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UNITED STATES OF AMERICA
UNITED STATES NUCLEAR REGULATORY COMMISSION
BEFORE THE
NUCLEAR REGULATORY COMMISSION

In the Matter of PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2)	Docket Nos. 50-443-OL-1 50-444-OL-1 (On-Site Emergency Planning and Safety Issues)

INTERVENORS' REPLY TO THE RESPONSES OF THE NRC STAFF AND APPLICANTS TO COMMISSION ORDER OF JULY 14, 1988

NOW COME the Town of Hampton, Seacoast Anti-Pollution League and New England Coalition on Nuclear Pollution (hereinafter "Intervenors") and reply to the responses of the NRC Staff and Applicants to the Commission's Order dated July 14, 1988.[1] By this reply, and contrary to the responses proffered by the Staff and Applicants, Intervenors urge the Commission to waive its regulations that exempt Applicants from financial qualification

[1] See NRC STAFF RESPONSE TO COMMISSION ORDER OF JULY 14, 1988 dated July 22, 1988 and APPLICANTS' RESPONSE TO THE COMMISSION'S ORDER OF JULY 14, 1988 dated July 22, 1988.

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review,[2] and to compel Applicants to demonstrate, prior to low power operation, that they possess or have reasonable assurance of obtaining the funds necessary to safely operate and to decommission Seabrook Station. 10 C.F.R. §50.33(f)(2).

HISTORY OF PROCEEDINGS

Under date of July 31, 1987, Intervenors filed a petition, pursuant to 10 C.F.R. §2.758, for waiver of Commission regulations that exempt Applicants from financial qualification review.[3] As grounds for waiver, Intervenors cited:

1) The Commission's purpose in generically exempting publicly regulated utilities from demonstrating financial qualification rested upon the Commission's belief that the rate making process would assure adequate funds for safe operation.

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[2]See 10 C.F.R. §§50.2, 50.33(f), 50.40(b), and 50.57(a)(4).

[3]10 C.F.R. §2.758(b) states as follows:

> A party to an adjudicatory proceeding involving initial licensing subject to this subpart may petition that the application of a specified Commission rule or regulation or any provision thereof of the type described in Paragraph (a) of this section, be waived or an exception made for the particular proceeding. The sole ground for petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted.

> The Commission believes that the record of this rule making demonstrates generically that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule, the Commission concludes that, other than in exceptional cases, no case by case litigation of the financial qualification of such applicants is warranted. 49 Fed. Reg. 35,750 (9/12/84).

2) As a matter of state law, however, the New Hampshire Public Utilities Commission is barred from allowing Applicants to recover, through the rate making process, any monies to operate Seabrook Station at low power, or to decommission that facility if it never commences full power operation.[4] The Commission's purpose in generically exempting Applicants from financial qualification review is thereby frustrated since the rate making process does not assure the "total revenues" to operate Seabrook safely. See 49 Fed. Reg. 35,750 (9/12/84).

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[4]NHRSA 378:30-A states in relevant part:

> All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.

See also, NHRSA 162-F:19 (decommissioning costs are only recoverable through charges against customers, but those charges may only be assessed, and payments to the funds shall commence, "in the billing month which reflects the first full month of service from the facility". Under New Hampshire law, therefore, no revenues through the rate making process are available to pay clean up and decommissioning costs of low power operation, if the facility never receives a full power license.

3) Finally, as grounds for waiver, Intervenors pointed to the likely (and now accomplished) bankruptcy of Applicants' lead owner, Public Service Company of New Hampshire. PSNH's perilous financial condition therefore casts further doubt on the ability of Applicants' lead owner, now subject to direction by the Bankruptcy Court, to meet its ongoing financial obligations or to reasonably assure the safe operation of Seabrook Station.

Under date of August 20, 1987, the Licensing Board denied Intervenors' petition, principally upon grounds that the concerns raised in Intervenors' petition were "speculative". Similarly, the Appeal Board concluded that Intervenors had failed to establish a prima facie case for waiver, and affirmed the Licensing Board's decision. ALAB 895. That denial is presently on appeal to the Commission.[5]

By ALAB 895, however, the Appeal Board additionally concluded that the Massachusetts Attorney General (MASS AG), by a parallel petition for waiver of the financial qualification regulations, had stated a prima facie case for waiver and certified the MASS AG petition for decision to the Commission. In certifying the MASS AG petition, however, the Appeal Board narrowly, and improperly, circumscribed the grounds justifying

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[5] See SAPL, TOWN OF HAMPTON AND NECNP APPEAL OF PARTIAL DENIAL OF WAIVER REQUEST (ALAB 895) TO REVIEW FINANCIAL QUALIFICATIONS OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE dated July 12, 1988. In this reply, Intervenors will not revisit the arguments made in their appeal brief, although those arguments are hereby adopted and incorporated by reference in this reply. For ease of reference, Intervenors have attached an additional copy of the appeal brief to this memorandum.

certification and waiver. The Appeal Board ruled that the only circumstances establishing a prima facie case for waiver arose out of the decision by the Massachusetts Municipal Cooperative Electric Company (MMWEC), Applicants' fourth largest owner, to cease its monthly payments for Seabrook and to get out of the project. ALAB 895 at p. 34. Certain additional grounds proffered by MASS AG, including those previously articulated by Intervenors, were rejected by the Appeal Board as speculative or otherwise not adequate to support the waiver of Applicants' exemption from the financial qualification regulations.

Intervenors concur that the decision by MMWEC independently justifies financial qualification review. The unduly narrow scope of the Appeal Board's Order, however, and the Staff's response that subsequent events have mooted MMWEC's decision to cease payments, warrant two comments.

First, in rejecting Intervenors' petition, the Appeal Board placed an undue, and improper, burden of proof upon Intervenors to obtain a waiver of the regulations exempting Applicants from financial

qualification review.[6] By regulation, however, the Commission has concluded that the purpose of demonstrating financial qualification is to assure:

> The applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, plus the estimated costs of shutting the facility down and maintaining it in a safe condition. 10 C.F.R. §50.33(f)(2).

Whether a particular Applicant has "reasonable assurance of obtaining the funds necessary to cover estimated operating costs",

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[6]Applicants have acknowledged that, in their view, the burden of proof upon Intervenors is so extreme as to effectually preclude Intervenors from ever obtaining a waiver of the financial qualification regulations.

> The sine qua non of a petition under 10 C.F.R. §2.758 is a prima facie showing that the rule being challenged will not serve the purpose intended. To begin with, it is doubtful whether under that standard, there ever can be a prima facie showing that the financial qualification rules for utilities will not serve the purpose intended. The avowed purpose of the rule is to eliminate case by case adjudication of financial qualifications of public utility applicants for operating licenses. Clearly the rule is serving that literal purpose here. APPLICANTS' ANSWER TO SAPL, TOWN OF HAMPTON AND NECNP APPEAL OF PARTIAL DENIAL OF WAIVER REQUEST (ALAB 895) TO REVIEW FINANCIAL QUALIFICATIONS OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, dated July 26, 1983, p. 3. (Emphasis Supplied)

Applicants' position is inconsistent with, and should be rejected, as contrary to the Commission's own statement of purpose at the time it promulgated the financial qualification regulations. 49 Fed. Reg. 35,751 (9/12/84). There the Commission expressly recognized that, in "special circumstances", it may be appropriate, through a petition under 2.758, to conduct financial qualification review of a publicly regulated utility. Id.

50.33(f)(2), necessarily requires a predictive finding of whether future revenues will be adequate to assure safe operation. This predictive finding is not, as asserted by the Appeal Board and Applicants, "speculative", but is rather compelled by the Commission's regulations to assure sufficient financial resources throughout the period of operation.[7] In addition, certainty of the rate making process represented the sole justification, in the Commission's opinion, for generically exempting Applicants from financial qualification review.

It is irrefutable, however, that the rate making process is unavailable to Applicants to finance low power operation, N. 4, supra, and, as recognized by the Appeal Board itself, "it is self evident that bankruptcy creates major uncertainties". ALAB 895,

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[7]In Applicants' view, Intervenors may obtain a waiver of the financial qualification regulations only upon conclusive proof that Applicants presently lack adequate funds to conduct low power operation safely.

> When, as, and if, the Seabrook project, in fact runs short of funds and thereby is unable adequately to fund safety related matters, then the prima facie case is made and not before. To say otherwise is to speculate. [See APPLICANTS' RESPONSE TO THE COMMISSION'S ORDER OF JULY 14, 1988 dated July 22, 1988 at pages 7-8.]

Applicants thereby urge the Commission to endorse the illogical view that Intervenors must first conclusively prove their case and then obtain subsequent and redundant financial qualification review by the Commission. Or, as in Alice In Wonderland, first the case should be decided, then the trial conducted.

p. 25.[8] Irrespective of MMWEC, therefore, these circumstances presently preclude a finding of reasonable assurance that Applicants will obtain the funds to operate Seabrook safely at low power. 10 C.F.R. 50.33(f)(2). The Commission should not wait until the facility is contaminated by low power operation, and high level nuclear waste generated, before determining whether Applicants' financial circumstances can assure safe operation and prompt decommissioning. The subject regulations should be waived.

Second, on the basis of the vote by the MMWEC's Board of Directors to cease monthly payments for Seabrook, and to move to get out of the project, the Appeal Board concluded that the MASS AG had stated a prima facie case for waiver of the financial qualification regulations and certified the petition to the Commission. Subsequent to MMWEC's decision to withhold Seabrook payments, and certification of the MASS AG petition, Northeast Utilities entered into an agreement with Applicants to pay

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[8]Applicants argue that a determination that bankruptcy per se should require financial qualification review may represent "a direct violation of Section 525 of the Bankruptcy Act". In substance, this section bars discrimination against a bankruptcy debtor "solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act." 11 U.S.C. §525(a). That statute, however, was never intended to preclude a determination that the debtor is financially qualified to undertake new or expanded responsibilities. "It (Section 525) does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capitol rules if applied nondiscriminatorily. Senate Report number 95-989. To adopt Applicants' construction of Section 525 would effectually grant PSNH greater rights to avoid financial qualification review than those enjoyed by nonbankruptcy applicants. This was never the intent of the law. Re: Professional Sales Core, 56 Br. 753 (N.D. Ill. 1985).

approximately $2,000,000 to fund MMWEC's share of Seabrook costs through August 31, 1988. Seizing upon these few additional weeks of funding, the NRC Staff argues that the MASS AG petition should now be denied since "the circumstances underlying the Appeal Board's decision to certify the Attorney General's petition to the Commission do not currently obtain". NRC Staff Response, Page 10. The Staff further cites with approval that Applicants "are working vigorously to structure an arrangement to provide funding for the MMWEC share for a period of at least a year". NRC Staff Response, Pages 9-10.[9]

Even assuming the legality of the interim payment of MMWEC's share by Northeast Utilities,[10] that payment by a single private utility to meet the shortfall occasioned by a defaulting co-owner in Seabrook, for a one month period, hardly constitutes equivalent

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[9]It is ironic that the Staff faults Intervenors' petition as "speculative" and then argues that financial qualification review should be denied, in part, since Applicants presently are engaged in negotiations to plug a financial hole necessitated by MMWEC's refusal to make further Seabrook payments. Staff Response pp. 9-10. The Staff's argument on this issue, grounded upon the Affidavit of John F. G. Eichorn, Jr., proffered by Applicants, presents nothing more than an admission that Applicants financial circumstances presently do not provide reasonable assurance that Applicants have adequate financial resources to conduct low power operations safely.

[10]Based upon information provided by Northeast Utilities to Intervenors, it appears that payment by NU of approximately $2,000,000 was conditioned upon an agreement by PSNH, among other Seabrook Applicants, to purchase power from Northeast Utilities over the next year. This transaction, which may extend beyond routine "short term" power purchases in both duration and cost, as well as including as partial consideration for the agreement, the funding of Seabrook Station, may fall outside PSNH's ordinary course of business, thereby requiring prior Bankruptcy Court aproval. 11 U.S.C. §363(b). This PSNH failed to do.

financial assurance, or predictability over time, as provided by the rate making process. The certainty of ongoing financing through rates, however, was the sole justification articulated by the Commission for exempting regulated utilities from financial qualification review.

> The NRC's analysis of the NARUC survey, discussed infra, has shown that all State public utility commissions have sufficient rate making authority to ensure sufficient utility revenues to meet the cost of NRC safety requirements.

By contrast, the history of the Seabrook proceeding is one of financial struggle and default by private utilities obligated by contract to continue funding the Seabrook project.[11] The Staff, however, still requests this Commission to accept a stop gap approach to Applicants' extreme financial circumstances, regardless of the source, or limited duration, of the funding.

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[11]As previously noted by Intervenors to the Appeal Board:

> The Appeal Board should be aware that various other ownership interests in the project are in dire financial straits. Vermont Electric Coop has been in default on its Seabrook obligations for more than a year, and the Washington Electric Coop, of East Montpellier Vermont has just announced it will be defaulting on the next payment. In addition, the Eastern Maine Cooperative, which is a participant through its participation with one of 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 Investor Services.

SAPL RESPONSE TO APPEAL BOARD MEMORANDUM AND ORDER OF JANUARY 29, 1988 REGARDING FINANCIAL QUALIFICATION RULE dated February 23, 1988, page 3, note 2.

The Commission should reject this invitation to create a significant safety hazard through low power operation without reasonable assurance of Applicants' financial qualification.

Respectfully submitted,

TOWN OF HAMPTON
By Its Attorneys
SHAINES & McEACHERN,
Professional Association

By _____
Paul McEachern

By _____
Matthew T. Brock

DATED: August 2, 1988

CERTIFICATE OF SERVICE

I, Matthew T. Brock, one of the attorneys for the Town of Hampton herein, hereby certify that on August 2, 1988, I made service of the foregoing document, INTERVENORS REPLY TO THE RESPONSES OF THE NRC STAFF AND APPLICANTS TO COMMISSION ORDER OF JULY 14, 1988, by depositing copies thereof in the United States Mail, first class postage prepaid for delivery (or, where indicated, by Express Mail, prepaid) addressed to:

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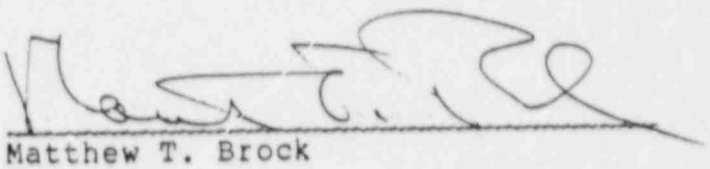

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UNITED STATES OF AMERICA
UNITED STATES NUCLEAR REGULATORY COMMISSION
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NUCLEAR REGULATORY COMMISSION

In the Matter of	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.	Docket Nos. 50-443-OL-1 50-444-OL-1
(Seabrook Station, Units 1 and 2)	(On-Site Emergency Planning and Safety Issues)

SAPL, TOWN OF HAMPTON AND NECNP APPEAL
OF PARTIAL DENIAL OF WAIVER REQUEST (ALAB 895) TO
REVIEW FINANCIAL QUALIFICATIONS OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

NOW COME the Seacoast Anti-Pollution League, the Town of Hampton, the New England Coalition on Nuclear Pollution, as joint intervenors, and hereby appeal to the Commission pursuant to 10 CFR §2.786(b), the July 5, 1988 Decision of the Atomic Safety and Licensing Appeal Board, ALAB 895, insofar as the Appeal Board denied the joint intervenors' waiver request which if granted would permit consideration of the issue of the financial qualifications of Public Service Company of New Hampshire (PSNH).

1. BACKGROUND AND INTRODUCTION

The joint intervenors by a pleading dated July 31, 1987, had sought a waiver of the Commission's rules pertaining to the determination of financial capability of applicants for nuclear operating licenses. The intervenors based their petition for a waiver on a July 1987 form 8K filed with the Securities and

Exchange Commission by PSNH which disclosed that the avoidance of bankruptcy for PSNH was going to be "extremely difficult."

Accordingly, the joint intervenors sought a determination that a prima facie showing had been made, pursuant to 10 CFR §2.758, that the Commission's rules which ordinarily foreclose a financial qualification inquiry for regulated electric utilities should not be applied. The rules in question are found at 10 CFR §§50.33(f) and 50.57(a)(4). The intervenors thus sought a determination that, given the parlous financial condition of PSNH, and the fact that the Commission still held that there was a safety need to have financially qualified applicants, that the issue of PSNH's financial capabilities should be made available for litigation in the licensing hearings.

On August 20, the Licensing Board rejected the intervenors' waiver petition, and a timely appeal to the Appeal Board followed. Oral argument was held on December 8, and the issue was awaiting decision when two important events occurred.

First, on January 26, the New Hampshire Supreme Court unanimously upheld the New Hampshire Anti-CWIP statute, RSA 378:30-a. This statute flatly prohibits any ratepayer recovery for any generating plant "until and not before" the plant "is actually providing service to customers."

Second, on January 28, two days later, PSNH filed for bankruptcy protection, the first utility in modern history to do

so, and the first ever to do so while seeking a nuclear operating license from this Commission.

On January 29, the Appeal Board, noting these events, invited the joint intervenors to file new or amended petitions for waiver, and invited other parties to file petitions. In response, intervenors filed a supplemental brief and another party, the Massachusetts Attorney General (Mass AG), on March 7 filed a new petition for waiver.

In addition, Mass AG filed two supplements to its petition. The first, on May 13, disclosed the attempt by PSNH's third mortgage bond holders to obtain timely payment of the interest on their securities, which PSNH had conceded would likely prohibit it from meeting other obligations, including its more than 5 million dollar a month obligation to the Seabrook project, absent rate relief.

The second Mass AG supplement disclosed the decision of the fourth largest Seabrook owner, the Massachusetts Wholesale Municipal Electric Corporation (MMWEC) to cease making project payments as of June 2, 1988.

Seabrook project costs, allocated among the joint owners, apparently vary between 10 and 15 million dollars a month. PSNH's share, at its 35.56952% ownership level, has been averaging approximately 5.5 million dollars a month. It is conceded that low power operation will cause these costs to increase.

2. SUMMARY OF DECISION BELOW

On July 5, the Appeal Board ruled that a prima facie case for a waiver was met by the second Mass AG supplement: that is, due to the decision of MMWEC to cease funding the project as of June 2, 1988, the project would soon have a 11.5934% funding deficiency. This deficiency, the Appeal Board noted, might be overcome, but it was sufficient to present a "prima facie case that the applicants lack sufficient funds to operate Seabrook safely at low power" and therefore, we must "certify the petition to the Commission." (Slip Opinion at page 38)

However, the Appeal Board affirmed the denial of the intervenors' petition, which relied fundamentally on the bankruptcy of the largest Seabrook owner as, on its face, establishing a prima facie case for a financial qualification review of the project. The Appeal Board acknowledged:

> Because PSNH's bankruptcy filing is unprecedented, the appellants' arguments have a certain visceral attraction.

However, the Board added:

> Such a reaction, however, can never be a proper substitute for the showing required under 10 CFR 2.758--the only basis on which we are authorized to act. (Slip Opinion page 16)

Accordingly, the Appeal Board affirmed the denial of the intervenors' waiver petition. The Appeal Board's ruling was thus, in effect, that although the decision of the fourth largest owner, MMWEC, to withhold payments was sufficient to establish a prima facie case for a financial qualification review, the bankruptcy of

the largest owner was not sufficient.

3. THE DECISION WAS ERRONEOUS

The Appeal Board erred in ruling that the bankruptcy of the largest Seabrook owner was not a sufficient basis, in itself, to waive the rule which ordinarily forecloses a financial qualification hearing.

The Appeal Board clearly stated that the intervenors "if they are to rely on PSNH's filing of a Chapter 11 Reorganization Petition . . ., must demonstrate that the bankruptcy proceeding deprives PSNH and the other applicants of the financial resources to operate the facility at that power level" [low power]. (Slip Opinion at page 22)

In short, the Appeal Board would hold that the intervenors had to establish, not merely that a utility applicant was in bankruptcy, but that the bankruptcy would then result in an actual funding shortage. This, we submit, reversed the burden of proof on an important safety issue from the applicants to the intervenors, contrary to the requirements of 10 CFR §2.732.

The Appeal Board's error stems from a mischaracterization of the purpose of the financial qualification rule. As previously noted, the financial qualification rule, as recast in 1984, was not premised on the conclusion that there was no relationship between financial qualification and safety. Indeed, the Commission, in adopting the current rule, specifically eschewed

this rationale:

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

Rather, the rationale 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 3548.

In short, the rule obviating the need for case by case adjudication of financial qualification was based on the fact that electric utility applicants are rate regulated (or can themselves set rates), and on the assumption that the rate regulation process itself reasonably assures the availability of necessary funds.

The bankruptcy of Public Service has eliminated the basis for the assumption. Under bankruptcy, there is no assurance that the rate setting process is available to provide reasonable assurance of funds.1 Whether or not the bankruptcy process itself can act as a basis for providing the necessary funds is another question, and one not within the rationale underlying the Commission's current rule.

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1 /The only reference in the Bankruptcy Code to a rate setting commission is at 11 USC 1129(a)(6) which provides that if a plan of reorganization requires a change in rates, the rate change must be approved by the rate setting commission. PSNH is a long way away from having a plan of reorganization and just sought an extension, for filing a plan, which was granted to December 27, 1988.

The intervenors, in short, have fully met their burden of proof by establishing that the rate setting process, which was to act as a surrogate for Commission case by case inquiry into financial qualification, is no longer available. That burden having been met, the Commission now should authorize a financial qualification inquiry, as to the bankrupt entity which is the lead owner, PSNH.

Thus, the PSNH bankruptcy, by itself, establishes the prima facie case necessary for a waiver pursuant to 10 CFR §2.758. This is so because the purpose of the rule eliminating the inquiry was not that the intervenors should be given the burden of showing an actual unavailability of funds, but to avoid case by case adjudication of financial qualification where the rate setting process could act as a surrogate for the confidence the case by case adjudication would otherwise provide in assuring that a nuclear operating license applicant had or could obtain the necessary funds for safe operation. That assurance does not exist for a bankrupt applicant, because the normal rate setting process does not exist for a bankrupt applicant, and the waiver should be granted.

4. REASONS FOR THE COMMISSION TO ACCEPT REVIEW

The Commission should review ALAB 895 both because the Appeal Board erred in denying the waiver by reversing the burden of proof on an important safety issue, financial qualification, and because this case presents a major policy question of first impression:

Should the Commission authorize a bankrupt utility applicant to initiate nuclear operation? Not only is PSNH the first utility seeking a nuclear license to ever file for bankruptcy, not only is it the largest the Seabrook owner with more than double the ownership of the second largest owner, it is also the lead owner, the holder of the fuel loading license issued in October, 1986, and the parent of an entity known as New Hampshire Yankee, which is purportedly the present operator of the facility, as a division of PSNH. The intervenors submit that the Appeal Board decision fails to deal with this underlying reality, and the major policy issues it presents.

In addition, the intervenors suggest that the Appeal Board decision is fundamentally opposed to the Commission's policy as set forth in its recently adopted decommissioning regulation.

In its new decommissioning rule, at 53 Fed. Reg. 24018, the Commission specifically rejected the request from many utilities that they be allowed to meet the financial requirements for decommissioning through use of an internal fund. 10 CFR 72.18(3) In so doing, the Commission in its Statement of Considerations noted that:

> Although the law in this area is not fully developed, in the event of bankruptcy there is no reasonable assurance that either unsegregated or segregated internal reserves can be effectively protected from claims of creditor . . .
> 53 Fed. Reg. at 24033.

If the uncertainties of bankruptcy, including the specifically mentioned bankruptcy of PSNH, are so great that nuclear licensees cannot be permitted to use internal funds for meeting decommissioning requirements, even if those funds are segregated, then it seems that the Commission must treat bankruptcy as an issue that can impact on the "reasonable assurance" that its licensees can obtain the funds necessary for other aspects of safe nuclear operation.

In addition, the Appeal Board refused to deal with the possibility that Seabrook, even if authorized to initiate low power operation, might never obtain a full power license.

In this event, there is now evidence before the Bankruptcy Court that operational costs would increase, as found by the Appeal Board, a decommissioning liability would be incurred, and yet PSNH would be prohibited by the New Hampshire Anti-CWIP statute from obtaining ratepayer recovery of these costs. Thus, a potential public hazard would exist for which no funding is reasonably assured.

Whether, in this event, there is assurance that the costs of nuclear operation can be met, including the handling of decommissioning expenses, is a matter the Appeal Board declined to address, because it felt that it ran afoul of the "Commission's prohibition on speculation as to the outcome of ongoing proceedings in applying specific regulations . . ." (Slip Opinion at page 35)

However, no such "speculation" is needed to realize that it is more than a bare possibility that Seabrook will not obtain a commercial license, even if low power is undertaken. The Commission cannot ignore this possible outcome, and the likely financial risk it would present, any more than it can assume the outcome of issuance of a full power license.

For the Commission to authorize these licensing proceedings to be concluded without consideration of the financial qualification of the Seabrook owners, including the lead owner's position as debtor in possession under the Bankruptcy Act, would be to fail to meet the Commission's duty to insure that its applicants have clearly established that all requirements for nuclear licensing have been met.

DATED: July 7, 1988

Respectfully submitted,

Seacoast Anti-Pollution League
By its Attorneys,

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I hereby certify that copies of the foregoing have been forwarded by first-class mail to all parties listed on the attached service list.

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Robert A. Backus, Esquire

UNITED STATES OF AMERICA
UNITED STATES NUCLEAR REGULATORY COMMISSION
BEFORE THE
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.	)	Docket Nos. 50-443-OL-1 50-444-OL-1
(Seabrook Station, Units 1 and 2)	)	(On-Site Emergency Planning and Safety Issues)

SAPL, TOWN OF HAMPTON AND NECNP APPEAL
OF PARTIAL DENIAL OF WAIVER REQUEST (ALAB 895) TO
REVIEW FINANCIAL QUALIFICATIONS OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

NOW COME the Seacoast Anti-Pollution League, the Town of Hampton, the New England Coalition on Nuclear Pollution, as joint intervenors, and hereby appeal to the Commission pursuant to 10 CFR §2.786(b), the July 5, 1988 Decision of the Atomic Safety and Licensing Appeal Board, ALAB 895, insofar as the Appeal Board denied the joint intervenors' waiver request which if granted would permit consideration of the issue of the financial qualifications of Public Service Company of New Hampshire (PSNH).

1. BACKGROUND AND INTRODUCTION

The joint intervenors by a pleading dated July 31, 1987, had sought a waiver of the Commission's rules pertaining to the determination of financial capability of applicants for nuclear operating licenses. The intervenors based their petition for a waiver on a July 1987 form 8K filed with the Securities and