

1
069

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Emmeth A. Luebke
Jerry Harbour

LBP-86-22
DOCKETED
USNRC

'86 JUL 22 P2:41

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SEVEN JUL 22 1986

In the Matter of

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-OL-1
50-444-OL-1

(On-Site Emergency Planning
and Safety Issues)

(ASLBP No. 82-471-02-OL)

July 21, 1986

MEMORANDUM AND ORDER

(Ruling on NH's Motion To Withdraw Contention NH-10, and on
Applicants' Motion to Strike SAPL's Objection To Motion To Withdraw)

Memorandum

On June 12, 1986, the State of New Hampshire filed a motion to withdraw Contention NH-10, because, "After considering all the materials submitted by the Applicant and the NRC Staff, the State has concluded that the issues raised by the State regarding the DCRDR [Detailed Control Room Design Review] and the SPDS [Safety Parameter Display System] have been satisfactorily addressed."¹

¹ NH Contention 10 read as follows:

The Seabrook Station control room design does not comply
(Footnote Continued)

8607240127 860721
PDR ADOCK 05000443
G PDR

DS02

On June 19, 1986, Seacoast Anti-Pollution League (SAPL) filed an objection to the motion to withdraw Contention NH-10. It urged that this contention cannot be withdrawn without SAPL's assent since the Board's Memorandum and Order of September 13, 1982,² in noting that SAPL Supplemental Contention 6 incorporated by reference Contention NH-10, permitted SAPL to participate with NH as a joint intervenor. SAPL set forth reasons why it did not believe that the results of the DCRDR and the design of the SPDS were adequate.

On June 27, 1986, the Applicants filed a motion to strike SAPL's objection. Thereafter, the Staff filed a response on July 2, 1986, which did not object to the State's withdrawal of its sponsorship of this contention. On July 3, NH responded to SAPL's objection, and SAPL objected to Applicants' motion to strike. On July 17, the Staff responded to Applicants' motion to strike.

Discussion

SAPL opposes the withdrawal of Contention NH-10 upon two grounds. First, it argues that the withdrawal is premature because several parameter displays ought be installed before fuel loading, because station operators should be thoroughly trained in their use prior to any operation of the plant, and because there is no good reason why a

(Footnote Continued)

with general design criteria 19 through 22 and 10 C.F.R. Part 50, Appendix A, and NUREG-0737, Items I.D.1 and I.D.2.

² LBP-82-76, 16 NRC 1029, 1040-41, 1083.

preliminary evaluation and identification of Human Engineering Discrepancies (HEDs), including those which may be identified from an evaluation of the control room environment, cannot be undertaken prior to fuel loading. We do not consider this argument because SAPL did not inform the Board whether the alleged inadequacies in Section 18 of SSER 4 are within the scope of the contention.³ While we do not consider SAPL's first argument, we do consider its second argument.

Second, since the Board permitted SAPL to participate with NH as a Joint Intervenor, SAPL argues that Contention NH-10 cannot be withdrawn without its assent. In their motion to strike, Applicants urge that SAPL relinquished any rights it may have had to object to the motion to withdraw because, early on, during discovery, SAPL informed the Staff and the Applicants that it would not "litigate" this contention, leaving the "litigation" thereof to New Hampshire.⁴ However, in its responses

³ SAPL, as well as any other intervening party, certainly should be aware that late-filed contentions, as well as late-filed amendments, are admissible only if they meet all of the five factors in 10 C.F.R. 2.714(a)(1), including the Appeal Board's three part test for good cause. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983). Such a submission requesting leave to file contentions or amendments out-of-time must address these factors and affirmatively demonstrate that on balance the factors favor the granting of the request. Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980).

⁴ In passing, we note that Applicants argue that such a motion to withdraw is not a motion but rather is a notification of withdrawal which, being immediately self-executing, limits the Board's authority to simply dismissing the contention. Applicants are
(Footnote Continued)

to Applicants' interrogatories which were received by the Board on January 21, 1983, SAPL specifically stated that it did not waive its right to cross examine witnesses -- that, pursuant to the Prairie Island Rule,⁵ it had the right to cross examine on a witness' testimony which related to matters placed into controversy by another party, and that it had a discernible interest in all the admitted contentions. Again, in its objection to Applicants' motion to compel answers to interrogatories which was filed on February 4, 1983, SAPL stated that, in responses to Applicants' interrogatories, it had made clear that it would not present direct evidence upon other parties' contentions, that it did not waive its right of cross examination, and cited another Board's order which directed that "no party need answer questions with respect to contentions, or portions of contentions, which it is not sponsoring."⁶ Further, while Applicants' imply that Board had ordered that SAPL did not have to respond to interrogatories because SAPL had stated it would

(Footnote Continued)

wrong. All motions properly filed with this Board in this reopened hearing are within our authority to allow or deny after receiving answers from interested parties. See 10 C.F.R. §§2.718(f), 2.730. Since NH's motion is contested, we must review SAPL's objection and other answers and proceed to rule.

⁵ Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-288, 2 NRC 390, 392 n.6 (1975).

⁶ Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-31, 10 NRC 597, 606 (1979).

not litigate NH-10, in a Memorandum and Order of March 1, 1983,⁷ the Board granted a protective order because Applicants' numerous and complex interrogatories, addressing contentions not sponsored by or to be the subject of direct testimony proffered by SAPL, did impose an undue burden.⁸ However, despite the protective order, on March 10, 1983, SAPL filed supplemental answers to Applicants' interrogatories directed to two NECNP contentions and to SAPL's Supplemental Contention 3, and noted that it had "decided to include responses related to those issues it may seek to litigate in this proceeding." SAPL did not state why it did not answer interrogatories directed to Contention NH-10. Finally, in denying as interlocutory SAPL's appeal from the Licensing Board's granting of summary disposition against it on SAPL's Supplemental Contention 3, the Appeal Board found that although the dismissal left no other contentions originated by it, SAPL itself noted that it had joined in a contention (Contention NH-10) filed by New Hampshire that remained before the Licensing Board.⁹ The Appeal Board

⁷ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-9, 17 NRC 403, 406 (1983).

⁸ At page 406 n. 3 of the Memorandum and Order of March 1, the Board assumed that SAPL had "dropped" Contention NH-10, which it had previously adopted in its Supplemental Contention 6.

⁹ Indeed, in its response of June 8, 1983 to SAPL's appeal, the Applicants stated that SAPL had joined and adopted Contention NH-10 and thus was still a party. In its response of June 15, 1983, the Staff also argued that an appeal as of right did not lie, in part, because SAPL remained as a co-sponsor of NH-10.

concluded that thus SAPL's participational rights (with regard to Contention NH-10) were not affected by the Licensing Board's summary disposition of Supplemental Contention 3.¹⁰

On balance, we conclude that overall SAPL has preserved its rights as a joint intervenor, and that Applicants' motion to strike is without merit and is denied. However, in order to prevent confusion and to proceed with a clear record in this reopened proceeding, we grant New Hampshire's motion to withdraw its Contention 10 despite SAPL's objection that this contention cannot be withdrawn without its assent since it is a joint intervenor. SAPL, as the joint intervenor, is not prejudiced by this ruling because we also rule that Contention NH-10 is now converted to and replaced by SAPL's Supplemental Contention 6, which will reflect the identical wording and basis of former Contention NH-10.

ORDER

1. The State of New Hampshire's motion to withdraw its Contention 10 is granted,
2. Applicants' motion to strike SAPL's objection to motion to withdraw Contention NH-10 is denied, and
3. Contention NH-10, permitted to be withdrawn by the State of New Hampshire, is now converted to and replaced by SAPL Supplemental

¹⁰ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073 (1983).

Contention 6, which will reflect the identical wording and basis of former Contention NH-10.

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe
Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Jerry Harbour
Jerry Harbour
ADMINISTRATIVE JUDGE

Emmeth A. Luebke
Emmeth A. Luebke
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 21st day of July, 1986.