

March 1, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PUBLIC SERVICE COMPANY OF)	Docket Nos. 50-443 OL
NEW HAMPSHIRE, <u>et al.</u>)	50-444 OL
)	
(Seabrook Station, Units 1 and 2))	

NRC STAFF RESPONSE TO SAPL MOTION FOR
RECONSIDERATION OF DENIAL OF SAPL SUPPLEMENTAL CONTENTION 5

On February 10, 1984, the Seacoast Anti-Pollution League ("SAPL") moved the Board to reconsider its denial on September 13, 1982 of SAPL's Supplemental Contention 5 raising the issue of Applicants' financial qualifications to operate and decommission the Seabrook facility. The Board's denial of the contention was predicated on 10 C.F.R. § 50.33(f), which prohibits the consideration of financial qualifications of electric utilities in licensing proceedings. See LBP-82-76, 16 NRC 1029, 1083. As sole basis for its Motion, SAPL pointed to the February 7, 1984 decision of the D.C. Circuit Court of Appeals in New England Coalition on Nuclear Pollution v. NRC (No. 82-1581). In that decision, the Court of Appeals determined that Section 50.33(f) as promulgated was not adequately supported by its accompanying statement of basis and purpose and remanded the rule to the Commission.

On February 27, 1984, the Commission issued a Statement of Policy (a copy of which is attached) addressing the Circuit Court's decision. In

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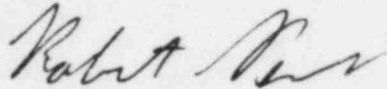
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its Statement, the Commission announced that it intends to conduct an expedited rulemaking to address the problems perceived by the court in the financial qualifications rule. The Commission noted that the court's mandate is not expected to issue before March 23, 1984, and that, until that time, "the present rule remains formally valid." Accordingly, the Commission directed its hearing boards to "continue to treat the rule as valid." Under the circumstances, SAPL's Motion should be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert G. Perlis". The signature is fluid and cursive, with a large initial "R" and a stylized "P".

Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 1st day of March, 1984

Nuclear Regulatory Commission

STATEMENT OF POLICY

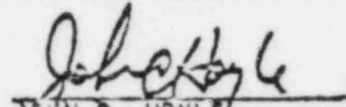
On February 7, 1984, the U.S. Court of Appeals for the District of Columbia Circuit granted a petition by the New England Coalition on Nuclear Pollution (NECNP) which challenged the Commission's rule eliminating financial qualification review requirements for electric utilities. New England Coalition on Nuclear Pollution v. NRC, No. 82-1581 (D.C. Cir. Feb. 7, 1984). The court found that the rule was not adequately supported by its accompanying statement of basis and purpose, and remanded it to the agency.

In response to this decision the Commission intends to conduct an expedited financial qualification rulemaking to address the problems which the court perceived in the Commission's present rule. The Commission understands from the court's order that the mandate will issue no earlier than 45 days from the date of the court's decision, i.e., not before March 23, 1984. Until then, the present rule remains formally valid. Therefore, the Commission directs its Atomic Safety and

Licensing Board and Atomic Safety and Licensing Appeal Panel to continue to treat the rule as valid. The Commission expects to complete an adequate response to the D.C. Circuit's decision before the court issues its mandate.

Commissioner Asselstine abstains.

For the Commission*


JOHN C. HOYLE
Assistant Secretary
of the Commission

Dated at Washington, DC
this 27th day of February, 1984

*Commissioner Gilinsky was not present when this Statement of Policy was approved but had previously indicated his approval.

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NUCLEAR REGULATORY COMMISSION

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In the Matter of)

PUBLIC SERVICE COMPANY OF)
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(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443 OL
50-444 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SAPL MOTION FOR RECONSIDERATION OF DENIAL OF SAPL SUPPLEMENTAL CONTENTION 5" 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, through deposit in the Nuclear Regulatory Commission's internal mail system, this 1st day of March, 1984:

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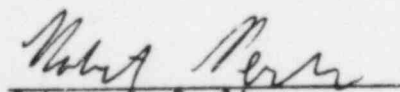
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