September 9, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the

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, Unit 1 and 2)	)	(Onsite Emergency Planning and Safety Issues)

THIRD SUPPLEMENT TO

MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON'S PETITION UNDER 10 C.F.R. 2.758 FOR A WAIVER OF OR AN EXCEPTION FROM THE PUBLIC UTILITY EXEMPTION FROM THE REQUIREMENT OF A DEMONSTRATION OF FINANCIAL QUALIFICATION

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INTRODUCTION

Presently before the Nuclear Regulatory Commission ("Commission") pursuant to the certification of the Appeal Board in ALAB-895 is MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON'S PETITION UNDER 10 C.F.R. 2.758 FOR A WAIVER OF OR AN EXCEPTION FROM THE PUBLIC UTILITY EXEMPTION FROM THE REQUIREMENT OF A DEMONSTRATION OF FINANCIAL QUALIFICATION. The Massachusetts Attorney General submits this Third Supplement to that Petition to bring to the Commission's attention new information that demonstrates the necessity of granting a wavier

of or exception from the public utility exemption from the requirement of a demonstration of financial qualification, i.e., new information that further demonstrates the inappropriateness of applying a generic presumption that the rate process will assure that adequate funding will be available to cover the costs of safe low power operation and the permanent shut down of the Seabrook Nuclear Power Station.

BACKGROUND

On March 7, 1988, pursuant to an order of the Appeal Board dated January 29, 1988, James M. Shannon, Attorney General of the Commonwealth of Massachusetts ("the Attorney General"), petitioned under Section 2.758(b) of the Commission's regulations for a wavier of or an exception from the public utility exemption from the Commission's requirement that a demonstration of financial qualification be made prior to the issuance of a commercial nuclear power plant operating license.[1] In particular, the Attorney General requested a wavier of or exception from Sections 2.104(c)(4), 50.33(f), and 50.57(a)(4) of the Commission's regulations to the extent necessary to require that the Applicants demonstrate, prior to low power operation, financial qualification to cover the costs of Seabrook Unit 1's operation for the period of the license and the costs to permanently shut it down and maintain it in a safe condition. In support of that petition, the

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1. MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON'S PETITION UNDER 10 C.F.R. 2.758 FOR A WAIVER OF OR AN EXCEPTION FROM THE PUBLIC UTILITY EXEMPTION FROM THE REQUIREMENT OF A DEMONSTRATION OF FINANCIAL QUALIFICATION (hereinafter referenced as "MassAG Pet").

Attorney General maintained that the substantial present and potential future costs associated with low power operation and testing of the Seabrook plant (MassAG Pet at 16 - 23), together with the bankruptcy related constraints on the availability of funds to PSNH to cover those costs (Id. at 24 - 32) and the present inability/unwillingness of the remaining joint applicants to commit to cover PSNH's share of those present and future costs (Id. at 4 - 15), demonstrated that it is more likely than not that adequate funding for the costs of safe low power operation and permanently shutting down the Seabrook plant and maintaining it in a safe condition would not be available during the pendency of the PSNH bankruptcy. In the period subsequent to the filing of the Attorney General's Petition, additional information became available which bore on the likelihood that adequate funding would be available to assure the safe operation of the Seabrook plant. This additional information led to the Attorney General filing two supplements to his original petition with the Appeal Board.

On July 6, 1988, the Appeal Board concluded on the basis of the Attorney General's Petition as supplemented that "the Attorney General's waiver petition present[ed] a prima facie case that the applicants lack sufficient funds to operate Seabrook safely at low power" and certified the petition to the Commission. Public Service Company of New Hampshire (Seabrook Nuclear Power Station, Units 1 and 2), ALAB-895, ___ NRC ___ (1988)(slip at 38).

In the period subsequent to the certification to the Commission by the Appeal Board of the Attorney General's Petition, additional information has become available which bears on the likelihood that adequate funding will be available to assure the safe operation of the Seabrook plant. Specifically, recent proceedings in the Bankruptcy Court as well as information recently provided by Public Service to the Commission Staff indicate that:

a. That Public Service itself believes that uncertainty concerning the willingness or ability of itself and other joint owners to meet their financial responsibilities to the Seabrook project has jeopardized the confidence and morale of the existing staff at Seabrook Station;

b. That the solution proposed by Public Service to mitigate this weakening of confidence and morale was not approved by the Bankruptcy Court;

c. That there is evidence that only the Bankruptcy Court, not the New Hampshire Public Service Commission, can assure that sufficient funds will be available to Public Service to cover the costs of safe low power operation and of permanently shutting down Seabrook Nuclear Power Station;

d. That the Applicants cannot now assure the availability of funds to cover the costs of safe low power operation and the only mechanism suggested to provide such assurance is an unorthodox financing that is indicative of the financial plight of the Applicants;

e. That the Applicants do not now have or appear to be seeking a mechanism to assure the availability of funds to cover the costs of permanently shutting down Seabrook Nuclear Power Station in the circumstance that low power testing occurs but a full power operating license is never granted.

To bring this important information to the Commission's attention, the Attorney General hereby supplements his March 7, 1988 Petition by stating:

THE PRESENT UNCERTAINTY CONCERNING THE FINANCIAL QUALIFICATION OF THE APPLICANTS HAS AND WILL CONTINUE TO HAVE A DELETERIOUS EFFECT ON THE MORALE AND CONFIDENCE OF SEABROOK NUCLEAR POWER STATION PERSONNEL

1. On July 21, 1988, Public Service filed a "Notice Of Intention To Enter Into Transaction Out Of The Ordinary Course (New Hampshire Yankee Electric Corporation)" with the Bankruptcy Court which concerned the Applicants' attempt to transfer management and operational control over the Seabrook Nuclear Power Station from Public Service to a separate corporation, the New Hampshire Yankee Electric Corporation ("NHYEC"). (See Third Supplemental Appendix III: In re Public Service Company of New Hampshire, ___ B.R. ___ (September 2, 1988 Mem. Op. in BK#88-00043)(slip at 1)).

2. In support of approval of the proposed transaction outside of the ordinary course, Public Service submitted a sworn declaration of Robert J. Harrison, its president and chief executive officer, which recited, among other items, the following

as benefits of the proposal to "both Public Service and the Seabrook project as a whole:

> 9.1 Instability in the willingness or ability of Public Service and other Joint Owners to meet their financial responsibilities to the Seabrook project jeopardizes the confidence and morale of the existing staff at Seabrook Station. The existence of NHYEC as the longterm operator of Seabrook Station will likely improve that confidence and morale, retaining the loyalty of the existing personnel and attracting new employees as necessary.
>
> 9.2 The existence of NHYEC as a separate corporate entity will permit continuity of the direct management of the Seabrook project, independent of changes in ownership of Seabrook or in the status of individual owners. Such continuity is important to perceptions of continued management dependability and prudence.

(Id. at 3).

3. Contrary to the expectation implicit in the August 31, 1988 response of Public Service to the Staff's request for financial information (See Third Supplemental Appendix I: PSNH Response to NRC Request for Financial Information [August 31, 1988], at 15-18), on September 2, 1988, the Bankruptcy Court denied approval of the proposed transaction which, among other purposes, was intended to alleviate a weakening of morale and confidence of Seabrook Nuclear Power Station personnel as well as to instill a perception of managerial continuity and prudence. (See Third Supplemental Appendix III: In re Public Service Company of New Hampshire, ___ B.R. ___ [September 2, 1988 Mem. Op. in BK#88-00043][Slip at 19-20]).

THERE IS STRONG EVIDENCE THAT THE BANKRUPTCY COURT, RATHER THAN THE RATE PROCESS, WILL CONTROL THE AVAILABILITY OF FUNDS FOR SAFE LOW POWER OPERATION

4. Consolidated Utilities and Communications, Inc. ("CUC") and Citicorp, holders of Public Service third mortgage bonds and active participants in the bankruptcy proceedings, have stated that they believe that the prior approval by the Bankruptcy Court is necessary for the initiation of low power operation. (See Third Supplemental Appendix II: Excerpts from Transcript, August 26, 1988, pp. 24-25).

5. Although the Bankruptcy Court has explicitly refrained from ruling on the question of low power operation (See Third Supplemental Appendix III: In re Public Service Company of New Hampshire, ___ B.R. ___ [September 2, 1988 Mem. Op. in BK#88-00043][Slip at 16 n. 8, 18 n. 10, and 20]), a colloquy between the Bench and counsel for Public Service during the hearing on the proposed transaction indicates that the issue is very much alive and that Public Service cannot assume that prior Bankruptcy Court is not necessary for low power testing:

> THE COURT: You feel that [it] would be in the ordinary course of business to turn on the power at Seabrook?
>
> MR. WILLENBURG: Your Honor, I think it might be. After all, generation of electricity is the business of this debtor, but I don't believe that that issue is before us now ...

(See Third Supplemental Appendix II: Excerpts from Transcript, August 26, 1988, pp. 61-62).

THERE IS STILL NO ASSURANCE THAT ADEQUATE FUNDS WILL BE AVAILABLE TO THE APPLICANTS TO OPERATE SEABROOK SAFELY OR PERMANENTLY SHUT IT DOWN

6. In its response to the request for financial information made by the NRC staff, Public Service indicated that replacement funds for those no longer provided by MMWEC had been secured for the period ending November 30, 1988 and that some unspecified form of contractual arrangement with outside investors was under consideration which would provide additional funds to replace those not provide by MMWEC during the period from November 30, 1988 through December 31, 1989. (See THIRD SUPPLEMENTAL APPENDIX I: PSNH Response to NRC Request for Financial Information [August 31, 1988], 8-9).

7. Public Service's response did not, notwithstanding an explicit request for such, provide any information concerning the sources -- secured, planned or otherwise -- "of funds for covering ... total costs of permanent shutdown of the facility and maitenance as a safe condition after a period of low power operations only." (Id. at 3-5).

8. In the absense of any secondary secure source of funding for MMWEC's share of the costs of permanent shutdown following low power operation, the Applicants are obviously left with only the possibility of a law suit against an an already defaulting Joint Owner whose default and nonparticipation prior to low power operation would constitute a colorable defense to that claim: a far from reasonable, much less certain source of funds.

CONCLUSION

WHEREFORE, Attorney General James M. Shannon prays that the Commission:

(1) determine that the public utility exemption from the requirement of a demonstration of financial qualification should be waived or an exception granted with respect to the licensing of the Seabrook plant;

(2) stay the issuance of a license authorizing low power operation and testing pending the outcome of proceedings concerning a determination of whether the Applicants can demonstrate that they possess the requisite financial qualifications to assure safe low power operation and a permanent shut down of the Seabrook Nuclear Power Station in the event that a full power commercial operating license is not issued;

(3) issue such other orders and grant such other relief as may be equitable and necessary to assure the public health and safety in light of the present extraordinary financial straights of the Joint Applicants.

RESPECTFULLY SUBMITTED,

JAMES M. SHANNON
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS

BY: Steven A. Jonas
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DATED: September 9, 1988

SUPPLEMENTAL APPENDICES

Third Supplemental Appendix	I:	PSNH Response to NRC Request for Financial Information (August 31, 1988).
Third Supplemental Appendix	II:	Excerpts from Transcript, August 26, 1988.
Third Supplemental Appendix	III:	In re Public Service Company of New Hampshire, ___ B.R. ___ (September 2, 1988 Mem. Op. in BK#88-00043)(slip).

PSNH

Public Service of New Hampshire

Robert J. Harrison
President and Chief Executive Officer

THIRD SUPPLEMENTAL APPENDIX I

August 31, 1988

U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Document Control Desk

References: a) Facility Operating License NSF-56, Docket No. 50-443

b) USNRC letter dated August 1, 1988, "Financial Coverage for the Cost of Low Power Operation - Request for Additional Information", B. Boger to R. J. Harrison

c) USNRC letter dated August 17, 1987, "Recent Filings by Public Service Company of New Hampshire Before the Securities and Exchange Commission", B. A. Boger to R. J. Harrison

d) PSNH letter dated September 3, 1987, "Re: Request for Financial Information", NYN-87104 in Docket No. 50-443

Re: Request for Additional Information

Gentlemen:

In reference (b), the NRC requested clarification with regards to the applicants' ability to provide financial coverage for the cost of low power operation of Seabrook and the cost of any permanent shutdown of the facility and maintenance in a safe condition following low power operation.

Enclosed herewith are detailed responses to your questions which we have prepared to the best of our ability based upon the assumptions you specified or as indicated therein. Included with these responses are copies of the Joint Owners' interim financial statements and other reports which you requested.

If you need any further information or clarification, please contact the undersigned, or Edward A. Brown, President and CEO of New Hampshire Yankee Division.

Very truly yours,

R. J. Harrison

RJH:fc
Enclosures

cc: ASLB Service List

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Due to their bulk, enclosures 7 to 18 are only being sent to the NRC Staff. The documents are available in the public document room.

*U.S. First Class Mail

NRC Question 1:

Please provide detailed estimates of (a) the total cost to operate Seabrook Unit No. 1 at low power only (up to five percent); and (b) the total cost to permanently shutdown the facility after low power operation only and to maintain it in a safe condition, should that become necessary. Also provide an estimate of the cost to store and to dispose of the irradiated fuel assuming low power operation only. Describe in detail the assumptions underlying the estimates. Include assumptions as to power level, duration of operation, method of fuel storage and disposal and method of permanent shutdown and safe maintenance. In response to the above, the applicants (i.e., the Joint Owners) should update their response to the NRC letter dated August 17, 1987. This request for information is in addition to the reporting requirements of the NRC's decommissioning rule published in the Federal Register on June 27, 1988, (53 FR 24018).

Response to NRC Question 1:

This question is substantially identical to Question 1 as set forth in the NRC letter dated August 17, 1987 referred to above and the information with respect to parts (a) and (b) of the question supplied in response to that question is still generally valid, except for the current funding forecast and the monthly expenditures following a permanent shut-down decision. See PSNH letter to NRC, dated September 3, 1987, in Docket No. 50-443. The current funding forecast for the period July - December, 1988 is provided in response to NRC Question No. 3 below. The current estimate of monthly expenditures after permanent shut-down is $4.8 million including $1.9 million for property taxes.

In addition, the Project has developed the costs

necessary to designate the Seabrook site for completely unrestricted use after the shipment of the fuel. After the normal decontamination process, only a limited number of components would require special disposal (other than the fuel). These components include the reactor vessel, the core internals, incore instrumentation and rod control assemblies. The actual magnitude of the radioactivity external to the fuel would be low due to the component material and the limited power operation. Remote handling of the vessel and internals would not be required as these pieces of equipment would be classified as low level waste material.

The costs associated with the decontamination, removal, packing, shipping and burial of the rod control assemblies and the incore detectors is $250,000.00. The costs to decontaminate, remove, pack, ship and bury the reactor vessel and internals, if necessary, would be $3.8 million.

NRC Question 2:

Please provide a detailed statement of the sources of funds for covering total costs of low power operations and total costs of permanent shutdown of the facility and maintenance as a safe condition after a period of low power operations only. Indicate the assumptions underlying the projection of each source of funds.

Response to NRC Question 2:

Funding of Seabrook Project, for the total costs of both on-going operations and for any permanent shutdown of the facility, is the pro rata, several responsibility of the several utilities (the "Joint Owners") which are participants under the Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units, dated as of May 1, 1973, as amended (the "Joint Ownership Agreement"). The Ownership Shares of these utilities are shown in Attachment 1. Pursuant to the Joint Ownership Agreement, the mechanics of establishing the level of this funding involve quarterly approvals by the Joint Owners collectively of itemized cash budgets for six months' periods on a revolving basis in accordance with the procedures set forth therein. The funding level to meet the budget forecast is subsequently determined on a monthly basis by the Joint Owners Executive Committee or the Joint Owners. Once a funding level has been established, each Joint Owner provides its Ownership Share of the budgeted operating expenses of the Seabrook Project.

Invoices are rendered as required and payments are due monthly. Each Joint Owner raises such funds as part of its normal financial sources.

It has been the policy of the Seabrook Project since the summer of 1984 to maintain a positive cash balance in the Project account from which its monthly obligations are paid. This policy was designed to assure additional flexibility should fluctuations in monthly cash requirements or delays in receipt of Joint Owner payments occur. The Project account, as supplemented by the Joint Owner monthly payments, is the source for meeting Seabrook Station's cash operating requirements. At January 1, 1988 the Project account had a balance of approximately $21.8 million, or about two months' cash needs.

The implicit assumption underlying this discussion is that each Joint Owner in the final analysis will perform its legal obligations as a party to the Joint Ownership Agreement and a licensee of the NRC. Experience has shown that routine performance of legal obligations by a Joint Owner may be affected by other circumstances. Currently, two of the Joint Owners are in default under the Joint Ownership Agreement and one is in arrears. (See Responses to NRC Question 3, 4 and 5 for further details.) As indicated in these responses, drawings from the Project account and other contingency arrangements have been successfully implemented in those

instances to deal with the interruptions of payments from these individual Joint Owners. As indicated in the Response to NRC Question 4 below, another contingency arrangement has been put in place to deal with the current MMWEC situation. Another Joint Owner, despite being in bankruptcy proceedings, remains current on its obligations under the Joint Ownership Agreement. (See Response to NRC Question 6). However, it should be emphasized that in all instances of failure to comply with the terms of the Joint Ownership Agreement the Joint Owners reserve their rights to seek legal redress and enforcement of the terms of that agreement.

NRC Question 3:

Provide copies of the latest funding forecast approved by the joint owners. Also provide copies of the funding performance for the most recent six months.

Response to NRC Question 3:

Enclosed herewith as Attachment 2 (2 pages) is the Funding Forecast for Seabrook Station for the six months period, July through December, 1988, as approved by the Joint Owners Executive Committee. This schedule provides a breakdown by major categories of the cash expenditures anticipated during each month of that period.

Enclosed herewith is Attachment 3 (1 page) is a schedule entitled "Uncollected Participant Funding Requests." This shows the status through August, 1988 of the two Joint Owners which are presently in default on payment of their funding obligations under the Joint Ownership Agreement and one Joint Owner in arrears.

Enclosed herewith as Attachment 4 (3 pages) is a schedule entitled "Analysis of Funding Performance: Billings v. Funding, Year to Date 1988." The first page of this schedule shows the total billings by month and the total participant payments and supplementary advance payments received by month. The discrepancy between total billings and total receipts was funded from the balance remaining in the Project account or supplementary advance payments (see

Response to NRC Question 2). The second page of this schedule shows the detailed breakdown by Joint Owner of the monthly participant payments. The third page of this schedule shows the detailed breakdown of the supplementary advance payments by contributor and in May reflects the partial reimbursement of some of these advances by New Hampshire Electric Cooperative, Inc. which in that month brought itself current again after a period of financial strictures.

NRC Question 4:

Provide a detailed statement of the joint owners' plan for covering the 11.6 percent share of Seabrook costs that is no longer being paid by Massachusetts Municipal Wholesale Electric Company (MMWEC). Identify any new or prospective owner(s) or other participant(s) in the project and describe in detail the arrangements for their participation and for covering the share of costs formerly paid by MMWEC. Describe how MMWEC's share of costs will be covered by the time low power operation is authorized. (For this purpose assume that low power authorization is received after September 1, 1988.)

Response to NRC Question 4:

On June 1, 1988 when MMWEC announced its intended "withdrawal from the Seabrook Station nuclear project", and that it would make no further payments to the Seabrook Project and that it would seek an agreement "to take MMWEC out of the project in a financially responsible manner", the Project account referred to above in Response to NRC Question 2 contained a positive balance in MMWEC's favor sufficient to cover MMWEC's share of the anticipated billings for the month of June and part of July. On July 13, 1988, Northeast Utilities ("NU"), the registered holding company parent of The Connecticut Light and Power Company, one of the Joint Owners, announced that it would advance sufficient funds in lieu of the MMWEC obligation to permit the Project to meet its obligation through August, 1988. On July 20, 1988 $2,249,000 was advanced to the Project by NU, which will cover MMWEC's share to September 9, 1988.

On August 30, 1988 NU announced that it had concluded arrangements under which it will provide further funding "for the [MMWEC] portion of the Seabrook Nuclear Project that is subject to default" through November 30, 1988 (see Attachment 5). This will permit the Project to "cover" the MMWEC share through that period.

The status of MMWEC's participation in the Project has been the subject of active negotiation for some time. MMWEC's unilateral announcement on June 1 that it was ceasing further payments complicated these negotiations. As indicated, the short-term financial consequences of that announcement are being covered by NU's payments through November 30, 1988. In addition, The United Illuminating Company has assembled investors who intend to cover the longer-term consequences of the MMWEC default. These investors will provide the Project up to $30 million of additional funds as MMWEC's payments fall due between November 30, 1988 and December 31, 1989, which amount exceeds MMWEC's share of the presently estimated Project billings during that period. The contracts to document this arrangement are in preparation and expected to be completed on or before September 15, 1988. A further response which provides the requested details of these arrangements will be filed at that time.

NRC Question 5:

Please identify any other joint owner(s) that is in default (or that is expected to be in default in the next twelve months) or in arrears on its Seabrook payments. Describe the circumstances of the default (or potential default) or the arrearage and indicate how the unpaid share is being (or will be) covered. Describe the plan for coverage of the share through low power operation up until issuance of a full power license. (For this purpose, assume a full power license is issued i the summer, 1989.)

Response to NRC Question 5:

As indicated in prior responses, there are currently two Joint Owners, other than MMWEC, which are in default or in arrears on their Seabrook payments:

As a result of severe financial difficulties, Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T), the owner of a 0.41259% share, ceased funding its share of the project costs in February, 1986 and through August, 1988 is in default for an aggregate of $2,445,811. VEG&T's share of the projected costs for the next twelve months (through August, 1989) is estimated to be approximately $663,000. The deficiency resulting from VEG&T's failure to pay has to date been covered by supplementary advance payments received from others (see page 3 of Attachment 4) and it is anticipated that this arrangement will continue during the next twelve months.

New Hampshire Electric Cooperative, Inc. (NH Coop), the owner of a 2.17391% share, is currently in arrears on its

Seabrook payments for an aggregate of $196,925. This amount has been accumulating since February, 1986 as the result of an on-going dispute with respect to certain project costs for public information expenditures. During that same period NH Coop paid the balance of its billings which amounted to approximately $5.3 million. Negotiations are continuing between the Project and NH Corp to resolve the arrearage. These expenditures are being paid out of NH Coop's portion of the cash balance in the Project account remaining from earlier advance payments received from NH Coop.

NRC Question 6:

Describe the effect of bankruptcy on PSNH's ability to cover its share of Seabrook costs both currently and through a period of low power operation. Please summarize any pronouncements of the Bankruptcy Court that affect PSNH's ability to pay its total share of Seabrook costs both currently and through low power operation up until issuance of a full power license. Indicate if PSNH is up-to-date on payment of its share of costs to the project and explain how PSNH expects to continue to be up-to-date on its payments through low power operation up until issuance of a full power license. (For these purposes, assume a full power license is issued in the summer 1989.)

Response to NRC Question 6:

The bankruptcy proceeding under Chapter 11 was initiated by PSNH on January 28, 1988. Since that date, PSNH has operated its business as debtor in possession. The pre-commercial activities of Seabrook Station have continued without interruption. But for the delays in payment of PSNH's share of some prepetition indebtedness, there has been no delinquency in meeting the Project's payment obligations.

PSNH has met each Project bill on time and in full since the filing date and is currently up-to-date on its payments due to the Project. PSNH expects to continue to meet its Seabrook obligations through low power operation up until issuance of a full power license from the revenues generated by its on-going utility operations. PSNH's net revenues have, in fact, increased since the bankruptcy filing and are expected to be more than adequate to meet PSNH's share of the

obligations enumerated in Response to NRC Question 1 above.

Any effect the bankruptcy proceeding itself has had on PSNH's ability to cover its share of Seabrook costs has been positive, and it is anticipated that this will continue in the future, including during low power testing. Filing the bankruptcy petition in effect "froze" payment of many prepetition debts, thus keeping funds available to meet Seabrook costs and the bankruptcy court will allow PSNH to emerge from bankruptcy only under a plan which provides means to satisfy all PSNH obligations, including those related to Seabrook, on a going forward basis. While it is possible that creditors or other parties involved in the proceeding may attempt to use the Bankruptcy Court as a forum to assail continued funding or low power testing, such action would face substantial legal hurdles and determined resistance by PSNH and the other Joint Owners. PSNH believes that such action would have a low chance of success.

Actions and pronouncements of the Bankruptcy Court have been consistently encouraging in this regard. For example, as alluded to above, on June 3 the Court allowed PSNH to use monies contributed prepetition to pay its share of vendor costs and ordered the bank holding deposits of Project funds to release all such monies contributed by PSNH. On June 9, the Court rejected the claim of certain creditors for payments during the bankruptcy that may, as a practical

matter, have impinged PSNH's ability to continue funding. Very early in the case, the Court rejected proposals for open-ended discovery and in-court evidentiary proceedings regarding Seabrook. In addition, the Court has granted PSNH additional time to attempt to negotiate its way out of bankruptcy, thereby refusing to allow other parties the chance to force a reorganization that did not include continued funding.

The Bankruptcy Court has also indicated that it does not see itself as the forum in which determinations about whether or when Seabrook should go forward should be made. At the June 9 hearing referred to above, the Court stated that "if Seabrook is lost, it is not lost because of uncertainties or attrition or myths or anything else relating to confusion about what is going on in the Bankruptcy Court, but it is lost because of those things that are the bailiwick of these other agencies that protect public health and safety. That, I think, is vital here." Transcript, June 9, 1988 pp. 143-144. Cf. Order Denying the Third Mortgagees' Motion for Adequate Protection, dated July 20, 1988, footnote on page 9, (see Attachment 6).

NRC Question 7:

Describe the status of efforts to spin off New Hampshire Yankee Electric Corporation as an independent company. Explain any efforts on responses to the above question if the reorganization were to be accomplished.

Response to NRC Question 7:

In the summer of 1984 the Joint Owners decided to create a new corporate entity which would be owned by them and which would become their managing agent under the Joint Ownership Agreement with responsibility for completing and operating Seabrook Station. Pending receipt of the regulatory approvals needed for such a restructuring, these functions of managing agent were to be, and have been, performed on an interim basis by the establishment at that time of New Hampshire Yankee Division (NHYD) of Public Service Company of New Hampshire (PSNH). This interim function of NHYD and the subsequent transition to NHYEC was fully disclosed to the Commission at a meeting on August 9, 1984 and subsequently confirmed in writing. See "Summary of Management Meeting between PSNH and NRC" issued by the NRC on August 16, 1984 in Docket No. 50-443; and PSNH Letter to NRC, dated August 31, 1984, SBN-707 in Docket Nos. 50-443 and 50-444.

As explained at that time, the purpose of the management restructuring is to create a management organization for Seabrook Station which is independent and not directly

affected by the financial or political pressures affecting PSNH. A primary consideration is the transfer of all operating personnel from their present status as employees of PSNH to become employees of the new entity. The restructuring would in no way modify the existing financial support for the project as evidenced by the commitments of the Joint Owners under the Joint Ownership Agreement.

Implementation of this new structure was immediately started. A New Hampshire corporation, New Hampshire Yankee Electric Corporation (NHYEC), was organized for that purpose. Regulatory approval for the organization of NHYEC and for the sale of its stock to the Joint Owners in proportion to their Ownership Shares of Seabrook Station was obtained from the New Hampshire Public Utilities Commission in October, 1984 and June, 1985, respectively. Proceedings for other required regulatory approvals were initiated before the Massachusetts Department of Public Utilities (Mass DPU) and the Securities and Exchange Commission (SEC).

Since the Mass DPU has failed to date to take any action on the proceeding before it, the Joint Owners have recently revised their approach. It is now contemplated that, after receipt of the requisite SEC approval, those Joint Owners which are not subject to Mass DPU jurisdiction will acquire stock of NHYEC, permitting NHYEC to commence business operations and that the Massachusetts Joint Owners will

subsequently acquire NHYEC stock if and when Massachusetts DPU approval is received. When NHYEC is authorized to conduct business, the Joint Owners and NHYEC will file an operating license amendment application with the NRC for approval of the actual transition of responsibilities from NHYD to NYHEC. This license amendment would document that all functions now being performed by NHYD would be transferred to NHYEC. NHYEC would be designated as a licensee of Seabrook Station "technically qualified" to operate the unit. The personnel of NHYD would be transferred to NHYEC, but their organizational structure would not change. The amendment would in no way alter the obligations, the ownership interests, or the assets of the existing twelve Joint Owners as NRC licensees.

On August 3, 1988 an amended application was filed with the SEC describing this revised approach and requesting SEC approval of the NHYEC stock acquisition by those Joint Owners subject to the Public Utility Holding Company Act of 1935. See SEC File No. 70-7214. A Notice of Intention relating to the transaction was also filed by PSNH with the Bankruptcy Court. (See Response to NRC Question 6 above.) Timing of favorable SEC action is uncertain. The NRC filing would be expected to promptly follow after SEC approval and requisite action by the Court.

Implementation of the NHYEC reorganization of the

project management would not have any impact upon the foregoing responses. The reorganization is a management consolidation and restructuring which is designed to improve efficiency and effective management control. It in no way alters the underlying ownership interests and financial obligations of the Joint Owners of Seabrook Station which are set forth in the Joint Ownership Agreement. That document remains the legally-binding contract which defines the rights and obligations of the parties thereto.

NRC Question 8:

Provide the following for each joint owner:

a. Copies of the most recent published, interim financial statements (and interim report to stockholders for the investor-owned utilities).

b. Copies of the 1987 SEC Form 10-K, the most recent SEC Form 10-Q and the most recent SEC Form 8-K, for the joint owners that file these reports.

Response to NRC Question 8:

Enclosed herewith are the requested materials for each Joint Owner as follows:

1. Public Service Company of New Hampshire (Attachment 7):

- Quarterly Report to Shareowners, dated June 8, 1988
- Annual Report on Form 10-K for 1987
- Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- Current Report on Form 8-K, dated June 30, 1988

2. The United Illuminating Company (Attachment 8):

- Annual Report on Form 10-K for 1987
- Quarterly Report on Form 10-Q, for quarter ended June 30, 1988

3. [illegible]UA Power Corporation (Attachment [illegible]

- Annual Report on Form 10-K for 1987
- Quarterly Report on Form 10-Q, for quarter ended [illegible]une 30, 1988

([illegible]e also Attachment 14 below.)

4. Massachusetts Municipal Wholesale Electric Company (A[illegible]achment 10):

- 1987 Annual Report
- Financial Statements with Supplementary Information

5. New England Power Company (Attachment 11):

- Annual Report on Form 10-K for 1987
- Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- Current Report on Form 8-K, dated June 6, 1988
- New England Electric System (NEES) Annual Report on Form 10-K for 1987
- NEES Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- NEES Current Report on Form 8-K, dated June 6, 1988

6. The Connecticut Light and Power Company (Attachment 12):

- Annual Report on Form 10-K of Northeast Utilities (NU) and subsidiaries
- Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- Current Report on Form 8-K, dated June 22, 1988
- NU Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- NU Current Report on Form 8-K, dated June 22, 1988

7. Canal Electric Company (Attachment 13):

- Annual Report on Form 10-K for 1987
- Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- Current Report on Form 8-K, dated March 30, 1988

8. Montaup Electric Company (Attachment 14):

- Annual Report on Form 10-K for 1987 of Eastern Utilities Associates (EUA)
- 1987 Financial Supplement
- EUA Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- Annual Report on Form 10-K for 1987 of Eastern Edison Company (EEC)
- EEC Quarterly Report on Form 10-Q, for quarter ended June 30, 1988
- Annual Report on Form 10-K for 1987 of Blackstone Valley Electric Company (BVEC)
- BVEC Quarterly Report on Form 10-Q for quarter ended June 30, 1988

(See also Attachment 9 above.)

9. New Hampshire Electric Cooperative, Inc. (Attachment 15):

- Financial and Statistical Report, REA Form 7, month ending December 31, 1987
- Financial and Statistical Report, REA Form 7, month ending June 30, 1988

10. Vermont Electric Generation and Transmission Cooperative, Inc. (Attachment 16):

- Operating Report - Financial, REA Form 12a, for month ending December 31, 1987 amended
- Financial and Statistical Report, REA Form 7, for month ending December 31, 1987, amended per 1987 audit statement
- Financial Statements, December 31, 1987 and 1986, dated March 4, 1988
- Financial Statements, December 31, 1987 and 1986, dated March 4, 1988 with note dated March 16, 1988

11. Taunton Municipal Lighting Plant (Attachment 17):

- Annual Report 1987
- Financial Statements and Auditor's Report, December 31, 1987 and 1986
- Return of the City of Taunton to the Department of Public Utilities for 1987

12. Hudson Light and Power Department (Attachment 18):

- Return of the Town of Hudson Light and Power Department to the Department of Public Utilities for 1987

Seabrook Joint Owners

Owner	Ownership Shares
Public Service Company of New Hampshire	35.56942%
The United Illuminating Company	17.50000
EUA Power Corporation	12.13240
Massachusetts Municipal Wholesale Electric Company	11.59340
New England Power Company	9.95766
The Connecticut Light and Power Company	4.05985
Canal Electric Company	3.52317
Montaup Electric Company	2.89989
New Hampshire Electric Cooperative, Inc.	2.17391
Vermont Electric Generation and Transmission Cooperative, Inc.	0.41259
Taunton Municipal Lighting Plant	0.10034
Hudson Light and Power Department	0.07737
	100.00000%

Seabrook Station Unit 1 And Common

Funding Forecast
· Six Months ·

	Jul 88	Aug 88	Sep 88	Oct 88	Nov 88	Dec 88	Six Month TOTAL
FUNDING FORECAST							
PRE-COMMERCIAL/CAPITAL (Excl. E-Plan)	9,018.1	10,295.9	8,491.4	10,880.4*	9,038.0	20,241.9	67,965.7
EMERGENCY PLANNING & COMMUNITY RELATIONS	2,565.6	2,701.1	1,699.1	1,840.7	2,029.6	2,340.7	13,176.8
OPERATIONS & MAINTENANCE	27.3	29.7	25.9	27.1	33.1	25.1	168.2
NUCLEAR FUEL	18.0	1.0	1.0	18.0	1.0	1.0	40.0
TOTAL	11,629.0	13,027.7	10,217.4	12,766.2	11,101.7	22,608.7	**81,350.7**

($ Thousands)

* Note: $1.761 Million Addition for NHY Portion of PSNH Early Retirement Program. To Be Paid in October 1988.

SEABROOK STATION
UNCOLLECTED PARTICIPANT FUNDING REQUESTS (1)

SEABROOK PARTICIPANT	ARREARS	DEFAULT	TOTAL
New Hampshire Electric Cooperative	$ 196,925.00		$ 196,925.00
Massachusetts Municipal Wholesale Electric Company		$5,030,772.00	5,030,772.00
Vermont Electric Generation and Transmission Cooperative, Inc.		2,445,811.00	2,445,811.00
	$ 196,925.00	$7,476,583.00	$7,673,508.00

NOTE

(1) Outstanding balances represent funding requirements through August, 1988.

August 18, 1988

SEABROOK STATION
ANALYSIS OF FUNDING PERFORMANCE: BILLINGS VS. FUNDING
YEAR TO DATE 1988

MONTH	DISBURSING AGENT BILLINGS	FUNDING ANALYSIS: PARTICIPANT PAYMENTS (See Page 2)	FUNDING ANALYSIS: SUPPLEMENTARY ADVANCE PAYMENTS (See Page 3)	TOTAL
JANUARY	$ 19,096,900.00	$ 18,602,958.00	$ 142,000.00	$ 18,744,958.00
FEBRUARY	12,363,900.00	12,044,208.00	263,000.00	12,307,108.00
MARCH	11,918,000.00	11,609,741.00	260,121.08	11,869,862.08
APRIL	11,565,300.00	11,266,164.00	647,000.00	11,913,164.00
MAY	12,122,400.00	13,223,342.00	<956,607.24>	12,266,734.76
JUNE	18,502,000.00	16,280,653.00	60,000.00	16,340,653.00
JULY	11,742,700.00	10,332,871.00	2,279,000.00	12,611,871.00
AUGUST	13,148,700.00	11,570,068.00	65,000.00	11,635,068.00
TOTAL	$110,459,900.00	$104,929,905.00	$2,759,513.84	$107,689,418.84

August 18, 1988

SEABROOK STATION

FUNDING PERFORMANCE FROM EXECUTIVE COMMITTEE BILLINGS (1)

YEAR TO DATE 1988

SEABROOK PARTICIPANT	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	TOTA
CANAL ELECTRIC COMPANY	$ 672,816	$ 435,601	$ 419,891	$ 407,465	$ 427,093	$ 651,857	$ 413,715	$ 463,251	$ 3,891
CONNECTICUT LIGHT AND POWER COMPANY	775,305	56[illegible]956	483,853	469,534	492,151	751,153	476,736	533,817	4,484,
EUA POWER CORPORATION	2,316,913	1,500,038	1,445,960	1,403,149	1,470,739	2,244,738	1,424,671	1,595,253	13,401,
HUDSON LIGHT AND POWER DEPARTMENT	14,775	9,566	9,221	8,948	9,379	14,315	9,085	10,173	85,
MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY (2)	2,213,979	1,433,396	1,381,701	1,340,811	1,405,398				7,775,
MONTAUP ELECTRIC COMPANY	553,789	358,539	345,609	335,381	351,536	536,538	340,525	381,298	3,203,
NEW ENGLAND POWER COMPANY	1,901,604	1,231,155	1,186,754	1,151,633	1,207,107	1,842,366	1,169,298	1,309,303	10,999,
NEW HAMPSHIRE ELECTRIC COOPERATIVE (3)					1,414,488	402,217	255,276	285,841	2,357,
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE	6,792,657	4,397,768	4,239,163	4,113,710	4,311,867	6,581,054	4,176,810	4,676,916	39,289,
TAUNTON MUNICIPAL [illegible]ING PLANT	19,162	12,406	11,959	11,605	12,164	18,565	11,783	13,193	110,
UNITED ILLUMINATING COMPANY	3,341,958	2,163,683	2,085,650	2,023,928	2,121,420	3,237,850	2,054,972	2,301,023	19,330,
VERMONT ELECTRICAL GENERATION AND TRANSMISSION COOPERATIVE, INC. (4)									
	$18,602,958	$12,044,108	$11,609,741	$11,266,164	$13,223,342	$16,280,653	$10,332,871	$11,570,068	$105,929,

NOTES:

(1) Funding performance is listed for the month funded, actual receipt of payment may differ slightly.
(2) MMWEC ceased funding as of June 1988.
(3) New Hampshire Electric Cooperative recommenced payments as of May 1988 including funds to reimburse contributors for supplementary advance payments.
(4) Vermont Electric Generation and Transmission Cooperative, Inc. ceased funding as of February 1986.

August 18, 1988

SEABROOK STATION
FUNDING PERFORMANCE FROM SUPPLEMENTARY ADVANCE PAYMENTS (1)
YEAR TO DATE 1988

CONTRIBUTOR	JANUARY	FEBRUARY	MARCH	APRIL	MAY (2)	JUNE	JULY	AUGUST	TOTAL	DEBT P
CANAL ELECTRIC COMPANY	$3,000.00	$5,000.00	$10,283.31		$5,000.00	$4,000.00	$2,000.00	$5,000.00	$ 34,283.31	$123,
CONNECTICUT LIGHT AND POWER COMPANY	3,000.00	5,000.00	4,000.00		14,392.76	5,000.00	2,000.00	5,000.00	38,392.76	147,
CONNECTICUT LIGHT AND POWER COMPANY (3)							2,249,000.00		2,249,000.00	2,249,0
EASTERN UTILITIES ASSOCIATES	56,000.00	118,000.00	103,575.65	266,000.00	<445,500.00>	18,000.00	9,000.00	19,000.00	144,075.65	337,
NEW ENGLAND ELECTRIC SYSTEM	8,000.00	13,000.00	30,585.07	72,000.00	< 58,000.00>	12,000.00	6,000.00	13,000.00	96,585.07	358,
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE	27,000.00								27,000.00	976,
UNITED ILLUMINATING COMPANY	45,000.00	122,000.00	111,677.05	309,000.00	<472,500.00>	21,000.00	11,000.00	23,000.00	170,177.05	638,0
	$142,000.00	$263,000.00	$260,121.08	$647,000.00	$<956,607.24>	$60,000.00	$2,279,000.00	$65,000.00	$2,759,513.84	$4,831,0

NOTES:

(1) Schedule of payment represents contributions to offset Joint Owners in default.
(2) Certain credits in May reflect New Hampshire Electric Cooperative reimbursement to applicable contributors.
(3) Contribution on behalf of Connecticut Light and Power Company is for payments it is making in lieu of MMWEC.

August 18, 1988

PR NEWSWIRE

NORTHEAST UTILITIES IN PACT ON SEABROOK COSTS

HARTFORD, CONN. -DJ- NORTHEAST UTILITIES SAID IT SIGNED AN AGREEMENT WITH THREE OTHER NEW ENGLAND UTILITIES UNDER WHICH IT WILL PROVIDE THREE MONTHS OF FUNDING FOR THE PORTION OF THE SEABROOK NUCLEAR PROJECT THAT IS SUBJECT TO DEFAULT.

THE UTILITY SAID IT WILL PICK UP ABOUT $5 MILLION IN SEABROOK COSTS, WHICH WILL FUND THE SHARE OF SEABROOK COSTS OF MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC CO.

MASSACHUSETTS MUNICIPAL, WHICH OWNS 11.6 PC OF SEABROOK, SAID EARLIER THIS YEAR IT WOULD NOT PROVIDE ADDITIONAL PAYMENTS FOR THE SEABROOK PROJECT.

AS PART OF THE AGREEMENT, COMMONWEALTH ENERGY SYSTEMS, EASTERN UTILITIES ASSOCIATES AND NEW ENGLAND ELECTRIC SYSTEM WILL PURCHASE ABOUT 275 MEGAWATTS A YEAR OVER FIVE YEARS FROM NORTHEAST UTILITIES, THE UTILITY SAID.

THE BUYERS OF THE ELECTRICITY ARE SEABROOK SHAREHOLDERS.

IN JULY, NORTHEAST SIGNED A SIMILAR AGREEMENT UNDER WHICH IT WILL PAY FOR $2 MILLION OF SEABROOK COSTS IN RETURN FOR THE PURCHASE OF ELECTRICITY FROM NORTHEAST BY FOUR OTHER SEABROOK SHAREHOLDERS.

-0- 4:25 PM EDT 08-30-88

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

CHAPTER 11 PROCEEDING OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, CASE NO. 88-43.

Before: Honorable James E. Yacos
Judge in Bankruptcy

MOTION TO EXTEND PLAN EXCLUSIVITY PERIOD

Thursday, May 19, 1988
Federal Building
275 Chestnut Street
Manchester, New Hampshire

V O L U M E O N E
of TWO VOLUMES
(Morning Session)

A P P E A R A N C E S

DEBTOR PSNH:

RICHARD LEVIN, ESQUIRE
DON WILLENBURG, ESQUIRE
Stutman, Treister & Glatt
3699 Wilshire Blvd., Suite 900
Los Angeles, California 90010

THOMAS R. JONES, ESQUIRE
'ahill Gordon & Reindel
8\ Pine Street
New York, New York 10[illegible]

MARTIN L. GROSS, ESQUIRE
Sulloway, Hollis & Soden
9 Capitol Street
Concord, New Hampshire 03301

realistic matter. It's not going to occur on one date. One thing I cannot do in this court, being a one-man band, is conduct something like this in a series of segmented hearings and hope to be able to rule after the last segmented hearing.

If I'm going to go to that kind of hearing, it's going to have to be set for a week or something, and I would have to be able to complete that record and rule on it while I'm still reasonably fresh on the facts. But my basic reasoning here, tentatively, is that it's in nobody's interest at this stage to divert attention from an all out effort to get into a conceptual plan, get to a situation of record in this case that it can assure all these other regulatory agencies that, but for safety and health considerations, which is their bailiwick from a reorganization standpoint and economic sense, this entity is in a financially stable situation or track toward that resolved, reorganized company status.

So that if Seabrook is lost, it is not lost because of uncertainties or attrition or

myths or anything else relating to confusion about what's going on in the Bankruptcy Court, but it is lost because of those things that are the bailiwick of these other agencies that protect public health and safety. That, I think, is vital here.

I think there is a window of opportunity of about six months; that after which this whole thing is going to start to unravel in a lot of directions, one of which will be this kind of all-out evidentiary hearing on valuation.

As you all know, that is war. That is war. And I can take a month off and I can try that. We'll live or die with this backwoods judge's valuation, or what some appellant court tells me, but you all know that isn't the way to resolve reorganization if you can avoid it.

I think this matter really is premature at this stage on what I've heard. I realize I may be cutting the equity cushion a little closer than has been done in some other cases, but I don't think any of those other cases -- barring your showing me to the contrary,

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW HAMPSHIRE

In re:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, BK#88-00043

Debtor Chapter 11

ORDER DENYING THE THIRD MORTGAGEES' MOTION FOR ADEQUATE PROTECTION IN THE FORM OF CURRENT AND CONTINUING INTEREST PAYMENTS UNDER THE THIRD MORTGAGE BONDS

Upon consideration of the Motion dated May 3, 1988 by First Fidelity, N.A., New Jersey ("First Fidelity"), as trustee under the Third Mortgage Bond Indenture, dated February 15, 1986 as amended and supplemented (the "Third Mortgage Indenture"), Citicorp, Consolidated Utilities & Communications, Inc. ("CUC"), and Amoskeag Bank, as trustee under the Pollution Control Revenue Bond Indenture, 1986 Series A (collectively, the "Third Mortgagees" or the "Movants") for an order requiring the above-captioned debtor (the "Debtor" or "PSNH") to afford adequate protection through the payment of interest on the Third Mortgage Bonds (as hereinafter defined) as and when such payments are due, including any payments which have become due and have not been paid subsequent to the filing of the Chapter 11 case (the "Third Mortgagee Motion" or the "Motion") and the responses and memoranda in opposition by the Debtor, the Official Committee of Unsecured Creditors (the "Creditors' Committee"), the Official Committee of Equity Security Holders (the "Equity Committee"), and upon the submissions of other parties in interest, and upon that certain stipulation among the Third Mortgagees, the Debtor and the Creditors' Committee, approved by order

political issues swirling around the question of putting the plant into operation. This "observational phenomenon" modifying the subject viewed is not limited to quantum physics.**

6. In view of the foregoing determinations, the Court concludes that adequate protection in the form of current interest payments is not now required and shall not now be granted. Also in view of the foregoing determinations, the court need not, and does not, now decide whether, as a matter of law, adequate protection is required for an oversecured creditor only when the value of the collateral is deteriorating, and not as protection against the accrual of postpetition interest on oversecured debt. See, United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 98 L. Ed.2d 740 (1988).

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED:

A. Consistant with the findings of fact and conclusions of law herein, the Motion is denied without prejudice to Movants' right to renew the Motion, pursuant to Amended Order Establishing Notice

---

** This court has made it clear at various stages of this case that it will leave environmental and public safety issues relating to Seabrook to the appropriate regulatory agencies having the expertise to deal with such matters but that it reserves all powers permitted it under the Bankruptcy Code to assure that questions relating to the financial condition and financial restructuring of the debtor remain for determination at an appropriate point in the reorganization court. The court therefore has serious concern that the relevant regulatory agencies be able to promptly come to a determination of any safety and environmental issues relating to Seabrook without being distracted by a premature "valuation sideshow" in this court that can only serve to confuse the matters appropriate for determination by such agencies.

Procedure, entered April 19, 1988, for a hearing no earlier than February 15, 1989.

B. As additional adequate protection, however, the Court directs the Debtor to grant, and the Debtor hereby is deemed to grant, the Third Mortgagees' a post-petition security interest in and lien on Post-petition Collateral (as defined in the Senior Debt Order), subject and subordinate to the interests of the holders of the Senior Secured Borrowing in such Collateral, upon terms and conditions comparable to those set forth in paragraph H of the Senior Debt Order.

C. In view of the foregoing disposition of the Motion, discovery, which was contemplated by the Stipulation in anticipation of an evidentiary hearing on the facts raised by the Motion, is unnecessary at this time, and paragraphs 2 through 6, inclusive, of the Stipulation are hereby vacated.

DONE and ORDERED this 20th day of July, 1988 at Manchester, New Hampshire.

Docketed M.N. JUL 20 1988

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to Serve on Full List

I certify that this is a true and accurate copy of the records on file with The United States Bankruptcy Court

Deputy Clerk, U.S. Bankruptcy Court
Manchester, New Hampshire

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW HAMPSHIRE

In re:	:	
	:	Bankruptcy Case No.
Public Service Company	:	88-00043
of New Hampshire	:	
	:	

Manchester, New Hampshire

August 26, 1988

Friday, 1:00 P.M.

HEARING ON NOTICE OF INTENTION TO ENTER INTO TRANSACTIONS OUT OF THE ORDINARY COURSE (NHYEC) (#1085 - 7/21/88) - DECLARATION OF ROBERT J. HARRISON (#1086 - 7/20/88)

BEFORE: The Honorable James E. Yacos, Bankruptcy Judge

RONALD J. HAYWARD & ASSOCIATES
General Stenographic Stenographers
24 Schurman Dr., Derry, N.H. 03038
TELEPHONE: (603) 623-6906 or 432-7265

that time that it was in the best interest. Thank you.

THE COURT: All right. Mr. Wade?

MR. WADE: Also supported.

THE COURT: You're supporting it, all right.

MR. WADE: Your Honor, CUC and Citicorp filed a response supporting this application, however, we did note that we had arrived at an understanding with counsel for the debtor that it will not in any way affect the jurisdiction of This Court over the debtor's Seabrook's related assets and, secondly, that it will not in any way affect the possibility or probability or as we would say necessity of having to bring any decision to do low-power testing before This Court and if our response is in any way read to say that the debtor agreed that it was necessary to bring it to This Court, it is not meant to do so, we believe it is, they have not agreed to that but, on the other hand, on the understanding that we have been given by

the debtor, we support the application.

THE COURT: All right.

MR. KATUCKI: Your Honor, Chris Katucki from Goodwin, Procter & Hoar representing several utilities that are collectively known as the 50 Percent Joint Owners which own 50 percent interest in the Seabrook Project. We are here simply to express our support for the proposal put forth by Public Service. I think our reasons are set forth in the paper we have filed.

I would like to point out to The Court that this is, in essence, only a managerial change and one that the joint owners can effect under the Joint Owners Agreement with a 51 percent approval of the joint owners, we represent 50 percent interest, our paper indicates that New Hampshire Co-op which owns approximately 2 percent is also in support of moving managerial responsibility from the division to New Hampshire Yankee and so if we are weighing the various factors involved, I think one to be considered is this is something the

and CRR Group, I think Mr. Wade with the third mortgage bond holders and they're satisfied that there is some kind of understanding that low power is not going to be precipitous.

MR. WILLENBURG: Your Honor, I don't think that there is an amorphous or concreteness or understanding out there on an agreement. As a matter of fact, I have attempted to avoid an agreement on what positions what parties will take if and when low-power testing is an issue and the basic reason for that, Your Honor, is because low-power testing is not now an issue.

This is a transaction which is not logically related to low-power testing inasmuch as we could make a decision to go for low-power testing while Public Service was, while the division rather was the operator at Seabrook or we could make the decision to go to low-power testing when NHYEC was the operator. In either of those cases, Your Honor, it would be a use of assets of the estate.

THE COURT: You feel that would be in

the ordinary course of business to turn on the power at Seabrook?

MR. WILLENBURG: Your Honor, I think it might be. After all, generation of electricity is the business of this debtor, but I don't believe that that issue is before us now and if we're going to have a dispute about whose authority is necessary or what standard are we going to use in determining whether or not to go to low-power testing, then let's do it when we have in front of us a concrete license for low-power testing, concrete facts which support decisions that are actually made and let's not discuss it here in the vacuum.

THE COURT: Mr. Wade has been around and he apparently feels that if this happens, there is some way of protecting against precipitous low-power testing that might be contrary to the interest of this estate. I think probably whatever the power this Court has will come from such a Model 5 and is going to be there whether New Hampshire Public Service Yankee

Division is the manager or New Hampshire Yankee Company is the manager. I'm generally kind of leaning your way on that for various reasons including the fact that all your economic interests are behind it. I still have a sense that I am not being shown a very strong reason why to do it now. What does it have to do with now? What happens if it isn't done except in conjunction with the plan?

MR. WILLENBURG: Well, plenty, Your Honor, I think the real question is not the less we delay, I think the interesting question, the question that tells us a little more, why didn't it happen until now, the joint owners have been planning this since 1984, they did not do this until the middle of 1988 and, Your Honor, there's a couple of reasons for that. First, and I think the primary reason, is that it was decided that certain events in the licensing process should be gotten past before this change was implemented. We are now fairly down the licensing path and this was the time when NRC considerations and NRC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW HAMPSHIRE

In re:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, BK#88-00043
Debtor

ORDER ON NOTICE OF INTENTION DATED JULY 21, 1988

This court on August 26, 1988 conducted a hearing upon the "Notice Of Intention To Enter Into Transaction Out Of The Ordinary Course (New Hampshire Yankee Electric Corporation)" filed herein by the debtor-in-possession on July 21, 1988. The court has set forth separately its findings and conclusions with regard to this matter, in its memorandum opinion entered this date, which are incorporated herein by reference, and accordingly it is

ORDERED that approval of the intended action and proposed transactions is hereby denied.

DONE and ORDERED this 2nd day of September, 1988 at Manchester, New Hampshire.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve on full list

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW HAMPSHIRE

In re:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, BK#88-00043
Debtor

MEMORANDUM OPINION RE PROPOSED RESTRUCTURING RELATING TO OPERATION OF SEABROOK NUCLEAR POWER GENERATING STATION

On July 21, 1988 the debtor in this reorganization proceeding filed a "Notice Of Intention To Enter Into Transactions Out Of The Ordinary Course (New Hampshire Yankee Electric Corporation)" under which the debtor gave notice that it proposed to enter into several related transactions under which the management and operational control with regard to the Seabrook nuclear plant would be transferred from a division of the debtor, i.e., the New Hampshire Yankee Division ("Division") of Public Service, to a separate corporation, i.e., the New Hampshire Yankee Electric Corporation, which corporation had been formed in 1984 in contemplation of the ultimate transfer of those powers and responsibilities to a separate corporation to be controlled by a board of directors representing each of the joint owners of the Seabrook plant.[1]

The Notice of Intention succinctly summarizes the existing situation regarding the Seabrook plant as follows:

1. The debtor in this reorganization proceeding, PSNH, holds a 36.57 percent share of the plant under the joint ownership agreement.

> At present, Seabrook is owned by Public Service and eleven other New England utilities (the "Joint Owners"). Among the Joint Owners, only Public Service is designated as "technically qualified" under the licenses and permits from the United States Nuclear Regulatory Commission ("NRC") relating to Seabrook (the "NRC Licenses"). Since 1984, the New Hampshire Yankee Division (the "Division") of Public Service, as agent for certain purposes for all the Joint Owners, has conducted the day-to-day operations and management of Seabrook. The Joint Owners supervise the Division's activities both directly (as a group) and through an executive committee composed of representatives of certain Joint Owners.

The Notice of Intention further summarizes the proposed changes to be made in the existing situation as follows:

> Under the proposed restructuring, the Division will be reconstituted as an independent corporation, the New Hampshire Yankee Electric Company ("NHYEC"), which will replace the Division as managing agent for the Seabrook project. NHYEC was formed by the Joint Owners for this purpose in 1984. NHYEC will employ those personnel the Division presently employs, so there will be no disruption of operations. Various licenses and permits necessary to operate Seabrook Station will be amended to include NHYEC and to designate NHYEC as the sole licensee "technically qualified" to operate Seabrook Station. Finally, each Joint Owner will be represented on the NHYEC Board of Governors by a representative having a vote weighted in proportion to its ownership share and, when the restructuring is fully implemented, each will own shares of NHYEC stock in the same proportion.

The proposed restructuring would be accomplished by the following specific actions: (1) Shareholder Agreement; (2) Managing Agent Operating Agreement; (3) Amendment of the Joint Ownership Agreement; (4) Issuance and purchase of stock in NHYEC; and (5) Split of Public Service's employee pension plan and transfer of funds to an NHYEC employee pension fund. However, the Notice of Intention covered only items 1 through 4 set forth above. It is contemplated that a subsequent notice and proposal would address the split of the employee pension plan and fund.

THE RECORD BEFORE THE COURT

No evidence was proffered by the debtor or any other party at the hearing held by this court on August 26, 1988 upon the proposed restructuring. The entire evidentiary record in support of the restructuring is contained in a declaration of Robert J. Harrison, president and chief executive officer of PSNH, which was filed in conjunction with the Notice of Intention on July 21, 1988. After a number of paragraphs summarizing the terms and details of the proposed restructuring, the declaration contains the following recitation of the benefits of the proposal to "both Public Service and the Seabrook project as a whole" as follows:

> 9.1 Instability in the willingness or ability of Public Service and other Joint Owners to meet their financial responsibilities to the Seabrook project jeopardizes the confidence and morale of the existing staff at Seabrook Station. The existence of NHYEC as the longterm operator of Seabrook Station will likely improve that confidence and morale, retaining the loyalty of the existing personnel and attracting new employees as necessary.
>
> 9.2 The existence of NHYEC as a separate corporate entity will permit continuity of the direct management of the Seabrook project, independent of changes in ownership of Seabrook or in the status of individual owners. Such continuity is important to perceptions of continued management dependability and prudence.
>
> 9.3. The existence of NHYEC as a corporate entity devoted solely to Seabrook Station will permit the Joint Owners to isolate in NHYEC all activities directed to that and, thus segregating them from other utility business activities of the Joint Owners.
>
> 9.4. Because NHYEC will be owned pro rata by the Joint Owners, and because the Joint Owners will have a direct voice proportionate to their ownership shares through representation on the NHYEC Board of Governors, the Joint Owners will share certain Seabrook responsibilities to a greater degree than under the present structure.

The declaration of Mr. Harrison goes on further to summarize and concluded as to the "particular benefit to Public Service, as distinct from the other Joint Owners" as follows:

> 10.1. The assumption of Seabrook management responsibilities by NHYEC would relieve Public Service and its Division of the primary ultimate responsibility for the safe operation of Seabrook Station and the implementation of its quality assurance programs. Assumption of these responsibilities by NHYEC, the personnel of which now perform such operation and implementation, would place Public Service in a position on par with the other Joint Owners by making it responsible for operations in proportion to its ownership share.
>
> 10.2. Employment by NHYEC of the personnel currently employed through the Division would reduce Public Service's personnel record keeping responsibilities, remove the pension and benefit obligations associated with those employees, and reduce future risk of employment-related claims.
>
> 10.3. The Seabrook restructuring would permit Public Service greater flexibility in devising and implementing reorganization proposals. The NRC Licenses currently contain certain unique obligations and responsibilities relating to Seabrook management which attach only to Public Service. These are in addition to Public Service's pro rata obligations as a Joint Owner of Seabrook Station. Any change in the NRC Licenses requires specific NRC authorization, which could be time consuming if contested. Any reorganization proposal which might contemplate a transfer of Public Service's license obligations or responsibilities could be delayed while such authorization was contested. Therefore, it would be advantageous to Public Service and all parties interested in the pending Chapter 11 proceeding to separate and expedite regulatory proceedings relating to the transfer of Seabrook management responsibilities so as to remove that issue from future consideration of potential future reorganization proposals.

Under the special motion and notice procedural orders entered in this proceeding, any objections to the notice of intention filed July 21, 1988 were required to be filed on or before August 5, 1988. An objection was filed the Attorney General for the Commonwealth of Massachusetts. Objection was also filed by three citizen groups, i.e.,

the Campaign For Ratepayers Rights, The Seacoast Antipollution League, and the Citizens Within The Ten Mile Radius, hereinafter referred to jointly as the "citizen groups" for convenience.

A response constituting a "non-objection" of sorts was filed by Consolidated Utilities And Communications, Inc. ("CUC") and Citicorp, holders of third mortgage debenture bonds who have been active in these proceedings. This response notes that CUC and Citicorp do not object to the Notice of Intention but recites further immediately after that statement:

> Based upon various representations of PSNH and its professionals, it is the understanding of CUC and Citicorp that the creation by PSNH and others of NHYEC:
>
> (1) will not affect in any way the jurisdiction of this Court over PSNH's Seabrook-related assets; and
>
> (2) will not affect in any way the necessity on the part of PSNH to receive this Court's approval prior to operating Seabrook pursuant to a low power operating license granted by the Nuclear Regulatory Commission.
>
> Based upon the above-mentioned representations and understanding, CUC and Citicorp do not object to the creation by PSNH and others of NHYEC.

Responses to the Notice of Intention supporting the proposed restructuring were filed by the Official Unsecured Creditors' Committee; by the Official Equity Holders' Committee; by the State of New Hampshire, and by a group of utilities constituting owners of approximately fifty percent of the Seabrook nuclear project commonly referred to as the "Fifty-Percent Joint Owners" group in these proceedings.

The objection by the Commonwealth of Massachusetts notes that whereas the State of New Hampshire in 1984 and 1985 approved the purchase of stock in NHYEC by PSNH,[2] the Commonwealth of Massachusetts has never granted that authorization, and in fact requests have been pending before the Massachusetts Department Of Public Utilities since 1984 regarding the five Massachusetts utilities involved as joint owners of the Seabrook project. However, the terms of the proposed restructuring before this court specifically obviate the need for the Massachusetts utilities to purchase NHYEC stock, in that the other joint owners have agreed to give the Massachusetts utilities pro rata representation on the board of governors of NHYEC based on their ownership interest in the Seabrook project notwithstanding their interim non-stockholder status with regard to NHYEC.

The Commonwealth objects further that the restructuring proposed by the debtor, in advance of a complete reorganization plan, should be disapproved on the grounds that it is premature:

> The proposal seeks to reorganize one division of PSNH and place it permanently and irrevocably in another corporate entity. It appears to be a piecemeal reorganization of PSNH submitted in advance of the complete reorganization plan. The consideration to PSNH for the assets to be transferred is unclear, as is the impact on pre- and post-petition creditors of the New Hampshire Yankee Division. PSNH was recently given an extension of the time to submit a complete reorganization plan until December 27, 1988. The present proposal by PSNH could be evaluated more usefully by all parties and the court in the context of the complete forthcoming reorganization plan being prepared by the company.

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2. See Re New Hampshire Yankee Electric Corporation, 69 N.H.P.U.C. 590 (1984) (ordering inter alia that NHYEC is authorized to engage in business as a public utility solely for the purpose of managing the construction of Seabrook); Re New Hampshire Yankee Electric Corporation, 70 N.H.P.U.C. 563 (1985) (ordering inter alia that NHYEC's authority be enlarged to include the purpose of managing the operation of Seabrook.

The Commonwealth also argued that the record put forth by the debtor to support the proposal was insufficient:

> "The grounds advanced for the proposal are largely speculative and conjectural. There is little record support for assertions that the PSNH proposal provides the claimed benefits. For example, indications that this proposal "might enhance" certain aspects of the licensing proceedings or "might realize" cost benefits provide little detail for the court or parties in evaluating the proposal. Beyond broad assertions, the proposal and affidavit filed by the Debtor provide little information or support as to the need for this reconstitution at this time.

The three citizen groups objected primarily out of a concern that the proposed restructuring would result in a loss of bankruptcy court jurisdiction to prevent low-power testing of the Seabrook plant, in advance of a determination that it is likely that PSNH's reorganization plan will provide, and can guarantee, the ultimate full operation of Seabrook and production of electric power from the plant on a commercial basis. The citizen groups note some interrelated economic questions and Nuclear Regulatory Commission procedures that could result very shortly in presenting the question of whether low-power operation of Seabrook should be authorized:

> The NRC.... has a rule permitting low power operation of nuclear plans up to 5 percent of rated power, even though radiological emergency plans for a ten-mile area around the reactors, required for a full power operation, have not been yet reviewed or approved. (10 CFR 50.47(d)) It is pursuant to this regulation that the Shoreham nuclear plant, on Long Island in New York, was permitted to commence low power operation in July of 1985, although it now seems unlikely that this plant will ever produce commercial power.

The citizen groups point to the record of prior proceedings in this case indicating that radio active contamination of the Seabrook plant, by introduction of nuclear fuel and low-power testing, followed by an ultimate decision not to put Seabrook into commercial operation,

would convert the plant from an asset, having a positive salvage value, to a substantial liability, due to the high costs of decontamination and disposal of radioactive materials. One indication in that record is that the "swing" in value could be as high as $130 million dollars.[2a] They also argue that contamination of the plant would preclude --- due to the costs involved --- the option of converting the plant to non-nuclear fuel operation.

The court heard several hours of oral argument from all parties present at the August 26, 1988 hearing on the debtor's proposed action, and took the matter under advisement to better review the record in this matter. Having reviewed that record, it is now necessary to consider the status of the parties objecting, the appropriate legal standard for the court's decision on such a matter, and the result to be obtained by applying that standard to these facts.

THE STATUS OF THE OBJECTORS

The debtor and the official committees have objected to the "standing" of the Commonwealth and the citizen groups to object to the intended action. While this objection was made in the pleadings, no party at the August 26th hearing orally objected to the Commonwealth and the citizen groups being "heard" by the court. I have previously noted that "standing" has to do with the right to appeal an order in a reorganization proceeding --- a far different matter than the question of status to be heard during the course of a hearing in the

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2a. The court does not accept that prior record as establishing the exact costs of decontamination and a subsequent cleanup for present purposes. There is no serious question however that such costs are very substantial.

reorganization court as an entity having an arguable interest in a particular matter before the court under § 1109 of the Bankruptcy Code. See In re PSNH, ____B.R.____, (Mem. Op., Court Document No. 952, p. 22) (Bankr. N.H., June 22, 1988).

The reorganization court I believe has sufficient discretion to "hear" any entity at any hearing to the extent that the entity may be able to provide an aid to the court in understanding the matter before it.[3] Accordingly, whatever an appellate court might decide as to "standing" for appeal purposes, this court sees no reason not to glean from the objections of the Commonwealth and the citizen groups such help as it may find in evaluating the matter for decision, inasmuch as said objectors did not attempt to delay or overburden these proceedings with extensive presentations not germane to the issue before court.

The court is aware that the Commonwealth and the citizen groups are committed to blocking the operation of the Seabrook nuclear plant for various noneconomic reasons relating to asserted environmental and safety dangers posed by the operation of the plant. The debtor and the committees argue credibly that these objectors may be expected to oppose

3. As noted at the hearing this court will look for the truth wherever it can find it. "Even the devil may speak truth" --- as someone once said.

any decision in this reorganization case which has the prospect of advancing the day upon which Seabrook may become operational.[4]

Nonetheless, the objectors do raise, regardless of motives, a considerable "economic" question posed by the intended action of the debtor, i.e., will this action if approved lead to the possibility of a diminution in the value of the assets of this estate by an unwise and premature activation of the nuclear chain reaction at the Seabrook plant which will be beyond any effective control which this court arguably now may have to under its present jurisdiction in these reorganization proceedings? It is also relevant that at least one "economic" party in these proceedings, i.e., CUC and Citicorp, have echoed the same concern in their responsive pleading set forth above.

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4. Indeed, the objection by the citizen groups by implication indicates as much:

> "We recognize that the Court has indicated that it does not want to make Seabrook licensing decisions on matters pertaining to public health and safety and hence might conclude this is not a matter within its area of concern. (See Memorandum Opinion on Plan Exclusivity Extension, page 38) However, the issues of public health and safety at Seabrook are inextricably bound up with the financial and valuation issues that this Court must decide. The interrelationship of health and safety issues, and the necessity for the Court's continuing jurisdiction over New Hampshire Yankee, may shortly come up in a very specific context: whether or not low power operation of Seabrook should be authorized." [Emphasis supplied]

The highlighted statement is erroneous to the extent that it implies that it would be relevant for this court to consider public health and the safety issues as factors in the financial reorganization determinations necessary in this chapter 11 proceeding, other than to assure that the reorganized debtor is able to meet health and safety operational requirements prescribed by the appropriate public agencies. Cf. In re PSNH, ___B.R.___, Mem. Opin., C.P. No. 1066 (foonote, p.9) (Bankr. N.H., July 20, 1988). Likewise, the province of the NRC in my judment is to determine whether those requirements are presently satisfied or --- if not --- what additional assurances will be required of PSNH or any other party involved in the reorganization plan. It obviously is not a permitted function of the NRC to deny approvals simply because PSNH is in reorganization. See, Bankruptcy Code, § 525 (11 U.S.C. § 525).

Accordingly, I find and conclude that the Commonwealth and the citizen groups have raised a pertinent question for consideration by the court on this matter and are not precluded from being "heard" in that sense. In so doing I have no need to express any opinion as to their general standing, if any, to appeal any orders entered by this court during the course of these reorganization proceedings. That is a matter appropriately left to the appellate courts.

THE LEGAL STANDARD

The debtor seeks to portray the matter before the court as simply a matter of "business judgment" on a "business operational matter" as to which the court should give its approval simply upon a surface showing of a "good faith business judgment" on the part of the debtor in making the decision to put forth the proposed restructuring. The debtor cites in this regard the decision in In re Curlew Valley Associations, 14 B.R. 506 (Bankr. Utah 1981). The court there actually expressed its standard in terms of a business operational matter that "involves a business judgment made in good faith, upon a reasonable basis, and within the scope of his [chapter 11 trustee's] authority under the Code." 14 B.R. at 513-514 (footnotes omitted) (emphasis added). It is fair to state that the court in Curlew did exhibit considerable deference to the business judgment of the chapter 11 trustee as to the particular manner of his operation of the debtor's farm business in that case --- to the extent of refusing to even hear the evidence proffered by the debtor who sought injunctive relief against the methods employed in the trustee's operation as being economically unwise. 14 B.R. at 508.

What needs to be noted about the Curlew decision in the present context, however, is that it was a case that clearly involved an activity

that was an "ordinary course" matter involved in the business operation, i.e., whether the trustee in operating the debtor's farm should "bale" hay rather than "cube" the same.[5] The present case before this court on the contrary involves a proposed restructuring of the debtor which clearly is out of the ordinary course of the debtor's activity for reorganization purposes. Accordingly, I refuse to accept the debtor's invitation to accept the Curlew decision as persuasive on the present matter.[6]

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5. The opinion in Curlew makes it clear that the court did not consider it necessary to its analysis that the business practice in question might be considered out of the ordinary course of the debtor's business. 14 B.R. at 514, n. 13.

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6. It may be noted that prior to the Curlew decision the "business judgment" standard for decisions by a bankruptcy court was applied almost exclusively in terms of a debtor's decision to accept or reject an executory contract under what is now § 365 of the Bankruptcy Code. As with so many other interesting twists and developments of legal doctrine, the deference to business judgment or discretion stemmed from the decision of the U.S. Supreme Court in A Group Of Institutional Investors v. Milwaukee Railway Co., 318 U.S. 523, 550-551 (1943), in which the "party" to whose discretion deference was given, on a lease assumption/rejection issue, was the Interstate Commerce Commission, as an administrative agency given special powers with regard to railroad reorganizations under § 77 of the Bankruptcy Act of 1898. It is also noted that the cases cited by the debtor as following the Curlew decision for present purposes, In re Airlift Intern., Inc., 18 B.R. 787 (Bankr. S.D. Fla. 1982); Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057; In re Afco Enterprises, Inc., 35 Bankr. 512 (Bankr. D. Utah 1983), actually did not involve the § 1107-1108 context, but rather the narrower question of lease assumption/rejections, in the first two cases cited, and a narrow question of surcharge against a secured creditor under § 506(c) of the Code, in the third case. None of these decisions, other than the Curlew case, stand for the broad proposition that a proposed action by the debtor out of the ordinary course of its normal business operations must be approved by a bankruptcy court simply upon a surface showing of business judgment, notwithstanding an arguably unwise impact upon the reorganization process in the particular case.

In my judgment the labeling of a particular proposed transaction occurring out of the ordinary course of a reorganization debtor's business, as simply a "business judgment" by the debtor, does not insulate the proposed transaction from a more searching view as to its wisdom and reasonableness than was given the hay-harvesting transaction in the Curlew case which occurred in the ordinary course of the business operation there involved.

I note that the Court of Appeals for the Fifth Circuit, in Richmond Leasing Company v. Capital Bank N.A., 762 F.2d 1303; 49 B.R. (222) (5th Cir. 1985), while citing the Curlew case on the § 365 point, in affirming an order approving an assumption of a lease proposed by a debtor in reorganization, expressed the appropriate standard in terms of a "valid exercise of.... business judgment" [762 F.2d at 1308] and summarized the extensive testimony taken by the court below with regard to the economic factors involved which indicated an enhancement of the debtor's estate. 762 F.2d at 1309.[7]

Moreover, while the court in Richmond Leasing also considered the business judgment standard to apply even in the context of § § 1107 and 1108 --- to the extent that the assumption of the lease there involved might be argued to represent "a true renegotiation" of the lease, the court in that context found it necessary to go further and consider whether the amended lease might be deemed to be a "Sub Rosa Plan Of Reorganization" before that attack upon the proposed action was also considered to be insufficient. 762 F.2d at 1311-1312. See also, In re Lionel Corporation, 722 F.2d 1063, 1071 (2nd Cir. 1983)(proposed sale transaction subject to "sound business judgment" standard which requires a showing of "a good business reason" other than appeasement of major creditors).

7. The court in Richmond Leasing also noted, in footnote 11, that it saw no essential difference between its "valid" or "proper" standard and the "economic soundness" standard employed in Matter of Southern Biotech, Inc., 37 B.R. 318 (Bankr. M.D. Fla. 1983).

Considering the particular business transaction here involved, i.e., a restructuring of the very entity in reorganization, I believe that an appropriate standard for approval or disapproval of the transaction by the reorganization court is whether good cause has been shown to implement the transaction of this stage of this proceeding i.e., does it have valid business reasons supporting it and does it make good sense in the overall context of the reorganization process? Phrased negatively, the standard might be whether the proposed transaction might improperly and indirectly lock the estate into any particular plan mode prematurely, and without the protection afforded by the procedures surrounding a disclosure statement and confirmation hearing, in a plan of reorganization.[7a]

In my view it is simplistic to borrow from relatively simple assumption-rejection cases (or a hay-harvesting case) a broad, unitary surface standard to be applied to the continuum of transactions that can be encompassed under the rubric of an "out-of-the-ordinary course" business transaction in a complex reorganization case. The degree of scrutiny necessarily must be elastic --- becoming more strict and searching the nearer the transaction gets to the heart of the

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7a. I cannot believe that when Congress removed the court and a mandatory disinterested trustee from the plan formulation process in reorganization cases, in the 1978 Bankruptcy Code, with the more extensive disclosure statement requirements under § 1125 as a necessary substitute for the former supervisory protections, Congress could have intended that this remaining safeguard could easily be avoided by indirection and use of the "business operation" and "business judgment" labels.

reorganization plan process in terms of channeling that process toward any particular plan option.

THE PROPOSED TRANSACTION

Without approval of the intended action pending before the court the debtor PSNH will remain the "technically qualified" utility entitled to operate the Seabrook nuclear plant when fully-authorized to do so by the NRC. PSNH would operate Seabrook itself, acting by one of its corporate divisions, and acting on behalf of itself and the other joint owners of this Seabrook project.

Under the proposed transaction the entity directly responsible for Seabrook operation would become a separate corporation not a debtor in these reorganization proceedings. The change in operational responsibilities would require NRC approval of the transfer of PSNH's license obligations and responsibilities to that extent to the new separate corporate entity. It would also require that the NHYEC entity also be determined to be a "technically qualified" party to operate the Seabrook project. If that approval is given, and NHYEC becomes the direct operator in control of the Seabrook nuclear plant, the question of its putting the plant into the low-power testing mode when authorized by NRC arguably would not need to be brought to this court for approval with regard to the timing and the effect of any such action upon the ongoing process of plan formulation.

It is not necessary for this court at this time to determine whether such a transfer of operational responsibilities for the Seabrook project would defeat subject-matter jurisdiction of this court, for injunctive relief to prevent low-power testing operation, if such

injunctive relief were determined to be appropriate on the facts and circumstances then existing. It also unnecessary for the court to determine whether in fact it has any such jurisdiction now. It is sufficient to note that the transfer of operational control to a separate non-debtor corporate entity raises an additional question as to the existence of that subject-matter jurisdiction.[8]

Since the debtor has been given an extension until December 27, 1988 of its exclusive period to file a plan of reorganization in this case, by my order of June 22, 1988, the "business judgment" of the debtor in advancing the NHYEC proposal at this time raises the obvious question as to what urgency there is to bring this matter before the court other than in conjunction with its plan of reorganization. If the matter is considered in the plan context then all ramifications of the transaction in terms of reorganization prospects could be evaluated in that specific context.

The debtor points to various improvements in morale of the employees dealing with the Seabrook operation, from being part of a separate entity, and the relieving of the debtor from some costs and over-involvement in Seabrook operations as opposed to the other joint owners, as benefits from the proposed transaction. The debtor notes that "The joint owners will share under certain Seabrook responsibilities to a greater degree than under the present structure." However, the debtor and the other joint owners have operated under the

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8. There is an unresolved question in these proceedings regarding the power of the majority of the joint owners of the Seabrook project to direct actions with regard to the project contrary to the wishes of PSNH without first securing approval of this court for such action. It would be highly inappropriate to unnecessarily precipitate a decision on that question before and if it is necessary to do so in these reorganization proceedings. That is the whole point of the underlying rationale of chapter 11 to promote the prospects for a "consensual" plan of reorganization to eliminate needless and time consuming litigation contrary to the interest of all involved.

present structure since 1984, with no apparent problems, and there is nothing to indicate that a plan of reorganization could not be put forward even if the operation of Seabrook plant continues to be the direct responsibility of a corporate division of PSNH. It is difficult for this court to believe that the improvements in morale adverted to, and the savings of some undefined, unquantified costs to this debtor between now and December, are of sufficient importance to justify approval of this transaction prior to the filing of the reorganization plan, if that were sole ground in support of the transaction.

The debtor adds however, that a particular benefit to PSNH itself would include, as quoted above, the rather cryptic comment by Mr. Harrison in his declaration to the effect that:

> Any change in the NRC Licenses requires specific NRC authorization, which could be time consuming if contested. Any reorganization proposal which might contemplate a transfer of Public Service's license obligations or responsibilities could be delayed while such authorization was contested. Therefore, it would be advantageous to Public Service and all parties interested in the pending Chapter 11 proceeding to separate and expedite regulatory proceedings relating to the transfer of Seabrook management responsibilities so as to remove that issue from future consideration of potential future reorganization proposals.

Mr. Harrison was not called to testify at the hearing on August 26, 1988. The debtor's motion and memorandum with regard to this point sheds no further illumination upon this point and simply parrots the recitation by Mr. Harrison. Debtor's counsel did make it clear during the course of the hearing that they do not agree with any implication from the CUC/Citicorp statements that they concede that the question of initiating low-power testing at the Seabrook plant is a question which

would have to be brought before this court if the NHYEC transaction were to go into effect.[9]

The court is left with the conviction that it was not presented the "whole story" with regard to the underlying reasons and anticipated effects of the proposed transaction at the August 26, 1988 hearing. It would appear that the debtor and its counsel were operating under an assumption that this court would apply mechanically the surface-judgment approach employed in the Curlew decision. For the reasons stated above, however, I decline to use that approach to a matter of this importance in the context of this reorganization case. It may well be that the debtor for good and sufficient tactical reasons does not wish to telegraph at this stage its game plan with regard to a plan of reorganization. However that may be, the result is to leave this court in the quandary of trying to evaluate the proposed transaction without a full picture of its effects and ramifications.[10]

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9. To be fair, the debtor's counsel also does not concede that that question necessarily has to be brought before this court in the existing situation.

10. The declaration of Mr. Harrison could be read as setting the stage for one of the plan options set forth by the debtor in its exclusivity motion, i.e., creating a separate entity that ultimately could be made a "wholesaler" subject only to FERC regulation rather than the present state-based regulatory control of consumer rates. Cf. Mississippi Power & Light Co., v. Mississippi, ____U.S.____ 108 S.Ct. 2428 (June 24, 1988). The present transaction by itself would not lead to that result, since the actions by the New Hampshire Public Utility Commission in 1984 and 1985, cited above, specifically precludes the new corporate entity NHYEC from having authority to sell electricity. There was no request for that enlargement of authority in the applications then pending before the NHPUC. In its 1984 decision the PUC specifically noted that "New Hampshire Yankee would not be involved in the application for rates or the selling of power. New Hampshire Yankee would not sell Seabrook energy to PSNH on a wholesale basis." It could be that this possibility represents the real time urgency in submitting the proposed transaction to the court at this time, rather than the matter of low-power testing, which was the focus of discussion at the hearing, but the fact is that the court simply has no basis for evaluating the latter justification, if it exists, on the present record.

CONCLUSION

It is a daunting task for any reorganization court to rule contra to a proposed action that is supported by all the major economic and regulatory interests directly involved in this case.[11] Upon a better evidentiary record this court might well have been in a position to approve the intended action. However, on the present record I do not believe that the court has a sufficient basis and showing of good cause to approve the intended action at this stage of this case, in light of the substantial question as to possible loss of jurisdiction with regard to the low-power testing matter discussed above. Debtor's counsel was given the opportunity by the court during the hearing to explain and amplify how denial of this approval might delay or impair the flexibility of the debtor in plan formulation. Counsel declined to take up that invitation. Accordingly, I can only go upon the recitations made in the Harrison declaration and, as indicated, I find them insufficient on balance to justify approval of the proposed transaction. In reaching this conclusion I express no opinion as to the merits of any potential future controversary as to low-power testing or any related matter.

A word should be added as to the "understanding" between CUC/Citicorp and the debtor, to the effect that the debtor would not seek to use the approval of this transaction in any further hearing in which jurisdiction of this court to prevent implementation of low-power testing might be raised. While that understanding might give some comfort to CUC/Citicorp, and perhaps to the committees, it does not give any relevant comfort to this court as to preserving the existing jurisdictional situation. It is elementary that federal courts, being

11. But Cf. In re Lionel Corporation, supra, at 1071.

courts of limited jurisdiction, may have their subject-matter jurisdiction challenged at any stage of the proceedings by any party, and by the court itself when the issue is apparent. See 20 Am. Jur. 2d COURTS § 95 (1965), citing Gainsville v. Brown-Crummer Invest. Co., 277 U.S. 54 ( ), Panhandle Eastern Pipe Line Co. v. Federal Power Com., 324 U.S. 635 ( ), Grubb v. Ohio Public Utilities Com., 281 U.S. 470 ( ). Parties to proceedings in the federal court cannot "stipulate jurisdiction" if in fact there is no subject-matter jurisdiction in the federal court as to a particular matter. Accordingly, while tempting, I do not believe that an attempt to "preserve jurisdiction" by some such understanding, or even a provision in this court's order approving the transaction, would be effectual.

A separate order in accordance with this opinion will be entered denying approval of the intended action under the debtor's Notice of Intention filed July 21, 1988.

DATED at Manchester, New Hampshire this 2nd day of September, 1988.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve on full list

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL. (Seabrook Station, Units 1 and 2)	Docket No.(s) 50-443/444-OL-1

CERTIFICATE OF SERVICE

I, George B. Dean, hereby certify that on September 9, 1988, I made service of the within MOTION OF MASSACHUSETTS ATTORNEY GENERAL FOR LEAVE TO FILE A DOCUMENT NOT AUTHORIZED BY THE COMMISSION'S RULES OF PRACTICE and THIRD SUPPLEMENT TO MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON'S PETITION UNDER 10 C.F.R. 2.758 FOR A WAIVER OF OR AN EXCEPTION OF A DEMONSTRATION OF FINANCIAL QUALIFICATION, by first class mail, or by Federal Express as indicated by [*], or by hand delivery as indicated by [**], to:

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Dated: September 9, 1987