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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Before Administrative Judges
Alan s. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

IN THE MATTER OF	)	Docket Nos.
	)	50-443-01-1
PUBLIC SERVICE COMPANY OF	)	50-444-01-1
NEW HAMPSHIRE, ET AL.	)	(On-Site
	)	Safety and Technical
(Seabrook Station, Units 1 and 2)	)	Issues)

SAPL RESPONSE TO APPEAL BOARD MEMORANDUM AND ORDER OF JANUARY 29, 1988 REGARDING FINANCIAL QUALIFICATION RULE

Respectfully submitted,

SEACOAST ANTI-POLLUTION LEAGUE

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February 23, 1988

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SAPL RESPONSE TO APPEAL BOARD MEMORANDUM AND ORDER OF JANUARY 29, 1988 REGARDING FINANCIAL QUALIFICATION RULE

BACKGROUND

The Appeal Board has before it the issue of whether the ASLB erred in denying a waiver, pursuant to 10 C.F.R. §2.758, of the Commission's Regulations which preclude a financial qualification inquiry for regulated utility applicants for nuclear operating licenses.

This issue was raised by a petition filed on behalf of Town of Hampton, New England Coalition on Nuclear Pollution, and Seacoast Anti-Pollution League (SAPL) on July 31, 1987. Argument was had before this board on December 8th.

The petitioners generally argue that the financial condition of the lead applicant, Public Service Company of New Hampshire (PSNH), as revealed in an SEC 8-K filing, was such that the purpose of the regulation sought to be waived had not been met. That regulation, 10 C.F.R. §50.33 (f), is based on the assumption that regulated legal monopolies would always have the necessary financial quality to assure nuclear safety as a result of the

rate-setting process, thereby obviating the need for any NRC inquiry. Petitioners argued that this assumption is not borne out in this unique situation.

On January 26th, the New Hampshire Supreme Court unanimously upheld the state's anti-CWIP law as constitutional and held that it operated to bar the granting of a pending emergency rate increase sought by PSNH. Within 48 hours, on January 28th, PSNH filed a voluntary petition for bankruptcy in the District of New Hampshire, the first utility in modern history to take this step.

On the next day, this Board issued its Memorandum and Order inviting further briefing on this issue. This brief will constitute the response on behalf of SAPL, Town of Hampton, and the New England Coalition on Nuclear Pollution.

SUMMARY

It is SAPL's, and the other intervenors, position that the bankruptcy filing by PSNH, in and of itself, is sufficient to require a §2.758 waiver of the Commission's regulations which normally do not require an inquiry into the financial qualification of an applicant for a nuclear operating license.

The reason for this is that the Commission, in adopting §50.33(f), in its present form, assumed that the normal state or federal rate-setting process for regulated utilities would assure the necessary financial quality for such utilities to operate or decommission nuclear plants. In other words, the assumption underlying the rule was that the normal rate-setting process, in which the rate base times the rate of return plus operating expenses provides the basis for the allowed rates, would act as a surrogate for any NRC inquiry into the availability of funds. The

Commission did not, in promulgating the revised rule, make any similar assumption about the bankruptcy process acting as a surrogate to assure the necessary funds. (Indeed, the Commission could not have made any such assumption, since the event in question, utility bankruptcy, had never previously occurred, at least during the history of nuclear regulation.)

Thus it is the intervenor's basic position that bankruptcy, per se, requires a waiver to permit a financial qualification inquiry into the qualifications of the lead applicant for the Seabrook operating license.1/ and 2/

1/ There is attached hereto, as Annex A, a copy of the Bankruptcy Petition filed by and on behalf of PSNH. The Appeal Board should note that the filing includes the New Hampshire Yankee Division as an "AKA." In other words, although joint owners had intended to set up New Hampshire Yankee as an independent operating entity, apart from Public Service, it is clear that New Hampshire Yankee is not a separate entity, and is included in the bankruptcy proceedings.

2/ The petition in question deals with PSNH. However, the Appeal Board should be aware that various other ownership interests in the project are in dire financial straits. Vermont Electric Co-op has been in default on its Seabrook obligations for more than a year, and the Washington Electric Co-op, of East Montpelier, Vermont, has just announced it will be defaulting in the next payment. In addition, the Eastern Maine Cooperative, which is a participant through its participation with one the MMWEC's power sale contracts, has filed for bankruptcy reorganization. Other owners, including some with much more substantial interests, have recently been placed on credit watch by Moody's Investors Services. See attached newspaper accounts. They include EUA power, which will default in May, New England Electric System, Commonwealth Electric, and United Illuminating.

Alternatively, it is SAPL's position that bankruptcy requires a financial qualification inquiry because, on the basis of the findings by the NH PUC and testimony of PSNH's own officials, there is no reasonable assurance that the necessary funds to safely operate, or to decommission, the facility will be forthcoming.

In view of this uncertainty, acknowledged by the applicant's own officials, the NRC can do only one of two things: (a) either suspend all licensing activity pending definitive rulings by the Bankruptcy Court on the issue of whether, and in what amount, project funding shall be authorized or (b) conduct a financial inquiry into the probable outcome of the bankruptcy proceedings, with the assistance of bankruptcy law and regulatory finance experts.

Finally, there can be no escaping the need for a financial qualification inquiry on the ground that 64.4 percent is owned by other entities. None of these other entities have had any legal obligation to assume PSNH's share of the project, and none has been found qualified to sustain any greater percentage of the project than it now holds. See Footnote 2 supra.

In addition, more than 50 percent of the project is held by utilities either in default, or about to go into default, and about 80 percent is held by utilities either in default or being considered for credit watch. See Footnote 2, supra, and attached newspaper accounts.

A. BANKRUPTCY PER SE REQUIRES A FINANCIAL QUALIFICATION INQUIRY

As has been previously argued, the Commission in adopting the current financial qualification rule, eliminating inquiry into the financial qualification of regulated utilities seeking operating license, expressly rejected as a rational for its action the notion that financial qualification was unimportant to safety. Indeed, it stated,

> "The Commission is not relying on this premise for its current rule." 49 Fed. Reg. 35751 (September 12, 1984)

Rather, the rational for the rule was that case by case adjudication of financial qualification "is unnecessary due to the ability of such utilities to recover, to a sufficient degree, all or a portion of the cost of construction and sufficient costs of safe operation through the rate-making process." (Emphasis added). Id. at 35748.

That rate-setting process may no longer be available to PSNH. Jurisdiction over PSNH as debtor in possession is now vested in the U. S. Bankruptcy Court, which may or may not attempt itself to exercise rate-setting authority.3/

3/ The intervenors believe it highly unlikely that the bankruptcy judge would attempt to exercise rate-setting authority.

The bankruptcy, by itself, therefore establishes the prima facie case necessary for a waiver pursuant 10 C.F.R. §2.758. This is so because the purpose of the rule eliminating the inquiry was to avoid case by case adjudication where the rate-setting process can act as a surrogate for the confidence that case by case adjudication could provide to reasonably assure a nuclear operating license applicant has the necessary financial quality.

That assurance does not exist in the case of a bankrupt utility.

B. BANKRUPTCY UNCERTAINTIES REQUIRE A FINANCIAL QUALIFICATION INQUIRY

Even should this Appeal Board decide bankrupty per se does not establish a prima facie case for a waiver of the current financial qualification rule, there is still a sufficient showing, in the case of Public Service, for a waiver of the regulation in order to permit a financial qualification inquiry.

10 C.F.R. §50.33 (f) as in force and applied since 1956 has required applicants for nuclear operating licenses to have "reasonable assurance" that they can obtain the necessary funds to carry out the permitted activities. The Commission's 1984 rule did not change this requirement. Rather, it only obviated the need for an inquiry for applicants for operating license which are "electric utilities."

In exempting electric utilities seeking an operating license from financial review, the Commission certainly could not have considered an electric utility operating under the jurisdiction of

the Bankruptcy Court to be included. Not only was there no basis in its experience to include such an entity as one whose financial quality could be assumed through the rate-setting process, but in fact, the bankruptcy of a utility applicant raises such major uncertainties that, absent definitive decisions, no assurance of financial quality can be reasonably assured.

These uncertainties include the following:

1. Does the Bankruptcy Court in fact have rate-setting power at all? (Most scholars think not. See 11 U.S.C. §1129(a)(6)).

2. Is the expenditure of funds of a bankrupt utility to pursue an application for nuclear operating license within the ordinary course of business, or does it need court approval?

3. Will a Bankruptcy Court require, or encourage, the sale of certain assets to further a plan of reorganization? If so, would the Court first encourage the sale of such non-revenue producing assets as the bankrupt's interest in an unlicensed and perhaps an unlicensable nuclear plant?

4. If the Bankruptcy Court felt that the early sale of unproductive assets was the most conducive way to an early plan of reorganization, would it continue to authorize use of the debtor's cash resources to support licensing activity, as opposed to merely protecting and maintaining the facility?

5. If nuclear fuel is reduced in value as a salable asset when irradiated, will the Bankruptcy Court approve a request to initiate low power operations, if such an operation is not "in the ordinary course of business"?

6. Since all costs of radiological emergency response

planning for the state of New Hampshire are billed to the Seabrook applicants, after approval of the N.H. PUC (see RSA Chapter 107-B) will the cost be authorized by the Bankrupcty Court to be paid by the debtor?

7. If the debtor's interest in Seabrook is to be sold, can a sale be authorized in light of RSA 374:22-a II, and if so would that buyer be found financially qualified?4/

8. If such a buyer were to purchase the debtor's interest, and if it sought to operate the facility as a nuclear plant, rather than undertaking a conversion, would it then seek to market the power on the basis of wholesale rates and would this assure financial quality within the meaning of §50.33(f)?

This is by no means an exhaustive list of relevant questions. Moreover, most of these of questions have been raised by the debtor itself or by the New Hampshire Public Utilities Commission.

In sworn testimony before the N.H. PUC, the utilities financial vice president, Charles Bayless, had this to say about bankruptcy:

> Commissioner Iacopino: Well, of course implicit in that assumption is that somehow service to customers is going to be interrupted as a result of that bankruptcy.
>
> The Witness: Service to customers interrupted? You know, there is a short term and a long term. I don't think in a

---

4/ RSA 374:22-a II provides "no permission or approval under this section shall be obtained by a foreign electric utility as defined in RSA 374-a:I in connection with its participation in electric power facility as defined in said section where the electric utility having the largest financial interest therein and the utility or utilities having primary responsibilty for the construction or operation of the facility are domestic electric utilities as defined in said section or obtain such permission." (Emphasis supplied).

bankruptcy that service to the customer on the short run, nobody is going to see a thing. You are not going to see anything in the very, very short run, for a couple, three or four months and then the fights are going to start. And they are going to be huge fights among all the creditors. And the question really boils down to things like: Can they sell the plant?

Can they force a sale of completed plant? You know, Merrimack, Schiller, the Maine Yankees. I think the Maine Yankees are the clearest case because they are not in New Hampshire. But even uncompleted plant in a normal bankruptcy even the unsecured creditors probably could order them sold or get the judge, the bankruptcy Judge to sell them. And it is not a certainty, nothing is in bankruptcy, as I have certainly learned. But the unsecured creditors would realize that is the only hope they had of getting anything out of this whole operation is either the Commission granting extraordinary rate relief or their getting the plant sold. And they would try to present it in that way to tell the judge either the Commission raises rates or you have to sell the plant. I don't know what the Judge is going to do, nobody can sit here and tell you because that has never happened. But there are just so many ramifications of going bankrupt and there are so many ramifications of not going. And I think when I say you should consider imprudent investment, I do so only in light of the extreme circumstances and the consequences that may result.

(Testimony before the New Hampshire Public Utilities Commission on February 6, 1985, by Charles Bayless.) (Pertinent portions of Mr. Bayless' testimony are attached hereto as Annex B).

Relying in part on this testimony, the New Hampshire PUC itself has found that bankruptcy would involve major uncertainties for the Seabrook project. The Commission's decision, in Docket DF 84-200, included the following:

> "Major Seabrook issues would probably include: whether Seabrook should be completed or abandoned, whether Seabrook joint ownership agreement is an executory contract which may be rejected; and whether Seabrook as an unfinished project should be sold by PSNH pursuant to Section 363 of the Bankruptcy Code." [Citations to record omitted.]
>
> Additional issues could also include the price for a 35 percent interest in an unfinished nuclear plant and whether capital can be raised to construct alternate generating sources at affordable costs.

70 NH PUC Reports, 164 at 253 (April 18, 1985).

This applicant should not now be permitted to contend that its bankruptcy does not create a need for a hearing to resolve the uncertainties of bankruptcy, when in sworn testimony, adopted by its regulator, it has taken the position that bankruptcy creates major uncertainties.

Finally, there is attached hereto as Annex C portions of the transcripts of an argument of a motion before the U. S. Bankruptcy Court held on February 12, 1988. This transcript concerns argument on a motion sought pursuant to Bankruptcy Rule 2004 by which one of the creditors of the debtor in possession, PSNH, sought wide-ranging discovery over the status of payments to the Seabrook fund. As will be seen from reviewing these transcript excerpts, it is evident that the parties present realize that the issue of continuing Seabrook licensing, by continuing to fund the project at the rate of 4.4 Million Dollars a month, was a major issue that needed to be resolved. In the view of the foregoing, the Appeal Board must now acknowledge that an inquiry into the financial qualification, and indeed authority, of the lead applicant, now under the jurisdiction of the Bankruptcy Court as debtor in possession, is mandatory.

Respectfully submitted,

SEACOAST ANTI-POLLUTION LEAGUE
By Its Attorneys,
BACKUS, MEYER & SOLOMON

By: _____

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February 23, 1988

February 23, 1988

I hereby certify that copies of the foregoing response have been mailed, postage prepaid to the attached service list.

Robert A. Backus, Esquire

BD

ANNEX A

The Energy Daily

827 National Press Building
Washington, D.C. 20045
(202) 638-4260
Telefax: (202) 662-9744

Thursday, February 4, 1988 Volume 16, Number 23

NRC Board Prohibits Low Power Start-up

More Bad News For Seabrook

BY JOHN McCAUGHEY

Owners of the Seabrook power plant lost another round on Wednesday in their struggle to license the embattled $5.1 billion nuclear unit. In a 24-page decision, two administrative judges with the Nuclear Regulatory Commission's Atomic Safety and Licensing Appeal Board reopened proceedings concerning emergency planning for the City of Newburyport in Massachusetts. Until the case is relitigated, which may take months, Seabrook operators will not be able to put into effect the 5 percent low-power license authorized by the NRC last March.

"Suitable measures for early public notification are not merely an essential ingredient of emergency planning but, as well, an absolute precondition to the authorization of low-power operation," the judges write. "Consequently, had the Licensing Board been informed that the sirens relied upon by [the plant owners] to provide early notification in Massachusetts were no longer available to fulfill that function, the [Licensing Board] would not—indeed could not—have authorized [low-power] operation."

The Massachusetts Attorney General asked the Licensing Board to put Seabrook's low-power license on hold after Newburyport dismantled and removed emergency notification sirens and poles that were to be used in the case of a Seabrook emergency. Newburyport is within the ten-mile Seabrook plume exposure pathway emergency planning zone.

Seabrook's owners had argued that the loss of the Newburyport sirens would have no effect on safety. About 60 percent of the area of the city could be covered by sirens in neighboring Massachusetts communities, they said, and a helicopter carrying acoustical packages capable of delivering both siren and voice warnings would deal with the rest of the population. A back-up mobile system on the ground would be used if the helicopter was not available.

In the legal fight with the Attorney General, the Seabrook owners accused the Commonwealth of Massachusetts of "systematically setting out to destroy the in-place, fully-adequate early notification system" and argued that the Attorney General's arguments should be dismissed because the state had set out to purposefully disable the nuclear plant. But the Seabrook lawyers may

(Continued on next page)

Gas Gets Credit For Oil Surplus

"Increased natural gas use worldwide has helped convert oil shortages of the late 1970s and early 1980s into the current oil surplus," says Amoco Corporation chairman Richard Morrow. The switch from oil to gas has been particularly noticeable in the U.S. and Europe, Morrow told a recent energy conference at the University of Paris. "In the past 10 years, two to three million homes have been converted from oil to gas," Morrow said. This interfuel switching has saved several hundred thousand barrels per day of oil. Europe has also turned increasingly to natural gas for its energy needs. The fuel accounted for 15 percent of total consumption in 1986 versus 10 percent in 1973. Worldwide, natural gas consumption over the same period has increased by 10 million barrels of crude oil equivalent in the past 13 years, Morrow said.

"Although great strides have been made in finding and utilizing natural gas resources, tremendous potential remains to be exploited."

Asset Sales May Not Halt Flow Of Angolan Crude To The U.S.

The sale this week by Chevron and Texaco of part of their Angola crude production holdings to foreign oil companies may not necessarily reduce the large amount of U.S. crude imports from Angola. AGIP, the Italian oil company which bought a 9.8 percent share in the major Cabinda offshore development, may find an outlet for its 27,500 barrels/day in new Angolan crude through East Coast oil distributor Steuart Petroleum, in which it holds a substantial stake. AGIP officials in New York could not comment on their strategy for the Angola crude but noted they have an aggressive downstream posture in the U.S.

BY PAUL KEMEZIS

Conservative groups in the U.S. have long demanded a halt to U.S. crude imports from Angola and a pullout of U.S. companies operating in the southern African country. Both Chevron and Texaco say that their actions were not politically motivated but designed to help their balance sheets, especially in the case of Texaco with its Pennzoil-Chapter 11 problems.

Texaco CEO James W. Kinnear said that his company's move was one of several asset sales planned for the near future to help it "meet debt retirements and other corporate objectives."

Chevron, which had put its Cabinda assets on the block a year ago and received bids from several companies, settled on AGIP as the buyer in July, with the approval of the Angola government. Negotiations continued through January. The sales price is estimated at around $200 million. Cabinda pro-

(Continued on next page)

SEABROOK

(From page one)

have pushed their argument too enthusiastically. In their decision, the Licensing Board judges write:

"The [Seabrook owners] offer this bit of rhetoric: 'What the Commonwealth, its agencies and political subdivisions have done to Seabrook is indistinguishable from the action of a private individual who somehow gains access to a nuclear power plant and deliberately renders a safety system inoperative.'

"We can readily appreciate the frustration of the applicants engendered by the recent turn of events respecting their early notification system. But that frustration cannot serve to justify entirely unfounded charges that, among other things, would cast a sovereign state and its agencies and political subdivisions in a role equivalent to that played by one who enters a nuclear plant illicitly and then engages in a most serious form of federal criminal misconduct. That the applicants' charges are utterly without warrant is manifest...

"The short of the matter is that the loss of the sirens (or, as applicants would have it, the destruction of their 'fully-adequate early notification system') did not stem from some unlawful or untoward act on the part of the Commonwealth or its agencies or political subdivisions. Rather, it came about as a result of belated obedience to the law of that jurisdiction."

Meanwhile on Wednesday, Moody's Investors Service confirmed the rating of approximately $3.2 billion of Public Service of New Hampshire securities in the wake of the company's bankruptcy filing on January 28. PSNH owns 35.6 percent of Seabrook. Moody's has rated the securities at its 'speculative' grade since 1982 and has downgraded them twice in the past year.

At the same time, the rating agency placed under review for possible downgrade the ratings of four utilities with direct or indirect ownership interest in the Seabrook plant. The utilities include Commonwealth Energy System, Eastern Utilities Associates, New England Electric System and United Illuminating Company. Moody's said that it is examining the negative implications of PSNH's bankruptcy on the financial position and flexibility of these utilities.

John Spellman, an assistant vice president at the New York rating agency, noted that PSNH's share of monthly maintenance expenses for Seabrook is $4.6 million. "It remains to be seen," he said, "if a bankruptcy court judge will allow these maintenance payments to be made. However, Moody's considers these payments likely, given the magnitude of PSNH's investment in Seabrook (approximately 71 percent of total assets) and the company's need to preserve its considerable investment. Even if the company was barred by the courts from making its share of ongoing payments, Moody's believes that the share would likely be paid by other joint owners interested in protecting their own investments. But such payments are not required under the terms of the joint owners agreement and would remain voluntary."

Spellman went on to say that the rating agency believes that PSNH's bankruptcy increases the risk of delay or cancellation of Seabrook. "This has implications," he pointed out, "for all of the joint owners, most of whom have invested heavily in the plant."

ANGOLA

(Continued from page one)

duction, which had been stagnant at around 200,000 barrels a day, rose sharply during 1987 to its current 275,000 b/d. Chevron retains a 39.2 percent share in the development, which it says it will reduce no further. The state-owned Sonangol holds the remaining 51 percent.

The deal automatically makes ACIP a major player in Angola with a total 1988 production in the country expected to be about 40,000 b/d, according to government estimates. This makes it a solid fourth behind Sonangol with 1988 production of about 150,000 b/d, Chevron with about 100,000 b/d and Elf with about 41,000 b/d. The Italian company has a 50 percent share of Block 1, just south of Cabinda, which has produced some small finds and it is a 30 percent partner with Conoco in Block 4, which is still in an early exploration phase.

Texaco is expected to earn about $100 million from the sale of a 20 percent holding in offshore Block 2 to Total and Braspetro. Each company will get a 10 percent stake, raising their holdings to 27.5 percent each. Texaco's share will drop to 20 percent and Sonangol will retain its 25 percent share. The block is being developed after a series of finds in the mid-1980s. Its total output should rise from the current 25,000 b/d to 40,000 b/d by the end of the year. Both Total and Braspetro have only the small Block 2 output in Angola but are eagerly seeking more leases.

The asset sales have been welcomed by the Angolan government which has wanted to reduce the amount of its crude that was subject to potential interference by right-wing inspired actions by the U.S. Congress. Besides Chevron and Texaco, the only other major U.S. player in Angola is Conoco. Mobil sold all its Angola assets to a Japanese group led by Mitsubishi in 1986. Chevron has taken the lead in arguing that U.S. oil company presence in Angola helps American policy, especially if the movement toward peace indicated by the recent Cuban troop pull-out proposal materializes and a bridge to the existing government is needed. Last May Chevron shareholders rejected overwhelmingly a proposal that the company withdraw totally from Angola.

APPA Renews Call On Deferred Taxes

Public power companies on Wednesday renewed their efforts to persuade investor-owned utilities to pay back swiftly excess deferred taxes. About $10 billion out of $38 billion in taxes collected from consumers and placed in deferred tax accounts are no longer due to the Treasury because of changes brought about by the 1986 Tax Reform Act, American Public Power Association officials in Washington said. Under the law, investor-owned utilities are obliged to pay back excess taxes over the life of a plant. APPA has supported bills aimed at allowing regulators to instruct the utilities to pay back the excess taxes much more quickly. APPA members will vote on a policy resolution backing swift repayment at their annual conference in Seattle on June 27. In a separate resolution, APPA's legislative and resolutions committee urged the federal government to stop restricting the ability of state and local governments to issue tax-exempt financing necessary to provide basic public services and maintain the national infrastructure.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF
NEW HAMPSHIRE

In re PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, a/k/a "Public Service of New Hampshire" "PSNH" "New Hampshire Yankee" Debtor Debtor's Employer Tax Identification No. 02-0181050	Chapter 11 Case No. 88-

BK-88-043

FILED
1988 JAN 28 P 4:40
U.S. BANKRUPTCY COURT

VOLUNTARY PETITION

1. Petitioner's mailing address, including county, is 1000 Elm Street, Manchester, Hillsborough County, New Hampshire 03105.

2. Petitioner's place of business has been, and the principal assets of the petitioner have been, within this distirct for the preceding 180 days.

3. Petitioner is qualified to file this petition and is entitled to the benefits of Title 11, United States Code, as a voluntary debtor.

4. Petitioner intends to file a plan pursuant to Chapter 11 of Title 11, United States Code.

5. Exhibit "A" is attached to and made part of this petition.

WHEREFORE, Petitioner prays for relief in accordance with Chapter 11 of Title 11, United States Code.

D. Pierre G. Cameron, Jr.
Vice President and General Counsel
Public Service Company of New Hampshire
1000 Elm Street
Manchester, New Hampshire 03105
(603) 669-4000

Martin L. Gross
Charles F. Sheridan, Jr.
R. Carl Anderson
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Concord, New Hampshire 03301
(603) 224-2341

Charles P. Normandin
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
(617) 423-6100

I, Robert J. Harrison, President of Public Service Company of New Hampshire, the Petitioner named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 1988.

Robert J. Harrison

suggesting, are you, that the Commission should allow any imprudent investments, are you?

THE WITNESS. Oh, no.

COMMISSIONER IACOPINO. And you are not suggesting that the public good insome way could be considered that the consequences of an imprudent investment would somehow be justified or somehow would justify the granting of that imprudent investment, are you?

THE WITNESS. I might be. And I normally my answer would be, no. You should not allow imprudent investments. But if the commission were to find that, lets assume that all of Seabrook was imprudent, just to make sure that we would go bankrupt. And under that scenario, the effects of the bankruptcy would be worse than the affect of allowing some imprudent investment. Then although I generally believe that imprudent investments should not be found to be included in the rate base, then I think the commission would have to consider that. You have to consider all of the facts that are before you.

COMMISSIONER IACOPINO. Well, of course implicit in that assumption is that somehow service to customers is going to be interrupted as a

result of that bankruptcy.

THE WITNESS. Service to customers interrupted? You know, there is a short term and a long term. I don't think in a bankruptcy that service to the customer on the short run, nobody is going to see a thing. You are not going to see anything in the very very short run, for a couple, three or four months and then the fights are going to start. And they are going to be huge fights among all the creditors. And the question really boils down to things like: Can they sell the plant?

Can they force a sale of completed plant? You know, Merrimack, Schiller, the Maine Yankees. I think the Maine Yankees are the clearest case because they are not in New Hampshire. But even uncompleted plant in a normal bankruptcy even the unsecured creditors probably could order them sold or get the judge, the bankruptcy Judge to sell them. And it is not a certainty, nothing is in a bankruptcy, as I have certainly learned. But the unsecured creditors would realize that is the only hope they had of getting anything out of this whole operation is either the Commission granting extra ordinary rate relief or they're getting the plant sold. And they would try to

present it in that way to tell the judge either the Commission rasies rates or you have to sell the plant. I don't know what the Judge is going to do, nobody can sit here and tell you because that has never happened. But there are just so many ramifications of going bankrupt and there are many ramification of not going. And I think when I say you should consider imprudent investment, I do so only in the light of the extreme circumstances and the consequences may result.

COMMISSIONER IACOPINO. I would hope so. I would hope you would say it reluctantly.

THE WITNESS. I do, very reluctantly.

COMMISSIONER IACOPINO. That is all.

Q (By Mr. Eckhaus) In cross examination yesterday and I forget which of the panel indicated it, it may have been several members with regard to uncertainties and the impact of uncertainties on the cost of this financing. Would you agree that if this Commission were to make a determination as to a cost cap for Seabrook that it would have an impact on the financing cost in this proceeding?

A I think it depends on what the cost cap is. Certainly if the Commission were to order, I am not suggesting

ANNEX C

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF
NEW HAMPSHIRE

In re:	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, a/k/a "Public Service of New Hampshire" "PSNH" "New Hampshire Yankee"	Chapter 11 Case No. 88-00043
Debtor.	

COPY

HEARING IN RE: DEBTOR"S MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY CONTRACT FOR LEASE OF EQUIPMENT.

MOTION FOR EXAMINATION OF DEBTOR UNDER BANKRUPTCY RULE 2004.

The above hearing was held before the Honorable James E. Yacos, 275 Chestnut Street, Manchester, New Hampshire, on Friday, February 12, 1988, commencing at 10:20 a.m.

SAMUEL S. GRAY
Court Reporting Services
Certified Shorthand Reporter
30 Highland Avenue
Derry, New Hampshire
434-5547

alerted to the fact that Public Service Company filed a Chapter 11 petition they sent something akin to a default letter to Public Service Company, and we quickly educated them as to the bankruptcy law and they were pleased with the proposed order.

JUDGE YACOS: Was the ground the filing of the case?

MR. MARCUS: Yes.

JUDGE YACOS: All right. I will enter this proposed order as an order of the Court approving the assumption with the deletion of the reference to the upgrade.

MR. MARCUS: Thank you.

JUDGE YACOS: You will service copies of these orders on the parties?

MR. MARCUS: Yes, your Honor.

JUDGE YACOS: Anybody that requests a copy here today, let the attorney know and you can have a copy for your file. All right. We will move on to the other motion, the motion for the 2004 examination. That's your motion?

MR. ROSS: My name is Jonathan Ross. I represent First Fidelity. It's our motion, your Honor. We

appear on behalf of the trustee of the third mortgage bonds under certain indentures and seek an order from the court to permit a 2004 examination. We understand that the Debtor ---

JUDGE YACOS: Can you people in the back hear counsel? Can you hear in the back there? We have an electronic system now and we're going to have an amplifier system. We have an air conditioning noise in the courtroom, but I don't think it is operational yet. Please speak louder so that everyone can hear you.

MR. ROSS: Perhaps if I move to the side. We understand, your Honor, that the Debtor is paying or is going to pay interest to the first and second level secured creditors, and we represent the third level of secured creditors in this action.

The Debtor has seemed to represent that it has money enough to pay either its contribution to the Seabrook project or interest to our bondholders, and it appears that the Debtor has made the choice to make the Seabrook payment. We are watching the potential for collateral to be diminished, and we feel that the trustee has a duty to all of its' bondholders to inquire into that subject. The trustee believes that the third mortgage bond

holders should be paid interest in lieu of the payments being made on the Seabrook project, and we need the ability to inquire of the Debtor under oath to examine those issues and to avoid the PR blitz that comes both from the Debtor and others interested in the Seabrook project.

We stand here representing First Fidelity as a trustee and the references in the affidavit filed by the Debtor to CUC are irrelevant to the trustee's duty to inquire and I will represent to the Court that we are not acting under instruction by anyone but the trustee here. We are looking to the Court ultimately to make judgments about whether or not the payments to the Seabrook project are in the ordinary course of business or are in the best interest of the Debtor and the State, and we need to develop information to present to the Court soon so that the Court can make that determination. We feel that the order that we proposed that was delivered here yesterday morning limits issues and provides a reasonable schedule to accomplish what we have asked for. The response from the Debtor has been a stonewall, no interest in discussing a schedule or issues. The only response is that they're not willing to do anything.

The next payment we understand on the

Seabrook project would be due in the first week of March, and we would like to move forward with some reasonable dispatch. We would suggest, your Honor, in light of the objections served on us by the Debtor, that to the extent that the Debtor can identify documents that we asked for that are in the public domain and readily accessible, that reference to such documents and the place where they are readily accessible would be acceptable to us as an alternative to production.

JUDGE YACOS: Are there any documents you're interested in that are not in the public domain?

MR. ROSS: We don't know because we don't know all of the documents that the Debtor has, your Honor, and we would have to ---

JUDGE YACOS: How many public agencies does the Debtor have to file with?

MR. ROSS: Many, many of whom are here, but the issues that we have asked the Court to permit us to inquire into we think are reasonably specific, and in order to find those documents ---

JUDGE YACOS: They report to the SCC as well as to state regulatory agencies?

MR. ROSS: We have those documents. Those

Service's business is to provide electric power to customers. Seabrook is not doing that right now, and it is important to inquire into the likelihood of Seabrook producing and for the Court to determine whether these payments are in the ordinary course of the Debtor's business and whether they're in the Debtor's best interest. Seabrook at this point is either a capital expense or a venture capital. We don't know which and to determine whether interim payments should be made we feel we have to get this additional information to protect our bondholders.

We also want to find out, as I said, whether there are other resources available and what impact they might have on that project if the Court suspended those payments and allowed the interest payments to third mortgage bondholders. So, we would ask the Court to grant our motion.

JUDGE YACOS: What was the last point?

MR. ROSS: We feel that we need to find out whether suspension of the payments to Seabrook, what impact that would have on the project. We believe, but don't know and wish to discover, whether other owners have a reserve or have the capacity to continue to maintain the project while the Debtor in possession uses its cash flow to pay

interest to the third mortgage bondholders.

JUDGE YACOS: All right. Do you have any other main points to make?

MR. ROSS: No, your Honor. Thank you.

JUDGE YACOS: All right. There is an objection by the Debtor and I will hear them first and then anybody else.

MR. STILLMAN: For the record my name is Robert Stillman for Public Service Company. I think First Fidelity has made clear its argument on what's really going on in this motion. This isn't really about discovery. It's about an attempt by one group of creditors, the third mortgage bondholders, to start out this proceeding by coming ahead of all others and in particular the unsecured creditors and the equity holders of this company.

First Fidelity says that it wants to make discovery in order to find out what should be done about Seabrook, and specifically the interim, whether it makes sense for the Court to suspend payments for maintenance and upkeep that is needed to keep Seabrook in compliance with its ongoing commitment to the NRC requirements with routine upkeep and maintenance, meeting payroll for approximately 800 employees of Public Service of New

Hampshire Yankee Division, who are charged with the responsiblity for maintaining this plant, which is familiar to all concerned, the principal asset of the Debtor.

Public Service agrees that discovery about Seabrook, because it is a critical issue in this case, will be appropriate at the proper time and in an orderly fashion. Our disagreement is withholding discovery now for the purported purpose of either deciding Seabrook's fate at the outset of this case or temporarily suspending routine upkeep and maintenance payments. Either motion would be brought inappropriately at this time and, therefore, there is no need at this time to respond to the very evasive and burdensome discovery request put forth by First Fidelity since any motion they could bring is premature.

I think your Honor is aware that a Creditors Committee was appointed only this Wednesday, that it is in the process of being organized, has not selected permanent counsel, hasn't decided yet whether it will seek to retain financial analysts or advisors to assist it in determining what is in the best interest of the creditors generally with respect to Seabrook. First Fidelity has already made clear itself and some of its bondholders have made clear what they think ought to be done. They want to cut Seabrook

off so that it doesn't in any way affect their narrow interest. That may be their view and they're entitled to press that view, but it doesn't mean that they should press that view by burdening the Debtor with discovery now where the Creditors Committe hasn't had a chance to figure out what information it needs or to figure out whether it can sit down with Public Service and informally share any information that all of the creditors need. In fact, as your Honor knows the world didn't come into existence on January Twenty-eighth, and Public Service has been in informal contact with the shareholders, excuse me, the bondholders group, CUC, that claims to control the largest block of third mortgage bonds. There has been an informal exchange of views. I don't know that anything would be served by formal discovery ---

JUDGE YACOS: You say that it's premature and not appropriate at this time. Now that suggests that at some other time it is relevant to develop these facts. When do you think that other time is going to come?

MR. STILLMAN: Your Honor, my proposal would be let's get counsel appointed for the Creditors Committee. Let's sit down with the Creditors Committee and see what they need and let's work out a schedule that makes sense.

Court to make a specific order about the 2004 proceeding today. Thank you.

JUDGE YACOS: All right. I am prepared to rule. I will state my reasons into the record. The written order will just incorporate them by reference.

I am sympathetic to Movant's position that they don't want to wait too long to develop an evidentiary record, and I am sympathetic to their suggestion, and I think it is shared by the Debtor to some extent and the Committee, but this is a key issue in the case and will require the development of an evidentiary record regardless of what happens in the reorganization process so that the negotiations can go forward in a meaningful fashion and unnecessary delays can be avoided.

We have coming up on the Twenty-sixth of February a status conference hearing on which I will hear suggestions from the various parties as to procedures in this case, and one of the ideas I will put on the table at that hearing for reaction is some mechanism to have an ongoing buildup of an evidentiary record fairly soon after the first meeting of the Creditors to develop facts that are going to be pertinent to some of the key questions that the Court is going to have to face at some stage in this

case rather than having to wait for the parties to negotiate without an evidentiary record being built. That is not very succinct expression of it and I hope to be a little more to the point on the Twenty-sixth.

So, I am sympathetic to your wanting to move this into an evidentiary mode very early, but I do think it's premature in the sense that the Committee should be fully organized, the first meeting of the creditors should have been held, which is scheduled March Eighth, and from our standpoint you can spend the time reading each and every financial record in the public domain so that if you file a new motion to be heard before this Court again you can say we have studied it all and we still don't know one, two, three, four, five, which we need to have discovery of. That process will eliminate a burden on the Debtor, will focus on what really needs to be disclosed in testimony, and hopefully that will be fair to both sides --- I shouldn't use the word "both", --- to "all" sides in this case. So, for those reasons I am going to enter an order that finds that this motion is premature and it is denied without prejudice. That will be the disposition today. I do encourage those of you who are interested to attend the Twenty-sixth hearing and I