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May 10, 1988

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UNITED STATES OF AMERICA  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
before the  
ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

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

BACKGROUND

On March 25, 1987 the Licensing Board issued a Partial Initial Decision ("PID") which authorized issuance of a license to operate Seabrook Station at up to 5% of rated power. Public Service Company of New Hampshire, (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177 (1987). Upon appeal of the PID, the Appeal Board issued a decision affirming in part, and reversing and remanding in part. Public Service Company of New Hampshire, (Seabrook Station Units 1 and 2) ALAB-875, 26 NRC 251 (1987). On remand, the Appeal Board stated that the Licensing Board should admit for

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litigation two contentions which had been previously rejected: namely, New England Coalition on Nuclear Pollution ("NECNP") Contention I.V. (regarding inservice inspection of steam generator tubes) and NECNP Contention IV (regarding the accumulation of aquatic organisms in the cooling system).<sup>1</sup> In addition, in ALAB-875 the Appeal Board stated that the Licensing Board should determine the appropriateness of a renewal pendente lite of the low power authorization provided in the PID. ALAB-875, supra, 26 NRC at 276.

On November 27, 1987 the Licensing Board issued an unpublished order directing the parties to brief the issue of whether the authorization to operate at low power should be renewed. Applicants and Staff filed briefs putting forth the position, on the basis of numerous affidavits, that the two remanded contentions were not relevant to low power operation because any safety concerns raised by the contentions would not adversely affect the public health and safety. NECNP opposed the renewal of low power operation on the basis of a legal argument that the Atomic Energy Act requires the

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<sup>1</sup> Following extensive discovery, on April 29, 1988 Applicants submitted motions for summary deposition. By letter of April 22, 1988 to the Licensing Board, NECNP expressed its decision not to oppose the summary deposition motions. NECNP further expressed its intention to appeal a ruling of the Licensing Board regarding the scope of Contention IV. NECNP's letter is attached.

completion of hearings on all safety issues before operation at any level of power may be authorized.

On February 17, 1988 the Licensing Board issued a Memorandum and Order renewing its authorization of low power operation. Public Service Company of New Hampshire, (Seabrook Station, Units 1 and 2), LBP-88-6, 27 NRC \_\_\_\_ (February 17, 1988).<sup>2</sup> It is this decision which is the subject of the appeal at bar.

#### ARGUMENT

Subsequent to its appeal of LBP-88-6, NECNP, in a letter to the Licensing Board, expressed its "decision not to litigate these two Contentions...." See n.1, supra. As NECNP does not oppose Applicants' summary disposition motions on the two remanded Contentions, the issues arising out of Contentions I.V. and IV should be considered to be resolved. Therefore, NECNP's appeal of LBP-88-6 is moot.

However, even if this Appeal Board were to consider the merits of NECNP's appeal, the appeal must fail. In its appeal, NECNP makes no issue specific arguments alleging error in the Licensing Board determination that the two contentions are not relevant to low power operations.

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<sup>2</sup> The Licensing Board, however, did not give effect to its renewed authorization because of the holding in Public Service of New Hampshire (Seabrook Station Units 1 & 2) ALAB-883, 27 NRC \_\_\_\_ (February 3, 1988).

Rather, NECNP revisits its legal arguments that the Atomic Energy Act entitles NECNP to a full hearing on all contested safety issues prior to the issuance of a low power license. To the extent this argument is an attack on the validity of 10 C.F.R. § 50.57(c)<sup>3</sup> because it deprives NECNP of a right to a hearing, it raises no request for relief which can be granted by this Appeal Board. ALAB-875, supra, 25 NRC at 256; Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-865, 25 NRC 430, 439 (1987); see also 10 C.F.R. § 2.758. To the extent that NECNP asserts

<sup>3</sup> 10 C.F.R. § 50.57 (c) states:

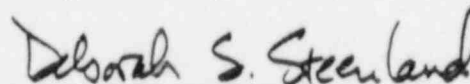
An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order pursuant to § 2.730(e) of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation (emphasis added).

that 10 C.F.R. § 50.57(c) is consistent with its argument that the Atomic Energy Act entitles it to a hearing, NECNP itself admits that this is directly contrary to the views of the Commission in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) CLI-84-21, 20 NRC 1437 (1984). See NECNP Brief at note 7. This Board, of course, is bound by Commission rulings. See also, Public Service of New Hampshire (Seabrook Station Units 1 and 2) CLI-87-13, 26 NRC 400, 405 (1987) ("As directed by the Appeal Board the Licensing Board shall expeditiously determine whether considering the issues that it is hearing on remand, it is appropriate to renew at this time its authorization of low power or whether low power operations must await further decisions.") (footnote omitted)

#### CONCLUSION

The decision of the Licensing Board in LBP-88-6 should be affirmed.

Respectfully submitted,



Thomas G. Dignan, Jr.  
Deborah S. Steenland  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110  
(617) 423-6100  
Counsel for Applicants

# HARMON & WEISS

2001 S STREET, N.W.

SUITE 430

WASHINGTON, D.C. 20009-1125

GAIL MCGREEVY HARMON  
ELLYN R. WEISS  
DIANE CURRAN  
DEAN R. TOUSLEY  
ANDREA C. FERSTER

TELEPHONE  
(202) 528-3500

April 22, 1983

Sheldon J. Wolfe, Esq.  
Dr. Emmeth A. Luebke  
Dr. Jerry Harbour  
Administrative Judges  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

SUBJECT: Seabrook operating license case:  
onsite emergency planning and technical issues

Dear Administrative Judges:

On behalf of the New England Coalition on Nuclear Pollution (NECNP), I am notifying you that NECNP does not intend to litigate NECNP Contention I.V, on the adequacy of Applicants' program for in-service inspection of steam generator tubing, or NECNP Contention IV, to the extent that Contention IV relates to the adequacy of Applicants' program for monitoring to detect blockage of coolant flow resulting from the build-up of macro-biological organisms. Accordingly, NECNP will not file its own summary disposition motion on these issues, nor will it oppose any summary disposition motions filed by Applicants or the Staff to the extent such motions address those issues.

NECNP's decision not to litigate these two Contentions is based on our review of the information and documents we have received to date as a result of discovery under Contentions I.V. and IV. Our decision also stems from this Board's procedural rulings on NECNP Contention IV, which effectively preclude NECNP from inquiring into, or litigating the adequacy of Applicants' program to control microbiologically induced corrosion, and other detrimental effects resulting from the accumulation of micro-biological organisms. NECNP continues to believe that Applicants' program for monitoring and controlling microbiologi-

Attachment

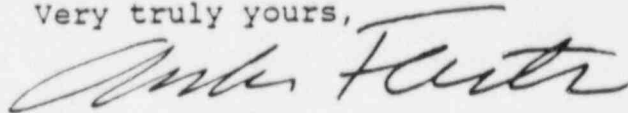
HARMON & WEISS

Atomic Safety and Licensing Board  
April 22, 1988  
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cally induced corrosion is not adequate, and that this issue is within the scope of NECNP Contention IV. Accordingly, NECNP intends to appeal the Board's rulings regarding the scope of NECNP Contention IV and allowable discovery thereunder at the appropriate time.

Counsel for the Staff and Applicants have been notified by telephone of the content of this letter.

Very truly yours,



Andrea Ferster  
Counsel for NECNP

cc: onsite service list

CERTIFICATE OF SERVICE

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I, Deborah S. Steenland, one of the attorneys for the Applicants herein, hereby certify that on May 10, 1988, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or where indicated, by depositing in the United States mail, first class, postage paid, addressed to):

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Alan S. Rosenthal, Chairman  
Atomic Safety and Licensing  
Appeal Panel  
U. S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Howard A. Wilber  
Atomic Safety and Licensing  
Appeal Panel  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Thomas S. Moore  
Atomic Safety and Licensing  
Appeal Panel  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Mr. Ed Thomas  
FEMA, Region I  
442 John W. McCormack Post  
Office and Court House  
Post Office Square  
Boston, MA 02109

Administrative Judge Sheldon J.  
Wolfe, Esquire, Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Robert Carrigg, Chairman  
Board of Selectmen  
Town Office  
Atlantic Avenue  
North Hampton, NH 03862

Administrative Judge Emmeth A.  
Luebke  
4515 Willard Avenue  
Chevy Chase, MD 20815

Diane Curran, Esquire  
Andrea C. Ferster, Esquire  
Harmon & Weiss  
Suite 430  
2001 S Street, N.W.  
Washington, DC 20009

Dr. Jerry Harbour  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Stephen E. Merrill, Esquire  
Attorney General  
George Dana Bisbee, Esquire  
Assistant Attorney General  
Office of the Attorney General  
25 Capitol Street  
Concord, NH 03301-6397



Adjudicatory File  
Atomic Safety and Licensing  
Board Panel Docket (2 copies)  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

\*Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

Philip Ahrens, Esquire  
Assistant Attorney General  
Department of the Attorney  
General  
Augusta, ME 04333

Paul McEachern, Esquire  
Matthew T. Brock, Esquire  
Shaines & McEachern  
25 Maplewood Avenue  
P.O. Box 360  
Portsmouth, NH 03801

Mrs. Sandra Gavutis  
Chairman, Board of Selectmen  
RFD 1 - Box 1154  
Route 107  
Kensington, NH 03827

\*Senator Gordon J. Humphrey  
U.S. Senate  
Washington, DC 20510  
(Attn: Tom Burack)

\*Senator Gordon J. Humphrey  
One Eagle Square, Suite 507  
Concord, NH 03301  
(Attn: Herb Boynton)

Mr. Thomas F. Powers, III  
Town Manager  
Town of Exeter  
10 Front Street  
Exeter, NH 03833

Sherwin E. Turk, Esquire  
Office of General Counsel  
U.S. Nuclear Regulatory  
Commission  
One White Flint North, 15th Fl.  
11555 Rockville Pike  
Rockville, MD 20852

Robert A. Backus, Esquire  
Backus, Meyer & Solomon  
116 Lowell Street  
P.O. Box 516  
Manchester, NH 03105

Mr. J. P. Nadeau  
Selectmen's Office  
10 Central Road  
Rye, NH 03870

Carol S. Sneider, Esquire  
Assistant Attorney General  
Department of the Attorney  
General  
One Ashburton Place, 19th Flr.  
Boston, MA 02108

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

R. Scott Hill-Whilton, Esquire  
Lagoulis, Clark, Hill-  
Whilton & McGuire  
79 State Street  
Newburyport, MA 01950

Mr. Peter S. Matthews  
Mayor  
City Hall  
Newburyport, MA 01950

Mr. William S. Lord  
Board of Selectmen  
Town Hall - Friend Street  
Amesbury, MA 01913

H. Joseph Flynn, Esquire  
Office of General Counsel  
Federal Emergency Management  
Agency  
500 C Street, S.W.  
Washington, DC 20472

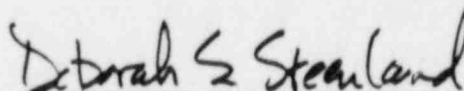
Gary W. Holmes, Esquire  
Holmes & Ells  
47 Winnacunnet Road  
Hampton, NH 03841

Judith H. Mizner, Esquire  
79 State Street, 2nd Floor  
Newburyport, MA 01950

Brentwood Board of Selectmen  
RFD Dalton Road  
Brentwood, NH 03833

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

Charles P. Graham, Esquire  
Murphy and Graham  
33 Low Street  
Newburyport, MA 01950

  
Deborah S. Steenland

(\*U.S. First Class Mail.)