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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD '88 MAY 16 P5:58

_____))
In the Matter of))
))
PUBLIC SERVICE COMPANY OF))
NEW HAMPSHIRE, ET AL.))
))
(Seabrook Station, Units 1) (Onsite Emergency Planning
and 2)) and Safety Issues)
_____)

May 13, 1988

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-443-OL-1
50-444-OL-1

SUPPLEMENT TO

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

INTRODUCTION

On March 7, 1988, pursuant to an order of this Appeal Board dated January 29, 1988, James M. Shannon, Attorney General of the Commonwealth of Massachusetts ("the Attorney General"), petitioned under 10 C.F.R. §2.758(b) for a waiver of or an exception to the public utility exemption from the Commission's requirement that a demonstration of financial qualification be made prior to the issuance of an operating license.^{1/}

1/ 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 "Mass AG Pet").

In particular, the Attorney General requested a wavier of or exception to 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'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 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 its share of those costs (Id. at ¶ 24 - 32) and the present inability/unwillingness of the remaining joint owners to commit to cover PSNH's share of those present and future costs (Id. at ¶ 4 - 14), 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.

After the filing of the petition, additional information has become available which bears on the likelihood that adequate funding will be available to assure the safe operation and/or decommissioning of the Seabrook plant. Specifically, information has been obtained which indicates that:

- a. Under the rates currently approved by the New Hampshire Public Service Commission and given the attempts by the Third Mortgage Bondholders to obtain Bankruptcy Court approval for payment of their interest, there is little, if any, assurance that PSNH will have adequate cash available to it during the pendency of its bankruptcy action to meet its share of the expenses of the Seabrook plant, irrespective of whether such payments are deemed to be "in the ordinary course";
- b. PSNH will not propose a plan of reorganization during 1988, extending the bankruptcy action at least until sometime in 1989;
- c. None of the other joint owners of the Seabrook plant has indicated a willingness to assume or makeup PSNH's share of the expenses of the Seabrook plant. Indeed, two joint owners have given notice that their continuing payments are contingent on securing additional financing in a market which is not receptive to Seabrook related financing and two of the joint owners continue to suspend their payments.
- d. Low power operation and testing of the Seabrook plant will result in a substantial negative salvage value of the plant, thus further reducing the likelihood that adequate funds would be available to permanently shut the plant down and maintain it in a safe condition.

To bring this important information to the Board's attention, the Attorney General supplements its petition as follows.^{2/}

THERE IS NO ASSURANCE THAT
ADEQUATE CASH WILL BE AVAILABLE
TO PSNH TO OPERATE SEABROOK SAFELY
OR PERMANENTLY SHUT IT DOWN

1. On March 31, 1988, PSNH moved that the Bankruptcy Court authorize payments of interest on its First and Second Mortgage Bonds. The motion was allowed by the Bankruptcy Court on April 25, 1988. Supplemental Appendix II: In re Public Service Company of New Hampshire, No. 88-00043 (Bkcy Ct. D. NH)(unpublished opinion April 25, 1988).

2. On May 3, 1988, the trustees and bondholders of PSNH's Third Mortgage Bonds moved that the Bankruptcy Court authorize and require PSNH "to make payments of interest on the Third Mortgage Bonds 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 Bankruptcy action. Supplemental Appendix III: MOTION FOR ADEQUATE PROTECTION IN THE FORM OF CURRENT AND CONTINUING INTEREST PAYMENTS DUE UNDER THE THIRD MORTGAGE BONDS.

2/ The necessity of a waiver is illustrated, in part, by the response of the joint owners to two contentions filed by the Attorney General in the current Massachusetts RERP phase of the Seabrook off site licensing proceeding. Although the Attorney General disagrees with the position of the joint owners, they argue that the public utility exemption is a bar to consideration of contentions concerning (1) the availability of funds necessary to maintain an adequate level of preparedness and (2) the willingness of private suppliers of transport resources to provide such resources given the uncertainty of the availability of funds. See Supplemental Appendix I: Excerpts from APPLICANTS' RESPONSE TO INTERVENORS' CONTENTIONS ON THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES.

3. In a statement in its 1987 SEC Form 10-K, PSNH indicated that if required to pay interest on its Third Mortgage Bonds, "its cash flow would by early 1989 become inadequate to make such payment and to pay all of the Company's remaining ongoing expenditures." PSNH noted that "[t]hese expenditures include monthly payments for [PSNH's] approximately 35% share of expenditures for the Seabrook Plant." Supplemental Appendix IV: PSNH 1987 SEC Form 10-K at 1.

4. In statements filed with the Bankruptcy Court, PSNH provided forecasts of its cash flow for 1988 which reveal that it will not have sufficient cash available to it during 1988 to fund its share of the pre-low power testing expenses of the Seabrook plant, irrespective of whether such payments are held to be "in the ordinary course," if it is required to pay interest on its Third Mortgage Bonds.

5. PSNH acknowledged in its 1987 Form 10-K that "[i]t is anticipated that the continued funding [by PSNH] of the Seabrook Plant may be opposed by certain of the Company's creditors." Supplemental Appendix IV: PSNH 1987 Form 10-K at 5.

PSNH'S BANKRUPTCY ACTION WILL NOT TERMINATE
BEFORE THE SPRING OF 1989

6. On April 28, 1988, PSNH moved that the Bankruptcy Court extend by eight months (until January 27, 1989) the period within which PSNH will have the exclusive right to file a plan of reorganization. In support of that motion, PSNH argued:

a. "That two issues played central roles in prompting this chapter 11 case: the pending litigation over the "anti-CWIP"

statute and the licensing of the Seabrook Nuclear Power Plant." Supplemental Appendix V: MEMORANDUM OF PUBLIC SERVICE COMPANY IN SUPPORT OF MOTION TO EXTEND PLAN EXCLUSIVITY PERIODS at 19.

b. That PSNH has filed an appeal with the United States Supreme Court from the decision of the New Hampshire Supreme Court upholding the constitutionality of the application of the anti-CWIP statute to PSNH and that even if the Court determines to hear PSNH's appeal, "it is not likely to hear the appeal until the October 1988 term." Id. at 20-21.

THE REMAINING JOINT OWNERS HAVE DONE NOTHING
TO ASSURE THE AVAILABILITY OF ADEQUATE FUNDING
AND SOME ARE EXPERIENCING THEIR OWN DIFFICULTIES

7. In the period since the filing of the Petition, not one of the joint owners has taken any action or stated any intention to take any action which would provide assurance that PSNH's share of operating and/or decommissioning expenses will be paid in the event PSNH is unable to make payment.

8. EUA Power Corp., the entity with the third largest ownership share (12.1324 percent) of the plant, has determined that it cannot meet the May 1988 interest payments due on its outstanding indebtedness and that additional financing or "other arrangements" will be necessary. Supplemental Appendix VI: EUA Power 1987 SEC Form 10-K at 2.

9. EUA Power Corp. acknowledges that it has been "advised that there is considerable doubt as to the feasibility under present

market conditions of finding purchasers for [the] \$100,000,000 issue of its secured notes to be sold for cash", referenced in paragraph 10 of the Attorney General's Petition. Id. at 3.

10. EUA Power Corp. has advised the joint owners that its ability to continue payment of its share of Seabrook's costs is dependent upon their obtaining additional financing. Supplemental Appendix IV: PSNH 1987 Form 10-K at 5-6.

11. The Massachusetts Municipal Wholesale Electric Company ("MMWEC") has also notified the joint owners that its ability to continue payment of its share of Seabrook's costs is dependent upon its obtaining additional financing. Id.

12. On May 2, 1988, Moody's lowered the bond ratings of two Joint Owners, Canal Electric Company and New England Power Company, as well as those of related companies -- Cambridge Electric Light Company and Commonwealth Electric Company, affiliates of Canal, as well as Massachusetts Electric Company, an affiliate of New England Power. Supplemental Appendix VII: Moody's Bond Survey, pp. 6785-6786 (May 2, 1988).

LOW POWER OPERATION WILL RESULT IN A SUBSTANTIAL
NEGATIVE SALVAGE VALUE OF THE SEABROOK PLANT

13. In a report on the valuation of PSNH's assets prepared for the trustees and holders of PSNH's Third Mortgage Bonds by the firm of Putnam, Hayes & Bartlett, the present net salvage value of the Seabrook plant if abandoned without commercial operation is estimated to be \$79.1 million but is estimated to be -\$59.1 million

if low power operation and testing are conducted prior to abandonment. Supplemental Appendix VIII: Valuation Analysis of Public Service of New Hampshire, Appendix 1, pp. I-1 through I-15.

CONCLUSION

WHEREFORE, Attorney General James M. Shannon prays that this Appeal Board:

(1) find that a prima facie case has been made that the application here of the public utility exemption from the requirement of a demonstration of financial qualification would not serve the purpose for which the exemption was adopted and that application of that exemption should be waived or an exception granted;

(2) certify directly to the Commission for determination of whether 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;

(3) stay the issuance of a license authorizing low power operation and testing pending the resolution by the Commission of the certified issue and pending a determination of financial qualification if the Commission determines that a waiver of or exception to the public utility exemption from the financial qualification rule should be granted;

(4) issue such other orders and grant such other relief as may be equitable and necessary to assure the public health and safety.

RESPECTFULLY SUBMITTED,

JAMES M. SHANNON

ATTORNEY GENERAL

COMMONWEALTH OF MASSACHUSETTS

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Dated: May 13, 1988

SUPPLEMENTAL APPENDICES

- Supplemental Appendix I: APPLICANTS RESPONSE TO INTERVENORS' CONTENTIONS ON SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES
- Supplemental Appendix II: In re Public Service Company of New Hampshire, No. 88-00043 (Bkcy Ct, D. NH) (unpublished opinion April 25, 1988)
- Supplemental Appendix III: MOTION FOR ADEQUATE PROTECTION IN THE FORM OF CURRENT AND CONTINUING INTEREST PAYMENTS DUE UNDER THE THIRD MORTGAGE BONDS
- Supplemental Appendix IV: PSNH 1987 SEC Form 10-K (excerpts)
- Supplemental Appendix V: MEMORANDUM OF PUBLIC SERVICE COMPANY IN SUPPORT OF MOTION TO EXTEND PLAN EXCLUSIVITY PERIOD
- Supplemental Appendix VI: EUA Power Corp. SEC Form 10-K (excerpts)
- Supplemental Appendix VII: Moody's Bond Survey, pp. 6785-6786 (May 2, 1988)
- Supplemental Appendix VIII: Putnam, Hayes & Bartlett, Valuation Analysis of Public Service of New Hampshire, Appendix I.