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September 30, 1988

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UNITED STATES OF AMERICA

before the

NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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)

**APPLICANTS' RESPONSE TO MOTION OF
MASSACHUSETTS ATTORNEY GENERAL,
JAMES M. SHANNON FOR LEAVE TO FILE
A DOCUMENT NOT AUTHORIZED BY
THE COMMISSION'S RULES OF PRACTICE**

Under date of September 15, 1988, the Attorney General of The Commonwealth of Massachusetts ("Mass. AG") has filed a Motion . . . For Leave to File a Document not Authorized by the Rules of Practice ("The Motion"). The document sought to be filed is entitled: Fourth Supplement to 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 Qualifications. To this document are attached several documents ("The Attached Documents"). In reply to this motion the Applicants say as follows:

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PDR ADOCK 05000443
G PDR

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Applicants have no objection to the allowance of The Motion insofar as it seeks the admission into the record of The Attached Documents. The documents speak for themselves. Applicants do object to the speaking portion of the supplement which purports to evaluate and characterize The Attached Documents in the context of an argument in support of his Petition under 10 CFR § 2.758 now sub judice before the Commission.

Insofar as The Motion's argument seeks to influence the Commission in respect of a stay of the issuance of a license for low power operation, Applicants suggest that the filing has, in any event, been mooted by the recent order of the Commission issued on September 22, 1988.¹ Insofar as the filing seeks to support the request for a suspension of the Financial Qualification Rules in order to require a hearing before any operating authority is conferred, a matter now sub judice before the Commission, The Motion is indeed, as styled, not authorized by the Commission's Rules of Practice and should be rejected out of hand.²

¹Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-88-07, 28 NRC ____ (Sept. 22, 1988).

² This too should be the result in respect of the Mass. AG's continuing practice of seeking leave to, and making, filings (now the fourth) which are not authorized by the Commission's rules. This practice should be stopped.

In any event, The Attached Documents simply do not supply the still not made prima facie case because no shortfall in funds has in fact occurred; any assertion that a shortfall may occur in the future is based on speculation as to future events, an impermissible exercise;³ and there is absolutely no showing that even the speculated shortfall would somehow compromise safety. Indeed, the more credible speculation from The Attached Documents would be that there will be ample funds available to carry the MMWEC share of the project until such time as authority permitting commercial operation is conferred and revenues from operation begin to supply operating funds.

Respectfully submitted,



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Counsel for Applicants

³Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC ____, Slip Op. at 37-38 (July 5, 1988).

CERTIFICATE OF SERVICE

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MAIL SERVICE
BRANCH

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on September 30, 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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