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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Emmeth A. Luebke
Dr. Jerry Harbour

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 No.(s) 50-443/444-OL-1 On-site EP October 7, 1988

JOINT INTERVENORS REPLY TO RESPONSES
OF THE APPLICANTS AND THE NRC STAFF
TO ONSITE EXERCISE CONTENTION

INTRODUCTION

The Applicants (on September 28, 1988) and the NRC Staff (on October 7, 1988) have filed responses to the Joint Intervenors' onsite exercise contention filed on September 16, 1988. These responses differ in their respective analyses of the proper procedural treatment to be accorded the contention at issue although both the Applicants and the Staff urge this Board not to admit the Joint Intervenors' contention. This Reply will address those responses separately in the context of two questions: (1) Should this exercise contention be

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considered late-filed? and (2) If it is held to be late-filed, are the applicable criteria for admission met?

I. The Onsite Exercise Contention Is Not Late-Filed.

A. Position of the Staff

The Staff's analysis is set forth in the following passage:

> Contrary to the position of Joint Intervenors, the contention proffered by them is untimely. The proffered contention comes nearly eighteen months after the issuance of the Licensing Board's March 25, 1987 initial decision and almost two years after the record was closed in the onsite emergency planning phase of this case. In these circumstances, the proffered contention must be considered "nontimely" as that term is used in 10 C.F.R. §2.714(a)(1).

In short, the Staff reasons that because the record on the "onsite emergency planning phase" was closed before this onsite exercise contention was filed, it must be considered "nontimely" pursuant to §2.714(a)(1).[1/]

However, the premise of this argument -- that the record was closed two years ago on the "onsite emergency planning

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1/ As a consequence, the Staff believes that the five late-filed criteria should then be applied and in that context, the Staff argues that no good cause for not filing prior to September 16 (and after July 6, 1988) has been shown. Significantly, the contention is not viewed by the Staff as nontimely for purposes of §2.714(a) because of any filing delay between July 6 and September 16 but because, as discussed above, the record closed some two years earlier. Even had this exercise contention been filed on July 6, 1988, the Staff would have this Board consider it "nontimely" although, ostensibly, the Staff's analysis of whether good cause existed for the untimely filing would be different.

phase" of this case -- ignores several factors that critically affect the proper analysis of this exercise contention.

1. The exercise giving rise to this contention was held on June 27-29, 1983. This exercise is the relevant exercise for purposes of establishing onsite preparedness and, as the Staff acknowledges, it is:

> "material" to the determination whether there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Staff's Response at 2, n.1.

In other words, the June 1988 on-site exercise is a material factor considered by the NRC prior to the issuance of a low-power license.[2/] As a consequence, Joint Intervenors have a right to a hearing on this exercise.

> [O]nce a hearing on a licensing proceeding is begun it must encompass all material factors bearing on the licensing decision raised by the requester. UCS v. NRC, 735 F.2d 1437, 1443 (D.C. Cir. 1984)

2. The claim that the record closed two years ago on the "onsite emergency planning phase" of this case must be tempered by the undisputed fact that the Joint Intervenors have a right

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2/ Thus, if no contention had been filed, the Director of Nuclear Reactor Regulation would have made the requisite 50.47(d) finding as to onsite preparedness based on the results of this June 1988 onsite exercise as evaluated in the NRC inspection report attached to the Pollard Affidavit. Therefore, this onsite exercise is material to any issuance of a low-power license by the Director unless and until a subsequent onsite exercise occurs prior to low power operation.

to a hearing on the results of the June 1988 onsite exercise. In this regard, the Staff does not appear to believe that the Joint Intervenors must move to reopen a closed record in order to have this exercise contention admitted. After noting that the June 1988 onsite exercise is "material" to licensing, the Staff cites the UCS v. NRC case and states:

> For this reason, the Staff does not discuss herein whether the Joint Intervenors' alternative motion to reopen the record meets the standards set forth in 10 C.F.R. §2.734. (Staff's Response at 2,n.1).

But the result pushes the Staff into a fundamentally incoherent procedural position: the contention is nontimely because the onsite record is closed, but because the Joint Intervenors do have hearing rights as to the June 1988 onsite exercise, they need not meet the applicable standard for reopening the record. But if the record need not be reopened for this contention to be admitted (as the Joint Intervenors and the Staff agree), then it should not be considered closed for purposes of defining this contention as nontimely at the threshold. Either the record is not closed because the June 1988 exercise is material or it is closed and must be reopened.

3. The Staff's curious position has a simple explanation: the UCS case expressly holds that an intervenor's exercise hearing rights are unlawfully denied if it must successfully meet standards for reopening the record to have its exercise contentions admitted. In light of this clear holding, the Staff rather mechanically concludes that since the

June 1988 onsite exercise is material to the issuance of a low-power license, the Joint Intervenors should not be required to reopen the record. Yet without reflecting on the signif cance of this procedural fact, the Staff concludes that the proffered contention is nontimely because the onsite record closed two years ago and then proceeds to its self-appointed task of urging this Board to deny admission to this contention because Joint Intervnors have failed to meet the late-filed criteria.[3/] But the Staff has taken up an unenviable position between a rock and a hard place: the Staff would not require that the record be reopened but would require that the proffered contention meet the late-filed contention standard even though in the circumstances of this case both tests should rise or fall together.

a) The UCS case held unlawful an NRC requirement that intervenors who seek to litigate exercises which are material to licensing must first successfully move

> to reopen closed proceedings or institute new proceedings upon a request by an interested party alleging inadequate emergency preparedness.
> Id. at 1443.

The basis for this holding was the determination that the statutory hearing rights that attach to all material issues

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3/ As discussed in detail in the next section, the Staff's discussion of these criteria as applied in this case is unconvincing in any event.

involved in licensing are violated if intervenors' rights to a hearing are circumscribed by the Commission's discretion to hold a hearing or not. Thus, the UCS court noted that a §2.206 petition, like a motion to reopen a closed record, leaves it within the discretion of the NRC to hold a hearing or not. It is this inherent limitation on the right to a hearing on a material exercise that caused the UCS court to strike down the NRC's 1982 rulemaking uncoupling preparedness exercises from the licensing proceeding.

b) Yet, the Staff is urging this Board to subject the Joint Intervenors' proffered exercise contention to a very similar discretionary standard of admissibility which will have the effect of again eviscerating exercise hearing rights. The late-filed contention criteria, like the standards for reopening the record, raise the procedural barrier to entry and wrongfully restrict an intervenor's hearing rights. For example, under this standard a contention may be denied admission, inter alia, if it broadens the issues or delays the proceeding. 10 C.F.R. §2.714(a)(1)(v). In other words, a hearing on the June 1988 onsite exercise may be denied if contentions arising from it are considered by the Commission in its discretion as broadening the issues too far or delaying the proceeding too much. But this is precisely the basis on which the UCS court held that the statutory hearing rights that attach to exercises were being violated.

c) It must be remembered that in the Staff's view any contention filed with respect to the June 1988 onsite exercise is, as it were, automatically to be viewed as nontimely and subject to the discretionary late-filed contention criteria.[4/] This is the procedural consequence of viewing the record on the "onsite emergency phase" of the case as having closed over 2 years ago and yet acknowledging that the exercise of the onsite plan now relevant for the issuance of a low power license just occurred in June 1988. No matter what the Joint Intervenors would do, their contentions on this material exercise will always be "nontimely".

d) The Staff attempts to defend this extra procedural barrier and distinguish it from a requirement that the record be reopened[5/] as follows:

> [R]equiring that the instant late-filed contention satisfy the requirements of 10 C.F.R. §2.714(a)(1) does not violate Joint Intervenors' hearing rights under section 189a of the Atomic Energy Act because it has been held that the Commission may place, in the interest of efficient administrative

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4/ Again, note that the Staff views the proffered exercise contention as "nontimely" because it was filed 2 years after the record on the "onsite emergency phase" of the case was closed and not because it was filed on September 16 instead of July 6, 1988.

5/ As noted, the Staff does grasp the letter (if not the spirit) of the UCS case and appears to agree with the Joint Intervenors (and disagree with the Applicants) that requiring that exercise contentions meet the standard for reopening the record would violate statutory hearing rights.

> process, reasonable procedural requirements concerning the exercise of that right. Staff's Response at 2, n. 1.

Again, the Staff has ignored the clear teaching of the UCS case. The Staff has confused procedural requirements that legitimately channel litigation toward material licensing issues with procedural requirements that unfairly burden the exercise of intervenors' hearing rights by displacing them with the Commission's discretion to hold a hearing. The Commission has already placed "reasonable procedural requirements" on the exercise of intervenors' hearing rights in regard to emergency plan exercises. In addition to pleading the requisite specificity and basis, intervenors must allege that the exercise results indicate fundamental flaws in the state of emergency preparedness. As the Commission itself has stated:

> We disagree with the proposition that restriction of any emergency planning exercise hearings requested by Intervenors to "fundamental flaws" requires rulemaking or is otherwise inappropriate. In the preamble to the rule reivewed by the UCS court, and in our rule change responding to the court's decision, we emphasized the predictive nature of emergency planning findings.... The court also observed that there was nothing to prevent the Commission from excluding from exercise litigation any issue which was not material to licensing decisions.... Under our regulations and practice, Staff review of exercise results is consistent with the predictive nature of emergency planning, and is restricted to determining if the exercise revealed any deficiencies which preclude a finding of reasonable assurance that protective measures can and will be taken, i.e., fundamental flaws in the plan. Since only

> fundamental flaws are material licensing issues, the hearing may be restricted to those issues.

Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), 23 NRC 577, 581 (1986). The proffered contention meets those requirements as to basis, specificity and identification of fundamental flaws in the onsite plan.[6/] These are "reasonable procedural requirements". But to further require that exercise contentions neither broaden the issues nor delay the proceeding and meet additional requirements on the grounds that they are "nontimely" filed because the record closed as to this material issue almost 2 years before the relevant exercise even took place, is to unreasonably burden the exercise of statutory hearing rights. To this extent, it is just as unreasonable and violative of statutory hearing rights to require intervenors to successfully move to reopen the record as it is to require that in addition to basis, specificity and well-pleaded allegations of fundamental flaws in the relevant onsite plan, intervenors must show that, inter alia, their effort to secure a hearing on the onsite exercise results will not broaden the issues or delay the proceeding. Once the June 1988 onsite exercise is recognized as the exercise whose results are material to the issuance of a low power license, otherwise sufficiently well-pleaded contentions -- like the one at issue here -- simply must be admitted.

6/ This fact is uncontested by Applicants or the Staff.

4. Instead of its conclusory analysis that the proffered contention must be "nontimely", the Staff should have considered the following:

a) "Nontimely" pursuant to 10 C.F.R. §2.714(a)(1) is actually defined at §2.714(b): A petitioner shall file a list of contentions:

> [n]ot later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to §2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference....

b) If this onsite exercise contention is nontimely, then any offsite exercise contention concerning the NHRERP is also nontimely because the record has already closed on the adequacy of that plan. But, in fact, exercise contentions arising out of the June 27-29 Graded Exercise were not to be filed until September 21, 1988. The fact that this exercise contention runs to the onsite plan and a low power license while other exercise contentions run to the offsite plan and to full power license does not distinguish this contention in terms of when it would be timely filed. All these exercise contentions stem from the same exercise.

c) The Joint Intervenors filed this exercise contention in a reasonable time after receipt of the Staff's inspection report and after a review of the necessary technical exercise information that provided a context for that inspection report. A reasonable time in which to file this

contention must be understood against the requirements of a well-pleaded exercise contention, i.e., basis, specificity and a link between the exercise results and fundamental flaws in the plan. In addition, the amount of material[7/] generated by the exercise must be considered because this material was reviewed and culled to determine whether any additional support for the contention could be found there.[8/]

In summary, the Staff assumes without analysis that this exercise contention is late-filed because it was submitted 2 years after the onsite record closed. The procedural result suggested by the Staff runs afoul of the clear directive of the UCS case regarding emergency planning exercise hearing rights. Viewed in the absence of the Staff's assumptions about it being 2 years late, this contention should be considered timely filed.

B. Position Of The Applicants

The Applicants simply do not address at all the UCS case and the Joint Intervenors' rights to a hearing on an emergency plan exercise material to licensing. Instead, the

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7/ Eight volumes of player generated material were received by the Mass AG during the week of August 15, 1988. In addition, draft and final FEMA reports were reviewed.

8/ Obviously, increasing the procedural requirements for well-pleaded exercise contentions to include "providing bases for the contentions which, if shown to be true, would demonstrate a fundamental flaw in the plan," id. at 581, also increases the time a careful intervenor needs to draft well-pleaded contentions.

Applicants appear content to challenge the jurisdiction of this Board at this juncture to entertain this contention and, ironically in light of the outcome of the UCS case, they repeat the Commission's argument made to the UCS court that if the Joint Intervenors have an issue arising out of the June 1988 exercise they should avail themselves of a §2.206 petition to the Director of Nuclear Reactor Regulation. Applicants' Response at 4-5. In light of the above discussion, it is clear that the Applicants are giving the wrong answer to the wrong question. The Joint Intervenors' rights to a hearing on the June 1988 onsite exercise results do not simply disappear because of the fact that prior to June 1988 (and based on prior now-superceded onsite exercises) this Board issued a PID authorizing low power operation. Any low power operation authorized at this point would be based on the results of the June 1988 onsite exercise. In the absence of an admitted contention raising this issue and thereby shifting jurisdiction to this Board, the Director would base his determination pursuant to §50.57(c) on this exercise. This proffered contention seeks to cause this Board for the first time to take jurisdiction over the issue of onsite preparedness as disclosed by the June 1988 exercise. Thus, the Applicants are simply dead wrong in asserting:

> [S]ince this Board would have had jurisdiction to entertain the issue in the past, and since it was not raised, the Director of Nuclear Reactor Regulation's findings as to all issues not raised before

> the Licensing Board encompassed in the outstanding operating license constitutes the finding upon this issue by the Commission. Applicants' Response at 5, n.9 (emphasis supplied).

The Applicants' claim that the issue of the June 1988 onsite exercise results could have been raised "in the past" reveals no little befuddlement on their part. Although not stated, the Applicants implicitly must be rejecting the predicate of this contention (a predicate accepted by the Staff) -- that the June 1988 onsite exercise is the relevant one now for issuing a low power license. If this is understood, there is nothing to Applicants' unsupportable remark that this Board could have entertained this contention "in the past and since it was not raised" this Board can not reach it now.[9/]

9/ These remarks should not be understood as making light of the real jurisdictional issue regarding low power authorization at this juncture in the proceeding. Real confusion does surround the question of what form an authorization to the Director pursuant to §50.57(c) to issue a low-power license would take and from what source it would issue. It is not clear whether the March 1987 Order of this Board simply would be permitted to take effect or whether another authorization from another adjudicatory level would have to issue. This jurisdictional confusion led the Joint Intervenors to file this exercise contention with both the Appeal Board and the Commission, asking the latter to instruct this Board to consider the pleading in the first instance. (Even the Applicants captioned their response as if it were to the Commission.) None of this has any logical relationship to the Joint Intervenors' rights to a hearing on the June 1988 onsite exercise, but if this Board is of the view that it has lost jurisdiction over the issuance of a low power license and for that reason could not admit this exercise contention as a matter of jurisdiction, the Joint Intervenors respectfully request that this threshold issue be referred to the Appeal Board so that the substantive issue of the Joint Intervenors' onsite exercise hearing rights be expeditiously reached.

II. Even If Viewed As Late-Filed, This Contention Meets All Applicable Standards.

A. Position of the Staff

As noted, the Staff does not address the standards for reopening the record, believing that the Joint Intervenors need not meet that test.[10/] Instead, the Staff reviews the contention against the late-filed contention criteria.

1. The Staff faults the Joint Intervenors for a six week delay (from July 15, 1988 when the Inspection Report was received to September 16, 1988) in filing this contention. However, as the Joint Intervenors indicated, the exercise scenario documentation was not received until the week of August 15, 1988. The Staff rejects this as follows:

> Since Joint Intervenors' late-filed contention is based on the "weakness" in the emergency planning exercise identified by the Staff in Inspection Report 88-09, it is apparent that information sufficient to enable them to formulate the basis for their contention was publicly available as early as July 6, 1988, the date the report was issued. (Staff's response at 5)

The Staff ignores the following:

10/ As a consequence, the representations by the Joint Intervenors that the matters at issue raise significant safety and environmental issues go uncontradicted by the Staff. Importantly, the Staff does not address at all the Applicants' claims that there is no significant safety issue because the information set forth in the Staff Inspection Report is not accurate. See infra.

a) Without the factual context supplied by the material contained in the 8-volume 1988 FEMA/NRC Graded Exercise, the Inspection Report would make little sense.

b) A well-pleaded exercise contention had to meet the basis, specificity and fundamental flaw requirements. Thus, the fact that the Inspection Report mentioned some "weaknesses" in the exercise is not sufficient for purposes of pleading an admissible exercise contention. Those "weaknesses" must be linked to exercise objectives so that the performance could be alleged to reveal, for example as here, a fundamental flaw in the training of the relevant staff. Simply asserting that the Stafff noted weaknesses is not sufficient. The Joint Intervenors did not learn of the exercise objectives until receipt of the 8-volume exercise material. These objectives are not stated in the Inspection Report. Thus, the Staff is wrong when it asserts that sufficient information was available for the purpose of formulating an adequate basis to an exercise contention before the exercise material was reviewed.

c) Further, the Staff rejects any Joint Intervenor reliance on the offsite Board's September 21 exercise contention deadline. As discussed in more detail above, Joint Intervenors believe they have a right to a hearing on the June 1988 exercise. As such, they did not (and do not) believe that every onsite exercise contention would be considered automatically untimely filed. In fact, Joint Intervenors believed (and believe) that the offsite Board on August 19,

1988 set a deadline of September 21, 1988 for submission of exercise contentions. In the absence of any indication that every onsite exercise contention would automatically be treated as untimely, it was not unreasonable to rely on the September 21 deadline.

2. The Staff also faults the Joint Intervenors for failing to set out how they will contribute to a sound record. Specifically, the Joint Intervenors have allegedly failed to identify witnesses or summarize their proposed testimony. Staff Response at 6-7. The Joint Intervenors allegedly have provided only "generalities" concerning the issues they would pursue and the evidence they would proffer. Id. These statements by the Staff are only intelligible if the Staff is purposefully ignoring the Pollard Affidavit which was incorporated into the contention.[11/] The lengthy passage quoted on page 7 of the Staff's response is a summary of the very testimony actually submitted in the Pollard Affidavit. Instead of repeating in the body of the motion all the statements made by the affiant (who is obviously an expert witness) concerning the issues and evidence now

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11/ Perhaps the Staff has concluded that because it did not address the motion to reopen, it need not read those portions of the Joint Intervenors' unified filing running to the standards for such reopening.

available, the Joint Intervenors believed, apparently incorrectly, that the actual contention itself would be read in assessing whether they will contribute to a sound record.

B. Position of the Applicants

1. The Late-filed Criteria

The Applicants, like the Staff, discount the importance of the exercise material received in mid-August. Again, the basis of this contention is not the simple iteration of those observations identified in the Inspection Report as "exercise weaknesses". Had the Joint Intervenors filed such a contention, it would have been attacked as lacking basis and specificity and failing to allege a fundamental flaw in the onsite plan.[12/] As any fair reading of the contention and the Pollard Affidavit makes clear, the "weaknesses" are interpreted in the light of what the exercise scenario actually was and what objectives for the onsite staff were being evaluated. Without knowing what was being tested, it would have been impossible to allege that fundamental flaws were disclosed by these weaknesses.

12/ For all their prattle about the Joint Intervenors' purported addiction to weaving contentions out of whole cloth, neither the Applicants nor the Staff even argue that the exercise contention at issue lacks basis, specificity or fails to identify exercise results indicating fundamental flaws in the onsite plan. Confronting an adequately drafted exercise contention, the Applicants can only complain that it should have been drafted before it would have been adequate so it could be rejected on that basis.

Similarly, the Staff's myopia with regard to the identity of the Intervenors' expert witness, their issues, and their evidence may well have been prompted by the Applicants' self-imposed blindness. Obviously, the contention itself which incorporates the Pollard Affidavit was intended to satisfy this requirement and was only briefly summarized in the body of the motion.

Finally, the Applicants gratuitously assert that the filing was solely to delay issuance of low power testing. No doubt the Applicants' reasoned their way to this conclusion in light of the unremarkable fact that this contention was filed prior to low power licensing. Apparently, if the Joint Intervenors did not wish to be "susceptible [to] a cynical reading" (Applicants' Response at 9), they should have filed this contention raising significant safety issues for the public (in this case not contradicted by the Staff) after the issuance of a low power license.

2. Reopening the Record

The Applicants focus their attention almost exclusively on the showing required to reopen the record that the motion address "significant safety or enviornmental issues." 10 CFR §2.734 (a)(2). However, the Applicants lead with the wrong punch and invite this Board to make an improper threshold determination of very disputed fact.

First, the Applicants blur the clear line separating permissible from impermissible determinations of fact necessary

for a Board to make the significant safety issue finding. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-3, 25 NRC 71, 75n.5, 77 (February 6, 1987); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-865, 25 NRC 430, 442 (May 8, 1987) (even if alleged facts are assumed to be true, other facts not in dispute may be considered at the threshold in determining whether the contention presents significant safety issue). In this case, the Joint Intervenors allege that the inappropriate actions taken by the onsite emergency staff as observed and recorded by the NRC Staff indicate that the training of that onsite staff in emergency response capabilities essential to public safety is inadequate. If the Applicants wish to contest this well-pleaded allegation on the grounds that no significant safety issue is nonetheless presented by it, they could argue: (1) that even if the onsite staff is inadequately trained, no safety issue is presented because, ex hypothesi, plant design does not require a trained staff; or (2) that even if the onsite staff is inadequately trained in the specific alleged particulars, it is still able to perform those emergency actions necessary to ensure public safety. These two alternative approaches would have been permissible factual responses to the proffered contention.

Instead, the Applicants have launched a direct assault on the very facts alleged in the exercise contention. The

Applicants' response to the allegations that the onsite staff made significant mistakes during the exercise is a straightforward denial.[13/]

> All of the matters upon which the Intervenors base their Motion have been shown by the affidavits filed herewith to, in fact, be matters which were properly addressed during the exercise and not to have any safety significance. Applicants' Response at 14. (emphasis supplied).

In particular, the Applicants respond as follows:

1) The continuation of efforts to repair the irrelevant Emergency Feedwater pump was not a display of questionable engineering judgment and a sign that the onsite staff did not demonstrate an ability to develop potential solutions. Instead, the Applicants assert that the onsite staff acted appropriately in the circumstances.

2) The failure to blowdown the Steam Generators was not an error at all as "subsequent analysis" has shown, Applicants' Response at 14, and the NRC Inspector's "conclusion reached from [his] observations is not correct." Sessler Affidavit at ¶ 21.

3) The "questionable fix" to the Containment Building Spray System observed by the NRC Inspector was

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13/ Again, it should be noted that the examples cited in the exercise contention were observed by the NRC Staff. Although the Staff had received the Applicants' September 28 materials asserting that the Inspection Report is simply wrong before its October 3 response, the Staff did not contradict the factual allegations set forth in the proffered contention.

"technically sound" and not "questionable" at all. Applicants' Response at 13.

4) Contrary to the representatives of the NRC Inspector a concerted effort was made to locate and isolate the release path. Applicants' Response at 13.

5) Contrary to the observations of the NRC Inspector, the TSC staff did recognize, discuss and question the lack of correlation between the release condition and core cooling indications. Applicants' Response at 12; MacDonald Affidavit at ¶ 5.

This cursory review indicates that the Applicants would have this Board reach the merits on critical and disputed facts (disputed by the Staff, the Applicants and the Joint Intervenors) in order to find no significant safety issue. Such a resolution is simply not permitted.[14/]

14/ Of course, these affidavits are written by some of the very individuals whose alleged failures during the onsite exercise form the predicate for the contention. Moreover, page 6 of the Inspection Report states under the heading "Exit Meeting and NRC Critique":

> there were areas identified for corrective action. . . . Licensee management acknowledged the findings and indicated that appropriate action would be taken regarding the identified open items.

Apparently, appropriate action includes post facto rejection of the findings already acknowledged. Again, the Staff did not contradict the allegations set forth in this contention even though it was aware that Applicants had frontally challenged these allegations in its response.

CONCLUSION

For all the reasons set forth above, this Board should admit the Joint Intervenors on-site Exercise Contention for adjudication. The Joint Intervenors also request oral argument on this matter.

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION

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In the Matter of	'88 OCT 11 P5:02
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2)	Docket No.(s) 50-443/444-OL-1 (On-site EP)

CERTIFICATE OF SERVICE

I, John Traficonte, hereby certify that on October 7, 1988, I made service of the within JOINT INTERVENORS MOTION FOR LEAVE TO FILE REPLY TO THE RESPONSES OF THE APPLICANTS AND STAFF TO THE ONSITE EXERCISE CONTENTION and JOINT INTERVENORS REPLY TO RESPONSES OF THE APPLICANTS AND THE NRC STAFF TO ONSITE EXERCISE CONTENTION, by first class mail, or by Federal Express as indicated by [*], or by hand delivery as indicated by [**].

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