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May 12, 1988

Samuel J. Chilk
Secretary of the Commission
U. S. NRC
Washington, DC 20555

RE: In the Matter of: Public Service Company of
New Hampshire, et al (Seabrook Station, Units 1 and 2)
Docket Nos. 50-443-OL and 50-444-OL

Dear Mr. Chilk:

The rule change proposed by SECY 88-109, and dated April 20, 1988, which proposes to eliminate the requirement for prompt alert and notification for the general public prior to low power operation at nuclear plants, is illegal, unwise and unacceptable.

The rule change is obviously the second Commission attempt to facilitate the licensing of particular plants currently under adjudication. The first rule change, having to do with utility plans, had application to only two facilities in the entire nation, Seabrook and Shoreham. The presently proposed rule change is clearly intended to benefit only one plant, Seabrook.

The Commission must at some point accept that if its applicants cannot meet the Commission's emergency planning requirements, they should not get a license. So far, it seems to be the Commission's policy that if its applicants cannot meet the emergency planning requirements, those requirements will be changed. This is not a proper basis for nuclear licensing.

The Commission's course of conduct in adopting the prior rule change, 44 Fed. Reg. 42078, and in proposing the current rule change, which has applicability to only one nuclear plant, will be to destroy whatever remaining vestiges of public credibility this agency may have.

The rule change is illegal.

The rule change is a blatant attempt to decide a matter now under adjudication in a specific case through rulemaking. The

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rulemaking amounts to a Commission reversal of ALAB 883, in which the NRC's Appeal Board held that under current regulations, no low power operation at Seabrook could be permitted without a compliant alert and notification system in place. Indeed, the Commission itself has now issued an order extending its time to consider review of ALAB 883, in light of the proposed rule change. Nothing could more clearly illustrate the fact that this rule change is nothing more than an attempt to decide an issue through a rule change, rather than through on-going litigation, now pending before the Commissioners themselves.

By the expedient of choosing to decide the issue through rulemaking, rather than adjudication, the Commission is abrogating that prohibition upon ex parte contact set forth at 10 CFR 2.780, depriving the parties of the adjudicatory rights they were intended to have under the Administrative Procedure Act and the Atomic Energy Act.

The Commissioners, as the Chairman himself has recognized, act in a quasi judicial capacity in determining licensing individuals in particular cases. There is absolutely no legal basis for the commissioners to step out of this quasi judicial capacity in order to consider this rule change, which has applicability to only one plant, particularly when that plant is under adjudication, and that adjudication is pending before the Commissioners themselves.

The rule change is unwise.

SECY 88-109 provides absolutely no basis for believing that the rule change is necessary. The only suggested rationale is the statement that the policy issues deserve a broader range of comment than merely available from the parties to the Seabrook litigation. This rationale could be generally applied to any issue in litigation at any nuclear plant, and provides no basis for removing from litigation issues which should be dealt with through litigation. It is also absurd in that it is only at Seabrook that the rule will have any staff effect.

The present rule has been in effect since 1982, and the Commission cites no new safety research or agency experience which would justify changing the prior rule. It is perfectly obvious that the only purpose of the change for the rule is to facilitate the licensing of Seabrook, which is not a proper basis for rulemaking.

Lacking a proper basis, the rule change is arbitrary and capricious, as well as violating the Commission's ex parte rules, the Administrative Act, Procedure Act, and the Atomic Energy Act.

Respectfully submitted,

Robert A. Backus
Attorney for Seacoast
Anti-Pollution League

RAB:jsr