

UNITED STATES NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)

Public Service Company of)
New Hampshire, et al.)

(Seabrook Station, Units 1 & 2))

) Docket Nos. 50-443 OL-1
) 50-444 OL-1
) ONSITE EMERGENCY
) PLANNING & TECHNICAL
) ISSUES

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S BRIEF
IN SUPPORT OF APPEAL OF MEMORANDUM AND ORDER
RENEWING AUTHORIZATION TO OPERATE AT LOW POWER

Diane Curran
Andrea Ferster
HARMON & WEISS
2001 S Street, N.W., Suite 400
Washington, D.C. 20009
(202) 328-3500

April 7, 1988

8804260091 880418
PDR ADOCK 05000443
G PDR

TABLE OF CONTENTS

Table of Authorities.....	ii
Introduction.....	1
I. BACKGROUND.....	1
ARGUMENT.....	4
II. THE ATOMIC ENERGY ACT PROHIBITS AUTHORIZATION OF LOW POWER OPERATION PRIOR TO COMPLETION OF PUBLIC HEARINGS ON ALL ISSUES MATERIAL TO FULL POWER LICENSING.....	4
A. The legislative history of the expired Temporary Operating License Authorization demonstrates that Congress did not authorize issuance of low power licenses until completion of all hearings relevant to licensing.....	6
B. "Sholly Amendment" legislative history.....	12
III. THERE IS NO AUTHORITY IN THE COMMISSION'S REGULATIONS FOR ISSUANCE OF A LOW POWER LICENSE PRIOR TO FINDINGS ON ALL ISSUES RELEVANT TO FULL POWER OPERATION.....	14
IV. APPLICANTS MUST SATISFY COMMISSION REGULATIONS WITH RESPECT TO REMANDED CONTENTIONS, OR SATISFY THE STANDARD FOR AN EXEMPTION, PRIOR TO RENEWAL OF LOW POWER AUTHORIZATION.....	23
V. CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<u>Calvert Cliffs Coordinating Committee v. United States Atomic Energy Commission</u> , 449 F.2d 1109 (D.C. Cir. 1971).....	9
<u>Izaak Walton League of America v. Schlesinger</u> , 347 F.2d 287 (D.C.D.C. 1971).....	9
<u>San Luis Obispo Mothers For Peace v. NRC</u> , 751 F.2d 1287 (D.C. Cir. 1984).....	18
<u>Sholly v. U.S. Nuclear Regulatory Commission</u> , 651 F.2d 780 (D.C. Cir. 1980), <u>vacated</u> <u>on other grounds</u> , 103 S.Ct. 1170 (1983).....	6
<u>Union of Concerned Scientists v. U.S. Nuclear Regulatory Commission</u> , 735 F.2d 1437 (D.C. Cir. 1984).....	5,6

Administrative Decisions

<u>Carolina Power & Light Company, et al.</u> (Shearon Harris Nuclear Power Plant), LBP-85-5, 21 NRC 410 (1985), <u>aff'd</u> , ALAB-837, 23 NRC 525 (1986).....	23
<u>Carolina Power & Light Company, et al.</u> (Shearon Harris Nuclear Power Plant), DD-87-6, 25 NRC 387 (1987)	19
<u>Commonwealth Edison Co</u> (Braidwood Nuclear Power Station, Units 1 and 2), LBP-86-31, 24 NRC 451 (1986).....	18
<u>Diablo Canyon</u> , DD-84-20, 20 NRC 776 (1984).....	19
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154 (1984).....	20,24
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station, Unit 1), CLI-84-21, 20 NRC 1437 (1984).....	5,19,21
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station), CLI-85-12, 21 NRC 1587 (1985).....	13
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station, Unit 1), LPB-84-35A, 20 NRC 920 (1984).....	21
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station, Unit 1), LPB-84-45, 20 NRC 1343 (1984).....	24
<u>Pacific Gas and Electric Co</u> (Diablo Canyon, Units 1 and 2), 17 NRC 777 (1983).....	21

<u>Public Service Company of New Hampshire, et al. (Seabrook Station, Unit 1), CLI-87-13, 26 NRC 400 (1987)</u>	6
<u>Public Service Company of New Hampshire, et al. (Seabrook Station, Unit 1), ALAB-883, 27 NRC ___ (February 3, 1988)</u> ...	1
<u>Public Service Company of New Hampshire, et al. (Seabrook Station, Unit 1), ALAB-875, (October 1, 1987)</u>	2-3
<u>Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177 (1987)</u>	1-2
<u>Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2), Memorandum and Order from the Licensing Board (November 27, 1987)</u>	3
<u>Texas Utilities Electric Co. (Commanche Peak Steam Electric Station, Units 1 and 2), LBP-84-30A, 20 NRC 443 (1984)</u>	17-18
 <u>Statutes</u>	
42 U.S.C. § 2239(a).....	5-10,13-14,15
42 U.S.C. § 2242.....	7,8,10-12
 <u>Regulations</u>	
10 CFR § 2.732.....	23
10 CFR § 2.758.....	22,23,24
10 CFR § 50.12.....	19,23,24
10 CFR § 50.47(d).....	5,21,23
*10 CFR § 50.57(a).....	23
10 CFR § 50.57(c).....	5,14-15-22
 <u>Miscellaneous</u>	
<u>Statement of James S. Schlesinger before Joint Committee on Atomic Energy, March 16, 1972</u>	8,10
House Rept. No. 92-1027, 1972 U.S. Code Cong. and Admin. News 2351	8-10
Sen. Rep. No. 97-113, 1982 U.S. Code Cong. and Admin. News at 3593	11
Vol. 128, Cong.Rec. (December 16, 1982).....	11

Vol. 128, Cong. Rec. (December 2, 1982).....14
SECY-84-290A.....20


DOCKETED
USNRC

'88 APR 20 P 6:45

CERTIFICATE OF SERVICE

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I certify that on April 18, 1988, copies of the foregoing pleading were served by first-class mail on the parties to the attached service list.



Diane Curran

SEABROOK SERVICE LIST -- OFFSITE APPEAL BOARD

Ivan W. Smith, Chairman
U.S. NRC
Washington, D.C. 20555

Dr. Jerry Harbour
U.S. NRC
Washington, D.C. 20555

Gustave Linenberger
U.S. NRC
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. NRC
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. NRC
Washington, D.C. 20555

Docketing and Service
U.S. NRC
Washington, D.C. 20555

Mrs. Anne E. Goodman
Board of Selectmen
13-15 New Market Road
Durham, NH 03842

William S. Lord, Selectman
Town Hall -- Friend Street
Amesbury, MA 01913

Jane Doughty
SAPL
5 Market Street
Portsmouth, NH 03801

Carol S. Sneider, Esquire
Assistant Attorney General
1 Ashburton Place, 19th Floor
Boston, MA 02108

Stanley W. Knowles
Board of Selectmen
P.O. Box 710
North Hampton, NH 03826

J.P. Nadeau
Town of Rye
155 Washington Road

Rye, New Hampshire 03870

Richard E. Sullivan, Mayor
City Hall
Newburyport, MA 01950

Alfred V. Sargent, Chairman
Board of Selectmen
Town of Salisbury, MA 01950

Senator Gordon J. Humphrey
U.S. Senate
Washington, D.C. 20510
(Attn. Tom Burack)

Selectmen of Northampton
Northampton, New Hampshire 03826

Senator Gordon J. Humphrey
1 Eagle Square, Ste 507
Concord, NH 03301

Michael Santosuosso,
Chairman
Board of Selectmen
Jewell Street, RFD # 2
South Hampton, NH 03842

Judith H. Mizner, Esq.
Silvergate, Gertner, et al.
88 Broad Street
Boston, MA 02110

Rep. Roberta C. Pevear
Drinkwater Road
Hampton, Falls, NH 03844

Phillip Ahrens, Esq.
Assistant Attorney General
State House, Station # 6
Augusta, ME 04333

Thomas G. Dignan, Esq.
R.K. Gad II, Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Robert A. Backus, Esq.
Backus, Meyer & Solomon
111 Lowell Street
Manchester, NH 03105

Sherwin E. Turk, Esq.
Office of General Counsel

U.S. NRC
Washington, D.C. 20555

Mr. Angie Machiros,
Chairman
Town of Newbury
Town Hall, 25 High Road
Newbury, MA 01951

H. Joseph Flynn, Esq.
Office of General Counsel
FEMA
500 C Street S.W.
Washington, D.C. 20472

George Dana Bisbee, Esq.
Geoffrey M. Huntington, Esq.
Office of the Attorney General
State House Annex
Concord, NH 03301

Allen Lampert
Civil Defense Director
Town of Brentwood
Exeter, NH 03833

Richard A. Hampe, Esq.
Hampe and McNicholas
35 Pleasant Street
Concord, NH 03301

Gary W. Holmes, Esq.
Holmes & Ellis
47 Winneconnent Road
Hampton, NH 03842

William Armstrong
Civil Defense Director
10 Front Street
Exeter, NH 03833

Calvin A. Canney
City Manager
City Hall
126 Daniel Street
Portsmouth, NH 03801

Matthew T. Brock, Esq.
Shaines & McEachern
P.O. Box 360
Maplewood Ave.
Portsmouth, NH 03801

Edward A. Thomas
FEMA
447 J.W. McCormack

(POCH)
Boston, MA 02109

Sandra Gavutis
RFD 1 Box 1154
East Kensington, NH 03827

Charles P. Graham, Esq.
McKay, Murphy and Graham
100 Main Street
Amesbury, MA 01913

Alan S. Rosenthal, Chairman
U.S. NRC
Washington, D.C. 20555

Howard A. Wilber
U.S. NRC
Washington, D.C. 20555

Thomas S. Moore
U.S. NRC
Washington, D.C. 20555