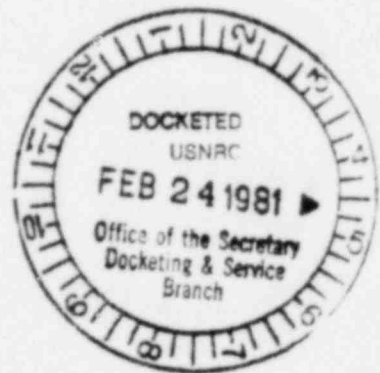


BEFORE THE COMMISSION

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

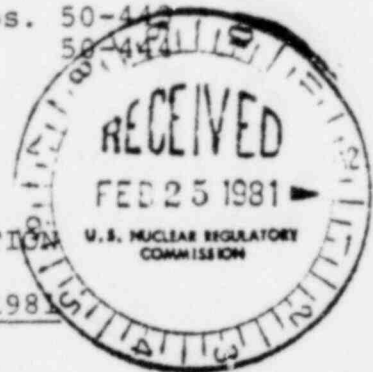


In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

*BLP224*  
Docket Nos. 50-442  
50-443



NECNP MOTION FOR DIRECTED CERTIFICATION  
AND REVERSAL OF  
APPEAL BOARD ORDER OF FEBRUARY 12, 1981

Pursuant to 10 CFR 2.785(d), the New England Coalition on Nuclear Pollution moves that the Nuclear Regulatory Commission direct the Appeal Board to certify for Commission consideration its Memorandum and Order of February 12, 1981, (Attachment 1) and that the Commission reverse that decision. Procedurally, the Memorandum and Order involved a dispute over the scope of discovery. Normally, such a decision would be interlocutory and not appealable until completion of the proceeding before the Appeal Board. However, this ruling indicates that the Appeal Board has misread the Commission's dictates in such a manner that failure to grant certification would harm the public interest and cause excessive and unnecessary delay and expense.

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### BACKGROUND

The Commission is undoubtedly thoroughly familiar with the procedural background of this phase of the Seabrook proceeding. In July of 1977, the Appeal Board affirmed the authorization of construction permits for the Seabrook reactors, accepting, inter alia, the NRC Staff's and Applicant's positions on seismic issues. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 54-65 (1977). This prompted a petition for review by NECNP, which the Commission held in abeyance pending receipt of the dissenting opinion promised by Mr. Farrar, then a member of the Appeal Board. After that dissent and the responses to it were issued in the fall of 1979, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-561, 10 NRC 410 (1979), the Commission asked the parties to participate in an oral presentation on seismic issues, which took place on May 29, 1980. Finally, on September 25, 1980, the Commission reversed the Appeal Board's decision on seismic issues and remanded for reconsideration in light of further evidence. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-80-33, 12 NRC 295 (1980) (Attachment 2). In particular, the Commission ordered that

At this yet early stage in earthquake science we are not prepared to dismiss an empirical relation on the basis of failure to satisfy criteria, which although they may appear reasonable, imply a greater understanding of the relation between geology, seismology and earthquakes than is actually available. . . Accordingly, in view of the need for conservatism in



this area, we find Dr. Chinnery's methodology is not inconsistent with Appendix A.

\* \* \* \* \*

While in most cases the mere passage of time would not provide an adequate basis for reopening the record, the subsequent publication of Dr. Chinnery's works and general increase in seismic knowledge suggest to us, that as a matter of prudence the record should be reopened. Accordingly, the Appeal Board shall reopen the record to take additional evidence on Dr. Chinnery's methodology and reconsider its opinion in this matter.

Id. at 297.

Based on this ruling, NECNP prepared interrogatories concerning, inter alia, the underpinnings of and uncertainties involved in the methods used by the Staff and the Applicant to determine earthquake intensities.<sup>1/</sup> Both the Staff and the Applicant objected to these interrogatories as irrelevant and forced NECNP to make Motions to Compel, to which they responded. (Attachments 3, 4, 5 and 6). The Applicant also made a Motion for a Protective Order, to which NECNP responded. (Attachment 7) On February 12, 1981, the Appeal Board denied NECNP's motions and granted the protective order on the ground that information relating to the identification of the Seabrook tectonic province was not relevant to the validity of Dr. Chinnery's hypothesis, or to the Appeal Board's reconsideration of its opinion. Public Service Co. of

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<sup>1/</sup> The language of the interrogatories is included in NECNP's Motions to Compel, which constitute Attachments 3 and 4.



New Hampshire (Seabrook Station, Units 1 and 2), Docket Nos. 50-433, 50-444 (February 12, 1981). However, in its last footnote the Appeal Board stated,

In both its motion to compel staff responses to the interrogatories and its answer to the applicants' motion for a protective order (at pp. 3-5 and pp. 2-3, respectively), the Coalition suggests that, in the event that the Chinnery approach is found valid on the basis of the reopened record, "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." In that circumstance, the Coalition opines, this Board will be required "to accept Dr. Chinnery's results" unless the applicants and the staff "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." As the Coalition sees it, the challenged interrogatories have a bearing upon the strength of the scientific foundation of the applicants' and staff's conclusions.

It is neither necessary nor appropriate to decide at this juncture whether the Coalition has correctly forecast our next step should the Chinnery approach be found, after the further evidence is received, to be acceptable. We likewise need not now determine whether there is, in fact, a linkage between the interrogatories and the "scientific foundation" for the applicants' and staff's conclusions on the earthquake intensity question. For, even if the Coalition is right on both scores, the interrogatories remain irrelevant to any issue which will be considered at the upcoming hearing -- which, under the terms of the Commission's remand order, is to receive evidence (insofar as concerns the intensity question) on the "factual validity" of the Chinnery approach and that alone. Should it subsequently become necessary or desirable to weigh the relative merits of two or more acceptable approaches, there will be then time enough for the Coalition to seek such information as it might deem relevant to the weighing process.



ARGUMENT

I. Issues Involving The Foundation Of And Uncertainties  
In The Staff's And Applicant's Approach Are Relevant  
To The Remanded Proceeding

In the interrogatories before the Commission, NECNP sought to obtain information concerning the basis for the conclusions reached by the Staff and the Applicant. The purpose of obtaining this information was to allow NECNP, and later the Appeal Board, to evaluate the relative strengths and weaknesses of that approach as opposed to Dr. Chinnery's hypothesis.<sup>2/</sup> However, in ruling on the Motions to Compel, the Appeal Board took the myopic view that consideration of the "factual validity" of Dr. Chinnery's hypothesis did not involve weighing its merits against other approaches. Instead, the Appeal Board viewed NECNP's interrogatories as an attempt to reopen the question of what tectonic province should be chosen for the Seabrook site and ruled that it would not allow relitigation of that issue.

As we argued to the Appeal Board, we have no intention of relitigating the issue of what tectonic province should be chosen for the purposes of the Staff's and Applicant's approach to determining the SSE. That point is clearly settled. The question now is whether the results of that approach should be accepted, or whether Dr. Chinnery's

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<sup>2/</sup> NECNP posed questions with a similar purpose in a deposition of the Staff's witnesses on February 12, 1981. The Staff objected on relevancy grounds and refused to respond.



analysis and the general increase in seismic knowledge in the last five years dictate a different result.

The Appeal Board's ruling appears to reflect a belief that it is possible to determine the validity of Dr. Chinnery's methodology in a vacuum, without regard to the strengths and weaknesses of competing theories. Only once the Appeal Board decides that Dr. Chinnery has reached some undefined threshold of validity will it then attempt to weigh his method against the others. If there were some quantitative means of determining the validity of Dr. Chinnery's hypothesis, this approach might make some sense. However, there is not.

As we contend, and as Dr. Chinnery would testify, earthquake science has not yet reached that point. Rather, any approach to evaluating seismic hazards is subject to uncertainties, and the only way that an honest decision can be made is by evaluating each in relation to the others. The only exception would be where a method is proposed that is patently invalid on its face. That is certainly not the case here, where the Commission itself has reviewed extensive Appeal Board opinions on the subject, heard a presentation directly from Dr. Chinnery, with some rebuttal by the Staff and the Applicant, and ruled that Dr. Chinnery's methodology must be considered further.

Indeed, the Appeal Board's narrowing of the scope of this proceeding ignores the very reasons that the Commission ordered a remand. We are at an "early stage in earthquake



science" at which it is not reasonable to assert that one method of seismic analysis can be evaluated and accepted or rejected without considering the merits and uncertainties of other methods. All are subject to uncertainties. We assert that the uncertainties in the Staff's and Applicant's method render it far more questionable for use in New England than Dr. Chinnery's, yet we will be unable to address that question at all under the Appeal Board's view. To paraphrase the Commission, the Appeal Board continues to assume a greater understanding of the relationship between geology, seismology, and earthquakes than actually exists. Particularly in light of the Commission's expressed mandate for a conservative approach, and its broad reference to the "general increase in seismic knowledge," the Appeal Board has misread the remand order.

Accordingly, questions that would elicit information concerning the foundation of the Staff's and Applicant's conclusions and the uncertainties in their approaches are relevant to this proceeding, and the Staff and Applicant should be compelled to respond to NECNP's interrogatories 8, 9 and 15.

## II. These Issues Are Appropriate For Directed Certification

Normally, a discovery ruling would not be appealable. The Commission and its Appeal Board are justifiably loathe to interrupt the administrative process in the absence of compelling reasons to do so. Vermont Yankee Nuclear Power Corp.



(Vermont Yankee Nuclear Power Station), Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-421, 6 NRC 25, 27 (1977). However, this case falls squarely within the exceptions to that general rule.

Here, the significant issue is not the discovery itself, but the Appeal Board's excessively narrow view of the proceeding, as reflected in its decision. If that view is allowed to prevail throughout the hearing, the result will be a severely constricted record that will be inadequate for a decision by the Commission. Therefore, directed certification of the Appeal Board's order is required by the principle that directed certification will be granted if the ruling below "affected the basic structure of the proceeding in a pervasive or unusual manner." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station), ALAB-405, 5 NRC 1190, 1192 (1977).

The same result is reached under the test articulated in Offshore Power Systems (Floating Nuclear Power Plants), ALAB-500, 8 NRC 323 (1978), where certification was granted because (1) the issue involved novel action by the Staff, (2) the issue also involved a major question of policy with ramifications beyond that case, (3) the particular facts were not important to the decision, and (4) there were divergent views on the Appeal Board. Here, the issue is novel in that it is the first consideration of a probabilistic approach to compete with the Staff's methods under



Appendix A. It also involves a major question of seismic methodology that could have ramifications in other cases, and the particular facts are not important to the fundamental question of the approach to be taken to earthquake science in its present state. Finally, while there are not divergent views on the Appeal Board, the status of this case is far more unusual in that the Commission has already considered the issues to the extent of receiving an oral presentation and giving specific direction to the Appeal Board.

Indeed, in one of its earliest decisions in this very proceeding, the Appeal Board stated a standard that requires that these issues be certified to the Commission. In Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975), the Appeal Board ruled that certification will be granted if,

failing a certification, the public interest will suffer or unusual delay or expense will be encountered.

Here, more than two years after the Appeal Board's original ruling on seismic issues, the Commission issued a remand decision that NECNP contends the Appeal Board does not understand and is not following. The public interest has already been seriously harmed by the delay, which raises serious questions about whether the plant is being properly constructed to withstand earthquake hazards and is contrary to the need for clear and expeditious resolution of such safety matters. To allow the Appeal Board to continue on



its present course will only worsen the situation. As the Board acknowledged in the last footnote in its ruling, if it finds Dr. Chinnery's methodology to have a threshold validity, it will then have to reinstitute the proceeding to weigh that methodology against those propounded by the Staff and the Applicant. Aside from the fact that the Board's view reflects a misunderstanding of our knowledge of earthquake science, it indicates on its face that we can expect further extended delays beyond those expected by the Commission when it remanded this proceeding. Taken together with the time since the Appeal Board's original decision, since reversed, this will be at least an "unusual delay."

This harm to the public interest and unjustified delay are compounded by the fact that, unlike the Staff's and Applicant's witnesses who are well paid to support their respective positions, Dr. Chinnery appears without compensation, although his testimony is essential to meet the Commission's desire to have his methodology fully explored. If this proceeding continues under the view expressed by the Appeal Board in its discovery ruling, it will be necessary to ask Dr. Chinnery to come before a Commission tribunal for a fourth time. Such an undue burden on him and on NECNP is entirely unjustified.

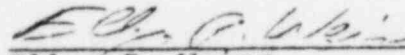
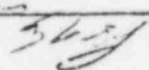
#### Conclusion


For the reasons stated above, NECNP requests that the Commission immediately direct the Appeal Board to certify to



it the Board's ruling of February 12, 1981, that the Commission reverse that ruling and compel responses to the interrogatories at issue, and that the Commission clarify for the benefit of the Appeal Board and the parties the fact that consideration of the uncertainties of the Staff's and Applicant's methods and approaches are within the scope of this proceeding.

Respectfully submitted,

  
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Washington, D.C. 20006

Counsel for NECNP

February 24, 1981



In the Matter of )  
 )  
PUBLIC SERVICE COMPANY OF ) Docket Nos. 50-443  
NEW HAMPSHIRE, et al. ) 50-444  
 )  
(Seabrook Station, Units 1 )  
and 2) )

I hereby certify that copies of the "NECNP Motion for Directed Certification and Reversal of Appeal Board Order of February 12, 1981," have been hand-delivered and mailed postage prepaid this 24th day of February, 1981, to the following parties:

\*Docketing and Service Section  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555




\* Dr. W. Reed Johnson  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

  
William S. Jordan, III

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\*/ hand-delivered.

\*\*/ Express mail.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman  
Dr. John H. Buck  
Dr. W. Reed Johnson

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE ET AL.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443  
50-444

Mrs. Ellyn R. Weiss and Mr. William S. Jordan, III,  
Washington, D. C., for the movant, New England  
Coalition on Nuclear Pollution.

Messrs. Thomas G. Dignan, Jr., and R. K. Gad, III,  
Boston, Massachusetts, for the applicants,  
Public Service Company of New Hampshire et al.

Mr. Roy P. Lessy for the Nuclear Regulatory Com-  
mission staff.

MEMORANDUM AND ORDER

February 12, 1981

We have at hand two motions of the intervenor New England Coalition on Nuclear Pollution (Coalition) to compel answers to certain interrogatories (Nos. 8, 9, and 15) which were propounded by that party to the applicants and the NRC staff in essentially identical terms. <sup>1/</sup> These interrogatories seek to elicit

1/ Also before us is the applicants' motion for an order that the discovery sought of it by the interrogatories in question ought not be had. See 10 CFR 2.740(c) and (f). A like motion was not required of the staff.

Most of the other Coalition interrogatories have been answered.

DUPLICATE



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman  
Victor Gilinsky  
Peter A. Bradford

In the Matter of

PUBLIC SERVICE COMPANY OF NEW  
HAMPSHIRE, et al

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443  
50-444

ORDER  
(CLI-80-33)

The New England Coalition on Nuclear Pollution (NECNP) has petitioned the Commission to review certain aspects of the Atomic Safety and Licensing Appeal Board's decisions regarding the seismic design of the Seabrook nuclear power plant. <sup>1/</sup> NECNP contended that the Appeal Board erred in finding Dr. Chinnery's probabilistic analysis of earthquake recurrence times technically deficient and inconsistent with 10 CFR Part 100, Appendix A (Appendix). In addition, NECNP argued that staff's correlation of the maximum vibratory ground acceleration to the Safe Shutdown Earthquake (SSE) is inconsistent with Appendix A because staff calculated this acceleration by taking the average of maximum ground accelerations for several earthquakes having the same intensity as the SSE. NECNP believes that Appendix A requires the use of the maximum vibratory acceleration that might result from the SSE.

Applicant Public Service Company of New Hampshire (PSCNH) and the NRC staff opposed Commission review contending that the seismic issues are matters of fact on which the Licensing and Appeal Boards have come to the same conclusion. 10 CFR 2.786(b)(4)(iii).

<sup>1/</sup> These decisions are ALAB-422, 6 NRC 33 (1972) and the relevant portions of ALAB-551, 10 NRC 410 (1979).

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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)

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Docket Nos. 50-443  
50-444

NECNP MOTION TO COMPEL NRC  
STAFF RESPONSE TO INTERROGATORIES

On January 2, 1981, NECNP served a set of interrogatories on the NRC Staff. In order to minimize the time spent by the Board in peripheral matters, NECNP asked that the Staff respond without requiring a motion under 10 CFR 2.720(h)(2) ii). The Staff agreed to respond to all but the following interrogatories:

Q. 8. Please describe what the Staff believes to be the tectonic province or seismic area in which the Seabrook site is located.

a. Please justify this choice in detail. In so doing, describe, explain the use of, and justify the Staff's conclusions concerning, at a minimum, the following:

1. All tectonic structures and other tectonic or seismic features, including all identified fault lines, that the Staff considered in reaching its conclusions.
2. Any new information concerning tectonic or seismic features or activity in the Northeastern United States

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DUPLICATE



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 MOTION TO COMPEL  
APPLICANT'S RESPONSE TO INTERROGATORIES

In a response received by NECNP on January 23, 1981,  
the Applicant objected to the following interrogatories posed  
by NECNP on January 2, 1981:

- Q. 3. Please describe what the Applicant  
believes to be the tectonic province  
or seismic area in which the Seabrook  
site is located.
- a. Please justify this choice in  
detail. In so doing, describe,  
explain the use of, and justify  
the Applicant's conclusions con-  
cerning, at a minimum, the  
following:
1. All tectonic structures and  
other tectonic or seismic  
features, including all iden-  
tified fault lines, that the  
Applicant considered in  
reaching its conclusions.
  2. Any new information concern-  
ing tectonic or seismic  
features or activity in the  
Northeastern United States  
that has become known to the  
Applicant since its original  
testimony on seismic issues in  
this proceeding.

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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  
50-444

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ANSWER OF PUBLIC SERVICE  
COMPANY OF NEW HAMPSHIRE  
TO NECNP MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES

STATEMENT OF THE CASE

On January 2, 1981, NECNP served upon Public Service Company of New Hampshire (PSCO) a set of interrogatories. On January 21, 1981, PSCO served answers thereto. In those answers PSCO responded to all but four of the nineteen interrogatories posed. NECNP now moves for an order compelling answers to three of the four interrogatories objected to viz. Nos. 8, 9 and 15.<sup>1</sup> All of these interrogatories (which are quoted in

<sup>1</sup> Interrogatory 16 was also objected to. NECNP does not seek to compel an answer to this interrogatory.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

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RESPONSE OF THE NRC STAFF TO NECNP'S MOTION TO COMPEL  
APPLICANT'S RESPONSE TO THREE INTERROGATORIES

---

Roy P. Lessy  
Deputy Assistant Chief  
Hearing Counsel

February 10, 1981

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DUPLICATE



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

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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.<sup>1/</sup> 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 NECNP'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.

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*8142-10444*  
DUPLICATE



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

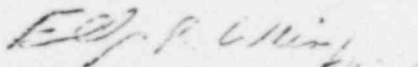



Applicant's approach must be judged. While they are relevant to the choice of tectonic province under the Applicant's method, they are also relevant to the question of which of two otherwise valid approaches must be chosen by the Appeal Board.

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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Attorneys for NECNP

DATED: February 6, 1981