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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

89 OCT 31 P 4:04

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 OL-1  
50-444 OL-1

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NRC STAFF'S RESPONSE TO APPLICANTS'  
MOTION TO STRIKE NOTICES OF APPEAL

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Edwin J. Reis  
Deputy Assistant General Counsel  
for Reactor Licensing

October 31, 1989

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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 OL-01  
50-444 OL-01  
} Low Power Testing Issues

NRC STAFF'S RESPONSE TO APPLICANTS'  
MOTION TO STRIKE NOTICES OF APPEAL

The NRC Staff opposes "Applicants Motion to Strike Notices of Appeal", dated October 26, 1989 ("Motion"). <sup>1/</sup> In that Motion, Applicants seek to strike as premature the notices of appeal filed by the Massachusetts Attorney General and the Seacoast Anti-Pollution League from LBP-89-28. The Licensing Board there rejected proffered contentions on the natural circulation test which was conducted during the low power testing of the Seabrook facility. The NRC Staff opposes the Motion to Strike for the same reasons as are set forth at 3-6 of the "NRC Staff's Response to Massachusetts Attorney General's Motion To Expedite Appeal and Appeal Board Order of October [23], 1989," dated October 27, 1989, ("Motion"), wherein the NRC Staff concluded that LBP-89-28 might be considered an order which could be appealed at this time.

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<sup>1/</sup> The subject Motion is another unneeded and redundant pleading in this proceeding. The Appeal Board in its order of October 23, 1989 directed the parties to set out their views on the current appealability of LBP-89-28, and no motion was needed. See "NRC Staff Opposition To Applicants' Motion For Leave To File a Reply. . .," filed October 6, 1989.

The Applicants cite the Appeal Board's Memorandum and Order of August 1, 1989, as well as ALAB-917, 29 NRC 465 (1989), both in the Seabrook proceeding, as authority for finding that LBP-89-28 is not a decision on a discrete portion of the proceeding on which appeal could be had.<sup>2/</sup> Neither opinion is dispositive. In the Memorandum and Order of August 1, 1989, the Appeal Board determined that issues concerning the emergency preparedness alert notification system was not a discrete issue when other issues concerning emergency planning were pending. In ALAB-917, 29 NRC at \_\_\_\_\_, it was determined that an issue concerning how a portion of the returning commuter population would affect emergency evacuation time estimates was not a discrete issue when it was related to, if not intertwined with, other issues concerning the affect of returning commuters on evacuation time estimates. In contrast, here no other issues are pending on the natural circulation test or low power testing which the subject appeal involves, and the order affecting contentions involving those tests could be considered to presently possess finality for the purposes of appeal.

As the Staff set out in its Response of October 27, 1989,<sup>3/</sup> to the Appeal Board inquiry on present appealability of LBP-89-28, the issues

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<sup>2/</sup> The subject "Motion" relies wholly on reasons set out at 2-4 in the "Applicants' response to Appeal Board Order of October 23, 1989 and [MassAG] Motion for Expedited Appeal," filed the same day ("Applicants' Response"). The Applicants' arguments appear in that response, 2-4, and the Staff here responds to those arguments.

<sup>3/</sup> At 3-6.



concerning the natural circulation test which was conducted during low power testing seem to be discrete issues unrelated to other matters pending in this proceeding and might be found to be presently appealable. <sup>4/</sup>

Respectfully submitted,



Edwin J. Reis  
Deputy Assistant General Counsel  
for Reactor Licensing

Dated at Rockville, Maryland  
this 31st day of October 1989

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<sup>4/</sup> Applicants correctly report that the Massachusetts Attorney General has announced that he "anticipates" filing additional contentions on the natural circulation test. Applicants' Response, at 3 n.7. The Appeal Board may, thus, wish to defer the consideration of LBP-89-28 until it can be determined whether the matters are to remain a discrete portion of the proceeding or are to become related to other matters concerning the natural circulation test or low power testing.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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10/31/89

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In the Matter of

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(Seabrook Station, Units 1 and 2

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Docket Nos. 50-443 OL-01  
50-444 OL-01

OFFICE OF SECRETARY  
DOCKETING & SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRS STAFF'S RESPONSE TO APPLICANTS' MOTION TO STRIKE NOTICES OF APPEAL" 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, or as indicated by double asterisk by express mail this 31st day of October 1989:

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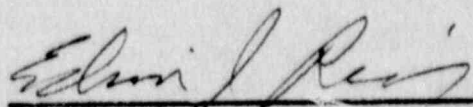
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