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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD '88 FEB -1 P2:59

Administrative Judges

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

January 29, 1988

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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) _____)	
In the Matter of)
)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, <u>ET AL.</u>)
)
(Seabrook Station, Unit 1)
and 2))
) _____)	

Docket Nos. 50-443-OL-1
50-444-OL-1
(Onsite Emergency Planning
and Safety Issues)

MEMORANDUM AND ORDER

Pending before us in this operating license proceeding is the appeal of three intervenors from the Licensing Board's August 20, 1987 denial of their petition pursuant to 10 C.F.R. § 2.758 to waive the Commission's financial qualification rule.¹ That rule generally precludes an examination during an operating license proceeding of a public utility's financial qualifications to operate a commercial nuclear power plant. The intervenors' petition requested that the rule be waived in this instance to require the applicants to demonstrate, prior to the commencement of low-power operation, that they are

¹ See 10 C.F.R. §§ 2.104(c)(4), 50.33(f), 50.57(a)(4).

financially qualified to operate safely Unit 1 of the Seabrook facility.

In keeping with their obligation to keep us apprised of relevant matters affecting cases before us, the applicants have filed during the past week copies of the Supreme Court of New Hampshire's decision in Petition of Public Service Company of New Hampshire, No. 87-311, January 26, 1988. That decision interprets the New Hampshire anti-CWIP statute, upholds its constitutionality on the facts presented, and recites that the New Hampshire Public Utility Commission found that it was unlikely that the Public Service Company of New Hampshire (PSNH) could meet its obligations, including its payroll. On the heels of this notification, the applicants also informed us that PSNH, the lead applicant seeking an operating license for Seabrook, Unit 1, filed a voluntary petition for bankruptcy on January 28, 1988.

These developments may affect the pending appeals and, at a minimum, require an opportunity for the parties to address their relevance and impact. Further, even if the recent developments and their ramifications do not alter the ultimate outcome of the Licensing Board's disposition on the merits of the intervenor's original waiver petition, these new matters may precipitate the filing of additional waiver petitions. Thus, because jurisdiction over the intervenors' waiver petition now on file is already vested in us and two

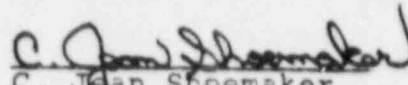
Licensing Boards in this proceeding are currently occupied with a myriad of issues, we believe the most efficient use of the Commission's limited adjudicatory resources is to keep the waiver issue here. Moreover, neither the Licensing Board nor we are empowered to waive the financial qualification rule but only to certify to the Commission that a prima facie case for a waiver has been made. That determination generally does not require a hearing and can as well come from us as from the Licensing Board.

Accordingly, the three intervenors now before us shall have thirty days from the service of this order to amend their original petition, or to file a new one pursuant to 10 C.F.R. § 2.758, in a further attempt to establish a prima facie case that the application of the Commission's financial qualification rule with respect to low-power operation would not serve the purposes for which it was adopted. Additionally, any other party seeking a waiver of the Commission's financial qualification rule with respect to low-power operation based in whole or in part upon the current fiscal circumstances of the lead applicant must join those intervenors' petition or file its own petition with us within the same time period. The applicants and any other

party opposing any new or amended petition shall have thirty days from the service of papers upon them to respond.²

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

² We caution all parties to comply fully with the provisions of 10 C.F.R. § 2.758 and other applicable Rules of Practice. Moreover, in preparing their respective filings, we urge all parties to read carefully the December 8, 1987, transcript of the oral argument on the intervenors' appeals.