

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of

PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE, et al.

(Seabrook Station, Units 1 & 2)

Docket Nos. 50-447
50-444

PERMITTEES' MOTION FOR SUMMARY
DISPOSITION OF ISSUE OF ALTERNATE
SITES ASSUMING SEABROOK IS REQUIRED
TO EMPLOY COOLING TOWERS

1. There is currently sub judice by this Appeal Board the issue of whether there is an alternate site for a nuclear facility anywhere in New England which would be "obviously superior" to the Seabrook site were cooling towers to be needed in conjunction with a nuclear facility at Seabrook.

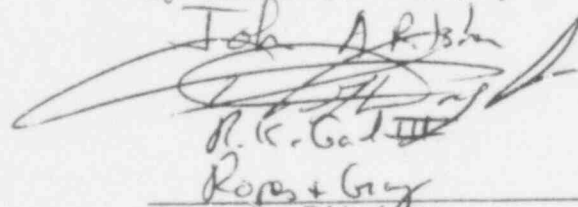
2. Prior to the holding of the evidentiary hearing, the intervenors at the behest of which a further proceeding on this issue was necessitated repeatedly conceded for the record that the United States Court of Appeals in the then pending case SAPI v. NRC, No. 78-1172, did not reconsider and alter its position taken in NECNP v. NRC, 582 F.2d 87 (1st Cir. 1978) that "sunk costs" could be counted in comparing

alternate sites with Seabrook, then Seabrook, with towers, would prevail over any alternate site.*

3. On May 30, 1979, the United States Court of Appeals issued its decision in SAPL v. NRC, No. 78-1172. In that decision, a copy of which is supplied herewith, the Court of Appeals in no way detracts from its earlier holding that assuming a sufficient number of sites are looked at, "sunk costs" may be included in the final comparison between the chosen site and each of the alternatives reviewed.

WHEREFORE, in light of the above-described concession and decision of the Court of Appeals, the permittees, pursuant to 10 CFR § 2.749, move the Appeal Board to enter an order summarily disposing of the question set forth in Paragraph 1 above.

By their attorneys,



John A. Ritscher
Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray

June 6, 1979

* SAPL Argument Regarding Hypothetical Alternative Site Hearing (March 2, 1979) at p. 6; Letter of Robert Backus, Esquire, to Appeal Board (Dec. 18, 1978) at pp. 2-3; Tr. Jan. 15, 1979, at 6; NECNP Motion to Be Excused From Evidentiary Hearings (Dec. 21, 1978), passim. See also letter of Robert Backus, Esquire, to Board (Sept. 18, 1978) at 2.