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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'88 SEP 27 P1:37

BEFORE THE COMMISSION

OFFICE OF THE  
SECRETARY

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)

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NRC STAFF RESPONSE TO MASSACHUSETTS ATTORNEY  
GENERAL JAMES M. SHANNON'S MOTION FOR LEAVE TO  
FILE THIRD AND FOURTH SUPPLEMENTS TO PETITION FOR  
WAIVER OF FINANCIAL QUALIFICATION RULES

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Gregory Alan Berry  
Counsel for NRC Staff

September 27, 1988

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NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al

(Seabrook Station, Unit 1)

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

FILE TO MASSACHUSETTS ATTORNEY  
SHANNON'S MOTION FOR LEAVE  
FOURTH SUPPLEMENTS TO PETITION  
FINANCIAL QUALIFICATION RULES

INTRODUCTION

On September 9 and 15, 1988, Massachusetts Attorney General James M. Shannon filed motions in which he again requests leave to bring to the Commission's attention several documents which he claims buttress his pending petition for waiver of the Commission's financial qualification rules.<sup>1/</sup> Although the instant motions filed by Attorney General are not authorized by the Commission's Rules of Practice, the Staff does not oppose his request that the proffered documents be included in the record.

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1/ See Motion Of Massachusetts Attorney General James M. Shannon For Leave To File A Document Not Authorized By The Commission's Rules Of Practice And Attached Third Supplement Massachusetts Attorney General James M. Shannon's Petition Under 10 C.F.P. § 2.758 For A Waiver Of Or Exemption From The Public Utility From The Requirement Of A Demonstration Of Financial Qualification (September 9, 1988) ("Third Supplement"); Motion Of Massachusetts Attorney General James M. Shannon For Leave To File A Document Not Authorized By The Commission's Rules Of Practice And Attached Fourth Supplement Massachusetts Attorney General James M. Shannon's Petition Under 10 C.F.R. § 2.758 For A Waiver Of Or Exemption From The Public Utility From The Requirement Of A Demonstration Of Financial Qualification (September 15, 1988) ("Fourth Supplement").

As explained below, however, nothing in those documents cures the deficiencies in the Attorney General's petition for waiver of the Commission's financial qualification rules previously identified by the Staff. In other words, the Attorney General's petition, as amended, does not show that Applicants will not be able to recoup their costs through the ratemaking process in the event a full power license is issued or that they currently lack sufficient funding to operate the Seabrook Station safely at low power. The Attorney General's petition therefore must be denied. <sup>1/</sup>

#### DISCUSSION

In its July 22, 1988 response to the to the Commission's July 14, 1988 Order, the Staff pointed out that in ALAB-895 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. ALAB-895, 28 NRC 7, 22 (1988). The Staff also pointed out that subsequent

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<sup>1/</sup> In CLI-88-07, 28 NRC \_\_\_\_ (September 22, 1988), the Commission required Applicants to provide information sufficient to enable the Commission to determine whether there is reasonable assurance that funds will be available to decommission the Seabrook Station in the event low power operation occurs but a full power license is not granted. Id. at 2. The Commission also stayed the issuance of a low power license for the Seabrook Station pending its determination on this issue. Id. Applicants were provided thirty days to supply the requested information. An opportunity to submit motions to reopen and admit late-filed contentions challenging the adequacy of Applicants' decommissioning plan was also provided. Id. The Commission's order, however, does not address the central issue raised by Attorney General's petition for waiver: whether in view of the bankruptcy of the Public Service Company of New Hampshire, Applicants are financially qualified to operate the Seabrook Station.

to the issuance of ALAB-895, another of the Seabrook co-owners, 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 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.

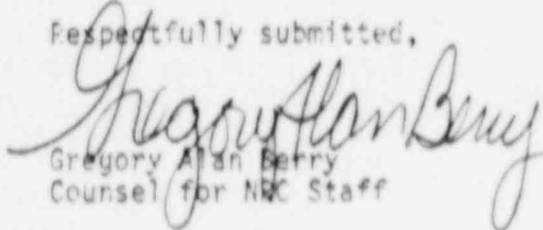
As shown below, none of the documents attached to the third or fourth supplements to the Attorney General's petition for waiver alters this salient fact. Two of the documents are copies of the responses to the Staff's August 11, 1988 request for financial information. A copy of these documents previously was submitted to the Commission by Applicants. See Attachment Applicants' Reply To Intervenor's Motion For Acceptance Of Additional Reply To Commission Order Of July 14, 1988 Regarding ALAB-895 (September 12, 1988); Letter From R.J. Harrison To NRC (September 13, 1988). These documents indicate that arrangements have been made to cover MMWEC's share of the Seabrook maintenance and operation costs through November 20, 1988, and that additional arrangements are being completed to guarantee funding of MMWEC's share through December 31, 1989. See Attachment 1 to Third Supplement; Attachment 1 to Fourth Supplement. These documents hardly show that Applicants lack the funds necessary to operate the facility safely at low power.

Similar, the copy of the bankruptcy court's order attached to the Attorney General's third supplement does not indicate that Applicants' lack the funds necessary to operate the Seabrook Station safely at low power. The order merely indicates that the federal bankruptcy court in New Hampshire denied a request by Public Service Company of New Hampshire (PSNH) to participate in the organization and implementation of an entity called the "New Hampshire Yankee Electric Corporation" (NHYEC) because the record before it was "insufficient on balance to justify approval of the proposed transaction." See Attachment 3 to Third Supplement at 10. Nor did the bankruptcy court assert the authority to set rates for PSNH or the authority to decide whether the Seabrook Station may be operated at low power. See Id. at 15; id., Attachment 2. In view of these circumstances, the documents proffered by the Attorney General do not cure the deficiency in his petition for waiver of the Commission's financial qualification rules: a failure to show that Applicants lack the funds necessary to operate the Seabrook Station safely at low power. The Attorney General's petition for waiver must be denied.

CONCLUSION

The Attorney General's motions for leave to supplement his petition for waiver of the Commission's financial qualification rules should be granted but the petition for waiver should be denied.

Respectfully submitted,

  
Gregory Alan Berry  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 27th day of September 1988

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON'S MOTION FOR LEAVE TO FILE THIRD AND FOURTH SUPPLEMENTS TO PETITION FOR WAIVER OF FINANCIAL QUALIFICATION RULES" 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 27th day of September 1988.

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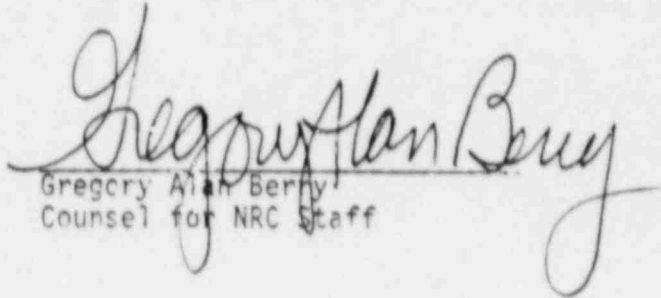
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