



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 26, 1982

MEMORANDUM FOR: Duke Wheeler
NRR

FROM: Andrew Grosso
ELD

SUBJECT: SEABROOK § 2.206 PETITION

As you are aware, on February 8, 1982, the Commission received a 2.206 Petition from Mr. Robert A. Backus with regard to the two Seabrook Nuclear Power Plants now under construction. That petition requested a hearing on the issue of whether the construction licenses of the Public Service Company of New Hampshire (PSCNH) should be revoked for failure to meet the financial qualifications requirements of 10 CFR 50.33(f).

On March 11, 1982, the Commission approved a new rule which, inter alia, eliminates these financial qualification requirements. This portion of the new rule will be effective upon publication, which may occur the week of March 29, 1982. As a result, the bulk of Mr. Backus' petition seems to be moot, with but one important exception. Since the financial condition of a licensee may have an impact upon Quality Control (QC) at a site, and since QC remains a concern of the NRC notwithstanding the new rule, an inquiry is in order as to whether or not the deteriorating financial situation of PSCNH is resulting in hazardous construction practices. The purpose of this inquiry would be to determine if an order to show cause is warranted on the question of whether the construction permits of PSCNH should be modified, suspended or revoked if QC deterioration has occurred from its financial difficulties.

Although arguably such an issue is not set forth under a strict reading of Mr. Backus' petition, the issue is too closely related to what Mr. Backus has explicitly sought for the NRC to properly ignore it. In addition, a second petition, directly on this question, can be expected shortly after any blanket dismissal of the present petition.

While leaving the mechanics of this inquiry to your office and to Region I, I would suggest the following areas for inclusion in its scope:

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Please Send Copy of XA to PDR

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- ° a compilation of QC problems which have recently occurred at the site and a comparison with past problems in order to see if any increase in their number or seriousness can be discerned; ✓
- ° an examination of the root causes of recent QC problems to see if they can be traced to the deteriorating financial situation of PSCNH; and, ✓
- ° as suggested in our phone conversations with Robert Gallo and Antone Cerne, an analysis of the Quality Assurance Program of PSCNH to see if its implementation has remained up to standards. ✓

Although information elicited directly from the licensee would be helpful and should be utilized, I caution against a total reliance upon the licensee's records in conducting this inquiry. The decision as to whether to grant Mr. Backus' request for a hearing should be an NRC determination based upon an independent review.

Although there is no explicit deadline for the Commission to act on the petition, it is required to do so "within a reasonable time," 10 CFR § 2.206(b), and the petition was received by the NRC on February 8, 1982. Therefore speed is important, and I request that you keep me informed of what actions will be taken and of the expected completion dates of those actions.

Andrew Grosso

Andrew Grosso
Attorney
Rulemaking and Enforcement Division

cc:
Richard Starostecki, Reg.I ✓

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February 5, 1982



Harold Denton
Director
Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, DC 20555

RE: Public Service Company of NH
Docket Nos. 50-443, 50-444

Dear Mr. Denton:

Enclosed please find a Request for an Order to Show Cause Why Construction Permits for the Proposed Nuclear Power Plant at Seabrook Should not be Suspended or Revoked.

I am assuming that your staff has available to it the NHPUC Decision in DR 81-87 on which we rely.

We look forward to your determination within a reasonable time.

Thank you.

Very truly yours,

Robert A. Backus

RAB/sld

Enc.

cc: As per attached service list

Boo/
s
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CERTIFICATE OF SERVICE

I, Robert A. Backus, certify that I have mailed, postage prepaid, first class or airmail of the within to the following:

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Robert A. Backus

February 5, 1982

CERTIFICATE OF SERVICE

I, Robert A. Backus, certify that I have mailed, postage prepaid, first class or airmail of the within to the following:


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Robert A. Backus

February 5, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

TO: Director of Nuclear Reactor Regulation
RE: Construction Permits CPPR-135
CPPR-136

* * * * *

IN THE MATTER OF *
Public Service Company of *
New Hampshire, et al *
(Seabrook Station, Units 1 and 2) *
* * * * *

Docket Nos. 50-443
50-444

REQUEST FOR AN ORDER TO SHOW CAUSE WHY
CONSTRUCTION PERMITS FOR THE PROPOSED
NUCLEAR POWER PLANT AT SEABROOK
SHOULD NOT BE SUSPENDED OR REVOKED

This request for an Order to Show Cause is made on behalf of the
Seacoast Anti-Pollution League, 5 Market Street, Portsmouth, New
Hampshire, 03801, an Intervenor in the above captioned.

The relief requested is an Order to Show Cause why the Seabrook
construction permits should not be suspended or revoked because of lack
of financial qualification on the part of Public Service Company of New
Hampshire, lead applicant for the Seabrook plant.

This request is based on the fact that PSNH no longer has a
"reasonable financing plan in light of relevant circumstances" due to the
following:

1. January 11, 1982 Order of the New Hampshire Public Utility
Commission indicating no further financing authorization
would be forthcoming for Unit 2 in light of present cir-
cumstances.

2. Reduction of the bond rating on PSNH bonds to below investment grade by Standard & Poor's.
3. Imminent cash demands far in excess of operating income or, in light of the two above, available financing.

INTRODUCTION

The staff and the Atomic Safety and License Board, in its decisions 50-443 and 50-444 found PSNE financially qualified for the Seabrook facility.¹ By divided vote, the Appeal Board upheld the finding. The Commission's finding of financial qualification in Public Service Company v. NRC (Seabrook Station, Units 1 and 2), 7 NRC 1 (1975) established that the "reasonable assurance" requirement of §50.33(f) required an Applicant to have a "reasonable assurance" in the light of relevant circumstances." 7 NRC 1. England Coalition on Nuclear Pollution v. NRC, 702 F.2d 1017 (1st Cir. 1983). The First Circuit affirmed.

Notwithstanding these decisions, PSNH's financial condition continues to be appropriate for reexamination of the Commission's Seabrook Decision, 7 NRC 1, particularly in light of the plan for financing the plant in the light of rapidly changing, circumstances. The First Circuit, in

¹At the time of the initial decision, the total cost of the plant was estimated to be 1.545 billion. The most recent cost estimate, prepared by ES&G, is 7.63 billion.

that Public Service was financially qualified, specifically stated that "the NRC is not bound by the[NRC's previous] decision should circumstances change in the future or should predictions not be borne out." 582 F. 2d at 93, note 9.

One reexamination of PSNH's financial qualifications has already occurred. In March, 1979 the Seacoast Anti-Pollution League requested a Show Cause Order on financial qualification grounds which was denied on November 16, 1979. In denying the request, Director of Nuclear Reactor Regulation Denton relied primarily on the ability of PSNH to get rate relief, and thereby to attract investors to provide the necessary capital. In other words, Mr. Denton, as a "fundamental" assumption, relied on the "existence of a rational regulatory environment." (Decision, Slip Opinion at 18.)

In light of the validity of this "fundamental underlying assumption" Mr. Denton was able to conclude that, as of November 1979, PSNH had a "reasonable financing plan" and denied the request.

I. THE FINDING THAT A "RATIONAL REGULATORY ENVIRONMENT" ASSURES FINANCIAL QUALIFICATION IS NO LONGER VALID.

A fundamental premise of all decisions concluding that PSNH is financially qualified to build the Seabrook facility is this:

- The NHPUC has historically supported Seabrook, starting with its own Certificate of Site and Facility issued in January 1974.
- The NHPUC is constitutionally required to permit rates designed to allow PSNH to earn a fair rate of return, that is, a return necessary to attract capital for its operation and future needs.

- The rates will therefore be sufficient to attract the necessary capital, although perhaps at higher cost.

This tidy syllogism, however, is no longer valid, if it ever was. The fact is that PSNH cannot earn revenues which the NHPUC has allowed it to earn. Therefore, although the allowed return on equity may be entirely sufficient, the earnings are not, and it is PSNH that has to earn its revenues, not the NHPUC.² In short, the assumption that the NHPUC can solve PSNH's problems, or is constitutionally required to, is without merit.

In its recent rate decision, Docket DR-81-87, the NHPUC, in an exhaustive opinion and report, allowed PSNH rates designed to permit it to earn an additional 28.9 million dollars, against an original rate request for 35 million. The decision was viewed "positively" by PSNH, and SAPL is advised that PSNH has not applied for a rehearing as to the level of rates granted, a prerequisite to any appeal.

Notwithstanding the largest rate increase ever granted to PSNH, computed on an allowed rate of return on equity of 17%, Standard and Poors on January 18, 1982, within a week of the Decision, lowered its rating on PSNH's second mortgage bonds from BBB to BB+, below investment grade.

²In its January 11, 1982 rate decision, the NHPUC allowed PSNH a 17% return on equity, among the highest ever allowed to an electric utility in the United States.

This event clearly establishes the fundamental fallacy in the syllogism on which the NRC has previously relied to find the applicant financially qualified; namely, that an adequate rate of return assures a utility will be financially qualified, if the regulatory agency has previously approved its construction projects. The NHPUC recognized this when it succinctly stated, at page 121:

"This Company's problem is not rate of return but cash flow."

The NRC, therefore, can no longer assume that an adequate rate of return, which PSNH has always been allowed, insures that an applicant will be financially qualified to safely construct and operate a nuclear plant. The fact is, as set forth in part 3 of this request, PSNH faces a cash crisis, which cannot be met by allowing it higher rates.

II. THE NHPUC NO LONGER SUPPORTS SEABROOK II.

Even if the syllogism discussed in part I were valid, it is no longer appropriate to assume that the NHPUC will allow rates designed to permit the construction of Seabrook Unit II. The NHPUC states on pages 120 and 121:

"The Company's financial position is caused by its commitment to the construction of Seabrook, and can therefore be improved only by changing this construction program. The Company has relied for its future health and success on one, and only one, alternative. As a result, few options are available to the Company for improving its financial position. All these options involve major changes in the Company's plans for Seabrook. The options include: selling additional shares of both units, modifying the Seabrook agreement and selling shares of only one of the units; delaying one or both of the units; cancelling one of the units."

Furthermore, the NHPUC has backed up its statements with an appropriate order. It states on page 122:

"If during the next six months PSNH's bond rating is downrated from its present level of BB+(S.P.) or BBB (Moody's) the Commission will condition its financings that will prevent their use toward the construction of Seabrook II...If their rating drops again it will no longer be of investment grade. A BB+/BBB utility is unlikely to be able to raise the 1.3 billion over the next five years. A lower rated utility could never raise this level of capital."³

The event that the NHPUC said would prevent it from authorizing future financings for the construction of Unit II has indeed occurred with the lowering by Standard and Poors of the rating on PSNH's second mortgage bonds, called General and Refunding Bonds, from BBB-, to BB+.

Therefore, by NHPUC Order there will be no regulatory approval for financing of construction for Unit II.

Since PSNH cannot construct Unit II without new financing, it is clear that PSNH no longer has "reasonable assurance" that it can and will obtain the necessary funds to construct the facility. It is therefore absolutely clear it is no longer financially qualified within the meaning of 10 C.F.R. §50.33(f).

³It appears the NHPUC inadvertently transposed the bond ratings for Standard and Poors and Moody's, since it was Standard and Poors that had been BBB and was reduced to BB+, whereas the Moody rating has remained at BA, less than investment grade. See the attached article from the Wall Street Journal, January 18, 1982 discussing PSNH's bond rating, and the effect of the decision of the NHPUC.

III. PSNH FACES A CASH CRISIS WHICH PRECLUDES A FINDING THAT IT HAS A "REASONABLE FINANCING PLAN IN THE LIGHT OF RELEVANT CIRCUMSTANCES."

In 1982, PSNH assumes the following financing:

PSNH ASSUMED FINACINGS
(000's)

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Common Stock	69,866	64,000	74,400	54,800	40,200	
Preferred Stock		30,000	30,000	30,000		
Long-Term Debt:						
Term Note Rollover		25,000	50,000	50,000	50,000	50,000
Term Note Addition		25,000				
Eurodollar Rollover	28,000					
Eurodollar Rollover	27,000					
Eurobond	30,000					
Barclay's Term Note	20,000					
Banker's Acceptance		25,000				
G & R Financing		140,000	90,000	120,000	120,000	
TOTAL	174,866	309,000	244,400	254,800	210,200	50,000

Source: NHPUC Decision, Page 104

On information and belief, SAPL avers that the bulk of this 1982 financing will be required within the first two quarters of 1982 since, PSNH will, within a month, no longer have the benefit of having all construction costs at Seabrook paid by the owners of the facility, while they purchase approximately 15% of the facility from PSNH. During the past approximately 12 months, this has been the case, while the other owners have increased

their ownership through a so-called "adjustment" period, at a time when PSNH's ownership share has been reduced to approximately 35%.

Since the Seabrook construction force is reported to be approximately 6,500 people, and since the average wage is reported to be \$15 per hour, the payroll at Seabrook alone is 3.9 million dollars a week. At a 35% ownership level, PSNH will have to, within the month, start paying payroll cost alone of approximately 1.3 million per week.

This amount of payroll costs at Seabrook amounts to 71 million dollars a year. In addition, PSNH has outstanding more than 23 million shares of common stock, with a dividend of \$2.12 per share. Thus, the dividend requirements for 1982, even if no more stock is issued, is 49 million dollars.

These, of course, represent major cash requirements, which cannot be met through AFUDC, but only through revenues.

The question, therefore, is whether these, and other cash requirements, can be met through PSNH's financing plan. As noted above, PSNH suggests 309 million will be needed during 1982.

To meet this, PSNH plans to raise 64 million through new issues of common stock. At \$14 a share, this represents nearly 4.6 million new shares to be issued this year. There is no assurance that PSNH can successfully market this many shares. Its stock, since the rate increase, has been below \$14, far below book value.⁴

⁴In 1971, the year before the first application for Seabrook was filed with the NHPUC, PSNH's stock sold above \$30.

PSNH must, today, issue new financing merely to meet its dividend obligations, since its total operating income for the 12 months ended June 30, 1981, was only 45.2 million.

PSNH cannot issue first mortgage bonds, since its assets are fully mortgaged. Thus, its most important financing vehicle in 1982 will be the issuance of its second mortgage bonds, called G & R financing. It plans to issue 140 million in 1982, of which most was to be placed in the first half. These bonds, however, are now rated below investment grade by both major rating services. Hence, there is no reasonable assurance that these bonds can be sold.

Therefore, in the light of relevant circumstances, PSNH has no reasonable financing plan for the present year, and should be found financially unqualified.

CONCLUSION

PSNH's lack of financial qualifications is shown not only by the foregoing, but also by the report of the NHPUC in DR-81-87:

"Examination of PSNH forecasts and statements before this Commission yield the conclusion that the Company tends to overestimate its revenues and underestimate its costs with some regularity. Thus we must assume that the Company is actually worse off than their financial forecasts would indicate. Given the less favorable future conditions that this Commission expects and unforeseen events that may have a negative impact on PSNH, this Commission is forced to conclude the PSNH may indeed reach a point in the near future where it will be unable to secure additional financing and unable to meet current obligations."
(Page 105)