# 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

## NECNP RESPONSE TO APPLICANT'S MOTION FOR A PROTECTIVE ORDER

On February 4, 1981, the Applicant made a Motion for a Protective Order to prevent NECNP from obtaining the Applicant's responses to NECNP's Interrogatories 8, 9 and 15. Although the Motion itself contained no justification, the accompanying Answer to NECNP's Motion to Compel argued that the protective order should be issued because MECNP's Interrogatories 8, 9 and 15 relate solely to the choice of the proper "tectonic province," an issue that the Applicant asserts has not been reopened.

NECNP has addressed that question briefly in its Motion to Compel. It suffices here to respond more specifically to the relevancy objection, as NECNP has done in the accompanying Motion to Compel the Staff's Response.

<sup>1/</sup> NECNP's Interrogatories are restated in its Motion to Compel Applicant's Response, dated February 2, 1981, and in the accompanying Motion to Compel Staff's Response.

One of the major issues to be addressed in the reopened proceeding is "the factual validity of Dr. Chinnery's hypothesis." If Dr. Chinnery's approach is found to be valid, the Appeal Board and the Commission will then be faced with making a choice between two approaches, both of which they have found to be valid. It is arguable, of course, that once Dr. Chinnery's approach is determined to be valid, the Staff's and the Applicant's automatically become invalid. However, it is more likely that the Appeal Board will view itself as faced with two valid and reasonable approaches with different scientific foundations. In light of the Commission's mandate for a conservative approach to seismic issues, the Appeal Board will be required to accept Dr. Chinnery's results unless the Staff and the Applicant demonstrate that the scientific foundation for their approach is so far superior to Dr. Chinnery's that their results should be accepted despite the fact that Dr. Chinnery's approach is valid.

NECNP has the right, therefore, to pose interrogatories related to the scientific foundation of the Applicant's conclusions. In so doing, NECNP is not challenging the Appeal Board's "tectonic province" finding. Regardless of the finality of that finding, the issue of the strength of its foundation and of the foundation of the conclusions that flow from the choice of tectonic province is relevant to the Appeal Board's choice between the Applicant's conclusions and Dr. Chinnery's.

Questions 8 and 9 seek the basic information by which the Applicant reached its conclusions and by which the strength of the

Applicant's approach must be judged. While they are relevant to the choice of tectonic province under the Applicant's method, they are also relevant to the question of which of two otherwise valid approaches must be chosen by the Appeal Board.

Question 15 seeks the Applicant's position on the maximum possible earthquake in the Seabrook tectonic province. As such, it appears to be directly relevant to the reopened proceeding since the Appeal Board previously rejected Dr. Chinnery's methodology largely because it questioned his belief that "there is no limit to the intensity of earthquakes to be expected in any given area." Public Service Co. of New Hampshire, (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 58 (1977). Clearly the Board considers the issue of maximum earthquake intensity to be relevant to the factual validity of Dr. Chinnery's methodology and hypothesis.

For these reasons, NECNP requests that the Appeal Board deny the Applicant's Motion for a Protective Order and compel its response.

Respectfully submitted,

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DATED: February 6, 1981

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# Affidavit of Michael A. Chinnery

I, Michael A. Chinnery, being duly sworn, depose and state that I prepared the answers that are referred to in and attached to the document entitled NECNP Responses to Applicant's Interrogatories dated January 6, 1981. The answers given are true i correct to the best of my knowledge

Subscribed and sworn to before me this 14 day of \ 274424, 1981.

My Commission expires: July 18, 1956

# UNITED STATES OF AMERICA

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### CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 1981 copies of "NECNP Response to Applicant's Motion for a Protective Order, NECNP Motion to Compel NRC Staff Response to Interrogatories, and Affidavit of Michael A. Chinnery" were mailed first class postage pre-paid to the following:

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