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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE DIRECTOR OF NUCLEAR REACTOR REGULATION

DOCKETED
USNRC

_____)
Public Service Company of)
New Hampshire, et al.)
(Seabrook Station, Units 1 and 2))
_____)

'84 10023 F20

Docket Nos.
50-443, -444
2.206

NEW ENGLAND COALITION ON NUCLEAR POLLUTION
PETITION FOR ENFORCEMENT AND
MOTION FOR SUSPENSION OF CONSTRUCTION
AT THE SEABROOK NUCLEAR POWER PLANT

Introduction

In mid-April of 1984, a financial crisis brought Public Service Company of New Hampshire (PSNH), lead owner of the Seabrook nuclear power plant, to the brink of bankruptcy. To avert a complete collapse, the utility halted construction on the \$9 billion project.

Construction at Seabrook Unit 1 has since resumed¹, but

¹ The extent of current construction activity at Seabrook Unit 1 is unclear. On June 23, 1984, the Seabrook Joint Owners approved a "Resolution Regarding Resumption of Construction of Seabrook Unit 1," that required construction to resume on July 2, 1984. Since then, NECNP has heard several different accounts regarding the status of construction at Seabrook. Public Service Company maintains that construction resumed July 2, and that a workforce of 2,000 is now on site. Local residents, however, have told us of radio reports that construction began again only recently. Finally, officials of the New Hampshire Public Utilities Commission have informed NECNP that construction has not yet begun because of a labor dispute at the site. They expect it to begin at the end of August.

Construction at Unit 2 has been suspended indefinitely, and may be cancelled.

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under vastly different circumstances. In response to its economic crisis, PSNH obtained some additional financing at an extremely high cost, and it gave up a large measure of its control over the management of construction at the plant. Under recent amendments to the Joint Ownership Agreement for Seabrook, Public Service Company lost virtually all but its titular authority over construction at Seabrook. The company gave up its veto power over ownership decisions, its disbursing function, and its former ultimate control over decisions regarding the construction of the plant. The Seabrook Joint Owners also incorporated a new organization, New Hampshire Yankee, to displace PSNH as manager of construction and operation of the Seabrook plant. Control over the Seabrook construction project now rests in the hands of several different entities -- the Joint Owners, New Hampshire Yankee, and the Yankee Atomic Electric Corporation. However, the Joint Owners have not delegated ultimate authority over quality assurance decisions on the construction project to any one of these organizations.

As a result of these changes in the management structure, construction at Seabrook no longer conforms to the terms of the owners' construction permit, which was issued on the premise that PSNH had complete responsibility for construction at Seabrook. Not only has PSNH given up its sole control over management of the plant, but the lines of authority over construction have become so confused that it is no longer clear

exactly who is in charge of construction of Seabrook.

The Seabrook owners' violation of their construction permit gravely jeopardizes the quality and effectiveness of the Seabrook quality assurance program. Because no organization clearly has ultimate authority over quality assurance decisions at the Seabrook construction project, there is no firm project management to guarantee that quality assurance requirements are being observed during construction. Moreover, although other Seabrook owners now have collective control over construction, none of them was ever approved by NRC to manage construction or quality assurance. Thus, the Commission has no assurance that there is an organization in charge with the independence and technical and financial qualifications to make certain that construction will be carried out in conformance with NRC quality assurance standards.

Moreover, to the extent that PSNH remains in control of construction, it has compromised its authority over quality assurance in construction by borrowing heavily from its creditors and its principal contractor, United Engineers and Constructors, Inc. Faced with such severe financial pressures, PSNH no longer has the independence from cost considerations that the NRC requires of a quality assurance organization, and it is not in a position to exercise control over its contractor to ensure compliance with NRC requirements.

The Seabrook owners have violated the terms of their construction permit and can not demonstrate that construction

is being carried out with a reasonable assurance of safety. Therefore, the Commission must suspend construction at the plant unless and until the Joint Owners obtain an amendment to their construction permit. If the Seabrook owners do apply for a construction permit amendment, NECNP requests a hearing pursuant to § 189(a) of the Atomic Energy Act, 42 U.S.C. § 2239(a).

Background

1. Issuance of the Construction Permit

In 1976, the Seabrook Joint Owners received a construction permit based on findings, inter alia, that the owners were "financially qualified to design and construct the proposed facility;" and that Public Service Company of New Hampshire was "technically qualified to design and construct the proposed facility." Construction Permit Nos. CPPR-135, -136, Seabrook Station Unit 1, Docket 50-443, July 7, 1976. Under the Joint Ownership Agreement approved by the NRC, PSNH owned 50% of the shares of Seabrook, and a vote of 80% of the ownership shares was required for any decision by the Joint Owners. PSNH thus held veto power over all decisions regarding construction of Seabrook.

Following hearings on the financial and technical qualifications of applicants, an NRC Licensing Board ruled that PSNH was technically qualified to construct the Seabrook plant. The Licensing Board approved issuance of a construction permit based on a finding that

Under the Joint Ownership Agreement in effect among the Applicants, PSCO is empowered to act in all matters for the other participants. Ultimate responsibility rests with the President of PSCO; responsibility for the design and construction is delegated to the Executive Vice-President, PSCO.

Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), LBP-76-26, 3 NRC 857, 866 (1976). The Licensing Board made no finding regarding the technical qualifications of any of the other owners.

2. Amendments to Construction Permit

After its issuance, the Seabrook construction permit was amended several times to accommodate changes in ownership. Each time, the Commission made a finding that the new owner was financially qualified. At no time, however, did the Commission make any findings with regard to the technical qualifications of any owners other than PSNH.

In 1980, after the New Hampshire Public Utilities Commission ordered financially strapped PSNH to reduce its ownership share in Seabrook, the NRC amended the Seabrook construction permit, allowing PSNH to reduce its interest in the plant from 50% to 35%. Amendment No. 3 to Construction Permit Nos. CPPR-135, -136, August 6, 1980. The NRC determined that the prospective buyers of the PSNH shares were financially qualified to obtain or increase an ownership interest in the Seabrook plant. In the Safety Evaluation Report supporting the Amendment, the NRC made a finding that the proposed transfers of ownership interests "would not constitute an unreasonable

risk to the health and safety of the public." The finding was based in part on the observation that "Public Service Company of New Hampshire will retain full responsibility for the design, construction, and operation of Seabrook Station, Units 1 and 2." Safety Evaluation Supporting Amendment No. 3 to Construction Permit Nos. CPPR-135 and CPPR-136, Seabrook Station, Units 1 and 2, August 6, 1980, at 4. Thus, despite changes in the ownership of Seabrook over the years, the Commission continued to approve the construction permit on the ground that PSNH remained in complete authority over the construction of the plant.

3. PSNH's financial crisis

During the ensuing years, cost estimates for the Seabrook plant climbed from an original estimate of less than one billion dollars² to \$9 billion³ in early 1984. The owners reduced construction on Unit 2 to the lowest feasible level in late 1983, and agreed in early 1984 to cancel the unit if certain conditions could be met.

As Seabrook construction costs rose, PSNH's financial health deteriorated. The company's bond rating plummeted in 1982 to the point where only General Public Utilities, owner of

² New Hampshire Public Utilities Commission, "Public Service Company of New Hampshire, Investigation Into the Supply and Demand for Electricity," DE 81-312, April 29, 1983, at II-1.

³ Bulkeley, "Seabrook's Cost Estimate Raised 72% to \$9 Billion," Wall Street Journal, March 2, 1984, at 10.

Three Mile Island, had a lower rating. Dean Witter Reynolds Capital Markets, "Electric Utility Industry, Financial Handbook," Summer 1982. Unable to meet its obligations to its contractors, and wavering on the brink of bankruptcy, PSNH finally suspended construction work on the entire plant in April of 1984.

With the help of the brokerage firm of Merrill Lynch Pierce Fenner & Smith and its subsidiary, Merrill Lynch Capital Markets, PSNH began attempting to raise its share of the \$1.3 to \$1.8 billion it estimates is necessary to complete Seabrook Unit 1.⁴ To date, PSNH has obtained approval from the New Hampshire Public Utilities Commission for the sale of \$135 million in securities at an interest rate of 20%. Of that amount, the company has sold \$90 million in short term notes.⁵ PSNH is now awaiting another PUC decision on its request for approval of a \$425 million sale of securities at a

⁴ At an informational hearing before the New Hampshire Public Utilities Commission on July 25, 1984, PSNH Senior Vice President William B. Derrickson stated that he believes Unit 1 can be completed for a cost of \$4.1 to \$4.5 billion. To date, about \$2.7 billion has been spent on Unit 1.

⁵ To back up the sale of these notes, PSNH is counting on the sale of its 5% share in the Maine Yankee plant to the New Hampshire Electric Cooperative. The coop will use \$57 million in Rural Electrification Administration funds, now committed to Seabrook Unit 2, to buy the Maine Yankee interest. PSNH apparently intends to deposit the funds in an escrow account to cover interest payments and provide security on the notes. Wessel, "PS of New Hampshire to Sell Its Interest in Maine (Footnote continued on next page)

minimum interest rate of 21%.⁶ The company arranged for extensions until May 31, 1985, of \$75 million in term loans that were due in June. Wessel, "PS of New Hampshire Sells Notes, Sets Loan Accord in Bid to Revive Seabrook," Wall Street Journal, June 20, 1984, at 12. Prudential's PruLease Inc. unit agreed to withdraw a demand for immediate payment of a \$50 million loan. Id. PSNH also negotiated an agreement with its principal contractor, United Engineers & Constructors, to turn a \$20.5 million debt into a loan.⁷ Id. In negotiating these loans, PSNH agreed to pay an interest rate of 116% of the prime rate plus 0.25 percentage point. Id.

(Footnote continued from previous page)
Plant to Aid Seabrook Rescue," May 23, 1984, at 12. The viability of that plan is now in doubt, since the New Hampshire Supreme Court recently ordered the state Public Utilities Commission to conduct hearings on the prudence of the coop's continued involvement in Seabrook. Appeal of Roger Easton, et al., Nos. 84-188, 84-204, 84-207 (N.H. Sup. Ct., July 13, 1984).

⁶ The PUC's approval of the \$135 million note sale, and its refusal to assess broad public interest issues in considering the \$425 million sale, have been challenged by New Hampshire public interest and consumer groups. It therefore remains uncertain whether PSNH will actually obtain final approval for these sales.

⁷ The \$20.5 million apparently does not constitute the entirety of PSNH's debt to UE&C. According to Thomas M. Dahl, Chairman of UE&C, nonpayment of bills by PSNH caused UE&C to suffer a "total exposure" of \$45 million, including employee relocation costs, between February and May of 1984. Letter from Thomas M. Dahl to Robert J. Harrison, President, PSNH, dated May 1, 1984. It is not clear whether PSNH ever paid the other \$25 million or UE&C forgave the debt. If UE&C forgave the debt, PSNH may be under even greater pressure to defer to UE&C in construction-related decisionmaking. See discussion, infra, at 21.

Thus, PSNH continues to function only by the grace of large loans for which it is paying exorbitant interest rates. Its financial condition is still extremely precarious. As Merrill Lynch Capital Markets has assessed it, "Public Service Company of New Hampshire has the lowest credit rating possible absent a default..." "Project Financing for Newbrook," May 15, 1984, § V.

4. Management Changes and Current Activities

In response to PSNH's financial crisis, PSNH and the other Seabrook owners executed amendments to the Joint Ownership Agreement (JOA) that substantially reduced PSNH's managerial role in the construction of the plant while leaving PSNH nominally in control. Under the Fifteenth Amendment to the JOA, the owners eliminated PSNH's veto power over the construction project by reducing the quorum necessary for a decision from 80% to 51% of the ownership shares. "Fifteenth Amendment of Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units," April 30, 1984. The amendment provided that upon a vote of 51% or more of the ownership shares, "PSNH shall be relieved of all of its management duties, functions, responsibilities, prerogatives, discretionary rights, and authorizations to act for and on behalf of all other Participants..." Id. at 5-6. Under the amendment, construction or operation of Unit 1 could be terminated or suspended for any length of time by a vote of 51% of the ownership shares. Id. at 7. Provision was also made

for the appointment of a new disbursing agent to take PSNH's place.⁸ Id. at 4. Finally, the 15th amendment created an "Oversight Committee" to "participate in the oversight of the Project." Id. at 2. PSNH was required to report to the Committee and to "consult with the Oversight Committee prior to making major decisions in connection with the Project which PSNH could reasonably expect to be of concern to the Participants." Id. at 3. The amendment required PSNH to

follow the recommendations of the Oversight Committee to the extent reasonably practicable, unless PSNH believes that such recommendations are not in accordance with the NRC regulations or prudent utility practice.

Id. at 3. In spite of the clear supervisory role given to the Oversight Committee and backed up by the power of the Joint Owners to dismiss PSNH as manager of the plant, the amendment stated rhetorically that "the creation of the Oversight Committee shall not be deemed to affect PSNH's responsibility for construction under this Agreement." Id.

The Sixteenth Amendment to the Joint Ownership Agreement, dated June 15, 1984, created an Executive Committee, composed of participants from each New England state, to review and

⁸ In an "Interim Agreement to Preserve and Protect the Assets of and Investment in the New Hampshire Nuclear Units," dated April 27, 1984, the Joint Owners appointed Yankee Atomic Electric Company to PSNH's former role as disbursing agent. The Joint Owners extended this arrangement indefinitely by an "Agreement for Seabrook Project Disbursing Agent," dated May 23, 1984.

approve the project manager's budget, workplan, and level of activity (at 7); to provide direction to and oversee and direct the functions of the disbursing agent (Id.); and to assure that construction expenses do not exceed levels approved by the Joint Owners (Id.). No participant who is more than a month behind in payment of the full share of current Project Costs can be represented on the Executive Committee. (at 4).

Because of its precarious financial situation, PSNH would have only the most tenuous position on the Executive Committee.⁹

Like the Fifteenth Amendment, the Sixteenth Amendment sets up a supervisory authority over PSNH, yet claims it does "not affect the duties and responsibilities for construction, operation and maintenance of the Units" by PSNH. Id. at 9.

On June 23, 1984, the Joint Owners adopted a "Resolution for Transfer of Managing Agent Responsibility" from Public Service of New Hampshire to a new entity called "New Hampshire Yankee." The transfer would take place in three "phases". The first phase, to become "effective as soon as possible," involves the creation of a division of PSNH called New Hampshire Yankee, which would have "primary responsibility for

⁹ As PSNH auditor Peat, Marwick, Mitchell & Co. has concluded, PSNH's "lack of financial flexibility may impair the company's ability to meet its obligations . . . or complete construction of Unit 1." Wessel, "PS New Hampshire Plan Doesn't Include Any Preferred Payments Before Late 1986," Wall Street Journal, July 10, 1984.

construction of Unit 1." Id. at 1.¹⁰

The New Hampshire Yankee Division, as created by the Resolution, has a complex managerial scheme that both weakens PSNH's supervisory role and blurs the lines of authority over construction at Seabrook. New Hampshire Yankee has two principal officers, the Chief Executive Officer and the President of the Division. The President of the Division is to "report functionally" to the Chief Executive Officer of PSNH, thus suggesting that PSNH is in charge of the New Hampshire Yankee Division. Id. However, the Senior Vice President of PSNH in charge of Seabrook Project Construction must "report functionally" to the President of the New Hampshire Yankee Division. Id. To make matters more confusing, the President of the Division, the Senior Vice President in charge of the Seabrook Project Construction and the Senior Vice President's entire staff are employees of Yankee Atomic. Id. at 1-2.

Moreover, New Hampshire Yankee was incorporated as an independent entity on August 2, 1984. Although it currently

¹⁰ In the second phase, New Hampshire Yankee would become incorporated (a step that has already been taken) and obtain all necessary permits to manage construction at Seabrook as an independent organization. The Chairman and President of the New Hampshire Yankee Corporation would be employees of the Yankee Atomic Electric Corporation.

Under a third phase, the Joint Owners contemplate that two corporations, New Hampshire Yankee and Massachusetts Yankee, will operate the Seabrook and Rowe nuclear power plants under the supervision of a re-formed Yankee Atomic Electric Corporation.

acts as a "division" of PSNH, New Hampshire Yankee has become a separate business which is not dependent on PSNH for revenues. Its two chief officials are employees of a third company, Yankee Atomic, which also handles the payroll for the entire construction project. Thus, the New Hampshire Yankee "division" appears to be subordinate to PSNH in name only.

The confusing management structure created by the Joint Owners creates no clear chain of command over quality assurance decisions related to construction. Officials of PSNH and New Hampshire Yankee are required to report to each other, and to the Joint Owners. As employer of New Hampshire Yankee officials and disbursing agent, Yankee Atomic also has a supervisory role. Yet, there is no clear hierarchy of authority and responsibility for the project. It remains unclear who -- if anyone -- has taken responsibility for quality assurance at Seabrook. In spite of this confusion, safety related construction work continues at the site.

Argument

I. The Joint Owners Have Violated The Atomic Energy Act, NRC Regulations and the Terms of Their Construction Permit.

A. The Joint Owners have illegally removed construction management control of the Seabrook plant from Public Service Company of New Hampshire.

The Atomic Energy Act requires that licensees conform to the terms of the Atomic Energy Act, NRC regulations, and the conditions of their permits. Under section 196, 42 U.S.C. §

2236,

Any license may be revoked . . . for failure to construct or operate a facility in accordance with the terms of the construction permit or license . . . or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission.

Section § 183, 42 U.S.C. § 2233, further provides that,

"Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter." The NRC has implemented these statutory provisions with the requirement that

Neither the license, nor any right thereunder, . . . shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and give its consent in writing.

10 C.F.R. § 50.54(c) (emphasis added).

In order to transfer control of a construction project to another entity, a permittee would have to show that the new entity has the qualifications to design and build the plant.

As the Appeal Board has ruled,

[C]hanges in the legal relationships of co-applicants and shifts in the responsibilities of their key employees bear on the utilities' financial and technical qualifications to build the nuclear plant. These are matters of some importance and warrant the remand of this issue to the Licensing Board for evaluation of the new arrangements.

Northern States Power Co. (Tyrone Energy Park, Unit 1),

ALAB-464, 7 NRC 372 (1978).

The NRC issued the Seabrook construction permit based on

the express understanding that PSNH had complete authority over the design and construction of the plant. That authority was ensured by the requirement in the Joint Ownership Agreement that all decisions must be made by agreement of at least 80% of the ownership shares, which gave PSNH veto power over all decisions. Now, PSNH has lost its veto power, its power to disburse funds, and its power to make decisions without reporting to and obtaining approval from the other Joint Owners. Assertions in recent amendments to the Joint Ownership Agreement to the effect that these changes have not altered PSNH's responsibility for construction at Seabrook cannot disguise the fact that PSNH has been stripped of its former ultimate authority over the construction project. Whenever they wish, the Joint Owners can override PSNH's decisions, despite the fact that none of the owners other than PSNH has ever been found technically qualified to control construction of a nuclear reactor.

The Joint Owners have even gone so far as to create a new "Division" of PSNH, New Hampshire Yankee, to manage construction of Seabrook. This new management organization does not even appear to be subordinate to PSNH, since the Senior Vice President of PSNH is required to report to the President of the New Hampshire Yankee Division. Moreover, both the President and Chief Executive Officer of New Hampshire Yankee are also employees of the disbursing agent, Yankee Atomic Electric Corporation.

The Joint Owners have thus revoked PSNH's authority over the Seabrook project and transferred it to other owners and to the Yankee Atomic Electric Corporation. The NRC has never approved the qualifications of the other owners to manage the project, and Yankee Atomic isn't even a Seabrook owner. The transfer therefore violates the Atomic Energy Act and the terms of the construction permit.

The Joint Owners' nominal retention of PSNH as manager of the Seabrook construction project appears to be simply a tactic to avoid any delays in construction while they reorganize the Seabrook management structure. The Resolution for Transfer of Managing Agent Responsibility makes it clear that the Joint Owners do not favor the continued management of the Seabrook construction project by PSNH, and that they intend to install an entirely new management organization as soon as they can obtain the necessary permits. However, they apparently realize that applying for an amendment to their construction permit could delay construction of the plant. Therefore, they have done everything to relieve PSNH of its authority over the project except to officially remove PSNH.

Under the Atomic Energy Act and the terms of the construction permit, however, the Joint Owners cannot have their cake and eat it too. If construction is to proceed, it must proceed under the terms of the construction permit, which mandate that Public Service Company retain complete control

over the construction of the plant.¹¹ If the Joint Owners wish to remove PSNH from managerial control immediately, they must halt construction until they have obtained the necessary amendment to the construction permit. Since they have not done so, they are in violation of the Atomic Energy Act and their construction permit. The Commission must order the suspension of construction at Seabrook unless and until it is carried out in compliance with the Act and the permit.

B. The Seabrook Owners have violated the NRC's Quality Assurance Requirements.

As a result of both PSNH's financial crisis and the management changes effected by the Joint Owners, the Seabrook owners are now in violation of NRC quality assurance requirements outlined in Appendix B to 10 C.F.R. Part 50.

1. Lack of clearly established authority over quality assurance in construction

Appendix B to Part 50, Criterion I, requires that

The authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components shall be clearly established and delineated in writing.

... The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions.

¹¹ If PSNH does remain in control of the Seabrook construction project, however, the NRC must examine its current compliance with NRC quality assurance regulations. As discussed at pages 20-22, *infra*, PSNH's heavy indebtedness to creditors and to its major contractor has gravely compromised its ability to make important safety decisions independent of financial considerations.

PSNH no longer has "clearly established and delineated" authority to supervise the construction project at Seabrook -- yet, its authority has not been squarely placed in another party's hands. Rather, PSNH remains officially in charge, without its former ultimate authority to make quality assurance decisions. If PSNH makes a decision contrary to the wishes of the other owners (none of whom the NRC has approved as qualified to make quality assurance-related decisions), it may be swiftly dismissed.¹²

Moreover, the officers of PSNH's construction management division, New Hampshire Yankee, are actually employees of and therefore answerable to a different corporation, Yankee Atomic. Where Yankee's interests conflict with PSNH's, Yankee's may govern. This is especially likely because Yankee now holds the purse strings for the entire construction project. Thus, PSNH lacks "sufficient authority and organizational freedom" to carry out a supervisory role over quality assurance at Seabrook.

The NRC stressed the importance of maintaining clear lines of authority over quality assurance in a recent study of quality assurance throughout the nuclear industry, "Improving Quality and the Assurance of Quality in the Design and

¹² In the past, the Joint Ownership Agreement's requirement of an 80% majority for all decisions affecting the Seabrook plant gave 35% owner PSNH complete control over the project. Now that the Agreement has been amended to allow a 51% vote to govern, PSNH can be fired or overridden by the other owners.

Construction of Commercial Nuclear Power Plants, a Report to Congress," U.S. Nuclear Regulatory Commission, Office of Inspection and Enforcement (1984). The study reached the "principal conclusion" that major quality-related problems in the design and construction of nuclear power plants were caused by

the inability or failure of utility management to effectively implement a management system that ensured adequate control over all aspects of the project.

(at 2-2). The staff further found that

Strong project management is required, with clearly defined responsibilities and authorities. The personnel responsible for the project must have sufficient authority to accomplish their mission.

The South Texas case illustrates the serious quality assurance problems that can arise when licensees fail to exert strong supervisory authority over a quality assurance program. After reviewing instances of poor craftsmanship and harassment and intimidation of quality assurance inspectors, the NRC placed "ultimate responsibility" for the QA failures with the licensee, and found that the licensee had not been in "sufficient control" of the construction project. Statement of Victor Stello, Jr., Director, Office of Inspection and Enforcement, U.S.N.R.C., before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, September 23, 1980.

At Seabrook, responsibilities and authorities over quality assurance could not be less clearly defined. PSNH has ceded

control over construction to New Hampshire Yankee, Yankee Atomic, and the other owners. Those individuals immediately responsible for quality assurance decisions may therefore be accountable to at least four different organizations, including PSNH, Yankee Atomic, New Hampshire Yankee, and the Joint Owners. As in the case of South Texas, where top management was never clearly visible, this absence of clear authority gravely jeopardizes the quality of safety-related construction at the plant. The NRC cannot have reasonable assurance that construction is being carried out in full conformance with its quality assurance requirements unless and until it determines that there is an organization at Seabrook that has the authority, responsibility, and ability to supervise the quality assurance program at the plant. The Commission must therefore suspend construction at the plant until its requirements are met.

2. PSNH unqualified to supervise construction at Seabrook

To the extent it retains any control over the construction program at Seabrook, PSNH has compromised its authority to supervise QA by becoming heavily indebted to its contractors and other creditors. It thereby violates the requirement of Appendix B to Part 50, Criterion I, that

Such persons and organizations performing quality assurance functions shall report to a management level such that . . . authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

PSNH is tightly bound by both cost and schedule considerations. It is mortgaged to the brink of default, at extremely high interest rates. Any quality assurance-related delay in the construction schedule or additional safety-related expenditure would raise financial obligations and interest costs that are already at an intolerable level for PSNH. Thus, it is in no position to make objective and independent decisions where safety and financial considerations are in opposition.

Finally, by borrowing over \$20 million dollars from its principal contractor, UE&C, PSNH has compromised its ability to supervise UE&C effectively.¹³ Indeed, because PSNH is so heavily indebted to UE&C, UE&C can now dictate to PSNH and could blackmail the utility into lax enforcement of quality assurance requirements and other actions detrimental to safety.

Moreover, in making difficult QA-related decisions, PSNH may be influenced by the authority of the other owners to dismiss it instantly as manager of the Seabrook project. The other owners have never before had this authority to remove PSNH from its role. These owners, who are also extremely concerned with the rising costs of the project, may exert substantial pressure on PSNH to place financial considerations

¹³ The extent of PSNH's obligation to UE&C may actually exceed \$20.5 million, thus further increasing pressure on PSNH to defer to UE&C. See footnote 7, supra, at 8.

above safety precautions.¹⁴

PSNH has not only abdicated its ultimate control over construction at Seabrook, but it has fatally compromised whatever authority it retains by becoming heavily indebted to its creditors and its principal contractors. Under the present circumstances, therefore, the Commission cannot find that PSNH complies with the NRC's requirement that the QA supervisory organization have independence from financial considerations in making safety decisions.

II. The Commission Must Suspend Construction Immediately.

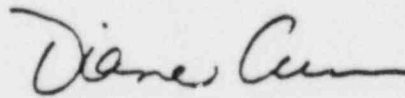
Safety related construction work is now progressing at Seabrook in violation of the Seabrook construction permit, the Atomic Energy Act, and NRC regulations. PSNH, the company the Commission originally approved as manager of construction at Seabrook, has illegally transferred its control of the project to other entities whose qualifications to supervise construction were never approved by NRC. Moreover, no other organization has assumed clear authority and responsibility for the safety of construction at the plant. Finally, any authority that PSNH retains over the project has been seriously compromised by its heavy indebtedness to creditors and its

¹⁴ Moreover, the NRC has never examined the qualifications of these other owners to manage quality assurance in the construction program at Seabrook. Their ability to make safety related decisions independent of financial considerations has never been tested and is at best doubtful, considering the severity of the financial crisis gripping the entire Seabrook project.

principal contractor. There is thus no assurance that construction is being carried out and supervised by a single authority with sufficient independence from financial considerations to make difficult decisions regarding the safety of construction.

The Commission cannot find that construction at the Seabrook plant can be conducted with a reasonable assurance of safety. Therefore, the Commission must suspend authority for construction at the plant until the Seabrook owners have obtained a construction permit amendment demonstrating a management change. In the alternative, the Joint Owners must demonstrate that PSNH remains in control, as required by the construction permit, and complies with NRC quality assurance regulations for the construction of the plant.

Respectfully submitted,



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