



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 4, 1990

The Honorable William S. Cohen
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

I have been asked to respond to your December 12, 1989 letter in which you request the following: (1) a status report on NRC licensing activities regarding Seabrook; (2) a response to comments by two of your constituents regarding Seabrook; and (3) a copy of the NRC's response to several of your Senate colleagues concerning the procedures used by the Commission in the Seabrook licensing proceeding. I am pleased to provide you with the requested information.

First, regarding your request for a status report on the Seabrook Licensing proceeding: on November 9, 1989, an Atomic Safety and Licensing Board issued a lengthy opinion which resolved, in favor of the licensee, emergency planning issues relating to the Massachusetts portion of the emergency planning zone. In earlier opinions the Licensing Board had determined that all other issues relating to the facility had been satisfactorily resolved. Therefore, in its November 9 opinion the Licensing Board authorized the issuance of a full-power operating license for the Seabrook facility. Prior to the issuance of this decision the Atomic Safety and Licensing Appeal Board had remanded several issues back to the Licensing Board for further hearing. The Licensing Board concluded that these remands did not bar issuance of the full-power operating license. In a follow-up order issued on November 20, 1989, the Licensing Board provided a detailed explanation of its reasoning of why operation should be permitted during the pendency of the remands.

Under NRC regulations, a Licensing Board decision authorizing full-power operation does not become effective upon issuance. The Commission conducts an "immediate effectiveness" review of the Licensing Board's decision to determine whether the plant should be permitted to operate during the pendency of administrative appeals of the Licensing Board's decision. The Commission has received the views of the parties to the Seabrook proceeding on whether the Licensing Board's decision should be made immediately effective. The Commission has announced that it will not make a decision on the matter until January 18, 1990 at the earliest. In the meantime,

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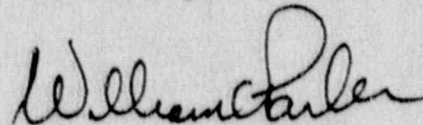
lawsuits have been filed in the United States Court of Appeals for the District of Columbia Circuit challenging various rulings in the Seabrook proceeding and requesting that the Court bar the NRC from making its immediate effectiveness decision at this time.

With respect to the concerns expressed by your constituents in the two letters, the issues they raise relate to matters being adjudicated in the Seabrook proceeding. As such, they constitute ex parte matters as defined in the Commission's regulations. See 10 CFR § 2.780. Accordingly, it is not appropriate for the Commission to comment on these issues at this time.

With respect to the issues raised by your Senate colleagues, they also raised issues directly related to the ongoing Seabrook proceeding. Accordingly, their letters were also viewed as ex parte communications under the Commission's regulations. Therefore, the Commission concluded it was inappropriate to address their concerns.

As required by our regulations, your letter and the letters of your constituents are being served on the parties to the Seabrook proceeding and will be placed in the public record of the proceeding in the Nuclear Regulatory Commission's Public Document Room.

Sincerely,



William C. Parler
General Counsel

Enclosures: As stated

cc: Seabrook Service List

January 4, 1990

The Honorable William S. Cohen
United States Senate
Washington, D.C. 20510

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*Steve Burns says you should see this.
OK 5/4/90.*



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 22, 1989

Senator Edward M. Kennedy
United States Senate
Washington, D. C. 21510

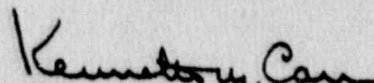
Dear Senator Kennedy:

I have received your letter of November 3, 1989, co-signed by Senator Kerry and Representatives Mavroules and Markey, in which you request the Commission's views on a number of issues concerning the Nuclear Regulatory Commission's regulations governing emergency planning for nuclear power plants. These issues are addressed in a recent decision of the Atomic Safety and Licensing Appeal Board in the ongoing Seabrook adjudicatory proceeding, Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-922, NRC (1989). The Commission is presently reviewing ALAB-922, and is considering the question certified to the Commission in that decision.

Because the questions you raise concern issues in the Seabrook adjudicatory proceeding, the Commission cannot comment on these issues at this time. See 10 C.F.R. Sec. 2.780. When the Commission has decided the issues before it, we will promptly provide you with a copy of the Commission's decision.

Commissioner Curtiss did not participate in the preparation of this letter.

Sincerely,


Kenneth M. Carr

cc: Seabrook Service List

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JOHN KERRY
MASSACHUSETTS

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United States Senate

WASHINGTON, DC 20510

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November 3, 1989

The Honorable Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington DC 20555

Dear Mr. Chairman:

We are writing to express several concerns regarding NRC regulations on emergency response plans for nuclear power plants.

As you know, recently the Atomic Safety and Licensing Appeal Board acknowledged to the Commission its inability to interpret NRC regulations (10 CFR 50.47 (a) (1)) governing what "reasonable assurance of adequate protective measures" means as it relates to emergency planning. In doing so, it is obvious to us that the Appeal Board has shown its inability to comprehend what standard governs emergency planning review.

This statement troubles us for several reasons. First, it demonstrates that ten years after Congress clearly mandated the NRC to adopt emergency planning standards, the Commission has been approving plans and nuclear operating licenses without remotely understanding the fundamental standard by which it is to judge such plans. To that end, we strongly request an immediate explanation from you on why this uncertainty regarding an issue so important as emergency planning is surfacing at this late date.

Second, in raising this question, the Appeal Board concluded that emergency planning has a lesser role in protecting public safety than siting and engineering design features. The Board characterized emergency planning as a "second tier" safety provision not tied to the requirement of "adequate protection" (section 182 of the Atomic Energy Act of the 1980 NRC Authorization Act.) We strongly disagree with this interpretation by the Board. Furthermore, as you know, over the years the Commission has repeatedly and explicitly assured us in Congress that emergency planning is a primary component to ensuring the health and safety of the public in the event of a nuclear mishap.

For example, in 1983 the Commissioners expressed their view on the importance of emergency planning before the

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Senate Subcommittee on Nuclear Regulations of the Environment and Public Works Committee. Senator Simpson the Chairman of the Committee at the time asked the NRC the following question:

To what extent are the NRC's current emergency planning requirements directly related to protection of the public health from radiological risk, and therefore deemed preemptive of local requirements on those areas?

He received the following response from the NRC:

The fundamental objective of the NRC's emergency planning regulations is to enhance protection of public health and safety in the event of a radiological emergency. This objective was explained by the Commission at the time of the proposed emergency planning rule: "The proposed rule is predicated on the Commission's considered judgement in the aftermath of the accident at Three Mile Island that safe siting and design-engineered features alone do not optimize protection of the public health and safety...The accident showed clearly that the protection provided by siting and engineered safety features must be bolstered by the ability to take protective measures during the course of an accident".

Additional statements issued over the years by the NRC have echoed similar sentiments on the importance of emergency planning.

Mr. Chairman, given the uncertainty created by the Appeal Board's recent decision and given what we have understood up until now to be a clear Commission view, we would like to receive your assurance that the NRC still views emergency planning as a "first tier" requirement of the Atomic Energy Act.

We are further concerned that the NRC may contemplate, or even rule (as the Atomic Safety and Licensing Board has in the Seabrook case ALAB-922 n.37), that emergency plans for a site are adequate as long as they represent the "best efforts" of the utility or sponsoring state under the circumstances of the particular site. It seems frightfully clear to us that under this rule, review of emergency response plans would be of little benefit. In fact, based on that scenario, utilities would be guaranteed an operating license regardless of how serious the risk could be to the surrounding populations. Surely this is not the intent of the Commission.

We recognize that this issue is at the core of the Appeal Board's uncertainty stated above. To that end, we await with great interest your development of the precise standard governing emergency planning review. In that regard, we would appreciate your assurance that "best efforts" in no way governs that standard.

Lastly, there is one final issue that relates to emergency planning standards that needs clarification. It is our view that the purpose of an effective emergency plan is to enhance the safety of the public; in other words, to reduce the dose of radiation that they may be exposed to in the event of a nuclear accident. We are confused, however, by contradicting statements made by the Commission on this issue. In a 1987 rulemaking governing utility sponsored emergency plans the Commission stated:

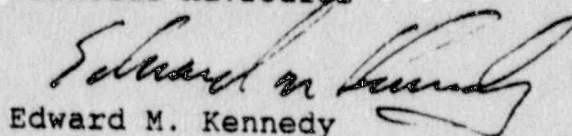
emergency plans are evaluated for adequacy without reference to numerical dose reductions which might be accomplished, ...every emergency plan is to be evaluated for adequacy on its own merits, without reference to the specific dose reductions which might be accomplished under the plan or to the capabilities of any other plan.

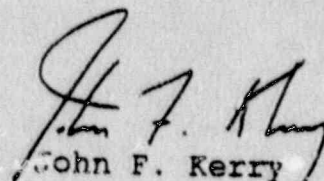
On the other hand, the Commission has said in the Shoreham decision, 24 NRC 22, 30, that emergency plans must provide "reasonable and feasible dose reductions under the circumstances." We strongly believe that dose reductions must be taken into consideration when evaluating the effectiveness of an emergency plan. Your clarification on this issue would be helpful.

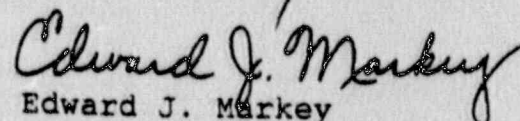
The health, safety and welfare of citizens surrounding nuclear power plants in the United States and of course the citizens near the Seabrook Nuclear Power Plant are, as you know, our utmost concern. Your ability to fully address and clarify our concerns will be very helpful in our complete understanding of the Commission's view on emergency planning. We look forward to your prompt response to all of our concerns.

Sincerely,


Nicholas Mavroules


Edward M. Kennedy


John F. Kerry


Edward J. Markey



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 28 1989

The Honorable Gordon J. Humphrey
United States Senate
Washington, D.C. 20510

Dear Senator Humphrey:

I have received your letters of November 14 and 19, 1989, in which you expressed concerns about the Atomic Safety and Licensing Board's recent decision regarding emergency planning, Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-32, NRC (1989), and the Commission's decision that it, rather than the Appeal Board, will consider all applications for stay of the Licensing Board's authorization of a full power operating license for Seabrook, Unit 1.

Because the questions you raise concern issues in the Seabrook adjudicatory proceeding, it is not appropriate for the Commission to comment on these issues at this time. See 10 C.F.R. § 2.780. However, after the Commission has decided the issues before it, we will provide you with a copy of the Commission's decision.

Commissioner Curtiss did not participate in the preparation of this response.

Sincerely,

Kenneth C. Rogers

Kenneth C. Rogers
Acting Chairman

cc: Seabrook Service List

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GORDON J. HUMPHREY
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United States Senate

WASHINGTON, DC 20510

November 14, 1989

The Honorable Kenneth M. Carr
Chairman
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Chairman:

I was astonished to find on page 569 of the Atomic Safety and Licensing Board's (ASLB) Partial Initial Decision on Seabrook that the ASLB was, in effect, ignoring four contentions with regard to the New Hampshire Radiological Emergency Response Plan which were remanded by the Atomic Licensing Appeal Board last week.

The ASLB said: "The Board has carefully read ALAB-924 [the Appeal Board's decision], evaluated the remanded issues, and studied the Appeal Board's directions to this Board. We concluded that those issues and directions do not preclude the immediate issuance of an operating license for the Seabrook Station."

I cannot recall a more disturbing disregard for the protection of public health and safety in the Seabrook proceedings. ALAB-924 was issued on November 7. It is a 71 page document. The contentions which were remanded--sheltering the beach population, evacuation of handicapped people and others with "special needs", and the safety of school children--are complex and important.

It seems inconceivable that, in less than two days, the ASLB was able to "carefully read" the order, "evaluate" the remanded issues, "study" the Appeal Board's directions and come to the conclusion that the contentions should not preclude an operating license.

Inasmuch as the adequate resolution of these contentions will directly affect the safety of New Hampshire residents, I insist that the Commission uphold due process in its administrative proceedings. In my view, the issues raised by Appeal Board last week must be resolved to assure the safety of the public. I ask that the Commission ensure that the contentions remanded last week are resolved after thorough and deliberate review before an operating license is issued.

Sincerely yours,

Gordon J. Humphrey
Gordon J. Humphrey, USS

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United States Senate

WASHINGTON, DC 20510

November 19, 1989

The Honorable Kenneth M. Carr
Chairman
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Chairman:

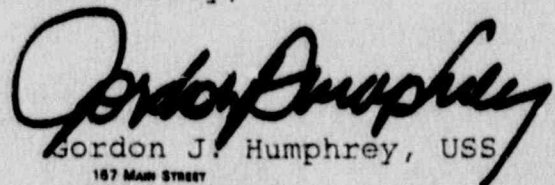
Sixty-seven years ago, with Rome in a state of siege, Benito Mussolini was called upon to head a new government. Boarding a train in Milan on his way to the capital, Mussolini said to the Station Master, "I want to depart exactly on time; from now on everything must function perfectly."

The Commission's November 16th order which effectively vacated the Atomic Safety and Licensing Appeal Board from further consideration of issues relating to the authorization of a full power license for the Seabrook Nuclear Power Station is more like a diktat from Il Duce than a deliberative decision from a regulatory body charged with protecting the health and safety of the American people. It was especially disturbing to read that the Commission made this decision "in the interests of efficiency and effectiveness..." Mussolini would have liked the Commission's attitude.

I would remind the Commission that that there are many interests involved in the Seabrook proceedings and you are obliged to respect them all. "Efficiency and effectiveness" should not be the standards against which crucial decisions affecting the health and safety of thousands of people are judged. Regulatory proceedings are generally not efficient, nor should they be, especially when protection of the public is in the balance.

The Commission's amputation of the Appeal Board is especially significant in light of the Board's recent remanding of four serious and important contentions lodged against the New Hampshire evacuation plan. I will be pushing for a full-blown Congressional investigation into this matter in the next session.

Sincerely,


Gordon J. Humphrey, USS

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 28 1989

The Honorable John F. Kerry
United States Senate
Washington, D.C. 20510

Dear Senator Kerry:

I have received your letter of November 15, 1989, in which you expressed concerns about the Atomic Safety and Licensing Board's (ASLB) handling of an Atomic Safety and Licensing Appeal Board remand and the ASLB's subsequent authorization of a full-power operating license for Seabrook.

Because the questions you raise concern issues in the Seabrook adjudicatory proceeding, it is not appropriate for the Commission to comment on these issues at this time. See 10 C.F.R. § 2.780. However, after the Commission has decided the issues before it, we will provide you with a copy of the Commission's decision.

Commissioner Curtiss did not participate in the preparation of this response.

Sincerely,

Kenneth C. Rogers
Acting Chairman

cc: Seabrook Service List

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NICHOLAS MAVROULES
9TH DISTRICT, MASSACHUSETTS

COMMITTEE
ARMED SERVICES
SMALL BUSINESS
SELECT COMMITTEE ON
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CHAIRMAN
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Washington, DC 20515**

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MAVERICK.
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MADRID
(800) 27

November 15, 1989

The Honorable Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

We are extremely dismayed over the recent decision of the Atomic Safety and Licensing Board (ASLB) authorizing a full-power license for the Seabrook Nuclear Power Plant. This decision will not only have far-reaching impacts on the people of Massachusetts and New Hampshire, but it calls into question the NRC's interpretation of due process and its commitment to faithfully execute its regulatory responsibilities. Indeed, today's decision has broad implications for all future licensing decisions nationwide.

On November 7th, the Atomic Safety and Licensing Appeal Board remanded certain issues concerning emergency planning to the Commission for further action. The Appeal Board told the ASLB to reconsider the adequacy of plans for evacuating people with special needs, sheltering the beachgoing population, and ensuring the safety of schoolchildren. Nevertheless, within a two-day period of the Appeal Board's remand, the ASLB authorized the issuance of a full-power license for the plant, leaving these critical issues of emergency preparedness unanswered. This hasty and ill-advised action did not even provide the parties involved in the appeals process with an opportunity to comment upon the concerns identified by the Appeal Board.

In our November 3rd letter to you (copy attached), we requested clarification of an issue raised by the Appeal Board regarding the standards governing emergency planning for the New Hampshire and the Massachusetts communities within the 10-mile

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EPZ. To date, the Commission has not offered to us or to the Appeal Board any explanation or elaboration on these emergency preparedness standards. One can only assume that the ASLB believes emergency preparedness standards to be unimportant or unrelated to the licensing process. Nothing could be further from the truth. We cannot comprehend how the Commission could consider affirming the ASLB ruling authorizing the issuance of a license to a nuclear power plant without a full resolution of all emergency preparedness issues.

The people living near the Seabrook facility deserve the maximum protection possible. Forging ahead with a full power license at this time is a disservice to these residents, and it raises serious doubts concerning the NRC's ability to protect the public in the event of a radiological emergency.

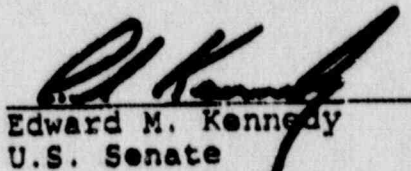
We are deeply disturbed with the ASLB's attempt to circumvent the administrative appeal mechanism that was established to ensure public input into the licensing process. We believe that this action represents a flagrant disregard for proper procedure and for statutory intent. Consequently, we have asked the congressional committees with oversight of the Commission's activities to initiate an immediate review of recent decisions relating to the Seabrook plant.

We urge the Commission to postpone any further consideration of licensing the Seabrook Nuclear Power Plant until all questions raised by the Appeal Board have been fully addressed, and until the Agency's appellate process on all emergency planning issues has been completed. We look forward to your prompt response.

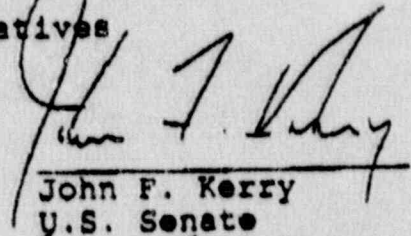
Sincerely,



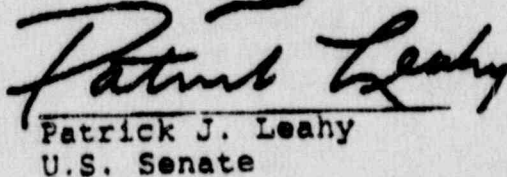
Nicholas Mavroules
House of Representatives



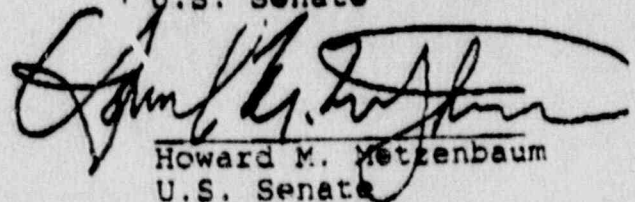
Edward M. Kennedy
U.S. Senate




John F. Kerry
U.S. Senate

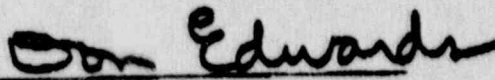


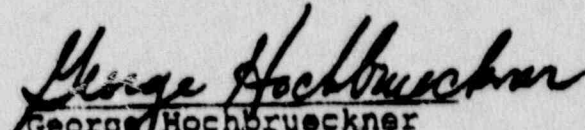
Patrick J. Leahy
U.S. Senate

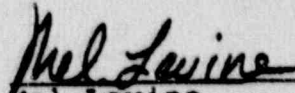



Howard M. Metzenbaum
U.S. Senate

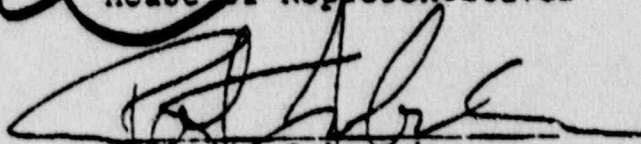

Chester Atkins
House of Representatives

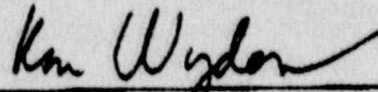

Don Edwards
House of Representatives


George Hochbrueckner
House of Representatives


Mel Levine
House of Representatives

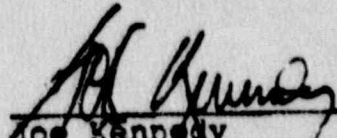

Leon Panetta
House of Representatives



Patricia Schroeder
House of Representatives

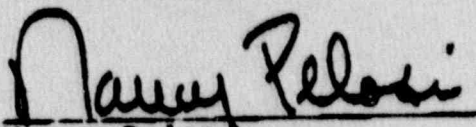

Ron Wyden
House of Representatives

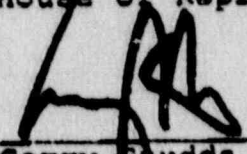

Joseph E. Brennan
House of Representatives


Barney Frank
House of Representatives


Joe Kennedy
House of Representatives


Edward J. Markey
House of Representatives


Nancy Pelosi
House of Representatives


Gerry Studds
House of Representatives