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March 18, 1991

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING APPEAL 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

(Offsite Emergency  
Planning Issues)

LICENSEES' RESPONSE TO APPEAL  
BOARD ORDER OF MARCH 8, 1991

On March 8, 1991, this Appeal Board issued an order requesting each of the parties herein to apprise this Appeal Board of that party's views as to which, if any, of the issues still remaining before this Appeal Board in this proceeding have been affected by a recent executive order issued, on March 6, 1991, by the Governor of The Commonwealth of Massachusetts. That executive order essentially reverses the prior policy of The Commonwealth of not engaging in emergency planning in connection with the Seabrook project and not cooperating in any way with the project.

It is the Licensees view that, in and of itself, the executive order does not affect any issue before the Appeal

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Board, unless and until the Appeal Board takes official notice of it under the regulations of the Commission. 10 C.F.R.


§ 2.743(i). Assuming the Appeal Board's willingness to take such official notice, then the Licensees believe that a number of the issues now on appeal should be dismissed as moot. These include:

1. The issue of whether The Commonwealth will, in fact, follow the SPMC in the event of an emergency. See, e.g., MAG Br. at 9. Obviously The Commonwealth is now cooperating, will become familiar with the SPMC, and, at least until an adequate state sponsored plan is in place, will follow that plan. Thus, there is no need for this Appeal Board to deal with the assertions by MAG that there is an issue, despite the regulatory presumption, as to whether Massachusetts will follow the SPMC.
2. The executive order moots the issue of whether the Governor can and will delegate the necessary authority to permit execution of the SPMC. See MAG Br. 15-16. Consistent with the executive order, this Governor will do so.
3. It would seem that the issue as to whether the Licensing Board properly excluded certain letters sent by the Massachusetts Department of Public Health to certain out of state ambulance companies has been mooted. See MAG Br. at 47-50. Prescinding from the tenuous legality of the letters in the first place, and

also from the fact that the threats made therein have never been acted upon or carried out, it is now clear that the present administration is not going to engage in this type of harassment and conduct, or otherwise attempt to preclude out-of-state ambulance companies from assisting in the event of an emergency.

4. The issue of whether local and state police will assist in locating and removing road impediments, see MAG Br. at 59, would appear to be clearly moot in light of the executive order.
5. The issue of whether the Haverhill facility will be available, see MAG Br. at 70 ff. is moot. It can be presumed that Haverhill, which has not pushed any law suits in any event since the licensing of Seabrook will not do so in light of the executive order.
6. Now that The Commonwealth is engaged in planning, presumably, the Red Cross will also participate in planning, and therefore the arguments as to the Red Cross' participation being ad hoc would appear to now be moot. See MAG Br. at 86-87.

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 March 18, 1991, 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):

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(\* = Ordinary U.S. First Class Mail.)