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USNRC

December 20, 1990  
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UNITED STATES OF AMERICA  
before the  
NUCLEAR REGULATORY COMMISSION

COPY OFFICE OF SECRETARY  
NUCLEAR REGULATORY COMMISSION

In the Matter of

PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1  
and 2)

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

(Offsite Emergency  
Planning and Safety  
Issues)

LICENSEES' ANSWER TO INTERVENORS'  
PETITION FOR REVIEW OF ALAB-941

Under date of December 10, 1990, certain of the intervenors herein filed a Petition for Review of certain portions of the decision issued by the Appeal Board in the above numbered proceeding denominated ALAB-941.<sup>1</sup> In particular, the intervenors take issue with (1) the Appeal Board's affirmance of the Licensing Board decision excluding a contention designated SAPL EX-12 from litigation; (2) the affirmance of the Licensing Board's decision to exclude Basis F of MASS AG Contention EX-2 from litigation; and (3) the fact that the Appeal Board did not revoke the outstanding operating license for Seabrook even though

<sup>1</sup>Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-941, 32 NRC \_\_\_\_ (Nov. 21, 1990) (hereafter cited as ALAB-941 and to the slip opinion).

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it held that the scope of the exercise was insufficient insofar as it did not encompass sufficient, in the Appeal Board's judgement, participation by school administrators. We address each of these points seriatim below.

#### Rejection of SAPL Contention EX-12

SAPL Contention EX-12 sought to have admitted for litigation the issue of whether the exercise of 50% of the reception centers in New Hampshire was sufficient.<sup>2</sup> The Intervenors state that the Appeal Board erred in holding that the requirement of anything less than 100% of such facilities is forbidden by the "standard set forth in 10 CFR Part 50, App. E IV.F.1 as to what constitutes a full participation exercise." Petition at 4. The standard is set out in footnote 4 to the text of the regulation<sup>3</sup> and is, as the Appeal Board noted, testing ". . . resources in sufficient numbers to verify the capability to respond to the accident scenario." The Intervenors' argument is frivolous.

#### MASS AG Contention EX-2, Basis F

By Basis F of MASS AG Contention EX-2, the Attorney General of The Commonwealth of Massachusetts (MAG) sought to have

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<sup>2</sup>In their petition, the Intervenors make much of the fact that the Appeal Board's decision as initially issued, indicated that Board's belief that the contention addressed the reception centers in Massachusetts. Petition at 3-4. Obviously, this was an inadvertence in composition, because on November 27, 1990, the Appeal Board issued a correction document wherein it changed the references to "Massachusetts" to "New Hampshire."

<sup>3</sup>Which is every much a part of the regulation as the body of the text. Long Island Lighting Company (Shoreham Nuclear power Station (Unit 1), 28 NRC 275, 292 (1988)).

admitted for litigation whether there was a deficiency in the scope of the exercise because the congregate care centers in Massachusetts, which are to be staffed by the American Red Cross (ARC) under the provisions of the Seabrook Plan for Massachusetts Communities (SPMC), were not activated. The Licensing Board excluded this contention on the grounds that such activity was not reasonably achievable because ARC in Massachusetts was refusing to participate at the request of the Governor of The Commonwealth who was, at that time, seeking to preclude Seabrook operation by any and every device available to him. In light of that fact, the Licensing Board held that (1) there is a presumption that ARC would respond in a real emergency, and (2) that due to its decision to obey the wishes of the Governor that it not participate in the exercise, activation of the congregate care centers was not reasonably achievable.

The Appeal Board questioned<sup>4</sup> that ruling, but upheld the decision on the ground that there would be little to be gained in litigating a scope contention founded solely on the declination of ARC to participate in a response role which it traditionally fulfills in light of this Commission's decision in the Shoreham proceeding.<sup>5</sup>

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<sup>4</sup>The Appeal Board did not reject the ruling as Petitioners state in the Petition. It questioned it and went on to say that the correctness was irrelevant for the other reason discussed in the text hereinafter.

<sup>5</sup>Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-87-5, 25 NRC 884, 887-88 (1987).

Both the Licensing Board's and the Appeal Board's reasoning is sufficient to support the result reached.<sup>6</sup>

#### The Relief Afforded

The Intervenors' last complaint is that the Appeal Board should have revoked the outstanding Seabrook operating license in light of its reversal of the Licensing Board's determination that the exercise was adequate in scope insofar as participation by school administrators was concerned. Such a holding, according to the Intervenors, dictated a revocation of the license. However, as the Appeal Board itself held, the sole remedy for a minor scope deficiency, assuming one to exist, is to run a partial remedial exercise,<sup>7</sup> because in no circumstances can a lack of appropriate scope per se establish a fundamental flaw in the plan.<sup>8</sup>

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<sup>6</sup>Intervenors argue at page 7 of their petition that the result should be reversed because allegedly a number of the congregate care centers in Massachusetts exceed what Intervenors characterize as the "standard" for numbers of persons to be cared for. Prescinding from the mischaracterization of the matter, the fact is that that issue is not one that would have been litigated under this contention in any event.

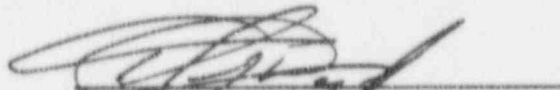
<sup>7</sup>ALAB-941 at 26.

<sup>8</sup>ALAB-941 at 30 citing Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-88-11, 28 NRC 603, 604 (1988).

CONCLUSION

The petition for review should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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I, Thomas G. Dignan, Jr., one of the attorneys for the Licensees herein, hereby certify that on December 20, 1990, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or where indicated, by depositing in the United States mail, first class postage paid, addressed to) the individuals listed below:

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