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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'91 FEB 15 P4:02

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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
Off-site Emergency Planning

NRC STAFF COMMENTS ON LICENSEES' PROPOSED
CERTIFICATION QUESTION REGARDING SHELTERING

On January 28, 1991, the Licensees filed a proposed question, in the form of a draft memorandum and order for the Licensing Board's signature, for certification to the Appeal Board regarding the questions posed in ALAB-939, 32 NRC 165, 179-80 (1990).^{1/} In accordance with the Board's Memorandum and Order, dated January 24, 1991 (unpublished), the Staff submits the following comments "as to the appropriate question to be certified" to the Appeal Board. Order at 1.

PROPOSED QUESTION FOR CERTIFICATION

The Draft Order adequately highlights the pertinent Appeal Board rulings in ALAB-939 concerning the three matters upon which clarification was sought in light of post-remand filings on whether sheltering the general beach population is a planned protective action for Condition (1) at the General Emergency level under the New Hampshire Radiological Emergency Response Plan (NHRERP). The Draft Order also recounts that the filings of the State of New Hampshire on the three questions posed in

^{1/}Licensees' Suggestion for Certified Question, dated January 28, 1991, appending [Draft] Memorandum and Order (Certifying Question to Appeal Board), dated February __, 1991 ("Draft Order").

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ALAB-939 "asserts unequivocally that ' . . . with respect to Condition(1), the short duration non-particulate caseous puff release, evacuation - not shelter-in-place - is the planned protective action'" and that this assertion was confirmed under oath by the Director of the New Hampshire Office of Emergency Management. Draft Order at 5, quoting Memorandum of the State of New Hampshire on ALAB-939, dated January 10, 1991; Tr. 28493.

The specific question proposed by the Licensees is as follows:

May the Licensing Board treat the factual statement in the Memorandum of the State of New Hampshire on ALAB-939 as equivalent to record evidence or the proper subject of official notice so as to supply the necessary record foundation for resolution of the matters remanded in

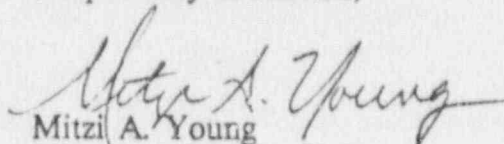
ALAB-939?

Draft Order at 6. The Staff, however, suggests that the following question be certified:

May the Licensing Board treat the January 10, 1991 Memorandum of the State of New Hampshire, attested to by Mr. Iverson (Tr. 28493), as a sworn statement of cognizant New Hampshire officials that evacuation is the only planned protective action for the general beach population in ERPA A at the General Emergency level under the NHRERP, in considering a motion for summary disposition or as otherwise resolving the matters posed in ALAB-939 (32 NRC 165, 178-79)?

The Staff believes that this statement would better focus the issue of whether the recent statements of the State of New Hampshire may be relied on in the proceeding to clarify the record and resolve matters identified in ALAB-939. Accordingly, the Staff suggests that the Board accept this proposal in lieu of the question posed in the Draft Order.

Respectfully submitted,


Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of February, 1991

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF COMMENTS ON LICENSEES' PROPOSED CERTIFICATION QUESTION REGARDING SHELTERING" in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisks, by facsimile transmission, or, as indicated by triple asterisks, by express mail, this 15th day of February 1991:

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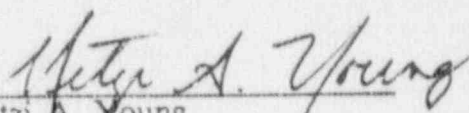
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