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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'88 SEP 14 A9:29

BEFORE THE COMMISSION

OFFICE OF THE SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)
(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443 OL-01
50-444 OL-01
On-site Emergency Planning
and Safety Issues

NRC STAFF RESPONSE TO INTERVENORS' MOTION FOR
ACCEPTANCE OF ADDITIONAL REPLY TO COMMISSION
ORDER OF JULY 14, 1988 REGARDING ALAB-895

Gregory Alan Berry
Counsel for NRC Staff

September 14, 1988

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INTRODUCTION

On August 26, 1988, the Seacoast Anti-Pollution League (SAPL), Town of Hampton, New England Coalition On Nuclear Pollution (NECNP), and the Massachusetts Attorney General (collectively "intervenors") filed a motion in they request leave to bring to the Commission's attention a document entitled "Request For Financial Information" which was directed to Applicants by the NRC Staff on August 11, 1988. According to intervenors, by requesting the information set forth in the attached document the Staff has embraced "inconsistent positions" with respect to the Massachusetts Attorney General's petition for waiver of the Commission's financial qualification rules, and has "raise[d] evidence sufficient to make out a prima facie case" that application of those rules in this proceeding will not serve the purposes for which they were adopted. See Motion at 1.

Although the instant motion filed by intervenors is not authorized by the Commission's Rules of Practice, the Staff does not oppose intervenors' request that the proffered document be included in the record. As explained below, however, nothing in the document suggests that the Staff

has changed its position on the merits of intervenors' waiver petitions or constitutes information sufficient to warrant a waiver of the Commission's financial qualification rules.

BACKGROUND

On July 5, 1988, the Appeal Board issued ALAB-895 ^{1/} which affirmed the Licensing Board's dismissal of a petition for waiver of the Commission's financial qualification rules ^{2/} filed by SAPL, NECNP, and the Town of Hampton, and which held that a separate waiver petition filed by the Massachusetts Attorney General should be certified to the Commission because it met the standards set forth in 10 C.F.R. § 2.758(b). ALAB-895, slip op. at 39. On July 12, 1988, SAPL, NECNP, and the Town of Hampton filed a petition for Commission review of ALAB-895. In a response filed on July 22, 1988, the Staff opposed this petition for review and explained why the Appeal Board was correct in affirming the Licensing Board's denial of the waiver petition. See NRC Staff Response To Joint Petitioners' Petition For Review Of ALAB-895, passim (July 22, 1988).

On July 14, 1988, the Commission issued an order soliciting the views of the Staff and Applicants as to whether it should exercise its discretion in favor of granting the Massachusetts Attorney General's petition. See July 14, 1988 Order at 2. Both the Staff and Applicants

^{1/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC ____ (July 5, 1988)

^{2/} 10 C.F.R. §§ 2.104(c), 50.33(f), and 50.57(a)(4).

filed responses on July 22, 1988. ^{3/} In its order, the Commission stated that the Massachusetts Attorney General and any other party could file a reply to the responses of the Staff or Applicants. July 14, 1988 Order at 2. The intervenors did so on August 2, 1988. See Intervenors Reply To The Responses Of The NRC Staff And Applicants To The Commission's Order Of July 14, 1988 (August 2, 1988); Response Of Massachusetts Attorney General James M. Shannon To Commission Order of July 14, 1988 (August 2, 1988).

In its response to the Commission's order, the Staff pointed out that the Appeal Board's finding that the Attorney General's petition met the standards set forth in 10 C.F.R. § 2.758(b) was based solely on information presented by the Attorney General that one of the co-applicants, MMWEC, had announced its intention to discontinue its share of the Seabrook maintenance costs. ^{4/} The Staff also pointed out that subsequent to the issuance of ALAB-895, another of the Seabrook co-applicants, Northeast Utilities, announced its intention to fund MMWEC's share of the Seabrook maintenance costs through August 31, 1988. Staff Response at 9-10. The Staff also noted that the co-owners of the Seabrook Station were working "to structure an arrangement to provide

^{3/} See NRC Staff Response To Commission Order Of July 14, 1988 (July 22, 1988); Applicants' Response To The Commission's Order Of July 14, 1988 (July 22, 1988).

^{4/} The Appeal Board stated:

It is the financial inability or unwillingness of PSNH or some other joint owner to fund its share of the cost to operate Seabrook safely at low power that, if established, provides the special circumstances warranting a rule waiver.

ALAB-895, slip op. at 29.

funding for the MMWEC share for a period of at least a year." Id. at 10. In light of these developments, the Staff urged the Commission to deny the Attorney General's petition, arguing that "the circumstances underlying the Appeal Board's decision to certify the Attorney General's petition to the Commission no longer obtain." Id. at 10. In other words, funds currently are available to Applicants to maintain and operate the Seabrook Station safely. Id.

In its response to the Commission's order, the Staff stated that even though the the Attorney General's waiver petition should be denied, the Staff would continue to monitor developments affecting the Seabrook Station:

The Staff will continue to follow its usual practice of monitoring developments bearing on Applicants' ability to maintain and operate the Seabrook Station safely and, pursuant to section 182 of the Atomic Energy Act, will require Applicants to demonstrate -- prior to the commencement of low power operations -- that there is reasonable assurance that they possess or can obtain the financial resources needed to conduct that activity in a manner that does not threaten the public health and safety.

Id. at 11, n.10. Consistent with this representation, on August 11, 1988, the Staff requested Applicants to provide certain information bearing on their ability to fund the costs of maintenance, operation, and decommissioning of the Seabrook Station after low power operations. See Attached Enclosure To Letter From Bruce Boger To Robert Harrison (August 11, 1988). It is this request for information which intervenors argue represents a change in the Staff's position and which should impel the Commission to grant the Attorney General's waiver petition. The intervenors are wrong.

DISCUSSION

No showing has been made to warrant a waiver of the Commission's financial qualification rules. With respect to the waiver petition filed by SAPL, NECNP, and the Town of Hampton, the Staff argued -- and the Licensing and Appeal Boards agreed -- that neither the bankruptcy filing of the Public Service Company of New Hampshire nor New Hampshire's anti-CWIP law operate to deprive Applicants of the funds necessary to operate the facility safely at low or full power. See ALAB-895, slip op. at 18, 22. Nothing in the motion filed by intervenors changes this salient fact.

Similarly, the Staff has urged the Commission to vacate the Appeal Board's finding that the Attorney General's petition made out a prima facie case because, as discussed above, that finding has been superceded by intervening circumstances. See Staff Response at 9-10. Nothing in the instant motion or the Staff's request for information from the Applicants to which intervenors allude suggests that these circumstances have changed materially. ^{5/} The suggestion therefore that the information proffered by intervenors establishes a prima facie case warranting a waiver of the the Commission's financial qualification rules is baseless.

^{5/} Indeed and to the contrary, the information submitted by Applicants in response to the Staff's request indicates that Northeast Utilities has agreed to fund MMWEC's share of the project through November 20, 1988, and that additional arrangements may soon be completed which assure that MMWEC's share of the project will be paid at least through December 31, 1989. See Attached Enclosure to Letter from Robert Harrison to NRC at 9 (August 31, 1988).

In requesting Applicants to provide information bearing on their ability to maintain, operate, and decommission the Seabrook Station, the Staff simply was taking the type of action contemplated by the Commission when it relieved regulated utilities from showing their financial The Commission stated:

[T]he Commission does not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, to require such additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked.

"Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants", 49 Fed. Reg. 35747, 35751 (September 12, 1984) (emphasis added).

Essentially, intervenors argue that the Staff's request for financial information from the Applicants shows that the question of Applicant's financial qualifications to operate the Seabrook facility should be litigated. There is no merit to intervenors' position. The Staff, unlike an intervenor, has the regulatory responsibility to protect the public health and safety. To carry out this mission, the Atomic Energy Act provides, inter alia, that the "Commissioner may at any time . . . require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked." 42 U.S.C. § 2232. This is why the Staff may inquire into a regulated utility's financial qualification to operate a facility whenever it believes it necessary to do so. See 10 C.F.R. §§ 2.102(a), 50.71(b), 50.73(c).

In order to warrant a waiver of the rules exempting a regulated utility from having to demonstrate its financial qualification, a

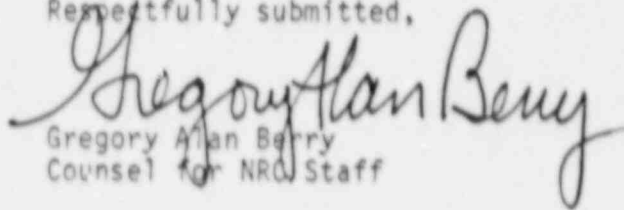
petitioner must make a prima facie showing that application of the rule in question "would not serve the purpose for which the rule was adopted." 10 C.F.R. § 2.758(b). This showing requires more than speculation about the financial condition of an applicant; a petitioner must make a showing that is "legally sufficient to establish the fact or case unless disproved." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1987). To warrant a waiver, intervenors were required to demonstrate that the underlying premise of the financial qualification rule -- i.e., that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities, see 49 Fed. Reg. at 35750 -- is not applicable in this case. For the reasons discussed in the Staff's response to the Commission's July 4, 1988, Order, intervenors have not made this showing. That the Staff has requested financial information from Applicants does not constitute evidence undermining the premise of the rule; indeed, the Applicants response to the Staff's inquiry indicates that Applicants continue to have adequate funding through November 20, 1988 and continue to work on longer range funding. See n.5, supra.

CONCLUSION

The motion for leave to file an additional reply to the Commission's July 14, 1988 Order filed by SAPL, NECNP, Town of Hampston, and the Massachusetts Attorney General should be granted and the Massachusetts

Attorney General's petition for waiver of the Commission's financial qualification rules should be denied.

Respectfully submitted,


Gregory Alan Barry
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of September 1988



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 11, 1988

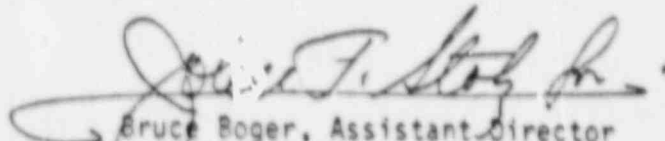
Docket No.: 50-443

Mr. Robert J. Harrison
President & Chief Executive Officer
Public Service Company of New Hampshire
Post Office Box 330
Manchester, New Hampshire 03105

Dear Mr. Harrison:

SUBJECT: FINANCIAL COVERAGE FOR THE COST OF LOW POWER OPERATION-REQUEST
FOR ADDITIONAL INFORMATION

As you are aware, the NRC is continuing to follow the financial aspects of Seabrook activities. The staff seeks clarification with regards to the applicant's 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 shutdown condition following low power operation. It would be appreciated if you would provide the additional information requested in the enclosure by August 31, 1988.


Bruce Boger, Assistant Director
for Region I Reactors
Division of Reactor Projects I/11

Enclosure:
As stated

See next page

ATTACHMENT 1

ENCLOSURE

REQUEST FOR FINANCIAL INFORMATION

SEABROOK UNIT NO. 1

DOCKET NO. 50-443

1. Please provide detailed estimates of (a.) the total cost to operate Seabrook Unit No. 1 at low power only (up to five percent power); and (b.) the total cost to permanently shut down 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).
2. Please provide a detailed statement of the sources of funds for covering total costs of low power operation and total costs of permanent shutdown of the facility and maintenance in a safe condition after a period of low power operation only. Indicate the assumptions underlying the projection of each source of funds.
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.
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.)

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 in the summer 1989.)
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.)
7. Describe the status of efforts to spin-off New Hampshire Yankee Electric Corporation as an independent company. Explain any effects on responses to the above questions if the reorganization were to be accomplished.
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.

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 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.

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NUCLEAR REGULATORY COMMISSION

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(Seabrook Station, Units 1 and 2)

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} On-site Emergency Planning
and Safety Issues

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS' MOTION FOR ACCEPTANCE OF ADDITIONAL REPLY TO COMMISSION ORDER OF JULY 14, 1988 REGARDING ALAB-895" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 14th day of September 1988.

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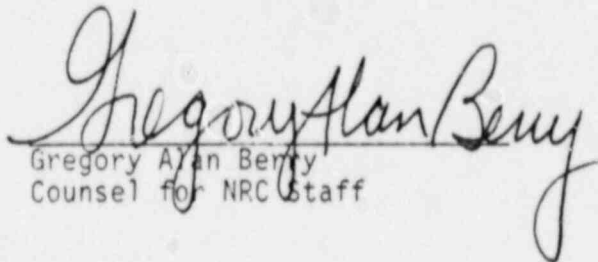
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