental qualification of the RG-59
- 12 cable.
- 13 After noting that, the Appeal Board in 886 refused
- 14 to reopen the record and to admit a new contention
- 15 challenging the environmental qualification of the RG-59
- 16 cable. This ruling by the Appeal Board is now the law of
- 17 the case.
- 18 That applicants now propose to install 12 RG-59
- 19 cables to replace 12 RG-58 cables does not excuse NECNP's
- 20 failure to have previously and timely raised the question of
- 21 the environmental qualification of the RG-59 cable.
- 22 So, if the parties would like for me to restate or
- 23 repeat rather what I'm now going to say, they may, because
- 24 it applies to discovery procedures and summary disposition.
- 25 And of course, you will have your own transcripts. But if

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- 2 this.
- Discovery shall be initiated immediately by NECNP,
- 4 the Staff and the applicants, and shall be completed by
- 5 August 15, 1988.
- And I underscore for you, Ms. Curran, the use of
- 7 the words, shall be completed by August 15. And you
- 8 understand what I'm saying?
- 9 MS. CURRAN: I do.
- 10 JUDGE WOLFE: All right.
- 11 Interrogatories and answers thereto, and requests
- 12 for production of documents and responses thereto shall be
- 13 served by express mail.
- 14 The 30-day period for responses to requests for
- 15 production of documents under Section 2.741(d) is reduced to
- 16 14 days in order to resolve this matter that's been hanging
- 17 around much too long.
- 18 Further, by no later than August 22, 1988, these
- 19 parties shall notify the Board whether or not each intends
- 20 to file a motion for summary disposition, and any motions
- 21 for summary dispositions shall be served by express mail on
- 22 or before September 12.
- 23 Any answers supporting or opposing a motion for
- 24 summary disposition filed pursuant to 10 CFR 2.749 shall be
- 25 served by express mail.

1	Are there any of these dates you want repeated?
2	If so, let me know.
3	MS. CURRAN: I wonder if you could repeat what yo
4	were saying about
5	MR. DIGNAN: Your Honor, is it your intention to
6	memorialize both the decision and this motion into a
7	separate written order, or will the transcript be the
8	written order?
9	JUDGE WOLFE: I'm going to be out of town, Mr.
10	Dignan. I'm leaving tomorrow morning. I won't be back
11	until Tuesday morning. I won't have an opportunity.
12	MR. D_WAN: No, I'm just, what I'm wondering on
13	is, I'm not requesting it. I just wanted to know if it is
4	your intention to 1 see an official order beyond what is
.5	contained in the transcript?
.6	JUDGE WOLFE: It is not my intention to issue a
.7	saparate order.
.8	MR. DIGNAM: Okay, thank you.
.9	All right, Ms. Curran?
20	MS. CURRAN: I was asking when you were talking
21	about the 2.741(d), I think the time for production of
22	documents. Could you repeat what you said there?
23	JUDGE WOLFE: Yes. The 30-day period for

responses to request for production of documents under

25 Section 2.741(d) is reduced to 14 days.

- Now, I don't think that much turnaround time is
- 2 needed certainly by Mr. Dignan. If you request certain
- 3 documents, I'm certain that he can turn around within a
- 4 couple of hours in light of the -- what was that Affidavit,
- 5 the Bergeron affidavit?
- 6 MR. DIGNAN: Your Honor, I'm confident I can turn
- 7 it around in terms of accessibility, but there are major
- 8 amounts, depending upon what they ask for, there are major
- 9 amounts of documents, and they may have to come up to the
- 10 site to review them.
- 11 JUDGE WOLFE: Yes.
- 12 MR. DIGNAN: I don't know what their request is
- 13 going to be, but if it's as broad as often these are, we're
- 14 talking -- we're not talking a quarter inch of documents
- 15 that I'd happily put in the sail; we're talking about many
- 16 documents that their technical people would just have to
- 17 come up and look at on the site to scide what if any they
- 18 would want.
- 19 JUDGE WOLFE: Well, I would assume, Ms. Curran,
- 20 that when you make such requests, as a matter of fact, I
- 21 would expect that you would go to the site, and look at
- 22 these documents. From what Mr. Dignan says, that they are
- 23 voluminous.
- 24 MS. CURRAN: Yes, I imagine we'll have to go up
- 25 there.

1	JUDGE WOLFE: Yes. Okay, well that's one thing
2	out of the way, Mr. Dignan.
3	All right, if there are no other questions, then.
4	MR. BERRY: Your Honor, this is Mr. Berry.
5	JUDGE WOLFE: Yes?
6	MR. BERRY: We don't need you to repeat any of the
7	discovery dates and things, but I would just like to state
8	just for the record at this time, our position. And that is
9	the Staff, we believe that this discovery schedule is far
10	too long.
11	I understand that the Board has given it some
12	thought and has proposed what it considers a reasonable
13	discovery schedule.
1.4	I would just like to state our position that a
15	discovery schedule ending date of August 15th, we just think
8	it's too long by at least three weeks.
17	MR. DIGNAM: I join in that, Your Honor,
13	respectfully, with a full understanding that it's a matter
9	of Board discretion.
20	JUDGE WOLFE: Yes.
21	Ms. Curran?
22	MS. CURRAN: If we're expected to be going up to
23	the plant to look at these volumes and volumes of documents
4	I think we need a substantial amount of time to look at

25 them. We're talking about time for at least two rounds of

- 1 interrogatories and possibly some depositions, and a visit
- 2 to the plant.
- 3 To me, this looks like a pretty reasonable amount
- 4 of time, maybe a little on the short side.
- 5 JUDGE WOLFE: Well, I'm going to let it stand,
- 6 because as I understand it, the documentation is voluminous.
- 7 So I'm going to hold everyone to that completion by
- 8 August 15 date. And I would be very loathe unless somebody
- 9 breaks a leg or whatever, something horrendous happens to
- 10 them, that the Board will hold firmly to August 15.
- 11 All right, if there are no further questions, the
- 12 conference is over.
- 13 MR. DIGNAN: Your Honor?
- 14 JUDGE WOLFE: Yes?
- 15 MR. DICHAN: Is the Reporter there?
- 16 JUDGE WOLFE: Yes.
- 17 MR. DICHAN: I would like to advise the Reporter,
- 18 would they expedite this transcript and get it to us here at
- 19 Ropes & Gray as soon as possible. We have a standing order
- 20 in I think for five copies.
- 21 THE REPORTER: Understood.
- 22 JUDGE WOLFE: All right.
- 23 Anything more?
- 24 (No response.)
- 25 JUDGE WOLFE: All right, the conference is

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1	concluded.
2	Thank you.
3	(Whereupon, at 4:10 p.m., the conference in this
4	matter was concluded.)
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1	CERTIFICATE
2	
3	This is to certify that the attached proceedings before the
4	United States Nuclear Regulatory Commission in the matter of:
5	Name: PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al
6	(Seabrook Station, Units 1 and 2)
7	Docket Number: 50-443-OL-1 50-444-OL-1
8	Place: Bethesda, Maryland
9	Date: June 23, 1988
0	were held as herein appears, and that this is the original
1	transcript thereof for the file of the United States Nuclear
2	Regulatory Commission taken stenographically by me and,
.3	thereafter reduced to typewriting by me or under the direction
4	of the court reporting company, and that the transcript is a
.5	true and accurate regard of the reregaing proceedings.
6	131 renoting
7	(Signature typed): KENT ANDREWS
8	Official Reporter
.9	Heritage Reporting Corporation
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