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June 27, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)
)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)
)
(Seabrook Station, Units 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket Nos. 50-443 OL
50-444 OL

NRC STAFF RESPONSE TO SAPL MOTION
TO DISMISS THE APPLICATION FOR UNIT 2

On June 10, 1986, the Seacoast Anti-Pollution League ("SAPL") filed a motion requesting that the Licensing Board dismiss the application for an operating license for Seabrook Unit 2. As grounds for its motion, SAPL asserts that the joint owners of Seabrook are not actively pursuing the construction of Unit 2, and that 10 C.F.R. §50.57(a) prohibits the Commission from issuing an operating license unless construction of a facility has been "substantially completed."

A brief review of the history of this proceeding is appropriate here, for this is not the first time the issue of the dismissal of the application for Unit 2 has been raised (in fact, this is not even the first time SAPL has raised the issue). The initial appearance of this issue was as a contention in a late-filed petition to intervene submitted on September 6, 1983 by John Doherty. Mr. Doherty asserted that the construction of Unit 2 was not close to completion, and that Section 50.57(a) therefore required dismissal of the application. Mr. Doherty's petition to intervene was denied on timeliness grounds by the Licensing Board on November

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15, 1983. An appeal was taken, and the Appeal Board affirmed the denial of Mr. Doherty's petition to intervene. ALAB-758, 19 NRC 7 (January 24, 1984). In ALAB-758, the Appeal Board dealt with the substantive issue raised by Mr. Doherty as follows:

... First, the Licensing Board correctly held that it is not its responsibility, but that of the Director of Nuclear Reactor Regulation, to make the finding required by Section 50.57(a)(1) as a precondition to the issuance by the Director of an operating license. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 410-11 (1974). Second, there is nothing in the Commission's regulations specifically providing that a reactor must have reached a particular stage of completion before an operating license application may be filed. Third, just 16 months ago the Commission denied a petition for rulemaking that sought amendments to the Rules of Practice that would have, inter alia, limited the scope of each operating license hearing to a single reactor unit even if that unit were one of several similar units constructed on a multi-reactor site. 47 Fed. Reg. 46,524 (1982). In support of his proposal, the petitioner had noted that the "time lag between inservice dates for individual reactors at multi-reactor nuclear plants has been increasing for many years." Ibid. In the Commission's view, however, that consideration did not provide a sufficient basis for requiring an exclusive hearing on each reactor unit." Id. at 46,525.

19 NRC at 11, n. 18.

Less than three weeks after Mr. Doherty filed his petition to intervene, SAPL itself filed a motion on September 26, 1983 to have the application for Unit 2 dismissed. SAPL's reasoning was identical to Mr. Doherty's; SAPL relied on the unfinished state of Unit 2 and the language in Section 50.57(a) prohibiting the issuance of an operating license prior to the "substantial completion" of a facility. This reasoning is also identical to that relied upon by SAPL in its instant motion.

Responses to SAPL's earlier motion were filed by the Applicants on October 6, 1983, and by the Staff on October 17, 1983. Both the Applicants and Staff pointed out that the Licensing Board's role is to decide issues in controversy between the parties, that those issues raised

in the Seabrook proceeding applied equally to both Units 1 and 2, and that the finding required by Section 50.57(a) is to be made by the NRC Staff rather than the Licensing Board. On January 13, 1984, the Licensing Board issued a Memorandum and Order agreeing with Applicants and the Staff and denying SAPL's motion.

SAPL appealed the Licensing Board's denial of its motion. In rejecting SAPL's appeal, the Appeal Board reaffirmed its earlier ruling in ALAB-758 to the effect that the Commission's regulations do not require that a reactor reach a certain stage of completion before an application for an operating license can be filed, and went on to add:

Further, we find not objectionable the practice of considering in a single proceeding those issues common to all units of a multi-unit facility. Indeed, the practice seems to us to make very good sense. In the proceeding at bar, many common issues have already been tried or will be heard at a future evidentiary session: e.g., control room design, equipment environmental qualification, and various aspects of onsite and offsite emergency planning. We know of no useful purpose that would be served by now resolving these issues for Unit 1 alone and then replewing the exact same ground at some later date in the context of Unit 2.

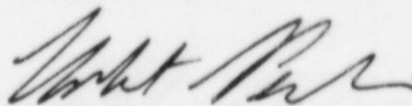
ALAB-762, 19 NRC 565, 569 (March 16, 1984) (footnote omitted).

In its instant motion, filed more than two years after the Appeal Board upheld the Licensing Board's denial of its earlier motion to dismiss the application for Unit 2, SAPL is trying again. SAPL's new motion is essentially the same motion that party filed in 1983. SAPL does not identify any new or changed circumstances in its latest motion, nor does SAPL provide any new argument calling into question any of the earlier rulings by either the Licensing Board or the Appeal Board. In fact, SAPL does not even allude to any of the earlier filings or rulings on the subject of the dismissal of the Unit 2 application. Instead, SAPL simply

cites Section 50.57(a) and states that Unit 2 is only 26% completed with construction currently suspended.

Without repeating all the arguments made two years ago on this issue, the Staff submits that the Licensing Board and the Appeal Board were correct in their earlier rulings and that the Licensing Board should once again deny SAPL's motion to dismiss the application for Unit 2. As both Boards noted in the past, Section 50.57(a) requires that the Staff make a finding that construction is substantially completed before a license can be issued; that Section does not require that a Licensing Board make such a finding before it can authorize the issuance of a license. The Commission's regulations clearly do not require that construction reach a certain level before issuance of an operating license can be considered. And as the Appeal Board noted in ALAB-762, where a site has two identically-designed units as is the case with Seabrook, there is good reason to settle in one proceeding issues common to both units. SAPL has failed to provide the Board with any reason why its earlier rulings (or the reasoning expounded by the Appeal Board in ALAB-758 and ALAB-762) should be reconsidered or reversed. Under the circumstances, the Staff submits that SAPL's latest motion should be denied.

Respectfully submitted,



Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of June, 1986

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SAPL MOTION TO DISMISS THE APPLICATION FOR UNIT 2" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of June, 1986.

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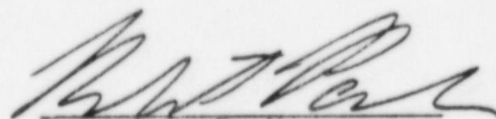
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