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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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

OFFICE OF SECRETARY
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In the Matter of)	Docket Nos. 50-443-OL-1
PUBLIC SERVICE COMPANY)	50-444-OL-1
OF NEW HAMPSHIRE, <u>et al.</u>)	(On-Site Emergency Planning and Safety Issues)
(Seabrook Station, Units 1 and 2))	(ASLBP No. 82-471-02-OL)
)	February 6, 1987

MEMORANDUM AND ORDER
(Granting Intervenor's Motion To File Supplemental Opposition,
But Denying Their Joint Supplement Opposition)

MEMORANDUM

On January 9, 1987, NECP, SAPL and Mass. (hereinafter referred to as Intervenors) filed a Joint Motion For Leave To File Supplemental Opposition to Applicants' Motion For Issuance Of Partial Initial Decision Authorizing Low Power Operation. Simultaneously the Intervenors filed a Joint Opposition To Applicants' Motion For Issuance Of Partial Initial Decision Authorizing Low Power Operation. In an opposing response of January 15, 1987, Applicants urged that the joint motion for leave to file should be denied, but, if granted, the substantive joint opposition should be rejected by the Board. In its response of January 27, 1987, while not opposing the motion for leave,

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the Staff urged that the Intervenors had failed to provide adequate grounds for the Board to withhold issuance of a Partial Initial Decision authorizing low power operation.

DISCUSSION

We grant Intervenors' motion for leave to file. However, as discussed infra, we find the joint supplemental opposition to be without merit and thus deny it.

In a motion filed on June 17, 1986, Applicants, in part, had requested that our Partial Initial Decision should authorize operation of Seabrook Unit 1 up to and including 5% of rated power. Intervenors filed responses in opposition. Our Memorandum and Order of July 25, 1986, LBP-86-24, 24 NRC 132, granted this part of Applicants' motion to the extent that we stated that our Partial Initial Decision would decide whether or not to authorize issuance of an operating license for operation up to and including 5% of rated power.

In the instant joint supplemental opposition, the Intervenors seek to supplement their earlier responses opposing Applicants' motion of June 17, 1986 with and because of new and relevant information which shows that a member of the NRC Staff is quoted as having stated that the Staff now intends to reopen technical issues that were formerly considered to be resolved. Intervenors state that, according to an article in the Boston Globe on December 23, 1986, the Applicants' December 19 filing of a §2.758 petition, which had requested that the radius of the Seabrook plume exposure emergency planning zone (EPZ) be

reduced from ten miles to one mile, has caused the NRC Staff to reconsider whether in the past it should have granted waivers from NRC testing requirements and whether these tests are now necessary because of the requested reduction of the EPZ to one mile. Citing 10 C.F.R. §§50.57(a) and 50.57(c),¹ the Intervenors argue that neither the Board

¹ Section 50.57 provides in pertinent part:

(a) Pursuant to §50.56, an operating license may be issued by the Commission, up to the full term authorized by §50.51, upon finding that:

(1) Construction of the facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission; and

(2) The facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission; and

(3) There is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter; and

* * * *

(c) An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to
(Footnote Continued)

nor the Director of Nuclear Reactor Regulation is any longer in a position to make findings of regulatory compliance and of a reasonable assurance of safe operation which are required as prerequisites to the issuance of a low power license. The Intervenors also urge that, should the Staff's new review result in technical determination or changes in the operating application before this Board, they are entitled to litigate these matters before this Board grants a low power operating license.

The Intervenors' arguments are without merit. When, as here, the Board is considering whether to authorize a low power operating license, pursuant to 10 C.F.R. § 50.57(c), the Board has to make findings only with respect to the matters specified in §50.57(a) "as to which there is a controversy" -- as to any uncontested matters, the Director of Nuclear Reactor Regulation is required to make those findings required by §50.57(a). Intervenors do not and cannot argue that the matters adverted to in the newspaper article are within the scope of any

(Footnote Continued)

the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order pursuant to §2.730(e) of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

contention previously admitted as an issue in controversy in this proceeding. Thus, upon resolving the issues in controversy which have been litigated before us,² we will decide in our Partial Initial Decision, *inter alia*, whether or not to authorize the issuance of a low power operating license for Seabrook, Unit 1. As the Commission has stated, "At an operating license hearing, a board passes only on issues put in contest. The decision as to all other matters which need to be addressed prior to the issuance of the license is the responsibility of the Commission and Staff outside the adjudicatory context." Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 7 n. 5 (1986). Further, we have no authority to direct the Director of Nuclear Reactor Regulation not to make findings upon uncontested issues which are required to be made pursuant to 10 C.F.R. §§50.57(a) and 50.57(c). The decision as to such uncontested matters is the responsibility of the Director alone. Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 457 n. 1 (1982); Consolidated Edison Company of New York, Inc. (Indian Point, Units 1, 2 and 3), ALAB-319, 3 NRC 188, 190 (1976); 10 C.F.R. §2.760a. Moreover, we refuse to speculate as to what determination another Board (the Hoyt Board, which has jurisdiction over

2 The on-site issues in controversy which were heard before the closing of the record on October 3, 1986 involved the classification scheme and emergency action levels, the safety parameter display system, and the environmental qualification of electrical equipment.

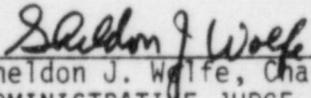
off-site emergency planning issues) will make with respect to Applicants' petition to reduce the radius of the EPZ. We also refuse to speculate that, if a "new" review is conducted, the Staff will determine that more safety measures concerning on-site emergency planning and safety issues are needed in light of the Applicants' request for a smaller EPZ.

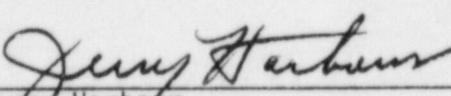
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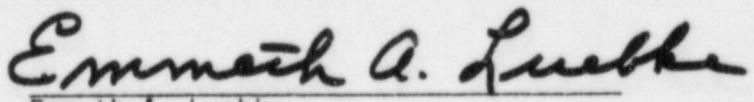
The Board grants the Intervenors' joint motion for leave to file their supplemental opposition, but denies their joint supplemental opposition to Applicants' motion for issuance of a partial initial decision authorizing low power operation.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE


Jerry Harbour
ADMINISTRATIVE JUDGE


Emmeth A. Luebke
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 6th day of February, 1987.