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NUCLEAR REGULATORY COMMISSION
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In the Matter of
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL.
(Seabrook Station, Units 1 and 2)
Docket Nos. 50-443, 50-444 Off-Site Emergency Planning - OL

Gentlemen:

The last sentence in footnote 3 (p.6) and the fifth sentence in footnote 4 (p.7) of the "NRC Staff Response to Licensing Board Order of November 27, 1987", filed January 12, 1988, contain typographical errors. The Staff requests that the enclosed corrected pages 6 and 7 be substituted in their place. The Staff apologizes for any resulting inconvience to the Board and parties.

Sincerely,

Gregory Alan Berry

Gregory Alan Berry
Counsel for NRC Staff

Enclosures: As stated

cc: Service list

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CLI-84-21, 20 NRC at 1439. In this connection it should be noted that the test of "relevance" is not whether the contention relates to the conduct of the proposed activitiy, but rather whether it is poses an issue relating to the safe conduct of the proposed activity. Braidwood, supra, 24 NRC at 455; see Shoreham, supra, 20 NRC at 1439. As the board explained in Braidwood:

> [T]he test for relevancy, under § 50.57(c) as is general, is whether, if the matters were heard, they could result in a finding adverse to the other party -- in this case under § 50.57(a). Since only matters inimical to the public health or safety can be decided adversely to Applicant under § 50.57(a), and Intervenors have made no showing that their admitted contention raises a safety matter with regard to fuel loading and precritical testing [the activities sought to be authorized], they have failed to establish that the contention is relevant to the requested license.

24 NRC at 456. Stated another way: unless the public health and safety is threatened by the danger posited by the admitted contentions if the activity sought to be authorized commences, the contentions simply are not relevant. See Shoreham, supra, 20 NRC at 1439. In such circumstances, the Board need not make any of the findings required by section 50.57(a) but authorizes the Director of NRR to do so. 10 C.F.R. § 50.57(c). As will be explained in the following sections of this brief, neither of the remanded contentions raises a safety matter with regard to low power operations and thus is not "relevant to the activity to be

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

> 1149. In contrast, in this case Applicants have only a fuel loading license but do not have a testing or operating license. Thus, unlike the Diablo Canyon case, the Board is not faced with a situation where a license already has been issued to commence power operations.

authorized." Consequently, the Board should rule that no contention currently pending before it precludes the Board from authorizing the Director of NRR, upon making the finding required by section 50.57(a), to issue a low power license for the Seabrook Station. 4/

4/ It should be noted that are two other matters pending in regard to the onsite emergency planning and safety issues phase of this operating license proceeding, both of which currently are before the Appeal Board. First, the Appeal Board has before it the Massachusetts Attorney General's motion to reopen the record and admit his late-filed contention challenging the adequacy of Applicants' emergency alert notification system for the Town of Newburyport, Massachusetts. Second, in ALAB-875, the Appeal Board deferred making a final determination as to whether the Board's finding that certain coaxial cable used by Applicant was environmentally qualified is supported by the record evidence. See ALAB-875, slip op. at 39. Instead, the Appeal Board directed the Licensing Board to identify the portions of the record which supported its conclusions and invited the parties to address the Board's response. In Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-882, 26 NRC ___ (January 8, 1988), the Appeal Board found the Board's explanation unpersuasive. However, the Appeal Board took note of the argument advanced by Applicants that the function of the subject cable "is not the mitigation of the consequence of an accident." Id., slip op. at 7. According to Applicants, RG-58 cable "need maintain its integrity only to the extent necessary to avoid compromising the fulfillment of the safety function of other components," which would be demonstrated if the cable satisfied a "high-potential" test. Id. Since this argument had not been presented previously to the Licensing Board, the Appeal Board directed that the Licensing Board consider Applicants' claim initially, subject to later review by the Appeal Board. Id., slip op. at 8-9.

Thus, in the present posture of this proceeding, it cannot be said that low power operations will commence in the event the Board were to issue a ruling favorable to Applicants. The most that could be said of such a ruling is that the contentions currently pending before the Board do not bar the Board from authorizing the Director of NRR from issuing a low power license for the Seabrook Station, provided he makes the findings required by 10 C.F.R. § 50.57(a).