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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

OFFICE OF NUCLEAR REACTOR REGULATION
Harold R. Denton, Director

In the Matter of)
PUBLIC SERVICE COMPANY)
OF NEW HAMPSHIRE, ET AL)
(Seabrook Station, Units 1 & 2))

Docket Nos. 50-443
50-444

(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

INTRODUCTION

In its "New England Coalition on Nuclear Pollution Petition for Enforcement and Motion for Suspension of Construction at the Seabrook Nuclear Power Plant" dated August 22, 1984 (Petition), the New England Coalition on Nuclear Pollution (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action to remedy alleged violations and deficiencies associated with construction of the Seabrook facility by a number of electric companies (the Licensees) including Public Service Company of New Hampshire (PSNH). Specifically, the Petition contends that construction activities underway at the Seabrook facility are being conducted in violation of the terms of the construction permit issued to the Licensees authorizing construction of the Seabrook facility. The construction permit identified PSNH as the sole technically qualified entity responsible for construction of the Seabrook facility. The

Petition alleges that PSNH is no longer acting in that capacity due to a series of recent management changes. The Petition also alleges violations of the Commission's quality assurance (QA) requirements, specifically, 10 CFR Part 50, Appendix B. Based on these alleged violations and deficiencies, the Petitioner seeks immediate suspension of construction of the plant until a construction permit amendment has been obtained reflecting the management changes which have occurred at Seabrook and conformance with NRC QA requirements are demonstrated.

In a letter dated October 17, 1984, I acknowledged receipt of the Petition but declined to take any immediate actions with respect to the alleged concerns identified in the Petition. I determined that no immediate action was necessary based on the preliminary conclusion of the NRC staff that PSNH continued to have the necessary authority over the Seabrook project to assure continued implementation of the QA Program. This conclusion was based in part on continued oversight of construction at the Seabrook facility by NRC inspectors. With respect to any violations of the construction permits or NRC regulations, I concluded that the Petition failed to identify any imminent hazard to the public associated with the alleged violations. Furthermore, the Petition concerns a facility under construction which will not operate for some time and where construction activities have been found generally acceptable and in accordance with the approval QA program. For these reasons, I declined to take any action.

I further indicated that a final decision with respect to the concerns raised would be forthcoming within a reasonable time. This decision constitutes my final action with respect to the Petition. In reaching my decision, I have considered the "Permittees' Response to the New England Coalition on Nuclear Pollution Petition for Enforcement and Motion for Suspension of Construction at the Seabrook Nuclear Power Plant" submitted on September, 6, 1984 by the Licensees. (Licensees' Response).

DECISION

The Petition raises essentially two concerns. First, the Petition alleges a violation of the terms of the construction permit issued to the Licensees based on a series of organizational changes which, the Petitioner argues, has effectively removed PSNH as the entity solely responsible for construction of the Seabrook facility. Second, the Petition alleges violations of the Commission's quality assurance requirements. Each of these issues will be discussed below in turn.

A. Present Construction Activities Are Authorized Under the Construction Permit

The construction permits issued for the Seabrook facility (Construction Permit Nos. CPPR-135 and 136, issued July 7, 1976) presumed that PSNH would act on behalf of all Licensees in accordance with the Joint Ownership Agreement (JOA) that was then in effect. The construction permits were

issued to the Licensees based on a finding that PSNH was technically qualified to design and construct the Seabrook facility. As is generally the case in the construction of nuclear facilities, PSNH would contract for and assign certain responsibilities to others. This was recognized by the Atomic Safety and Licensing Board which considered the issue of technical qualifications in the construction permit proceeding. ^{1/} The Licensing Board based its conclusions regarding the technical qualifications of PSNH in large measure on the fact that the Yankee Atomic Electric Company (YAEC), United Engineers and Constructors, Inc., and Westinghouse Electric Corporation had suitable qualifications and had been assigned major responsibilities for construction of the Seabrook facility. ^{2/} Indeed the participation by YAEC was deemed essential by the Licensing Board because Seabrook was the first nuclear venture for PSNH. ^{3/} In any event, regardless of the degree to which activities were delegated, the Licensing Board recognized that ultimate responsibility lay with PSNH. ^{4/}

Following issuance of the construction permits in 1976, the construction permits were amended from time to time to reflect changing ownership interests in the Seabrook facility. However, at no time did these amendments reduce the responsibilities of PSNH with respect to design and construction of the Seabrook facility. Indeed, as the Petition points out, in approving the construction permit amendments, the NRC recognized the fact that PSNH would continue to retain full responsibility and

^{1/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-76-26, 3 NRC 857 (1976).
^{2/} Id. at 800-807.
^{3/} Id. at 917.
^{4/} Id. at 866.

authority under the JOA for design and construction of the Seabrook facility and would continue to utilize suitably qualified contractors. The Petition contends in essence that, under recently executed amendments to the JOA, and other agreements concerning continued funding of the Seabrook project, PSNH in fact no longer remains solely accountable for design and construction of the Seabrook facility and, consequently, construction of the facility is being performed in violation of the construction permit and the provisions of the Atomic Energy Act of 1954, as amended, and the Commission's regulations limiting the transfer of licenses, specifically Section 183 and 10 CFR 50.54(a). While there has been a number of agreements recently involving organizational changes at and financing of the Seabrook facility, in the NRC staff's view, for the reasons stated below, none have had the effect of removing PSNH as the entity solely accountable and responsible for design and construction of the Seabrook facility.

Petitioner points to the "Fifteenth Amendment of Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units" dated April 30, 1984, (Fifteenth Amendment) to support its view that Commission requirements have been violated. Petitioner argues that the Fifteenth Amendment eliminated PSNH's "veto power" over the Seabrook project by reducing the vote necessary for effecting decisions from 80% to 51% of the ownership shares. While the Fifteenth Amendment did permit certain actions to be taken based on a vote of 51% of the ownership shares, Petitioner attributes undue significance to the so-called "veto power" of PSNH. What is significant is that the entity found to be

technically qualified has the requisite authority to fulfill its responsibilities to construct a facility in accordance with the Commission's regulations. PSNH was given such authority under the original JOA. The Fifteenth Amendment at page 3 explicitly recognizes that PSNH remains the entity ultimately responsible for project construction. To the extent that the Fifteenth Amendment contemplates possible removal of PSNH as Project Manager upon a 51% vote of ownership shares, such removal is conditioned upon obtaining needed regulatory approvals, including that of the NRC, and appointment of a new Project Manager. Until then, PSNH remains ultimately responsible for Seabrook facility design and construction. Nor do the terms of the Fifteenth Amendment regarding the appointment of a dispersing agent upon a 51% vote of the ownership shares change this result. The very term itself, "dispersing agent", makes clear that this is a particular function associated with design and construction of the Seabrook facility which may readily be contracted to or assigned to another entity. ^{5/} Finally, the requirement in the Fifteenth Amendment that PSNH report to and consult with an Oversight Committee prior to making major decisions in connection.

^{5/} The appropriate disbursing agent for the Seabrook facility is also the subject of the "Interim Agreement to Preserve and Protect the Assets of an Investment in the New Hampshire Nuclear Units" dated April 27, 1984 and the "Agreement for Seabrook Disbursing Agent" dated May 23, 1984. Both documents concern disbursement of payments due from certain participants in the Seabrook project in light of the financial difficulties associated with the Project. The documents place no limitations on the authority of PSNH in managing design and construction of the Seabrook project and Petitioner points to none.

with the Seabrook project does not detract from its role as the entity solely accountable for design and construction of the Seabrook facility. To the contrary, the provision itself recognizes that PSNH is the entity responsible for making decisions associated with design and construction of the project (Fifteenth Amendment, pp. 2-3). Also, the Fifteenth Amendment makes clear that PSNH can disregard the recommendations of the Oversight Committee when it believes that such recommendations are not in accordance with NRC regulations. (Fifteenth Amendment, p. 3). Nor does the "Sixteenth Amendment of Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units" dated June 15, 1984 (Sixteenth Amendment) affect the role of PSNH as the entity solely accountable for the design and construction of the Seabrook facility. It appears from the document that the role of the Executive Committee created under it is to closely monitor the expenses of the project to assure that they do not exceed approved levels. It is a vehicle apparently designed to monitor the financial course of the project. While it could be argued that such monitoring could in some fashion affect PSNH's commitment to quality, which inherently involves expenses, it does nothing to undermine PSNH's sole accountability under the construction permit. Every nuclear construction project has an inherent tension between keeping costs reasonable and ensuring that the quality demanded in construction of the project meet NRC regulations. Every project has associated with it budget control and the monitoring of construction expenses. A central concern with regard to every nuclear construction project, including Seabrook, is that the entity in charge has the authority to carry out its responsibilities to

ensure construction in accordance with the Commission's requirements. The Sixteenth Amendment expressly rebuts the Petitioner's claims that PSNH is no longer in charge. It specifically states that its terms do not affect the duties and responsibilities for construction, operation and maintenance of the units by PSNH. (Sixteenth Amendment, pp. 8-9).

The June 23, 1984 "Resolution for Transfer of Managing Agent Responsibility" (Resolution) also does not support the Petitioner's view. The Resolution contemplates an orderly process for transferring responsibility for design, construction and operation of the Seabrook facility from PSNH to a new entity, New Hampshire Yankee Electric Company. The first stage of this process calls for the creation of the New Hampshire Yankee Division within PSNH. The Division has been formed.^{6/} With the exception of the President and Chief Executive Officer of the Division, who is an employee of YAEC, all other employees of the Division are employees of PSNH.^{7/} The Division reports to the Chief Executive Officer of PSNH. PSNH thus remains the entity accountable for, and with the authority to carry out, design and construction of the Seabrook facility. The New Hampshire Yankee Division is envisioned under the Resolution to ultimately dissolve with separate corporate entities assuming responsibility for completion of construction and operation of the Seabrook facility. Staffing of the Division by employees of YAEC, an entity experienced in nuclear construction and operation and recognized by the Licensing Board as essential for

^{6/} Licensees' Response, p. 4.
^{7/} Licensees' Response, p. 5 and p. 9.

construction of the Seabrook facility, is not inappropriate. In any event, the current organizational structure has the New Hampshire Yankee Division and its employees subordinate to PSNH with PSNH remaining accountable for the design and construction of the Seabrook facility. Incorporation of the Division under the Resolution as the New Hampshire Yankee Electric Corporation responsible for completing construction of Seabrook Unit 1 would become effective upon receipt of any necessary regulatory approvals. (Resolution, p. 2).

In summary, none of the changes raised in the Petition have had the effect of undermining the authority of PSNH to continue managing the construction of the Seabrook facility. PSNH remains in charge. While future changes may be contemplated, present responsibility and authority for construction continues to rest with PSNH. While actions and proposals by PSNH for continued construction of Seabrook are reviewed by newly-created committees, and while such committees may voice concerns with proposed expenditures, ultimate decision making authority remains with PSNH. Nor does the NRC oversight of construction activities suggest differently. The NRC monitors and inspects construction at the Seabrook site through Regional and Resident Inspectors. The design process is also the subject of inspections not only at the site but at the corporate headquarters and at contractors and vendors. The results of these inspection activities confirm that PSNH continues in its role as managing agent solely accountable and responsible for design and construction at

Seabrook. Consequently, no actions on my part with respect to this matter are appropriate.

B. Construction of the Seabrook Facility is being Undertaken in General Conformance With the NRC's Quality Assurance Requirements

The Petition also alleges violations of the Commission's Quality Assurance (QA) requirements, specifically 10 CFR Part 50, Appendix B. The Petition alleges that the recent organizational changes discussed above with respect to construction of the Seabrook facility make it unclear who has authority over the construction quality assurance in violation of Criterion I of Appendix B. The Petition claims that PSNH no longer has clearly established and delineated authority with respect to QA and construction. Further, to the extent that PSNH does retain any control over the construction program for Seabrook, the Petition alleges that PSNH has compromised its authority and organizational freedom to effectively supervise QA by becoming heavily indebted to its contractors and creditors, again in violation of Criterion I of Appendix B.

The current management and organization associated with the implementation of the QA Program at the Seabrook facility have been the subject of a recent NRC staff review and were found to continue to satisfy the requirements of 10 CFR Part 50, Appendix B. The description of this management and organizational arrangement is provided in PSNH's letter of October 31, 1984

from W. P. Johnson to G. W. Knighton which has been reviewed by the NRC staff. ^{8/} As a result of this review, the staff found that PSNH has established a new integrated project organization, the New Hampshire Yankee Division, with delegated responsibility for the design, construction and operation of the Seabrook facility. Under this new organizational arrangement, PSNH continues to delegate to the Yankee Atomic Electric Company (YAEC), through the Division, responsibility for establishing and implementing the Quality Assurance Program. Also, PSNH continues to retain ultimate responsibility for this program. This arrangement has been acceptable in the past and complies with Criterion I which permits PSNH to delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the Quality Assurance Program or any part thereof, providing PSNH retains responsibility therefor.

The Petition alleges that responsibilities and authorities over quality assurance are not clearly defined at Seabrook, and specifically, that individuals immediately responsible for QA may be accountable to four different organizations. The staff has found that lines of responsibilities and authorities over quality assurance are adequately described in the Final Safety Analysis Report (FSAR) Section 1.4 "Identification of Agents and Contractors," Section 13.1.1.5 "Construction and Construction/Operation Interface," and Section 17.1 "Quality Assurance During Design and Construction," which includes a Section 17.1.1.1.(a) on "Authority, Responsibilities, and Duties." (See Appendix A attached hereto). From these descriptions, it

^{8/} Letter of January 31, 1985 to R. J. Harrison from D. G. Eisenhut transmitting the NRC staff review, attached hereto as Appendix A.

is clear that QA personnel within YAEC who are responsible for establishing and implementing the Seabrook QA Program report to the YAEC Construction QA Manager. The YAEC Construction QA Manager is assigned exclusively to the Seabrook Project and is responsible for interfacing with the New Hampshire Yankee Division Vice President in charge of Administrative Services. United Engineers and Constructors and Westinghouse Electric Corporation QA Programs are extensions of the YAEC QA Program and have been reviewed and accepted by YAEC. YAEC maintains control of these and other contractors by means of audits, surveillance, surveys, investigations and reviews. In turn, YAEC is accountable to the New Hampshire Yankee Division of PSNH which is responsible for the construction of Seabrook Station. The overall responsibility for all activities associated with Seabrook Station resides with the PSNH President and Chief Executive Officer.

The New Hampshire Yankee Division consists of an integrated project organization to ensure effective project management control. This integrated organization is comprised of the Director of Construction, the Director of Engineering and Licensing, the Vice President of Nuclear Production, and the Vice President in charge of Administrative Services who is responsible for interfacing with YAEC Quality Assurance Department. Responsibility for quality assurance has been delegated to the YAEC for the development, execution, and administration of the QA Program.

The YAEC Director of Quality Assurance who reports to the YAEC President is responsible for establishing policies under which the Yankee quality assurance organization works, and with which contractors comply. He approves the Seabrook Station Quality Assurance Manual which governs all

YAEC program activities and receives copies of correspondence and reports generated by the Quality Assurance Department. He evaluates and reports to the President on the effectiveness of the Quality Assurance Program. He reports on a quarterly basis to the New Hampshire Yankee Division management to keep them advised of the program status. He coordinates the activities and program direction of quality assurance during design, construction and certain phases of operation to maintain a consistency of the program and a continuity of the effort. The YAEC Construction Quality Assurance Manager, who reports to the Director of Quality Assurance, is responsible for the direction and supervision of work performed by the Construction Quality Assurance Group staff, at both the corporate office and at the plant site, and by consultants hired to supplement this staff. Off-site personnel (Home Office QA Engineers) perform staff functions, i.e., develop QA programs and procedures, review technical and QA documentation submittals, provide training and indoctrination and perform audit and/or surveillance functions internally as well as over contractors, constructors, subcontractors and suppliers. Onsite personnel perform QA line functions, i.e., plan and develop verification procedures and controls, perform surveillance activities over constructors and subcontractors and review contractor and subcontractor implementing procedures.

YAEC has delegated to the engineer-constructor, United Engineers and Constructors Inc. (UE&C), and to the nuclear steam system supplier, Westinghouse Electric Corporation-Water Reactor Divisions (WRD), administration and execution of large portions of the Quality Assurance Program

associated with the design, procurement and installation of safety-related structures and equipment. UE&C and WRD and their vendors and subcontractors who are responsible for safety-related components and structures, are required to have quality assurance programs consistent with the requirements of 10 CFR 50, Part Appendix B. The UE&C QA program is described in Topical Report No. UEC-TR-001. The WRD QA program is described in the Westinghouse WRD Quality Assurance Plan (WCAP-8370).

The YAEC Construction Quality Assurance Manager has direct communication with Westinghouse and UE&C regarding quality-related activities. YAEC reviews and concurs with all quality-related procedures, programs, plans, that are generated by UE&C. YAEC reviews and concurs with the Westinghouse QA Topical Report and reviews department procedures in the process of auditing Westinghouse performance.

The contractors are responsible for the review and approval of their supplier and subcontractor quality-related documents. The adequacy of the contractors' reviews are verified by YAEC audit and/or surveillance.

The New Hampshire Yankee Division Vice President of Administration and his staff maintains cognizance of and evaluates the QA Program activities in the following manner:

1. Reviews and approves of the YAEC Quality Assurance Program.
2. Participates in major QA decisions and program changes.

3. Receives copies of all YAEC audit reports (internal and external) pertaining to the Seabrook project. Monthly he receives the status of outstanding items indicating the status of audit findings
4. Participates on a quarterly basis in selected external audits by YAEC to assess YAEC performance in contractor activities.
5. Participates on a quarterly basis in selected internal audits of YAEC to assess YAEC performance in QA activities.
6. Performs management audits of YAEC construction quality assurance performance. The management audits are conducted annually using approved checklists and follow a preestablished schedule assuring compliance with the program.
7. Reviews quarterly evaluations of QA program activities.
8. Receives copies of all YAEC correspondence with contractor relating to QA program activities.

Organizational changes that culminated in creation of the New Hampshire Yankee Division reinforces the position that PSNH is responsible for the establishment and execution of the Seabrook Quality Assurance Program.

As the above description of the current Quality Assurance Program for the Seabrook facility demonstrates, the lines of organizational authority are clear and well defined and dispel the allegation of the Petition that individuals immediately responsible for quality assurance may be accountable to four different organizations. As the staff concluded in

Appendix A, establishment of the New Hampshire Yankee Division and the delegated responsibilities to this Division from PSNH have not diluted nor weakened the previously approved QA Program for design and construction. Therefore, the organization and the QA Program for design and construction is acceptable for the remaining construction activities at the Seabrook Station.

The Petition alleges that the chief officials of PSNH's New Hampshire Yankee Division are actually employees of, and therefore answerable to, a different corporation, YAEC, suggesting that the Division is subordinate to PSNH in name only.

As was discussed earlier in this decision, staffing of the Division by employees of YAEC would not be inappropriate if it remained clear that those employees were ultimately responsible to PSNH, as is in fact the case. Indeed, given the explicit recognition by the Licensing Board of the need for YAEC, an entity experienced in nuclear construction and operation, to be involved in the Seabrook Project, such staffing is of great importance.

The Petition also alleges that PSNH has compromised its authority and organizational freedom to supervise QA by becoming heavily indebted to its contractors and other creditors. Because of this heavy indebtedness, the Petition alleges that PSNH is in no position to make objective and independent decisions where safety and financial considerations are in opposition. The

Petition's allegation lacks specificity in that there is no instance given where such a compromise has actually occurred. Although one could argue that PSNH's position may be weakened by its financial problem, PSNH is well aware of the need for it to demonstrate that it does properly balance safety and financial considerations in the execution of its Quality Assurance Program. It should be emphasized that the Petition fails to point to any instance where a compromise of safety has occurred. This can also be said of the allegation raised in the Petition that, in making difficult QA decisions, PSNH may be influenced by the authority of the other owners to dismiss it immediately as manager of the Seabrook project. No specific instance of undue influence is presented in either instance.

With respect to both of these concerns, the issues raised by the Petition are not unique to the Seabrook project. There may be differences in degree but the problem of an inherent tension caused by the need to keep costs under control while at the same time ensuring that quality meets NRC regulations is an industry-wide one. Financial considerations may make the potential more intense at Seabrook. But Petitioner points to no specifics indicating a problem in fact. The recent NRC staff review of organizational changes indicates continued compliance with Commission regulations. Furthermore, NRC oversight of construction activities including extensive field and corporate inspections has failed to identify any compromise by PSNH in the implementation of its Quality Assurance Program. The Construction Quality Assurance Manager

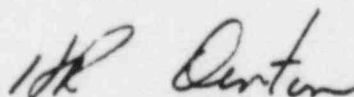
and personnel reporting to him have the authority to stop any operation found being performed contrary to approved procedures, specifications, instructions or drawings. It is expected that all provisions of the licensee's QA Program will be adhered to, including the exercise of stop work authority when appropriate. Failure to adhere to the QA Program can result in NRC enforcement action, including civil penalties and orders. Failure to adhere to the QA program would be a relevant consideration in the issuance of an operating license for Seabrook. These controls along with the inspection and surveillance activities of the resident inspector and NRC Regional office provide the necessary deterrents to discourage abuse of the QA decision process.

Recent Systematic Assessments of Licensee Performance by the NRC have recognized that management support of quality assurance remains a strong point in the construction of Seabrook Station. In recent NRC meetings with senior New Hampshire Yankee Division management personnel, PSNH has committed that such support of QA will continue. Finally, it should be noted that, during the suspension of construction and in accordance with the "Interim Agreement to Preserve and Protect the Assets of the Investment in the New Hampshire Nuclear Units", dated April 27, 1984, the Joint Owners included QA and QC activities among one of the high priorities for the limited expenditures.

CONCLUSION

The Licensee's activities in the construction of the Seabrook facility are authorized under the construction permit issued for the facility. More specifically, PSNH continues in its role as managing agent solely accountable and responsible for design and construction at Seabrook. Furthermore, the QA Program at Seabrook which has been the subject of a recent staff review and ongoing inspection oversight continues to meet the requirements of 10 CFR Part 50, Appendix B. The Petition has failed to raise issues which would warrant the relief requested, namely suspension of construction.

Accordingly, the Petitioner's request for action pursuant to 10 CFR 2.206 has been denied as described in this Decision. As provided by 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary for the Commission's review.



Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland
this 18 day of March, 1985.

APPENDIX A



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

JAN 31 1985

Docket Nos.: 50-443
and 50-444

Mr. Robert J. Harrison
President & Chief Executive Officer
Public Service Company of New Hampshire
Post Office Box 330
Manchester, New Hampshire 03105

Dear Mr. Harrison:

SUBJECT: SEABROOK QA PROGRAM CHANGES

Public Service Company of New Hampshire (PSNH) submitted Amendment 50 to the FSAR modifying certain portions of the Chapter 17, Operational QA Program. In addition to the amendment, PSNH's letter of August 31, 1984 provides the staff information regarding the establishment of a new division within PSNH called New Hampshire Yankee (NHY) with prime responsibility for the construction, operation, maintenance and refueling of Seabrook Station, Units 1 and 2. Accordingly, the staff has reviewed this material as it affects the Safety Evaluation Report (SER).

The staff has completed the review of the new organization as it pertains to the SER including additional information provided at our request in PSNH's letter of October 31, 1984. Since the reorganization was within PSNH, the staff review focused on the continued acceptability of the "Quality Assurance Program" and its implementation. The staff has completed its review and as stated in the Enclosure 1, finds Amendment 53 including the newly established NHY organization acceptable. The revised SER material in Enclosure 2 will be included in a future Supplement to the Seabrook Nuclear Station SER (NUREG-0896).

Questions or additional information regarding this matter should be directed to the Seabrook Project Manager, Mr. V. Nerses.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darrell G. Eisenhut".

Darrell G. Eisenhut, Director
Division of Licensing

Enclosures: As stated

cc: See next page

Safety Evaluation of Design and Construction

OA Program Changes

The staff has evaluated Section 17.1 "Quality Assurance During Design and Construction of Amendment 53 to the FSAR and PSNH's letters of August 31, 1984 and October 31, 1984, to G. Knighton which discusses the establishment of a new division within PSNH called New Hampshire Yankee (NHY). NHY has been delegated the responsibility for the design, construction and operation of the Seabrook Station. Under this new organizational arrangement, PSNH continues to delegate to the Yankee Atomic Electric Company (YAEC) responsibility for establishing and implementing the Quality Assurance Program for the construction of the Seabrook station. Also, PSNH continues to retain ultimate responsibility for this program. This arrangement has been acceptable in the past and complies with Criterion I of 10 CFR 50 Appendix B, which permits PSNH to delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program or any part thereof, providing PSNH retains responsibility therefore.

The lines of responsibilities and authorities over quality assurance are adequately described in the FSAR Section 1.4 "Identification of Agents and Contractors," Section 13.1.1.5 "Construction and Construction/Operation Interface," and Section 17.1 "Quality Assurance During Design and Construction," which includes a Section 17.1.1.1.(a) on "Authority, Responsibilities, and Duties." From these descriptions, it is clear that OA personnel within the

YAEC who are responsible for establishing and implementing the Seabrook QA programs report to the YAEC Construction QA Manager. The YAEC Construction QA Manager is assigned exclusively to the Seabrook Project and is responsible for interfacing with the NHY Vice President in charge of Administrative Services. United Engineers and Constructors and Westinghouse Electric Corporation QA programs are extensions of the YAEC QA program and have been reviewed and accepted by YAEC. YAEC maintains control of these and other contractors by means of audits, surveillance, surveys, investigations and reviews.

We conclude that the establishment of the NHY division and the delegated responsibilities to this division from PSNH have not diluted nor weakened the previously approved QA Program for design and construction. Therefore the NHY organization and the QA Program for design and construction is acceptable for the remaining construction activities at the Seabrook Station.

Quality Assurance Safety Evaluation

Seabrook Station, Units 1 and 2

As a result of Public Service Company of New Hampshire's submittal of Amendment 53 which affects our previous SER organizational description for the operation of the Seabrook Station, it is necessary that section 17.2 "Organization," 17.4 "Conclusions" and the QA organization chart Figure 17.1 be replaced by the following supplement

17.2 Organization

The organization responsible for the operation of Seabrook station and for the establishment and execution of the operations phase QA program is shown in Figure 17.1. The Public Service of New Hampshire (PSNH) President, has delegated to the New Hampshire Yankee (NHY) President, a division within the Public Service Company of New Hampshire, the direct responsibility for operation, maintenance, modification and refueling of the Seabrook Station, Units 1 and 2. The NHY Vice President of Nuclear Production reports through the NHY Senior Vice President to the NHY President and is responsible for the operation and operational support of the Seabrook Station, Units 1 and 2 including quality assurance functions. The Seabrook Station Manager, the Nuclear Quality Manager, and other support groups report to the NHY Vice President of Nuclear Production. The Nuclear Quality Manager is in charge of the Quality Assurance Department which consists of a Quality Assurance Section, an Audit and Evaluation Section and a Quality Control Section.

The Nuclear Quality Manager has been delegated the authority for establishing QA program requirements, verifying implementation, and measuring the overall effectiveness of the QA program. The Nuclear Quality Manager and his staff (which presently consists of 28 persons) have the responsibility and authority to stop unsatisfactory work and control further processing, delivery, or installation of nonconforming material.

The QA organization has the authority to (1) identify quality problems; (2) initiate, recommend, or provide solutions through designated channels; (3) verify implementation of solutions; and (4) stop unsatisfactory work and control further processing, delivery, or installation of nonconforming items. The QA organization is responsible for (1) reviewing and concurring with documents affecting safety; (2) verifying inplant activities by surveillance inspections and examinations; (3) evaluating suppliers before contracts are awarded; (4) inspecting suppliers' facilities; (5) ensuring that personnel qualifications are current and applicable to the work being performed; (6) ensuring that corrective actions are effective and accomplished in a timely manner; and (7) conducting (a) internal audits of maintenance, modification, and operations activities and (b) external audits of suppliers activities.

The Seabrook Station Manager reports to the Vice President-Nuclear Production and is responsible for (1) ensuring the safe, reliable, and efficient operation of the plant and (2) ensuring that quality affecting activities are conducted in accordance with the QA program. Disputes on any QA matter that arise between QA/QC and other departments are resolved by the management of the involved organizations or, if necessary, with the NHY Vice President of Nuclear Production.

17.3 Quality Assurance Program

The SER previously submitted on this subject is still valid.

17.4 Conclusion

Based on its detailed review and evaluation of the QA program as described in FSAR Section 17.2, the staff concludes

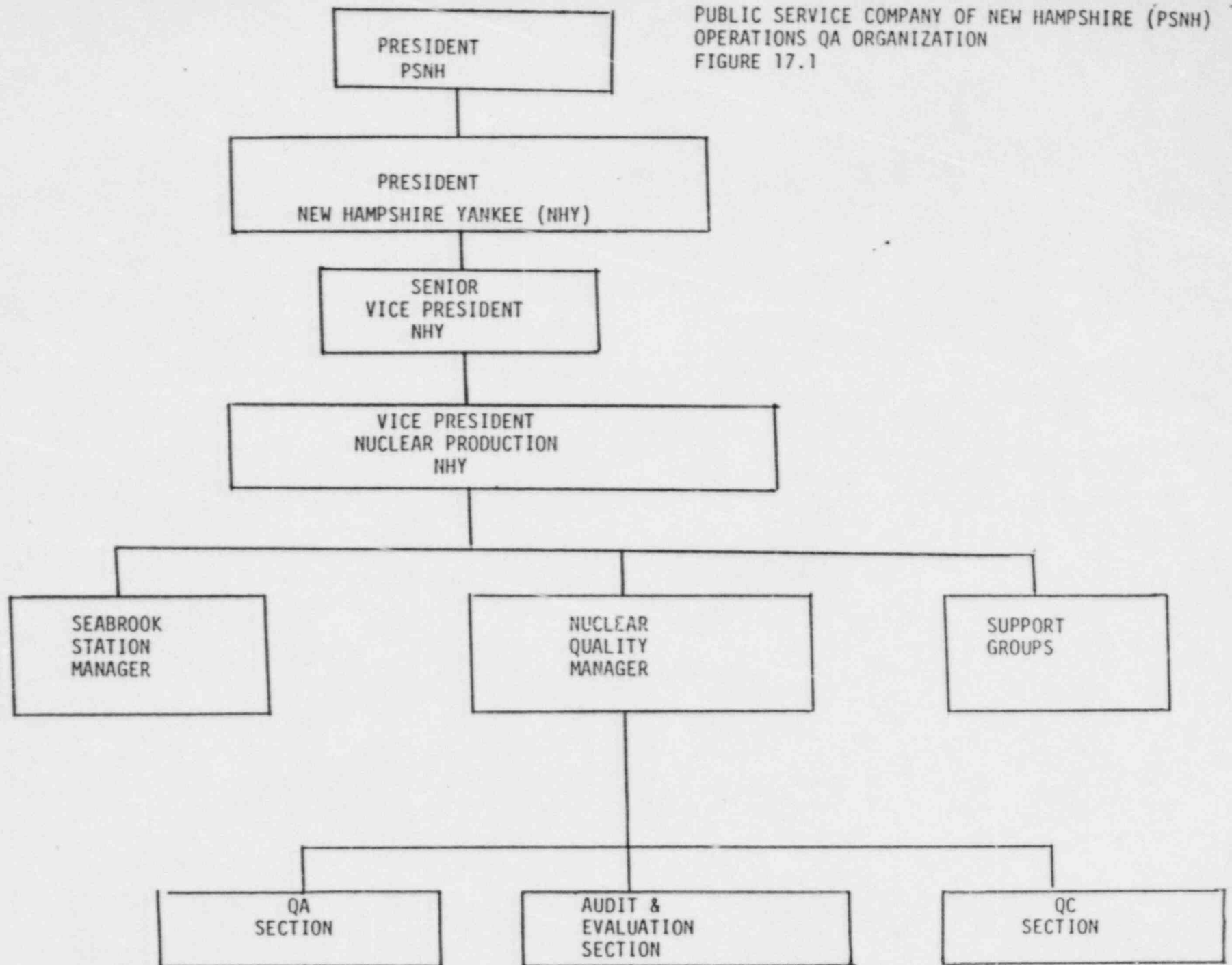
- (1) The organizations and persons performing QA functions have the required independence and authority to effectively carry out the QA program without undue influence from those directly responsible for cost and schedules.
- (2) With the exception of the outstanding issue described in Section 17.5, the QA program describes requirements, procedures, and controls that, when properly implemented, comply with the requirements of Appendix B to 10 CFR 50 and with the acceptance criteria in SRP 17.2.

Accordingly, the staff concludes that the applicant's description of the QA program, with the exception of the outstanding issue noted below is in compliance with applicable NRC regulations.

17.5 Outstanding QA Issues

The staff is evaluating the listing of those structures, systems, and components that are under the control of the QA program. The results of this review will be included in a supplement to this SER.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE (PSNH)
OPERATIONS QA ORGANIZATION
FIGURE 17.1



NUCLEAR REGULATORY COMMISSIONDocket No. 50-443/444PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL(Seabrook Station, Units 1 and 2)ISSUANCE OF A DIRECTOR'S DECISION UNDER 10 CFR 2.206

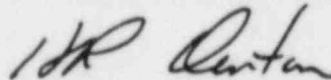
Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision pursuant to 10 CFR 2.206 concerning a Petition dated August 22, 1984 filed by the New England Coalition on Nuclear Pollution. The Petitioner requested that the Commission take action to remedy alleged violations and deficiencies associated with construction of the Seabrook facility by a number of electric companies (licensees), including Public Service Company of New Hampshire (PSNH). Specifically, the Petition contends that construction activities underway at the Seabrook facility are being performed in violation of the terms of the construction permits issued to the licensees authorizing construction of the Seabrook facility. The construction permits identified PSNH as the sole technically qualified entity responsible for construction of the Seabrook facility. The Petition alleges that PSNH is no longer acting in that capacity due to a series of recent management changes. The Petition also alleges violations of the Commission's quality assurance (QA) requirements, specifically, 10 CFR Part 50, Appendix B. Based on these alleged violations and deficiencies, the Petitioner seeks immediate suspension of construction of the plant until construction permit amendments have been obtained reflecting the management changes which have occurred at Seabrook and conformance with NRC QA requirements is demonstrated.

The Petition was referred to the Director, Office of Nuclear Reactor Regulation for treatment pursuant to 10 CFR 2.206 of the Commission's regulations and a final Director's Decision has been issued denying the Petitioner's request. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206" (DD-85- 3), which is available for inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D. C. 20555, and at the Local Public Document Room at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, takes review of the decision within that time.

Dated at Bethesda, Maryland, this 18 day of March, 1985.

FOR THE NUCLEAR REGULATORY COMMISSION



Harold R. Denton, Director
Office of Nuclear Reactor Regulation

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

DOCKETED
1984

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

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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.

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, S 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 186, 42 U.S.C. 5

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.

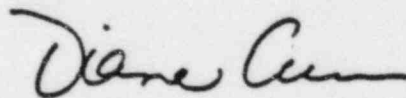
Safety related construction work is now progressing at Seabrook in violation of the Seabrook construction permit, the Atomic Energy Act, and NRC regulations. PSNH, the company the Commission originally approved as manager of construction at Seabrook, has illegally transferred its control of the project 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.

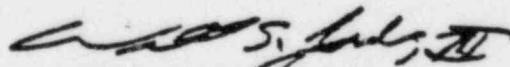
principal contractor. There is thus no assurance that construction is being carried out and supervised by a single authority with sufficient independence from financial considerations to make difficult decisions regarding the safety of construction.

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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