



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20565

May 29, 1992

50-443
50-444

Mr. Donald W. Del Core, Sr.
4 Driscoll Drive
Uncasville, Connecticut 06382

Mr Timothy O'Sullivan
550 Veir Street
Glastonbury, Connecticut 06033

Gentlemen:

I am responding to your mailgram of May 4, 1992, to Chairman Selin in which you stated that you opposed the transfer of the Seabrook license to Northeast Utilities (NU) and had expected that a public hearing would be held. You also indicated that you had sent a letter on December 15, 1991, to Chairman Selin and to the Atomic Safety and Licensing Board (ASLB) asking that the proposed license transfer not take place.

In the public meeting held May 11, 1992, your mailgram of May 4, 1992, was presented to the Commission by the Seacoast Anti-Pollution League (SAPL). The SAPL presentation to the Commission, a copy of which is enclosed, encompassed very similar matters to those you expressed in your letter of December 15, 1992, which was that the suppression of employee concerns which occurred at Millstone might occur at Seabrook, and jeopardize safety. The Commission has acted on the proposed transfer of the Seabrook license and has taken into account a need to assure that the Seabrook facility be safely managed. The Commission has done this by imposing license conditions particularly requiring that the joint owners of the facility, in addition to NU, oversee matters which would affect safety, including the harassment of employees, and that reports required under the Seabrook joint ownership agreement be sent to this agency, together with proposed corrective actions.

In addition, in the course of considering the Seabrook transfer, the Commission obtained plans and commitments from NU to improve safety at its Connecticut nuclear plants, and, further, a commitment to provide adequate resources and staff to implement those safety improvements.

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Mr. Donald W. Del Core, Sr.
Mr. Timothy O'Sullivan

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May 29, 1992

Although the Commission did not choose to hold an adjudicatory hearing before approving the transfer, it is hoped that the actions taken have ameliorated your concerns.

Sincerely,

Original signed by
Victor Nerses, Acting Director
Project Directorate I-3
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

enclosure:
As Stated

A32

OFFICE	PDI-3/LA	PDI-3/PM	OGC	D:PDI-4	(A)D:PDI-3
NAME	MRushbrook	GEdison:mw	<i>[Signature]</i>	JStolz	<i>[Signature]</i> VNerses
DATE	5/27/92	5/29/92	5/27/92	5/27/92	5/29/92

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STATEMENT OF SAPL IN OPPOSITION TO NRC APPROVAL OF
SEABROOK LICENSE TRANSFER TO NORTHEAST UTILITIES

Mr. Chairman and Members of the Commission:

On behalf of the Seacoast Anti-Pollution League, we do appreciate the Commission's willingness to provide an opportunity for SAPL to express its views on the Seabrook license transfer now before you. Financial constraints prohibit our counsel, Mr. Robert A. Backus, from appearing before you today, so we further appreciate the opportunity for Mr. Jeff Sosland of the Nuclear Information and Resource Service to present our views.

Basically, our position is twofold. First, the Commission should grant a hearing, in the Seabrook area, on the proposed transfer before taking any action. Second, because of concerns about NU's financial condition and treatment of nuclear whistleblowers, no transfer of operation of Seabrook to NU should be authorized at this time.

1. A hearing should be held.

SAPL believes there is no way that this transfer should go forward without a full and fair evidentiary hearing in the Seabrook area on the serious issues presented. The Commission, of course, held extensive hearings in the Seabrook area on both the construction permit and the operating license. It is simply incredible that now, in the face of a proposal to transfer both the largest ownership interest, and operational control, to another company, the Commission proposes to proceed with no further procedures provided for input other

than this hearing in Rockville, Maryland on whether or not to adopt a staff recommendation for approval of the transfer. Although SAPL appreciates the offer of five to ten minutes to present its position to the Commission, this is in no way a substitute for the accountability that an evidentiary hearing in the area of the plant would provide.

10 C.F.R. 50.80 "Transfer of Licenses" makes clear that a license can only be transferred with Commission consent and that the information to be provided on the "technical and financial" qualifications of the transferee is to be the same "as would be required if the application was for an initial license". SAPL cannot understand how a license transfer can require the same showing as an initial license, on those issues important to a decision on whether a transfer should occur, yet no hearing is required on such a major decision.

Under 10 C.F.R. §50.8(c), the Commission is to provide "appropriate notice to interested persons", and provide "such procedures as may be required by the Act or regulations . . ." SAPL believes that both as a matter of sound policy, and as a matter of law, the transfer of the Seabrook license cannot be approved without a full evidentiary hearing on the issue of NU's technical, managerial, and financial capability.

Accordingly, SAPL reserves its right to appeal any Commission decision to approve transfer of this license, in the absence of an on-the-record hearing in the vicinity of the Seabrook plant.

2. The transfer to NU should not be approved at this time.

As §50.80 makes clear, before a nuclear operating license can be transferred to a different entity, that entity must meet the same standards as to its technical and managerial competence as would an initial licensee. NU, at the present time, has not established its capability in these areas.

(a) NU's record at Millstone does not provide a basis for authorizing the company to operate a fifth nuclear plant.

As is acknowledged by all parties, NU's nuclear operations at Millstone have slipped badly. As NU states in its 1991 Annual Report: "The performance of the three nuclear electric generating units located at Millstone station was less than satisfactory in 1991. The three units composite capacity factor was only 39.4% in 1991 compared with 79.3% in 1990." (Annual Report, p. 21.)

However, it is not the poor Millstone capacity factor that should concern the Commission: it is the reason for the poor performance, and the treatment NU has afforded to certain of its nuclear plant workers that reported the declining attention to detail and increasing failure to adhere to procedures that led to the decline.

As the Commission well knows, two nuclear whistleblowers employed at Millstone 2 were fired by NU on November 8, 1991. The firing came after these two individuals had filed hundreds of safety allegations with the NRC, many of which the NRC has

acknowledged were substantiated. (See attached telegram from Mr. Don Delcore and Mr. Timothy O'Sullivan.)

Although NU claimed that the firing was the employees' fault, the Department of Labor hearing officer found that the justification offered by NU was "pretextual" and ordered reinstatement and back pay. This finding was approved on January 17, 1992 by the Assistant Director, Wage and Hour Division of the Department of Labor. Although the two whistleblowers have since entered into a settlement agreement, not yet executed, the NRC arranged a Special Review Group to investigate the matter.

The SRG findings are totalling self-contradictory. On one hand, the SRG purported to find that, despite the retaliatory firing, "there was an atmosphere present which did not have an overall 'chilling effect' on the willingness of employees to report concerns." (Executive Summary at II.) On the other hand, the SRG found that "an atmosphere that encouraged the reporting of quality deficiencies and safety concerns was lacking in many respects." (Id. at I.)

SAPL suggests that these findings are contradictory, and indeed a classic example of government doublespeak. We suggest that, given the found "pretextual" firing of two whistleblowers, by a top NU management official, the NRC should consider it an established fact that NU management has acted so as to frustrate the prompt and diligent reporting of safety concerns by nuclear plant employees. NU, accordingly, should not be authorized to operate another nuclear plant. A record of reform and adherence

to the highest standards of nuclear operation must be established, before, and not after, the transfer.

The NRC staff cannot and does not plead ignorance of this matter. Indeed, according to the staff reports, SECY 92-099 and 92-156, now before the Commission, the staff suggests that its concerns can be addressed by a number of license conditions.

SAPL submits that the conditions proposed by the staff are wholly inadequate to address the concerns raised by NU's recent operations at Millstone, and particularly its treatment of its employees. The conditions require that the NRC be "informed" of any change in the Seabrook senior site official, "informed" of reports of the Oversight Committee, "informed" of changes to the incentive compensation program, and "informed" of changes to the annual operating and maintenance and capital expenditure budgets.

It was SAPL's understanding that NCR staff already had the right to be informed of these matters, under existing regulatory authority. If this is so, it appears that the conditions are wholly illusory, and offer no additional protection against the concerns raised by the recent record of nuclear management at Millstone. As a 40% owner of the Seabrook plant, NU would have twice the ownership of the next largest owner, and clearly have the influence to establish the "atmosphere" that will prevail at Seabrook, as it has done at Millstone. Until an actual record of nuclear excellence has been achieved at Millstone, and until an actual program of facilitating the reporting of safety problems

by employees has been demonstrated, the proposed transfer should not be approved.

Finally, and perhaps most important, SAPL would point to the fact that nowhere in the staff reports and recommendations is there any reference to the acknowledged fact that NU is under investigation by a federal grand jury in Connecticut. Grand jury proceedings are of course, by law, secret. NU, however, has acknowledged the grand jury investigation is underway, and urged its employees to cooperate in providing evidence.

SAPL suggests the Commission should not be considering transferring the license to NU, unless it is known what the outcome of the grand jury proceeding will be. It is understood that the grand jury proceeding involves an alleged failure on the part of NU, or its management, to report safety allegations at Millstone 1.

(b) The financial stresses on NU dictate license transfer should not be approved.

The issue of NRC review of the financial qualifications of a nuclear licensee has received much attention. See, for example, CLI 88-10, where the Commission required the Seabrook builders to establish a financial capability prior to low power testing. However, even as the NRC has retreated from requiring individual reviews of financial qualifications, it has continued to acknowledge that there is a connection between financial strain

and the possibility of safety problems.¹ Indeed, the staff's own reports in this matter make this clear.

NU's financial situation is therefore very important to the Commission's deliberations. Indeed, NU's overall financial situation may be a major portion of the root cause of the problems it faced at Millstone. Thus, the fact, as set forth in the attached excerpt from NU's five-year business plan, that NU faces a revenue shortfall of \$728 million between 1992 and 1996, is extremely important.

The importance of the revenue shortfall is clear from the SRG report stating that: "NU management may have overemphasized cost containment" at Millstone. (Executive Summary, p. 1.) NU has now made a commitment to add 200 new positions in nuclear licensing and operations, at an additional annual payroll cost of \$10 million. NU, therefore, is facing increased costs its own nuclear operations, at the same time it faces a major revenue shortfall.

These facts must be viewed against the representations NU made to the New Hampshire Public Utilities Commission when it

¹ SAPL cannot help but note that, although the NRC has frequently said its concern is not with profitability, or the economic well-being of its licensees, that the NRC staff, in SECY 92-156 noted, that NU is seeking a favorable Commission action before its shareholders' meeting on May 14, 1992. Perhaps it should be inquired of the staff why they mention the shareholder meeting, since the Commission has often stated its sole concern is with nuclear safety, and not with the economic well-being of its licensees.

sought approval for its merger with PSNH. NU, in its brief filed with the PUC at that time, stated as follows:

Since late 1986 NU has been engaged in a concerted effort to approve the cost effectiveness of all of its operations, including its nuclear operations. [Citation omitted.] NU's success in achieving cost savings by reducing staffing levels in its own organization demonstrates its ability to operate its nuclear units both safely and cost effectively. [Citation omitted.] During that three-year period, NU has reduced by approximately 250 the number of positions in its nuclear engineering operations group. [Citation omitted.] During the same period, NU Systematic Assessment of Licensee Performance ratings by the NRC have improved. The approach NU's management takes to its nuclear operations creates an atmosphere which is conducive to cost reductions. (Emphasis added.)

NU also states that:

As part of NU's acquisition of PSNH, a wholly-owned subsidiary of NU will become responsible for the management operation of Seabrook. NU estimates that its levelized cost of operation of Seabrook, including both O & M and Administrative & General (A & G) expenses, will be approximately 113 million a year. [Citation omitted.] When compared to New Hampshire Yankee's ("NHY") budget of 157.5 million, NU expects levelized savings of 44.5 million. Over the life of the unit, Seabrook's O & M's savings to PSNH (accounting for the estimated impact of severance payments of employees of NHY) are projected at a cumulative present value of approximately 188 million.

On NU's own statements, it is clear that NU contemplated budget cuts at Seabrook. Yet, it was budget cuts which have, according to the NRC staff, contributed to a decline in safety performance at Millstone. NU, now facing a massive revenue shortfall, is likely to be under continuing and severe pressure

to cut costs at Seabrook, as it indicated to the NH PUC it would. This tendency is going to be exacerbated by the commitment NU made, as part of the PSNH merger agreement, to cap rate increases in New Hampshire at 5.5% a year, over a 7-year period.

All of this indicates that NU will be under continuing pressure to cut costs, and that this may well result in a tendency, whether deliberate or not, to cut corners. Again, SAPL urges that, before any authorization of license transfer is made, NU should demonstrate that it has improved the performance at the Millstone units, as well as the atmosphere for reporting of safety problems.

CONCLUSION

For the reason stated, SAPL urges that a public hearing be held on the proposed transfer, and that pending the outcome of that public hearing the requested license amendment not be approved.

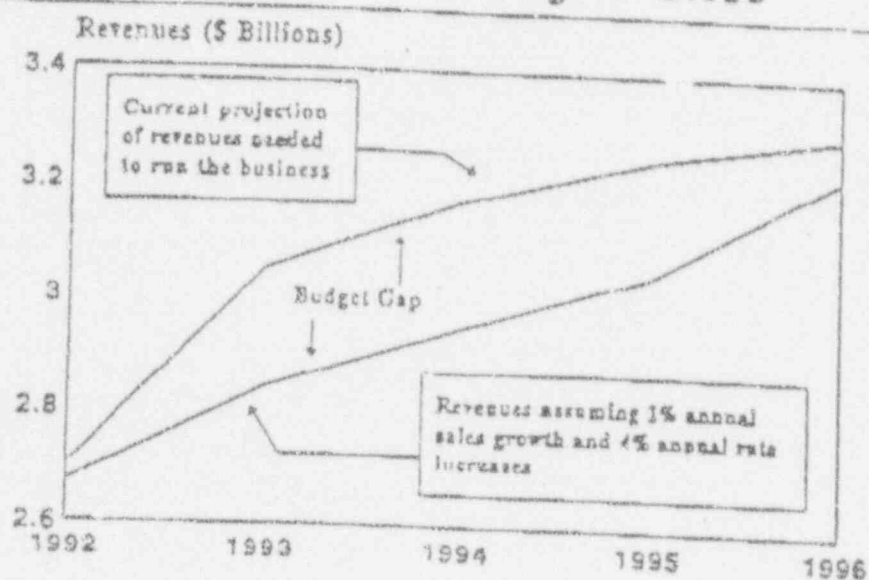
Part 2: The Next Five Years

NU Faces a \$728 Million Budget Gap That We Must Find a Way to Close

As you read through this Business Plan, you will see specific five-year budgets quoted for every function. Those familiar with specific budgets for personnel levels and capital and O&M spending may believe that they are extremely ambitious. Those budgets are aggressive, but the problem is they don't go nearly far enough.

This budget is based on rates rising by about 4 percent annually (the expected rate of inflation) and sales rising by 1 percent annually (assuming a gradual economic recovery). The rate increase projection is based on a review of recent regulatory decisions indicating that we cannot expect that rates will be allowed to rise at more than the prevailing inflation rate. Additionally, higher rates do affect our competitiveness. While higher increases may in fact be justified, we cannot reasonably base this plan on raising our charges substantially faster than the inflation rate. As a result, NU's revenues will come up \$728 million short of what this plan assumes is necessary to run the business for the five-year period 1992-1996. That means we expect to need \$15.5 billion of revenues to run the company and earn a reasonable profit over the next five years, and expect right now to collect only \$14.8 billion during that time.

NU Faces a Budget Gap We Must Find a Way to Close



As you can see from the charts, the problem is not as acute in 1992 because of our success in holding down our costs and the 1991 rate increases received by CIAP and WMECO. Reducing targeted spending levels by 2 percent will close the 1992 gap. And it is not as bad in 1996 because by then costs related to the Millstone 3 phase-in will be gone. But, we face a shortfall of about \$200 million a year from 1993-1995 when the impact of phase-ins and dropping capacity sales is most acute, and considerable effort must be devoted in 1992 to finding ways to close that gap.

Year	Annual Gap
1992	\$ 34 million
1993	212
1994	218
1995	199
1996	65
Total	\$728 million

This projected budget gap results from a variety of factors. They include:

- Higher O&M costs. While the budgets listed throughout this document are ambitious, they still represent an average annual increase of \$48 million or 5 percent a year.
- Phase-Ins. Rate increases have been moderated in recent years because Connecticut regulators have phased into rates the effects of major capital projects such as Millstone 3 and Seabrook. In effect, NU holds tens of millions of dollars of IOUs from customers that must be paid off by 1996. The Millstone 3 and Seabrook 1 phase-ins will increase annual revenue needs by \$80 million and \$30 million, respectively over the next four years.
- Medical benefits for retirees. New accounting rules require NU to collect additional revenue today to pay for the future medical benefits of retired workers. It sounds minor, but requires about \$30 million of additional revenue annually starting in 1993.
- Millstone 2 steam generators. This \$190 million capital project, the biggest NU is currently planning, will raise annual rates by \$40 million, offset to some extent by improved operational performance.
- Loss of capacity sale revenues. NU's ability to sell surplus capacity to other New England utilities created enormous savings for NU retail customers since 1988. A regional recession and the coming on line of Seabrook, Hydro-Quebec and other independent power producers have created a glut of power in the New England market. Capacity sales revenues are projected to slide from \$187 million in 1991 to \$33 million in 1996, leaving a gap of \$154 million to be made up in new revenues. It is difficult to overstate the adverse impact of losing these revenues.

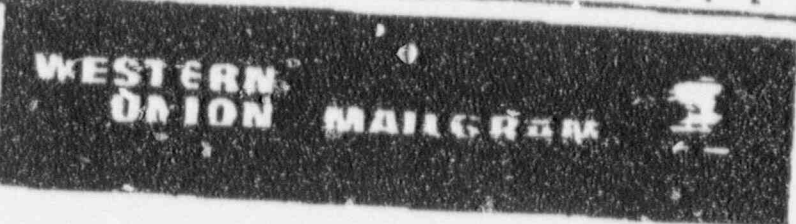
NU Capacity Sales Revenues (millions of \$)					
<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
187	152	127	75	33	33

- Sluggish sales growth. NU retail sales showed no growth in 1990 and dropped more than 1 percent in 1991. A gradual recovery is expected to increase sales only 1 percent a year through 1996. By contrast, sales grew by about 5 percent most years between 1983 and 1988. To put this in perspective, 1 percent sales growth offsets about \$18 million in higher O&M charges. By contrast, 5 percent sales growth offsets about \$90 million in higher O&M charges.

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DONALD W DEL CORE, SR.
NUMBER 4 DRISCOLL DR
UNCASVILLE CT 06382

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

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ZIP
IVAN SELIN, CHAIRMAN
USNRC
WASHINGTON DC 20555

DEAR CHAIRMAN SELIN:

ON DECEMBER 15 1991, WE THE UNDERSIGNED SENT A LETTER TO YOU AND THE ATOMIC SAFETY AND LICENSING BOARD IN REGARDS TO A LICENSE TRANSFER FROM THE SEABROOK NUCLEAR POWER STATION TO NORTHEAST UTILITIES (NAEC). WE HAVE NOT RECEIVED A RESPONSE REGARDING THAT LETTER TO DATE.

IN AN ASSOCIATED PRESS RELEASE FROM WASHINGTON DC, WE HAVE LEARNED THAT THE NUCLEAR REGULATORY COMMISSION PLANS TO CONSIDER THE LICENSE TRANSFER IN A COMMISSION MEETING ON MAY 11 1992. AS YOU ARE AWARE, WE OPPOSE THE LICENSE TRANSFER TO NU AND WE WOULD EXPECT THAT A PUBLIC HEARING WOULD BE HELD TO PROPERLY ADDRESS THE MATTERS AT HAND.

WE HOPE YOU WILL PROPERLY ADDRESS THE MATTERS OF SAFETY CONCERN THAT ARE CLEARLY RAISED BY THIS PROPOSED LICENSE TRANSFER. WE AWAIT YOUR RESPONSE. VERY TRULY YOURS,

DONALD W DEL CORE, SR. AND TIMOTHY O'SULLIVAN

20:03 EST

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THURSDAY, WEDNESDAY, MAY 4, 1992