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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Kenneth M. Carr, Chairman  
Kenneth C. Rogers  
James R. Curtiss  
Forrest J. Remick

SECRET

SERVED OCT 26 1990

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, ET AL.

(Seabrook Station, Units 1 and 2)

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

Offsite Emergency Planning

ORDER

CLI-90-10

The Commission decides today yet another in a series of reopening and "emergency" motions filed before it or its adjudicatory boards in the Seabrook nuclear facility operating license proceeding. The evidentiary record in Seabrook has long been closed save for remanded matters, and the Seabrook reactor is in commercial operation. The instant motion, styled "Intervenors' Emergency Motion to Reopen the Record on the Adequacy of the Staffing of the NHRERP and for Immediate Shutdown" claims that further evidentiary hearings are required with regard to allegedly inadequate staffing for the New Hampshire Radiological Emergency Response Plan (NHRERP) and seeks an immediate shutdown of the reactor due to the alleged inadequacy. We conclude that the request fails for lack of a showing of an actual safety problem to support reopening a closed record or plant shutdown.

D502

The Intervenor's motion<sup>1</sup>, dated August 7, 1990 --9 months after the Licensing Board authorized issuance of a full power license, is based on allegations by Mr. Michael C. Sinclair, an emergency planning consultant formerly employed by Applicants. The allegations appear in an affidavit executed by him on August 6, 1990. The essence of that affidavit is that since completing his work in 1989 to update Seabrook staffing rosters and based chiefly on his conversations with government officials, Mr. Sinclair has come to believe that staffing levels for the New Hampshire emergency response have fallen significantly. In his view, the extent of vacant positions is so unacceptably large as to prevent a current finding that the New Hampshire emergency plan would provide adequate protection for the public health and safety.<sup>2</sup>

Intervenor's motion was answered by the Applicants and NRC staff who each opposed it. Both the Applicants and staff provided affidavits by cognizant

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<sup>1</sup>In this order the term Intervenor refers to the Attorney General of the Commonwealth of Massachusetts, the New England Coalition on Nuclear Pollution and the Seacoast Anti-Pollution League whose joint motion is before us and whose intervention has been the most active in this licensing matter.

<sup>2</sup>Intervenor's claim a violation of a specific condition imposed by the Licensing Board as a precondition of licensing. The Licensing Board required that:

- (a) the Director of Nuclear Regulation, in consultation with the Federal Emergency Management Agency, shall confirm that the State of New Hampshire has provided for FEMA review satisfactory personnel rosters and call lists of compensatory plan and reception center emergency workers as discussed in § 5.

LBP-8832, 28 NRC at 804. That condition was met, as required, before license issuance.

officials who attested to a current vacancy roster of three positions.<sup>3</sup> In an affidavit provided by FEMA on August 21, 1990 in response to the staff's inquiry and included by the staff in its August 22 answer to intervenors' motion, the responding FEMA official concluded that "the small number of vacancies that existed [in New Hampshire emergency plan staffing] did not affect the State's ability to staff and implement the NHRERP." Affidavit of Richard W. Donovan, dated August 21, 1990, numbered paragraph 8. FEMA also separately reported to staff by memorandum of August 21, 1990 (attached to Staff Response).

By letter dated August 29, 1990, counsel for Seacoast Anti-Pollution League advised that Intervenor would file a further affidavit in response to the licensee's and staff's affidavits. The supplemental affidavit of Mr. Sinclair, dated September 7, 1990, was filed under cover of a motion to accept it for filing. The cover motion characterized the supplemental affidavit as clarifying that the affidavits filed by staff and the applicants "do not support a finding of reasonable assurance that adequate protective measures can be taken, in regard to implementation of the NHRERP." The Sinclair supplemental affidavit was critical of the staff and applicants' affidavits for having failed to deal with the adequacy of training of the staffing resources. The affidavit itself also expressed concerns about the

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<sup>3</sup>On August 16, 1990 Mr. George L. Iverson, Director of the New Hampshire Office of Emergency Management, attested to three vacancies as of August 15. By a later affidavit, dated August 21, Mr. Iverson modified that statement to include an additional vacancy for a total of four vacancies as of August 15. FEMA's report by Region I Director Richard H. Strome acknowledged three vacancies, noting that a fourth vacancy, the position of Health Officer in the Town of Exeter, was filled on the afternoon of August 16, 1990, apparently unknown to Mr. Iverson when he submitted his affidavit of that date. See Memorandum from Richard H. Strome to Grant C. Peterson, Associate Director, NRC State and Local Programs and Support, dated August 21, 1990.

effect of New Hampshire employment freezes on future staffing levels and espoused the view that reasonable assurance that public health and safety will be protected only when Federal regulations mandate the perpetual maintenance of a fixed level of trained emergency personnel response capability. Applicants filed a supplemental affidavit of Mr. George L. Iverson dated September 24, 1990.<sup>4</sup>

The Commission considered all of these papers in reaching its decision.

#### DECISION

1. At the outset, there is doubt whether we need entertain this motion to reopen<sup>5</sup>--coming as it does significantly after a license has issued and after resolution of any contentions on the adequacy staffing for the New Hampshire plan had achieved administrative finality.<sup>6</sup> See this docket, CLI-90-3, 31 NRC 219, 256 (1990). Because the motion, when considered in conjunction with all of the submittals of the parties, so clearly fails at least two of the three criteria required to obtain reopening of a closed record, we address the reopening criteria directly rather than the threshold issue that has not been fully briefed by the parties.

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<sup>4</sup>On September 27, 1990, the NRC staff filed its "Response to Intervenors' Motion to File Supplemental Affidavit in Support of Emergency Motion to Reopen the Record." The response discussed the supplemental affidavits of the other parties, but sponsored no further affidavit on the staff's behalf.

<sup>5</sup>The motion is before us because Intervenors themselves apparently concluded that no jurisdiction lay before our subordinate boards to consider this matter. There are of course avenues to seek consideration of significant safety concerns other than the route of adjudicatory hearings. See, e.g., 10 C.F.R. § 2.206.

<sup>6</sup>The Licensing Board's findings on the adequacy of NHRERP personnel resources were affirmed by the Appeal Board in ALAB-932, 31 NRC 371, 380-90 (May 31, 1990), Commission review declined (July 12, 1990).

2. Litigants here have been made well aware that proponents of a reopening motion bear the burden of meeting all of the following requirements:

- (1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
- (2) The motion must address a significant safety or environmental issue.
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially. 10 C.F.R. § 2.734.

a. If we are to consider the proper base date for judging timeliness to be the date upon which Mr. Sinclair first made known his concerns on the record of this proceeding, we agree that the motion would be timely. However, Applicants have suggested that timeliness should be judged from the time of public knowledge of the root-cause budget cuts and employment freeze which underlie Mr. Sinclair's concerns. Applicants suggest that the Intervenors were then on notice of sufficient facts to alert them to raise earlier any issue of staffing deficiencies resulting from such cuts. Because we decide the remaining two criteria against Intervenors we need not and do not resolve the issue raised by Applicants. However, we note as future guidance that, absent exceptional circumstances<sup>7</sup>, new letters or expressions of concern opposing a license which are not themselves promptly developed on new information cannot open anew an opportunity for a timely reopening motion. To permit otherwise would open a door to abuse and prolong further our already overlong proceedings.<sup>8</sup>

b. With respect to safety significance, the short answer is that according to the affidavit of Mr. George L. Iverson, Director of the

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<sup>7</sup>See 10 C.F.R. § 2.734(a)(1).

<sup>8</sup>Other means to pursue safety concerns than litigation are of course open without limitation as to "timeliness."

New Hampshire Office of Emergency Management "as of August 15, 1990, there are [4] vacancies in the 1263 positions needed to staff the NHRERP."<sup>9</sup> That number hardly signals a deficiency with significant safety implications.<sup>10</sup>

In addition, FEMA has concluded that "the small number of vacancies that existed did not affect the State's ability to staff and implement the NHRERP." Affidavit of Donovan par.8. FEMA's views carry great weight and are rebuttably presumed correct in our emergency planning proceedings. See 10 C.F.R. § 50.47(a)(2). We agree with the Applicants and the Staff that Mr. Sinclair's belief and understanding of what he was told by cognizant officials as well as his conjecture on the implications of that information cannot stand against the affidavits of the same officials or others with first hand knowledge and expertise. Thus, we find that the motion to reopen does not present a question of safety significance.

Apparently recognizing the weight of the evidence contrary to the claims in his first affidavit, in his latest affidavit Mr. Sinclair attempts to shift his emphasis from staffing numbers to uncertainties about training. While his first affidavit mentioned training, Mr Sinclair did not there develop that theme so as to have placed the parties on notice that they should reply to it. Mr. Sinclair's supplemental affidavit did not provide a sufficient factual

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<sup>9</sup>Affidavit of George Iverson dated August 16, 1990. Bracketed material is in accordance with Mr. Iverson's affidavit dated August 21. See n.3 supra. Mr. Iverson's fact-specific affidavit is particularly significant in light of Mr. Sinclair's less specific conclusions based on his recollection of Mr. Iverson's alleged statements and alleged agreement with Mr. Sinclair's speculation about possible future reductions in staffing. See, e.g., Affidavit of Sinclair, dated August 6, at paragraph 8.

<sup>10</sup>It should be abundantly clear that such figures or even the earlier figures of 22 vacancies (less than 2%) would not provide the predicate for an immediate shutdown, and we deny Intervenors' motion for such an order. Some minimal turnover is to be expected and is acceptable in both the public and the private sectors.

basis for his training concerns to cause us to seek the responses of the licensees or the staff<sup>11</sup>, and is certainly not sufficient to find that there is an actual safety problem concerning training, which needs to be addressed. Speculation about future effects of budget curtailments or freezes such as provided by Mr. Sinclair does not satisfy the Commission's reopening requirement that a significant safety issue must be addressed. It also does not warrant emergency action.

c. Because this matter as presented is devoid of safety significance, we see no likelihood whatsoever--let alone a demonstration --that a materially different result would be or would have been likely had the newly proffered evidence been considered initially. Accordingly, the third factor counts against Intervenors as well.

3. It remains only for us to add that Mr. Sinclair's final comments, linking a lack of assurance of protection for the public to the absence of a more rigid regulatory mandate, suggest his dissatisfaction with the current state of the regulations and a tacit admission that, as the regulations now stand, there are no grounds for an enforcement action against the applicants. Mr. Sinclair's recourse, if any, lies in rulemaking -- not in extending the Seabrook hearing. However, without deciding, it appears to us unlikely that the Commission will agree to propose a rule so unrealistic as not to allow for reasonably expectable personnel change and turnover.

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<sup>11</sup>Nonetheless, Applicants have provided a supplemental affidavit for Mr. Iverson dated September 24, 1990. The affidavit answers some confusion or questions posed by Mr. Sinclair's supplemental affidavit. We accept Mr. Iverson's supplemental affidavit for the record; however, we need not discuss it as Mr. Sinclair's supplemental affidavit standing alone had not provided information of sufficient weight to show a significant safety issue.

Intervenors' motion is denied.

Commissioner Curtiss did not participate in this matter;  
Commissioner Remick abstained in this matter.

It is so ORDERED.



Dated at Rockville, Maryland  
this 26 day of October, 1990

For the Commission,

A handwritten signature in black ink, appearing to read "Samuel J. Chalk". The signature is written over a horizontal line.

SAMUEL J. CHALK  
Secretary of the Commission



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-DL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER (CLI-90-10) 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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Docket No. (s) 50-443/444-OL  
COMMISSION ORDER (CLI-90-10)

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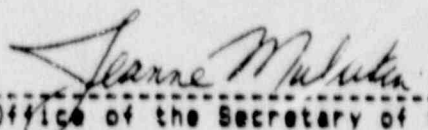
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Docket No. (s) 50-443/444-DL  
COMMISSION ORDER (CL1-90-10)

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Dated at Rockville, Md. this  
26 day of October 1990

  
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Office of the Secretary of the Commission