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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Lando W. Zech, Jr., Chairman  
Thomas M. Roberts  
Kenneth M. Carr  
Kenneth C. Rogers

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In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1  
and 2)

Docket Nos. 50-443-OL-1  
50-444-OL-1  
(Onsite Emergency Planning  
and Safety Issues)

ORDER  
CLI-88-07

The Commission has under consideration the views of the parties on the certified petition for waiver of certain aspects of its financial qualification rules. See this docket, Memorandum and Order, ALAB-895, July 5, 1988. The Commission intends to address the rule waiver issue directly in a subsequent memorandum and order.

While the matter has been pending, the Commission's decommissioning rule became effective on July 27, 1988. See 53 Fed. Reg. 24018 (June 27, 1988). The potential effect of that rule on aspects of the relief sought by petitioners was noted by the Atomic Safety and Licensing Appeal Board in ALAB-895. The Appeal Board held that "all consideration of decommissioning funding should be eliminated from financial qualification review and instead be considered under the . . . decommissioning regulations." Slip op. at 36 n.66.

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We agree with the Appeal Board in this regard.<sup>1</sup> Moreover, since the funds required to decommission safely after low power operation has occurred would appear to be substantially more than the funds required to conduct low power testing and training safely, we have given initial consideration to this issue.

In the decommissioning rulemaking the Commission determined that public health and safety could best be protected by promulgating a rule requiring reasonable assurance that, at the time of termination of operations, adequate funds are available so that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems. 53 Fed. Reg. at 24037.

We believe that this reasoning, when applied to the unique and unusual circumstances of this case, requires that before low power may be authorized, applicants provide reasonable assurance that adequate funds will be available so that safe decommissioning will be reasonably assured in the event that low power operation has occurred and a full power license is not granted for Seabrook Unit 1.

Applicants have not yet provided such assurance. Thus, the first step in resolution of this question of assurance of adequate funding for decommissioning is to request applicants to provide the basis on which a finding of the necessary reasonable assurance, as stated above, might be made. We request that within 30 days of the date of this Order

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<sup>1</sup>As a strict matter, this means that financial qualifications or assurance of funding for decommissioning after low power operation has occurred falls outside of the scope of the rule sought to be waived in the petition for waiver certified to us by the Appeal Board. However, the matter is before us on review of ALAB-895 and, of course, we also may take up the issue sua sponte.

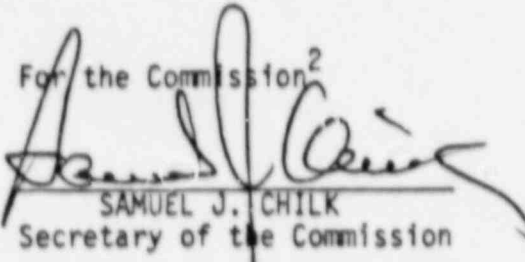
applicants provide us adequate documentation of their plan and appropriate commitments under that plan to provide reasonable assurance that adequate funding for decommissioning will be available in the event that a full power license is not granted for Seabrook Unit 1.

The procedural posture of this case reflects that the record is closed for the consideration of new issues and litigation on this issue may only be pursued if a motion to reopen is granted and at least one late-filed contention is admitted. The Commission intends to resolve any such motion on an expedited basis. Thus, within ten (10) days after service of applicants' filing the parties must file, with the Commission, any motions and late-filed contentions based on applicants' plan to fund the decommissioning of the plant in the event that a full power license is not granted. All oppositions to any such motion must be filed within ten (10) days of service of the motion. All filing and service shall be by personal delivery or express mail. After receipt and consideration of the parties' filings, the Commission itself will either decide that the requisite reasonable assurance has been provided or will direct what additional steps are necessary to permit a determination that the requisite reasonable assurance has been demonstrated.

It is so ORDERED.



Dated at Rockville, Maryland  
this 22<sup>nd</sup> day of Sept, 1988

For the Commission<sup>2</sup>  
  
 SAMUEL J. CHILK  
 Secretary of the Commission

<sup>2</sup>Chairman Zech was not present for the affirmation of this order, which he would have approved had he been present.