COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 12, 1989

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

Dear Chairman Carr:

The Oversight and Investigations Subcommittee is initiating a comprehensive inquiry into NRC licensing proceedings and interpretations of law that appear fundamentally at odds with the agency's safety mission. This inquiry has been prompted by the steady erosion of safety standards enacted by Congress following the major nuclear accident at Three Mile Island in Pennsylvania, and by the extraordinary series of apparently contradictory actions recently taken by the Commission and its Licensing Board concerning the application for a full power operating license at Seabrook Station in New Hampshire.

Erosion of Reasonable Assurance Standard

On March 28, 1979, the most serious accident in the history of the U.S. civilian nuclear power program occurred at Three Mile Island. Subsequently, this committee, pursuant to its jurisdiction over the regulation of the domestic nuclear power industry, conducted a thorough investigation of this accident and of the regulatory deficiencies made apparent by this accident. On the basis of this investigation, a series of reforms were recommended by this committee and enacted into law in the 1980 Authorization for the Nuclear Regulatory Commission.

These reforms included a requirement that the NRC adopt, for the first time, mandatory rules with respect to emergency response to supersede the "voluntary guidelines" then in place. These rules were to specify that no operating license could issue until the NRC had approved emergency response plans which provide "reasonable assurance that public health and safety is not endangered by operation of the facility." Congress made clear in the conference report its intention

"that ultimately every nuclear powerplant will have applicable to it a state emergency response plan that provides reasonable assurance that the public health and safety will not be endangered in the event of an emergency at such plant requiring protective action."

In response, the NRC adopted regulations which now require, as a condition of receiving an operating license, an emergency response plan which provides "reasonable assurance that adequate protective measures can and will be taken" during an emergency.

Subsequent NRC decisions have, unfortunately, raised questions concerning the Commission's willingness to implement this requirement consistent with Congressional intent.

For example, in 1986 the NRC issued an emergency planning decision in the case of Shoreham (CLI-86-13) which declared that an emergency evacuation plan did not have to attain minimum radiation dose savings or evacuations times, but only achieve reasonable and feasible dose reductions "in the circumstances at that facility."

And in 1987, the Commission declared in a Statement of Considerations for rule amendments that "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 capabilities of any other plan."

Based on these declarations one might reasonably be puzzled about whether the NRC is attempting to circumscribe the emergency evacuation requirements. This puzzlement grows to concern, however, following a recent decision by the NRC's own Appeal Board giving weight to the argument that the focus of a "reasonable assurance" finding "should be on the objective review of planning efforts and plan implementation...rather than on the more subjective judgments about whether a particular plan affords an 'adequate' level of protection or entails too great a degree of risk." (ALAB-922 at 23-24).

It is apparent that the Commission is dangerously close to twisting the intent of Congress to a point where it can no longer be said that the public health and safety protection afforded by one emergency plan is equivalent to another. Moreover, the Commission has drifted off course to such an extent that apparently plans might be approved as "reasonable" without judging the level of risk to which the population near the plant is exposed.

Fortunately, in ALAB-922 the Appeal Board was sufficiently confused about NRC interpretation of "reasonable assurance" that it has certified that question to the Commission, noting that the Commission's answer to this question "is of pivotal

importance to the emergency planning matters before us [the Seabrook case] ...and has important policy implications for emergency planning in general."

Unfortunately, in the same decision, the Appeal Board concluded that emergency planning is a "second-tier" safety measure, inferior to that of siting and design. That view clashes fundamentally with this Committee's intent as reflected in the 1980 Authorization Act and with the Commission's own statement in 1979 that it proposed "to view emergency planning as equivalent to, rather than secondary to siting and design in public protection." 44 Fed. Reg. 75169.

As you know, the significance of this distinction is the difference between whether or not a plant should be issued an operating license.

Fairness of Licensing Process in Question

Confusion over such pivotal issues ten years after Three Mile Island is a serious problem in its own right, but recent developments in the Seabrook case related to resolving this confusion now threaten to overrun rational decisionmaking and to compromise the integrity of the Commission.

I am referring to the extraordinary series of events which followed ALAB-922, including: 1) November 7, reversal by the Appeals Board of the Licensing Board decision to approve New Hampshire's Seabrook evacuation plan (ALAB-924); 2) November 9, a Licensing Board decision to authorize granting the full power operating license to Seabrook despite the reversal of its New Hampshire plan decision just 48 hours earlier and despite the fact that a question "pivotal" to the outcome of the licensing proceeding was pending before the full Commission; 3) November 16, a decision by the full Commission to short-circuit the Appeal Board by asserting jurisdiction over the interveners Motion to Revoke and initiating an "immediate effectiveness review" of the November 9 Licensing Board decision to authorize the license.

Without getting into the merits of this ongoing proceeding, it seems preposterous for the Licensing Board to authorize a license while the NRC has pending before it the question of the standard for judging whether the evacuation plans for that plant are adequate. Until the standard is known, it is impossible to judge whether the standard has been met.

It seems equally preposterous for the Licensing Board to take final action in a case 48 hours after it has been reversed on an earlier decision which is the necessary predicate for final action. When the Licensing Board can ignore the decisions of the Appeal Board, all semblance of fairness is lost and the due process protections afforded affected parties become a sham.

Questions

Given these concerns, I would appreciate your prompt cooperation in answering the following questions:

1. Does the NRC agree that it is legally required to deny an operating license to a new plant for which a state, local or utility plan meeting the "reasonable assurance" standard legislated in the 1980 NRC Authorization bill has not been approved?

2. Is it relevant to judging the adequacy of a proposed emergency evacuation plan that:

a. the site of a plant makes it unusually difficult to evacuate? If not, why not?

b. a significant number of the people the plan is intended to protect are not likely to avoid lethal radiation doses within the first 8 hours after a major accident? If not, why not?

c. the radiation dose savings are lower and the evacuation times are higher than for similar plants in other locations? If not, why not?

3. Please provide the Subcommittee with a legislative and regulatory history of the "reasonable assurance" standard. Please include:

a. any opinion of the General Counsel of the NRC which deals with the interpretation of this standard.

b. any reference in the statute or the legislative history which supports the view that this standard could be lower for a plant with a site which is relatively difficult to evacuate than for a plant which is relatively easy to evacuate?

c. a list of all decisions made by the Commission or its lower boards in which the "reasonable assurance" standard was applied.

4. When the Commission adopted the emergency response rules in response to the Three Mile Island accident, it declared that it "recognizes that this proposal, to view emergency planning as equivalent to, rather than secondary to siting and design in public protection, departs from its prior regulatory approach to emergency planning." 44 Fed. Reg. 75169. Has the Commission departed from this view as expressed when the rule was adopted? If yes, why?

5. Does the Commission agree that it is not sufficient to meet the "reasonable assurance" standard for an applicant to show that it has done its best to plan for as efficient an evacuation as possible?

6. On what basis did the Commission decide to take the unusual step of interfering with the normal appeal rights of the the Seabrook interveners by removing the Appeal Board from the appellate process after it reversed the Licensing Board and by initiating an "immediate effectiveness" review? Please provide the Subcommittee with the opinion of the Office of General Counsel or any other similar opinion used by the Commission to guide its decision to review the consistency of LBP-89-32 with ALAB-924 as a matter of "immediate effectiveness" rather than on the merits.

7. Since 1989, has the NRC ever issued a full power operating license to an applicant who did not have an approved emergency response plan at the time the license was issued? If yes, please provide a detailed explanation for each decision and an explanation of how each decision is consistent with the 1980 NRC Authorization Act.

8. Have decisions of the Atomic Safety and Licensing Appeal Board ever before been overruled by the Atomic Safety and Licensing Board? If yes, please provide a detailed explanation of the circumstances and a justification that addresses how this is consistent with the Administrative Procedures Act, relevant statutes, and fundamental fairness to the parties.

9. Has the Licensing Board ever before granted authority to issue an operating license while an appeal is pending before the Appeal Board? If yes, please provide a detailed explanation and justification consistent with the Administrative Procedures Act, relevant statutes and fundamental fairness to the parties.

10. Has the Licensing Board ever before granted authority to issue an operating license while an issue described as "pivotal" to approving the application has been certified to the full Commission and is still pending there? If yes, please explain.

11. Are any of the current Commissioners precluded from deliberating matters concerning the licensing of Seabrook? If yes, please list the person affected and the nature of the problem.

I would appreciate receiving these responses at your earliest

convenience, but in any case no later than December 20, 1989. Please call me or my staff director, Mr. David Weiss, should you have any question concerning this letter.

Sincerely,

Peter H. Kostmayer
Chairman

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL. (Seabrook Station, Units 1 and 2)	Docket No.(s) 50-443/444-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LTR CARR TO KOSTMAYER - 12/20 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
21 day of December 1989

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