



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. McCORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698

DOCKET NUMBER PR 50
PROPOSED RULE 53 FR 16435

DOCKETED
TSN-PT

1437

'88 J '88 JUN 23 P2:28

JAMES M. SHANNON
ATTORNEY GENERAL

June 22, 1988

OFF
DOCK

OFFICE OF THE ATTORNEY GENERAL
DOCKETING & SERVICE
BRANCH

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Docketing & Service Branch
Washington, DC 20555

RE: NRC Rule Change Regarding Offsite Emergency
Planning and Low-Power Operations

Dear Sir/Madam:

Enclosed for filing please find the Comments Of Massachusetts
Attorney General James M. Shannon In Opposition To Proposed NRC
Rule Change Regarding Offsite Emergency Planning And Low-Power
Operations.

Very truly yours,

Stephen A. Jonas
Assistant Attorney General
Deputy Chief
Public Protection Bureau
(617) 727-4878

SAJ:bm
Enclosure

- cc: William Lord
- Diane Curran, Esq.
- Robert A. Backus, Esq.
- Jane Doughty
- Senator Gordon J. Humphrey
- R. Scott Hill-Whilton, Esq.

8807070113 880622
PDR PR
50 53FR16435 PDR

DS-10

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 JUN 23 P2:28

COMMENTS OF MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON
IN OPPOSITION TO PROPOSED NRC RULE CHANGE REGARDING
OFFSITE EMERGENCY PLANNING AND LOW-POWER OPERATIONS

June 23, 1988

INTRODUCTION

This testimony sets forth my formal opposition to the NRC's proposed rule change allowing the issuance of low-power licenses to nuclear power plants without any prior showing of offsite preparedness. The proposed rule is designed explicitly to facilitate low-power testing at Seabrook Station in New Hampshire by eliminating the public notification system requirement for a low-power license. The Seabrook owners have struggled to meet that requirement and to date have failed to do so. The proposal excuses that failure and is a capricious attempt to sweep aside the Commission's rules in order to meet its apparent goal of licensing Seabrook without regard to the inadequacy of emergency planning at the site. By virtue of this proposal and its November 3, 1987 rule change on emergency planning at Seabrook and Shoreham (52 Fed. Reg. 42078), the Commission has abundantly demonstrated that it views its rulemaking power as a vehicle to promote the interests of utilities which cannot obtain operating licenses under existing rules or through normal agency processes. Rather than provide the means to promote public health and safety by imposing tough

DS-10

but fair standards for prospective nuclear power plant operators, the NRC regulations have become the Commission sanctioned "out" for utilities which cannot obtain a license on the merits of their applications.

THE COMMISSION HAS PROVIDED NO SOUND
REASON TO REVERSE ITS 1982 LOW-POWER RULE

In August of 1980, as a result of harsh criticism of its handling of offsite emergency planning prior to the accident at Three Mile Island, the NRC amended its regulations to impose as a precondition for an operating license that the applicant demonstrate the existence of adequate emergency planning. 45 Fed. Reg. 55402. Two years later, on July 13, 1982, the Commission eased its emergency planning requirements for licenses authorizing fuel loading and low-power operation by shifting NRC and FEMA reviews, findings and determinations on offsite emergency plans to the later licensing proceedings dealing with full-power operation. 47 Fed. Reg. 30232. Massachusetts opposed the 1982 rule change and we continue to believe that it is a misconstruction of the operating license process under the Atomic Energy Act. In response to criticism from Massachusetts and others, the Commission stated that its review (for low-power purposes) of the licensee's onsite response mechanism "would necessarily include aspects of some offsite elements" including the means to provide prompt notification and clear instruction to the population in the

DS-10

EPZ. Id. Now, through its recent publication, the Commission proposes to eliminate review prior to low-power testing of any offsite elements of emergency planning, including public notification systems. 52 Fed. Reg. 16435.

The justifications offered for this latest retreat from the post-TMI objective of protecting the public through effective emergency planning are either insubstantial or misleading. The primary reason for the rule is the February 3, 1988 decision of the agency's Appeal Board concerning the Seabrook siren system. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-883. The Appeal Board ruled that until the Seabrook applicants created an adequate siren system or other public notification system for the Massachusetts portion of the Seabrook EPZ, they could not obtain a low-power license. In its well-considered ruling, the Appeal Board followed the Commission's explicit direction in the 1982 rule change that compliance with the public notification requirement was mandatory for a low-power license.

If the agency is interested, as it should be, in a fair and steady application of its rules, it should support its Appeal Board, reiterate its earlier direction, and demand compliance from the utilities it is charged with regulating. Regrettably, the NRC appears to be going in a different, all too familiar, direction. It has elected to "re-examine" the 1982 rule change

"to determine whether there is any safety basis for continuing public notification as a requirement for low power." 53 Fed. Reg. 16436. That reexamination is apparently little more than a prelude to the NRC once again bowing to utility interests by removing safety-related obstacles from the path to licensing.

An impartial reexamination of the 1982 rule change would reveal that the Commission imposed the public notification requirement not by accident or inadvertence, but rather after full consideration of the risks of low-power operation and with a desire to assure the public that adequate offsite protective measures existed even for a low-power accident. The 1982 rule change began with SECY-81-570, a staff paper dated September 30, 1981. The staff recommended that the Commission eliminate "the need to have any findings and determinations on the adequacy of offsite emergency planning and preparedness in order to issue a low-power license." SECY-81-570 at 2.^{1/} Significantly, the recommendation was unequivocal and did not mention what the final rule later characterized as "offsite elements" of the "onsite response mechanism."

On December 15, 1981, the proposed rule was published in the Federal Register for comment. 46 Fed. Reg. 61132. In the publication, the NRC added to its explanation of the proposal

^{1/} I request that the NRC include in the rulemaking record for this proposed rule all staff and Commission documents related to the July 1982 rule change, including those described in these comments.

that "the NRC review of the licensees' offsite response mechanism will necessarily include aspects of some offsite elements," including public notification. 46 Fed. Reg. 61138.

The Commission received 66 letters commenting on its proposal. 47 Fed. Reg. 30233. In responding to the concern expressed by the New Hampshire Attorney General's Office^{2/} that the public must be assured that it is adequately protected even for a low-power accident, the Commission emphasized that it would insist on compliance with the public notification requirement of 10 C.F.R. §50.47(b)(5), among other offsite requirements, before issuing a low-power license. 47 Fed. Reg. 30234. The Commission reasoned that a fully operable siren system would increase the public's confidence in the emergency response mechanism, which in turn would lead to a more effective response in the event of an emergency. Id.

In short, the public notification aspect of the 1982 rule had a purpose -- public assurance of prompt notification and adequate protection -- which is still applicable today. Indeed, until their siren system was dismantled with the approval of the First Circuit Court of Appeals, the Seabrook owners themselves recognized that purpose. New Hampshire Yankee, in a June 27, 1986 letter, assured all of the residents of the Seabrook EPZ that a fully operative public notification

^{2/} That office opposed the July 1982 rule change as inconsistent with the 1980 emergency planning rules.

DS-10

system would be in place before low-power testing. See Attachment A.

Now, because the Seabrook owners have had considerable difficulty maintaining a siren system consistent with Massachusetts law, the Commission is rethinking its 1982 promise to the public to withhold a low-power license unless and until the problems with the system are resolved. It claims that the 1982 rule is now "contested" and should be reconsidered. In fact, the old rule is merely being applied, although apparently to the dismay of the Seabrook owners. The resolution for a regulatory agency like the NRC should be clear: adhere to the rules and direct compliance. No other course is consistent with public health and safety.

LOW-POWER OPERATION AT SEABROOK SHOULD
NOT BE PERMITTED UNLESS AND UNTIL THE APPLICANTS
CAN DEMONSTRATE THAT THEY WILL LIKELY OVERCOME
THE OBSTACLES TO FULL POWER OPERATION

Stripped of its insubstantial justifications, the proposed rule is little more than a bareknuckled attempt to secure a low-power license for Seabrook. Aside from the violence that this approach to licensing does to the Atomic Energy Act of 1954, 42 U.S.C. §§2011, et. seq., and the NRC's mandate to protect the public health and safety, low-power testing at Seabrook is more ill-advised now than ever.

Public Service Company of New Hampshire, Seabrook's lead owner, is now bankrupt and in reorganization proceedings in federal bankruptcy court in New Hampshire. The Massachusetts

Municipal Wholesale Electric Company, an 11.9% owner of Seabrook, has voted to withdraw its participation from the ill-fated project. New England Power Company, a 10% owner, recently wrote off 53% of its investment in Unit 1. The financial backing for Seabrook is beginning to crumble. As a result, Massachusetts has petitioned the Appeal Board to ask the Commission to waive its financial qualifications rules and to require the Seabrook owners to demonstrate, prior to low-power testing, that they can meet the financial burden of low-power operation and decommissioning. It would be appalling for the Commission to ignore these unprecedented events and not require such a showing. Now is the time for the Commission to ask many more, not fewer questions about low-power testing.

Moreover, the Licensing Board hearings on the New Hampshire emergency response plans closed only last week and an initial decision will not issue until the fall. Contentions have not even been ruled on in the litigation over the utilities' plans for Massachusetts. With a joint exercise scheduled for June 28 and 29, the additional, lengthy piece of litigation on the exercise will not begin until this fall at the earliest. The litigation should result in a finding consistent with Massachusetts' long-held position that adequate emergency planning is an impossibility for the Seabrook site. But even if the Commission and its adjudicatory boards were ultimately to close their eyes to this fact, the litigation will have

taken years to complete. The Seabrook owners themselves estimate that full-power operation will not occur, if at all, until January 1990. With a low-power testing program which can be completed in a matter of weeks, there is no reason to issue a low-power license anytime in the near future.

If the Commission permits low-power operation and full-power operation does not follow, the plant will be contaminated, perhaps irrevocably, with radioactive waste. The construction of a long-term radioactive waste storage facility for the country is still many years away. Therefore, an irradiated Seabrook station would be a de facto radioactive waste dump. That prospect is particularly disturbing given the proximity of the plant to several sizeable Massachusetts and New Hampshire communities and to some of the most popular and populous New England beaches.

As the Commission is well aware, New York authorities and the Long Island Lighting Company recently agreed to close down the Shoreham nuclear power plant on Long Island. In 1985, the Commission authorized low-power testing at Shoreham. Now, three years later, LILCO does not have a full-power license and the plant will be permanently shut down. New York State, Suffolk County, Long Island residents and LILCO itself must now address the intractable problems of decontaminating and securing the plant and storing its radioactive waste. The

Commission should learn from this hard lesson and prevent Seabrook from fully duplicating the folly of Shoreham.

LOW-POWER TESTING POSES RISKS SUFFICIENT
TO REQUIRE SOME MEASURE OF OFFSITE PREPAREDNESS

At 5% of its rated power, Seabrook Unit 1, a 1150 megawatt-electrical power reactor is the equivalent of a 57.5 megawatt-electrical power reactor. NRC regulations require detailed offsite emergency preparedness and planning for small research and power reactors of sizes comparable to Seabrook at low power. For example, under 10 C.F.R. §50.33(g), Emergency Planning Zones for reactors with an authorized power level of less than 250 megawatt-thermal "may be determined on a case-by-case basis." Offsite emergency planning requirements must be met prior to operation of these plants. Yet the Commission now proposes to remove those requirements for commercial reactors operating at the same power levels.

In its 1982 rule change, the Commission attempted to justify this discrepancy by noting that research reactors are often located in "high population density areas." 47 Fed. Reg. 30234. Seabrook cannot be distinguished on that basis. It is difficult to imagine a higher population density area than Seabrook, Hampton and Salisbury beaches on a summer weekend. Therefore, consistent application of the Commission's principles demands that the proposed rule be rejected.

Finally, while the risk of an accident with offsite consequences may be smaller at low-power operation than at

DS-10

full-power operation, a risk does exist. See SECY-84-156, Enclosure 1, Staff Review Process For 5 Percent Power Operation at 3 (April 12, 1984). That risk is compounded by the expected frequency of operator errors during startup and low-power testing programs. As long as a potential for an accident exists, the public has a right to be promptly notified in the event of an emergency. The view embodied in the proposed rule is that "what the public doesn't know won't hurt it." That sentiment is not only inconsistent with the Commission's 1982 rule change but is also entirely unacceptable as a matter of public policy.

THE PROPOSED RULE IS ANOTHER ILLEGAL ATTEMPT
TO POSTPONE THE CONSIDERATION OF THE INTRACTABLE
EMERGENCY PLANNING PROBLEMS AT SEABROOK

For the past fourteen years, Massachusetts has maintained that the Seabrook nuclear power plant is so poorly sited as to jeopardize the health and safety of Massachusetts and New Hampshire residents in the event of an emergency. Since 1979, Massachusetts has argued repeatedly that emergency planning issues must be addressed and resolved before the utility is permitted to invest billions of dollars in construction of the plant. Each time, the Commission's Licensing Boards, Appeal Board or Director rejected the argument and labelled evacuation issues premature, and each time assured us that those plans would be addressed at the operating license stage, that the utility bore the risk that no operating license would be

issued, and that the money spent on construction would not be a factor in deciding on an operating license.

The Commission has shown itself incapable of honoring that promise, particularly with respect to Seabrook. On November 3, 1987, the Commission passed an amendment to its emergency planning rules to facilitate the licensing of Seabrook notwithstanding Massachusetts' determination that adequate emergency planning at that site is infeasible. The amendment, now on appeal in the First Circuit Court of Appeals, is baldly premised on the financial risk to the Seabrook utilities of being forced to comply with the then existing rules.

With its most recent proposal, the Commission would again come to the aid of the Seabrook owners by paving the way for a provisional license and once again postponing its consideration of thorny emergency planning issues. But postponing the issues does not resolve them. The Seabrook applicants must eventually comply with the public notification requirement. By putting off this issue and other serious emergency planning issues until after low-power testing, the public runs the risk that either Seabrook becomes a radioactive waste dump or its full-power license becomes a fait accompli.

CONCLUSION

The Seabrook owners have indicated that they view a low-power license as providing badly needed momentum to their project. Unfortunately, the proposed rule appears to be

designed as a means to that end. As such, it is a misuse of the Commission's rulemaking authority. Whether the NRC elects to address them now or later, the emergency planning problems at Seabrook will not disappear and should ultimately prevent the full-power licensing of the plant. Low-power testing is a point of no return that should not be crossed. I urge the Commission to retain its existing rules, reject the proposal and deny any request for low-power testing at Seabrook.

New Hampshire Yankee

ATTACHMENT "A"

June 27, 1986

Dear Neighbor:

I would like to share with you some important information on Seabrook Station and its alert and notification system.

Construction of Seabrook Station will soon be complete. After receiving a low-power operating license, New Hampshire Yankee will load nuclear fuel into the Seabrook reactor. The next step will be a series of low-power tests at up to five percent of its normal capacity.

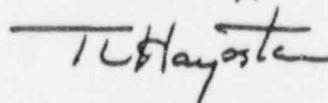
~~Before low-power testing can be done at a nuclear power plant, the federal government~~ requires that the plant have in place a prompt notification system for nearby areas.

An accident at Seabrook is extremely unlikely. The plant has been built and tested to strict quality and safety standards, and the reactor containment building is the strongest in the United States. However, if there were an incident at Seabrook that could affect the public, the notification system would be used to alert you. Please take a moment now to read about this system and share this information with your family:

1. If there should be an emergency at Seabrook Station that could affect the public in any way, warning sirens in your area would make a steady three-to-five minute signal.
2. If you hear this signal, you should turn on your radio. Emergency broadcasts will tell you what is happening and what to do. Staying tuned to the radio might be all you would need to do. Or, you might be told to take other actions.
3. Please do not use your telephone except for a personal emergency. The phone lines may be needed for official business. If you can do so without using your phone, please check to see if your neighbors have heard and understood the emergency message.

As Seabrook moves closer to running above five percent power, and to full operation, you will receive more materials on emergency notification and response plans for your area. In the meantime, if you have questions about this letter, please call the following non-emergency number between 8:30 a.m. and 4:00 p.m: (603) 474-2154. Thank you.

Sincerely,



Terry Harpster
Director of Emergency Preparedness

DS-10