

NEW ENGLAND POWER COMPANY

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20 Turnpike Road, Westborough, Massachusetts 01581

November 27, 1978

NRC-N-93

Director of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Sir:

Docket Nos. STN 50-568 and STN 50-569

The question of the power of eminent domain in Rhode Island has arisen in connection with your review of alternate sites to the proposed Charlestown location of NEP 1 & 2, specifically with respect to the Westerly site. A Rhode Island Department of Environmental Management memorandum (R. D. Prentiss to V. Bell, dated 11/8/78) was recently provided to Dr. P. C. Cota of NRC's Division of Site Safety and Environmental Analysis. Although it infers that Section 39-1-31 of the General Laws of Rhode Island constitutes a grant of the power of eminent domain, it concludes that "a particular utility may have restrictions in its corporate charter as to the purposes for which the power may be exercised."

We are advised by our counsel that no subsidiary of New England Electric System (NEES), including Narragansett Electric, has the power of eminent domain in Rhode Island for the purpose of constructing intake and discharge ducts (e.g. pipes or tunnels) for the cooling system of a power generating plant.

Amendment 9, Section 1 of the Constitution of Rhode Island provides that the General Assembly may provide by general law for the creation and control of corporations "provided, however, that no corporation shall be created with the power to exercise the right of eminent domain, . . . except by special act of the general assembly upon a petition for the same"

The only NEES subsidiary created by special act of the Rhode Island General Assembly is Narragansett Electric, the only NEES subsidiary which is a domestic Rhode Island corporation. The special act of the General Assembly creating Narragansett Electric entitled "An Act in Amendment of an Act, entitled 'An Act to Incorporate United Electric Power Company,' Passed at the January Session, 1926, and the Several Acts in Amendment Thereof and Relating Thereto," most recently amended by the 1976 January Session of the General Assembly, grants to Narragansett Electric the power of eminent domain for specific purposes. The grant of eminent domain reads as follows:

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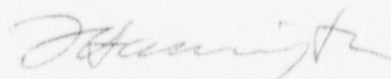
The Narragansett Electric Company (hereinafter called "said Company") a corporation created by an act of the General Assembly passed at its January Session A.D. 1926 under the name of United Electric Power Company (which name was changed by authority of an act in amendment of said act passed at the January session A.D. 1927) is hereby authorized and empowered to exercise the right of eminent domain for the purpose of taking any land, interest in land, or other rights necessary or desirable for the erection, construction, extension, installation, maintenance, alteration, use or operation from time to time of a line or lines for the transmission of currents of electricity of eleven thousand volts or more, and substations for the transmission and distribution of electricity and for the erection, construction, extension, installation, maintenance, alteration, use or operation of such poles, towers, wires, conduits, structures, machinery, equipment and other appurtenances and appliances, including buried ground wires, as may be necessary or desirable for such line, or lines, or substations, in the manner and subject to the conditions hereinafter provided in this act, subject to first obtaining an order from the Public Utility Administrator permitting the filing of a petition in accordance with section 2 hereof.

Note that this grant is by its very terms limited to lines and substations and appurtenances and does not encompass generating stations or their cooling water ducts.

Since the Rhode Island Constitution requires a special act to grant the right of eminent domain, a general law cannot be read to do so. Thus, § 39-1-31 of the Rhode Island General Laws must be read to relate exclusively to the procedures governing the exercise of the right of eminent domain by a corporation which has been vested with such power by special act of the General Assembly, and not as a substantive grant of such right.

If you have any question in connection with this matter I will be happy to put you in touch with the attorneys who prepared the foregoing opinion.

Very truly yours,



Joseph Harrington
Project Manager

cc: R. Daniel Prentiss, DEM