

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 )  
and 2) )

Docket Nos. 50-443  
50-444



NRC STAFF RESPONSE TO SAPL MOTION TO REOPEN  
RECORD ON FINANCIAL QUALIFICATIONS

By motion dated November 30, 1978, the Seacoast Anti-Pollution League ("SAPL") filed before this Appeal Board a "Motion to Reopen Record on Financial Qualifications." The NRC Staff opposes the motion because it is beyond the jurisdiction of the Appeal Board. In addition it is premature for the appropriate Commission entity to take any action.

SAPL's motion argues that the financial qualifications of the lead permittee, Public Service Company of New Hampshire (PSCO) must now be examined to consider the likelihood that Construction Work in Progress (CWIP) will in the future not be allowed in the rate base by New Hampshire, and to further consider now whether PSCO would be financially qualified absent the continued allowance of CWIP.

As the Commission has stated, "[t]he financial qualifications inquiry here appears to have been the most searching examination of this question in

the history of commercial power reactor licensing." CLI-78-1, 7 NRC 1, 12 (January 6, 1978). The Licensing Board's initial decision found PSCO financially qualified. 3 NRC 857, 867-68, 916-17 (1976). This finding was affirmed by the majority decision of this Appeal Board, ALAB-422, 6 NRC 33, 73-82 (1977), and was again affirmed by the Commission in CLI-78-1, supra, at 8-23. The Commission's decision, as the final agency action, was reviewed and upheld by the United States Court of Appeals. New England Coalition on Nuclear Pollution v. U.S. NRC, 582 F.2d 87, 92-93 (1st Cir. 1978).

Having proceeded to final decision of this Appeal Board, and indeed beyond that through two further layers of appellate review, the financial qualifications issue may not be reopened in this proceeding by the Appeal Board. 10 CFR §2.717(a); Wisconsin Electric Power Co. (Point Beach, Unit 2), ALAB-86, 5 NRC 376 (1972); Consumers Power Co. (Midland, Units 1 and 2), ALAB-283, 2 NRC 11, 13-14 (see n. 16 at 14) (1975). Houston Lighting and Power Co. (South Texas, Units 1 and 2), ALAB-381, 5 NRC 582, 590-91 (1977).

As pointed out in South Texas, supra at 591, enforcement of the termination of jurisdiction embodied in §2.717(a) (and the sound underlying principle that there must be an end to litigation sometime) does not have the effect of precluding the early adjudicatory consideration of developments subsequent to the construction permit

proceeding which have a possible bearing upon the continuation or modification of the permit. However, the mechanism for such an early adjudication would be a show cause proceeding. And, the determination to initiate show cause proceedings is initially the province of the Staff, subject to the direction of the Commission. This is particularly true with respect to the issue of financial qualifications in this proceeding.

The NRC Staff, as the delegate of the Commission in the absence of jurisdiction by an NRC adjudicatory Board, is charged by the Commission's regulatory scheme with the responsibility for monitoring information regarding financial arrangements and status of funds of licensees. See Appendix C to 10 CFR Part 50, §IV. In this proceeding, the Commission has specifically directed the Staff to report to the Commission on its findings and proposed course of action regarding changes in financial planning of PSCO as a result of orders entered in the future by the New Hampshire Public Utilities Commission. CLI-78-1, supra, at 23. This express reservation of continuing regulatory scrutiny by the Commission over the financial qualifications of PSCO was ratified by the First Circuit's decision on review, supra, 582 F.2d at 93, n. 9.

If and when there is a change in the regulatory orders of the New Hampshire PUC which gives rise to changes in PSCO's financial planning regarding CWIP, the Staff will report to the Commission pursuant to CLI-78-1. It is impossibly premature for the Staff to analyze the questions posed by SAPL's motion at this time. As has been recognized by the Appeal Board

and Commission decisions, the reasonable assurance test involves examination of many factors in combination to determine whether PSCO has a reasonable financing plan in the light of relevant circumstances--the presence or absence of allowance of CWIP by New Hampshire cannot be viewed in a vacuum.

There is nothing in the discussions of CWIP in the decisions in this case that finds that inclusion of CWIP in the rate base is a necessary ingredient to the finding that PSCO has satisfied the requisite reasonable assurance standard. Cf. Kansas Gas and Electric Co. (Wolf Creek, Unit 1), ALAB-462, 7 NRC 320, 333-34 (March 9, 1978) for an example where the assumed unavailability of CWIP by an Appeal Board did not prevent a finding that the applicant satisfied the financial qualifications standard enunciated in CLI-78-1, supra. It is true that the anticipation of the allowance of CWIP was a critical factor in PSCO's financing plan as reflected in the Commission's decision, CLI-78-1, supra, at 23. However, this does not mean that if and when CWIP is disallowed,<sup>1/</sup> PSCO's reasonable financing plan cannot be adapted to rely on alternatives to CWIP.<sup>2/</sup> If

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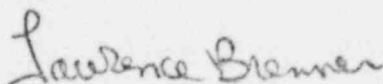
<sup>1/</sup> The precise extent of any disallowment would obviously be a material factor in the Staff's analysis.

<sup>2/</sup> SAPL's motion relies on Governor Gallen's and the New Hampshire legislature's opposition to CWIP, but this does not mean that the Governor and other New Hampshire officials would not take actions that would facilitate PSCO's implementing alternatives to CWIP to finance Seabrook. (See the attached article excerpted from the December 15, 1978 edition of the Wall Street Journal). SAPL does not suggest how the Staff could now consider the actions that would be taken by New Hampshire officials as alternatives to CWIP in the future circumstance of CWIP being disallowed.

CWIP is disallowed by New Hampshire, the Staff will examine the financing plan proposed by PSCO in response to that change and report to the Commission.

SAPL's motion should be denied because the Appeal Board lacks jurisdiction to grant it. Moreover, it is premature even for the appropriate Commission entity (which in our view is the Staff) to consider the issues urged by SAPL's motion.

Respectfully submitted,

  
Lawrence Brenner  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 20th day of December, 1978

# Seabrook Nuclear Plant Is Being Pushed Quietly by Legislators in New Hampshire

B / MITCHELL C. LYNCH

Staff Reporter of THE WALL STREET JOURNAL

MANCHESTER, N.H.—In what appears to be an about-face, New Hampshire legislative leaders are working quietly to make sure that the Seabrook nuclear project continues even if Granite State residents still are forced to foot part of the bill.

Indeed, one plan being given serious consideration calls for electricity users, in effect, to lend money to Public Service Co. of New Hampshire, the prime builder of the controversial \$2.3 billion nuclear-powered generating station.

No matter which plan is adopted, state leaders, including none other than Gov.-Elect Hugh J. Gallen, are spreading the word that the state supports construction of the nuclear facility and that it will be financed somehow. This show of support, state aides say, is aimed at shoring investment-community confidence in P.S. of New Hampshire.

## Campaign Pledge

This confidence sagged in November with the election of Mr. Gallen, who defeated incumbent Meldrim Thomson Jr. on the pledge to do away with an electricity-bill surcharge to pay for construction of the nuclear plant.

Since then, P.S. of New Hampshire was forced to shelve plans for a public offering of two million common shares. Atop that, with the financial situation in doubt, P.S. of New Hampshire is caught in a cash bind that company officials concede would be eased only if the utility can clear the outlook for the nuclear facility.

Yesterday, for instance, Fitchburg Gas & Electric Light Co. postponed to Jan. 5 a special shareholders meeting to decide whether to increase its holdings in the Seabrook project to 0.6% from 0.2%. The Massachusetts utility said that P.S. of New Hampshire's plight "could result in construction being halted."

The latest issue causing P.S. of New Hampshire problems is a utility-industry term called construction work in progress, or CWIP. Beginning last June, P.S. of New Hampshire, with the permission of the state's Public Utility Commission, added as much as 8% to residential electricity bills as CWIP money earmarked to help pay some of the costs of building the nuclear facility. CWIP was to raise around \$100 million by 1982. The company also increased its fuel-adjustment charge to make up for rising oil prices. In all, the utility bills rose as much as 19%.

The state legislature voted to do away with CWIP, but Gov. Thomson vetoed the bill. Mr. Gallen has vowed to sign such a bill.

Since then, Marshall French, House majority leader, has come up with a loan plan his office says he will submit to the legislature. Called "future credit account," the plan calls for P.S. of New Hampshire to end CWIP, but then add 10% to 15% to customers' utility bills. P.S. of New Hampshire would keep track of the extra amount each customer paid. After the nuclear plant is completed, the company would return that surcharge to the customers in the form of free kilowatt hours on a monthly basis to be worked out by the utility and the state PUC.

Neither Gov.-Elect Gallen nor William Tallman, P.S. of New Hampshire's president, would say whether they would support the plan. However, sources on the Gallen administration team and at P.S. of New Hampshire indicate they believe it is the solution to what has turned out to be an embarrassing and uneasy situation.

Embarrassing because Mr. Gallen in his election campaign zeal gave outsiders the erroneous impression he was opposed to

Seabrook itself, aides say, even though he opposed only the higher utility bills. Further, sources say, Mr. Gallen has been told that legislation outlawing this CWIP may be illegal, because that comes under the jurisdiction of the PUC. (However, the legislature could pass a law banning future CWIPs.)

But while favoring Seabrook and opposing CWIP, Mr. Gallen, who takes office early next month, hasn't come up with an alternative funding plan of his own. P.S. of New Hampshire suggested a state-guaranteed loan, but Mr. Gallen rejected that outright. His aides say it would hurt the ratings of existing state bonds.

## Dividend Boost

Political observers in New Hampshire say the utility company brought on some of the problems itself by miscalculation. For one thing, the company supported Mr. Thomson in the election campaign. For another, in September, only three months after getting authority to tack on CWIP, the company increased its quarterly dividend to 53 cents a share from 47 cents. This gave the impression that customers were paying more money merely to be passed along to shareholders.

"From a public relations point of view, that company's got a long way to go," one Gallen staffer says.

In the meantime, P.S. of New Hampshire is having a cash-flow problem. Officials say the company has to borrow \$21 million by the end of this month. It has a \$100 million line of credit, but has already drawn down \$80 million of that. Thus, it comes up \$1 million short of its cash needs, a company official says, a problem that could be solved if financiers are persuaded that the state supports Seabrook and won't throw up road blocks.

P.S. of New Hampshire owns 50% of the nuclear project, which is located in the coastal resort town of Seabrook. Construction, which began in July 1976, was halted twice by the Nuclear Regulatory Commission in disputes over whether the facility's water-cooling system and nuclear-power generating system would meet federal standards.

P.S. of New Hampshire said that if construction continues, the project will be completed in the early 1980s and would supply electricity to New Hampshire and parts of Massachusetts.

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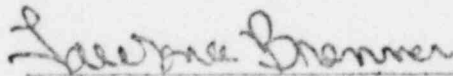
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