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UNITED STATES OF AMERICA NUCLEAR PEGULATORY COMMISSION

'87 DEC 15 P2:25

BEFORE THE COMMISSION

In the Matter of

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. Docket Nos. 50-443 OL-01 50-444 OL-01 On-site Emergency Planning and Safety Issues

(Seabrook Station, Units 1 and 2)

NRC STAFF RESPONSE TO SEACOAST ANTI-POLLUTION LEAGUE'S PETITION FOR REVIEW OF ALAB-879

> Gregory Alan Berry Counsel for NRC Staff

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INTRODUCTION

On December 1, 1987, the Seacoast Anti-Pollution League (SAPL) petitioned the Commission to review the Appeal Board's decision in ALAB-879. $\frac{1}{}$ Seacoast Anti-Pollution League's Petition For Review of ALAB-879 (December 1, 1987) ("Petition"). In that decision, the Appeal Board resolved two of the questions that were raised by intervenors' appeals from the Licensing Board's March 25, 1987 partial initial decision in the onsite emergency planning and safety issues phase of the Seabrook operating license proceeding. Those questions involved the correctness of the Licensing Board's denial of two separate motions to reopen the record and admit a late-filed contention challenging the adequacy of emergency alert siren systems installed in East Kingston, New Hampshire

^{1/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-879, 26 NRC (November 20, 1987).

and Merrimac, Massachusetts. $\frac{2}{}$ As explained below, Commission review of ALAB-879 is not warranted because the petition does not set out "an important matter that could significantly affect the environment, or . . . an important procedural issue, or otherwise raise important questions of public policy." Accordingly, the petition should be denied.

LEGAL STANDARDS

Petitions for review, and responses in opposition, must satisfy the requirements of 10 C.F.R. § 2.786(b)(2). Those requirements are:

- A concise summary of the decision or action of which review is sought;
- (ii) A statement (including record citation) where the matters of fact or law raised in the petition for review were previoulsy raised before the Atomic Safety and Licensing Appeal Board and, if they were not why they could not have been raised;
- (iii) A concise statement why in the petitioner's view the decision or action is erroneous; and
- (iv) A concise statement why Commission review should be exercised.

10 C.F.R. §2.786(b)(2)(i-iv). The Staff will address each of these points seriatim.

^{2/} The East Kingston contention was sponsored by SAPL and is the subject of the instant petition for review. The Merrimac contention was sponsored by the Attorney General of the Commonwealth of Massachusetts.

DISCUSSION

A. Summary of ALAB-879

ALAB-879 is the Appeal Board's decision on two of questions left unresolved in ALAB-875, which otherwise disposed of the appeals taken by SAPL and two other intervenors $\frac{3}{2}$ from the Licensing Board's partial initial decision in LBP-87-10. In LBP-87-10, the Licensing Board resolved the issues relating to onsite emergency planning and safety issues favorably to Applicants. With the exception of certain arguments made by intervenor New England Coalition on Nuclear Pollution (NECNP), <u>see</u> ALAB-875, slip op. at 48, the Appeal Board rejected all of the arguments raised on appeal relating to the issues decided on the merits and affirmed the Licensing Board's partial initial decision. <u>See</u> ALAB-875, <u>passim</u>.

The Appeal Board reserved judgment on the question whether the Licensing Board correctly denied two motions to reopen the record and admit late-filed contentions challenging the adequacy of the siren systems installed in East Kingston, New Hampshire and Merrimac, Massachusetts. ALAB-875, slip op. at 48. With respect to the East Kingston sirens, the Appeal Board stated:

In the circumstances, it seems quite apparent that this matter is susceptible of resolution without the need for litigation. More particularly, as no party appears to disagree, the sensible course is to conduct another test during the coming winter. Obviously, it will be most helpful if there is also agreement with regard to the test procedures that should be utilized and the appropriate climatic conditions for the conduct of the test.

ALAB-875, slip op. at 46. The parties were not able to reach an agreement with regard to the test procedures that should be utilized and

- 3 -

^{3/} New England Coalition on Nuclear Power (NECNP) and the Attorney General of the Commonwealth of Massachusetts.

the climatic conditions for the conduct of the test. See ALAB-879, slip op. at 9. Consequently, the Appeal Board "had to confront the challenges to the rejection of the East Kingston and Merrimac contentions." Id. at 4. The Appeal Board upon reviewing the subject contention involving the East Kingston sirens concluded that the contention did not raise "safety questions of sufficient gravity to justify the reopening of a closed record to accommodate them." Id.

B. The Matters Raised In The Petition Were Raised Below

In its petition, SAPL seeks review of the Appeal Board's determination that the Licensing Board correctly excluded SAPL's East Kingston siren contention on the ground that SAPL had failed to satisfy the standards set forth in 10 C.F.R. § 2.734 governing the reopening of a closed record. SAPL challenged the Licensing Board's determination on this issue in its appeal. <u>See</u> Seacoast Anti-Pollution League Appeal at 20 (May 8, 1987).

C. The Appeal Board Correctly Decided The Issues Raised In The Petition

SAPL's East Kingston siren contention alleged that during a siren test conducted on January 31, 1987 by the Town of East Kingston, problems were encountered in the broadcast of messages over the system. SAPL also cited as a basis for its contention a ruling by a New Hampshire superior court that licenses issued by the Towns of Rye and Hampton Falls and the New Hampshire Department of Transportation which permitted Applicants to install siren poles on land owned by the towns were invalid. Both the Licensing Board and the Appeal Board found that neither of these bases posed a "significant safety issue." <u>See</u> ALAB-879, slip op. at 7. 9-13; Memorandum and Order (Denying SAPL's Motion of February 6, 1987) at 7-8 (March 23, 1987) (unpublished) ("March 23, 1987 Decision").

With respect to the ruling of the New Hampshire superior court, the Appeal Board stated:

[W]e encounter no difficulty in agreeing with the Licensing Board that the concern engendered by the Superior Court's ruling is premature. SAPL does not dispute that the siren poles have not been removed and will continue in place at least until the outcome of the pending appeal to the state Supreme Court. . . If the court overturns the result below, that will likely be the end of the matter. On the other hand, if the directive to remove the poles in question is affirmed, the applicants obviously will have to substitute for the sirens some other mechanism that will satisfy the regulatory requirement regarding "early notification and clear instruction to the populace within the" EPZ. If SAPL believes that the substitute proposed by the applicants is insufficient to meet that requirement, it will have means at its disposal [e.g. 10 C.F.R. § 2.206] to put that belief before the Commission.

ALAB-879, slip op. at 7-8. Thus, as the Licensing Board recognized and the Appeal Board agreed, no significant safety issue was presented by the ruling of the New Hampshire superior court. Pending an affirmance of this ruling by the New Hampshire Supreme Court, the sirens remains in place and available for use to provide "early notification and clear instruction" to the populace within East Kingston. Nothing in SAPL's petition for review contradicts this salient fact or demonstrates that this conclusion is clearly wrong.

Similarly, the Appeal Board did not err in affirming the Licensing Board's conclusion that the problems encountered during the January 1987 siren test conducted by the Town of East Kingston presented a significant safety issue. The record indicated that the problems resulted from the failure of the Town of East Kingston to conduct the test in accordance with approved Seabrook test procedures and an unexpected snowstorm. In satisfying itself that the problems would not recur, the Board relied upon the assurance of the Staff that any future test would be conducted in accordance with approved procedure and that adequate measures would be taken to ensure that the sirens would not be affected by adversely by ice or snow storms. $\frac{4}{2}$ <u>Id.</u> at 8. Nothing in SAPL's motion to reopen indicates that these assertions are not correct. As the Licensing Board noted: "[SAPL's affiant] does not tell us, nor does he have the expertise to so advise us, that the problems encountered are insurmountable or incapable of solution." <u>Id.</u> at 9. The record thus indicated that the problems encountered during the test of the East Kingston sirens are remediable and will be remedied prior to the commencement of any future test.

Moreover, the Appeal Board took note of the fact that the Federal Emergency Management Agency (FEMA) will evaluate the "adequacy of the applicants' siren system as part of its review of the overall offsite emergency preparedness program for the facility." ALAB-879, slip op. at 11 and n.28. These consideration amply support the conclusion of the Licensing Board and the Appeal Board that the problems encountered during the test of the East Kingston sirens did not pose a significant safety issue sufficient to warrant a reopening of the record.

SAPL argues that it is speculative whether corrective actions taken will be sufficient to assure that the problems encountered in the East Kingston test will not recur. See Petition at 4. According to SAPL,

- 6 -

^{4/} These measures included the reorientation of the sirens, the application of an anti-icing product, and the modification of the sirens "ground planes." Id. at 8.

relying upon the adoption of such corrective actions in concluding that the proffered late-filed contention posed no significant safety issue impermissibly operated to shift the burden of proof from Applicant to SAPL. Id. at 4-5. There is no merit to this argument. Section 2.732 of the Commission's regulations provides that the proponent of a motion bears the burden of proof. 10 C.F.R. § 2.732. As the proponent of the motion to reopen the record to admit its late-filed contention, it was SAPL, not the Applicants or the Staff, that had the burden of proof and bore the risk of non-persuasion. SAPL's speculation that the modified sirens would not function in a proper test does not show the existence of a "significant safety issue" to permit the reopening of the record. See 10 C.F.R. § 2.734(a)(2).

D. Commission Review Is Not Warranted

As 10 C.F.R. § 2.786(b)(4) makes clear, "the grant or denial of a petition for review is within the discretion" of the Commission. The Commission has indicated that review will not be granted in the absence of a chowing that the case "involves an important matter that could significantly aftect the environment, public health and safety, . . . involves an important procedural issue, or otherwise raises important questions of public policy[.]" 10 C.F.R. § 2.786(b)(4)(i). Further, a petition for review "of matters of fact will not be granted unless it appears that the Atomic Safety and Licensing Appeal Board has resolved a factual issue necessary for decision in a clearly erroneous manner contrary to the resolution of that same issue by the Atomic Safety and Licensing Board". 10 C.F.R. § 2.786(b)(4)(i).

- 7 -

The petition to the Commission does not involve an important matter which could significantly affect the public health and safety or which raises an important question of policy. <u>See</u> 10 C.F.R. § 2.786(b)(4)(i). The issue here is only the adequacy of sirens in East Kingston and whether an informal test revealed deficiencies in those sirens. As noted above, the record is uncontroverted that the Staff will verify that remedial actions will be taken to assure that the problems encountered during the initial test of the East Kingston sirens will not recur and that FEMA will evaluate the "adequacy of Applicants' siren system as part of its review of the overall offsite emergency preparedness program for the [Seabrook] facility." ALAB-879, Slip op. at 11 and n.28.

Further, the question presented by SAPL's petition to reopen the record was whether an irregular test of the East Kingston sirens demonstrated a matter of sufficient gravity to warrant reopening the record. ALAB-879 at 4, 6. The Appeal Board did not disturb the Licensing Board's factual determination that the tests did reveal problems in that proper procedures were not followed in the test and that measures were to be taken to avoid a repetition of the deficiencies observed. Id. at 6-7. As the Appeal Board did not resolve "a factual issue necessary for decision" to reopen the record in a "manner contrary to the resolution of that same issue by the Atomic Safety and Licensing Board," no basis appears for the Commission to review ALAB-879. 10 C.F.R. § 2.786(b)(ii).

- 8 -

CONCLUSION

For the reasons stated herein, the Petition for Review of ALAB-879 filed by the Seacoast Anti-Pollution League should be denied.

Respectfully submitted,

Muyon A. Benny Gregory Alan Berry Counsel for NRC Staff

Dated at Bethesda, Maryland this 11th day of December 1987

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OFFICE OF SECRETARY DOCKETING & SERVICE BRANCH

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SEACOAST ANTI-POLLUTION LEAGUE'S PETITION FOR REVIEW OF ALAB-879" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of December 1987.

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