UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 2 1987

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MEMORANDUM FOR: Richard W. Krimm
Assistant Associate Director
Office of Natural and Technological Hazards
Federal Emergency Management Agency

FROM: Frank J. Congel, Director
Division of Radiation Protection
and Emergency Preparedness
Office of Nuclear Reactor Regulation

SUBJECT: FEMA SUPPORT FOR NRC LICENSING OF SEABROOK NUCLEAR STATION

This memorandum supplements our request of November 27, 1987, in which the NRC asked FEMA to review the Seabrook Plan for Massachusetts Communities (SPMC).

In reviewing and evaluating utility offsite plans and preparedness, FEMA should assume that in an actual radiological emergency, State and local officials that have declined to participate in emergency planning will:

(1) Exercise their best efforts to protect the health and safety of the public;

(2) Cooperate with the utility and follow the utility offsite plan; and

(3) Have the resources sufficient to implement those portions of the utility offsite plan where State and local response is necessary.

The above assumptions were the subject of correspondence between NRC and FEMA on October 21, October 28, and November 9, 1987, and are incorporated in Supplement 1 to NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (Criteria for Utility Offsite Planning and Preparedness)", November 1987.

As you know, on September 18, 1987, Public Service of New Hampshire (licensee) submitted the SPMC to satisfy the standards established by the Commission in CLI-87-02 and CLI-87-03. Certain information was deleted from the SPMC by the licensee (e.g., names of individuals and companies under letters of agreement and names and telephone numbers of emergency response personnel) to ensure that there would be no unwarranted invasion of privacy. On September 21, 1987, the licensee filed a motion with the Commission to lift the stay of the low power

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license for Seabrook, Unit 1. In its November 25, 1987 Memorandum and Order lifting that stay, the Commission determined that, as a condition of low power operation, the licensee must provide to the staff and FEMA any of the deleted information in the SPMC that the staff and FEMA deem necessary for the detailed full power review. Accordingly, please let us know as soon as practicable those portions of the plan that are currently deleted that FEMA requires to complete its detailed review. A copy of the Commission Order is attached.

Frank J. Congel, Director
Division of Radiation Protection
and Emergency Preparedness
Office of Nuclear Reactor Regulation

Enclosure:
Commission Memorandum and
Order dtd. 11/25/87

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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SERVED NOV 25 1987

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)

MEMORANDUM AND ORDER
(LIFTING THE ORDER STAYING THE
DIRECTOR OF NUCLEAR REACTOR REGULATION
FROM AUTHORIZING LOW POWER OPERATIONS
DUE TO THE LACK OF AN EMERGENCY PLAN FOR MASSACHUSETTS)

By this memorandum and order the Commission grants Applicants' September 21, 1987 motion to vacate the stay entered in the Commission's order of January 9, 1987 [unpublished]. The January 9 order barred the Director of Nuclear Reactor Regulation from issuing a low power license for Seabrook in the event issuance of such a license was otherwise authorized so that the Commission might consider whether as a matter of law or policy low power operations should proceed absent the submitta

of an emergency plan for that portion of the plume exposure emergency planning zone that lies with the Commonwealth of Massachusetts.[1]

This order lifting the stay does not itself authorize a low power license for Seabrook, as we explain more fully below. Also, consistent with its instant decision, the Commission denies the remaining pending portion of the Request of Attorney General James M. Shannon, Seacoast Anti-Pollution League (SAPL), New England Coalition on Nuclear Pollution and Town of Hampton for Briefing Schedule and Hearing on Applicants' Utility Plan, dated September 21, 1987, in which the named parties sought among other things an evidentiary hearing on the sufficiency of the Applicants' utility plan before low power operations would be authorized for the Seabrook facility. Finally, the Commission dismisses as unripe all other motions seeking to stay low power operations that are pending before it; these motions may be refiled should a low power license be authorized in the future.

Background

Both matters that we here address--the motion to vacate the stay and the request for an evidentiary hearing on summary review--arose from the Applicants' submittal, under cover of a letter dated September 18, 1987, of its utility emergency plan for Massachusetts. Such a plan for

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[1]By subsequent orders the stay was continued in force until the Applicant shall have submitted a bona fide utility plan. See, this docket, CLI-87-02, 25 NRC 267 (1987) and CLI-87-03, 25 NRC ___ (June 11, 1987).

Seabrook had been required by the Commission as a matter of regulatory policy on April 9, 1987. CLI-87-02, 25 NRC at 270. In setting this requirement the Commission did not open the door to an evidentiary pre-hearing on emergency planning issues, but stated that on summary review the plan need demonstrate only that adequate emergency planning was not foreclosed, i.e., that it was "in the realm of the possible." On June 1¼, 1987, rejecting an earlier submittal by the Applicants, the Commission elaborated in CLI-87-03 on the standards for such a plan. The Commission emphasized that the plan must be a utility plan including measures to compensate for the absence of state and local governmental planning and that it necessarily must be a good faith submittal.

Evidentiary Hearing Denied

As should have been clear from the Commission's order in CLI-87-02, all that the Commission intended need occur with respect to a utility plan submittal before low power operations at Seabrook was summary review. The Commission's policy decision to require submittal of a bona fide plan before low operations was not intended to effect an exception to the Commission's rules which provide that a full evidentiary hearing on the offsite emergency plan is available before full power operations, but is not required before low power. 10 C.F.R. 50.47. Accordingly, the motion for a hearing is denied.[2]

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[2]Also denied are the various repetitions of this request incorporated by the parties into other legal papers.

Vacation of Stay

On review of the positions of the parties[3] on both the sufficiency of the submittal and the motion to vacate the stay and on its own review of the Applicants' utility plan, the Commission accepts and agrees in essential respects with the analysis of the NRC staff which supports the motion to vacate the stay. The staff's analysis closely followed the Commission's guidance in CLI-87-03 and based on the recitations in its affidavit describing its summary review concludes that the Applicants' utility plan appears to constitute a bona fide utility plan for those portions of the emergency planning zone which are located in the Commonwealth of Massachusetts. See NRC Staff's Response to Applicants' Motion for Vacation of Stay, Oct. 20, 1987.

As the staff stated, the utility plan addresses the sixteen planning standards by which emergency plans are judged (see 10 CFR 50.47(b) and NUREG-0654); has compensating measures for the lack of state and local government participation, has been submitted to FEMA and the NRC for review; and appears to be intended for implementation. Staff's Response at 7-11.

Our summary review of the utility plan and the record before us, convinces us that adequate emergency planning for the Massachusetts portion of the emergency planning zone is "in the realm of the possible" or, stated conversely, we are satisfied that the Massachusetts emergency

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[3]The Commission grants the motion to permit late filing by the Town of Newbury and SAPL which were unopposed.

planning issues are not "categorically unresolvable." CLI-87-02 at 6. In CLI-87-02 the Commission, after analyzing its prior decision in Shoreham, CLI-83-17, 17 NRC 1032 (1983), and the decision in Cuomo v. NRC, 772 F.2d 972 (D.C. Cir. 1983) dismissed as moot (March 12, 1987), contrasted the situation where emergency planning issues are "categorically unresolvable" with more typical situations where there are litigation and political disputes about emergency planning whose outcome is speculative. As we said in the decision,

> [T]he disputes which fueled the controversy in Shoreham were, by their nature, litigation and political disputes. And, as noted by the U.S. Court of Appeals for the District of Columbia Circuit, we observed in regard to Shoreham, "the outcome of litigation and political conflicts frequently surrounding the grant of a final license is particularly speculative." Cuomo v. NRC, 772 F.2d 972, 976 (D.C. Cir. 1985). The emergency planning uncertainty at Shoreham could have changed favorably or adversely at any time as viewpoints changed or as accommodations were reached. This is characteristic of many matters in litigation, and the Commission properly declined to regard the existence of such litigation as a factor precluding issuance of a low-power license.

We find here that the disputes about the adequacy of the Seabrook utility plan are, as was the case with Shoreham, litigation and political disputes. While the outcome of those disputes is uncertain, we cannot conclude on the basis of the papers now before us that they are categorically unresolvable. We necessarily find, therefore, that adequate emergency planning for the Massachusetts portion of the emergency planning zone is within the realm of the possible. Because the policy concerns which caused us to impose our stay have now been satisfied, that stay is hereby vacated.

The various intervenors in this proceeding have raised a number of issues in their responses which we do not here address in detail. Those issues may turn out to be legitimate questions for the full power hearings on the emergency plans, and as such they will be addressed in the first instance by the Atomic Safety and Licensing Board. Suffice it for now for us to find that the issues raised reach a level of detailed review that goes beyond the inquiry that we intended as a condition for lifting the stay of low power operation.

This is not to say that the Commission is unconcerned about the extent of the deletions of information from the plan. While the Commission can well understand why the Applicants might wish to withhold individuals' names and phone numbers given the emotionally charged atmosphere that surrounds this particular plant, that concern must eventually give way to the needs of the staff and FEMA to review the emergency plans. However, the Commission does not believe that it needs to have that information in its possession to satisfy itself that the utility plan satisfies the policy concerns which we set out in CLI-87-03. Those concerns have been satisfied for the reasons set forth in this order. We find that the plan is bona fide and in the realm of the possible. That decision does not require us to evaluate every detail of the proposed plan. Such an evaluation will be made in the full-power proceedings. Nevertheless, as a condition of low power operation, the licensee must provide to the staff and FEMA any of the deleted information that the staff and FEMA deem necessary for the detailed full power review of the emergency plan. Until such information is provided no low power license shall issue. Also prior to

low power applicants should clearly state for the record their willingness to provide the detailed information to the other parties to the proceeding, if necessary under appropriate protective orders from the Licensing Board. The Commission is confident that the Licensing Board can fashion appropriate orders and procedures to allow full litigation of contested issues without unnecessarily violating personal privacy.

Posture of the Proceeding

As the parties are aware, the Appeal Board's October 1, 1987 decision on review of the Licensing Board's March 25, 1987 partial initial decision authorizing low power operations[4] may have disturbed the legal footing of authorization for low power operations. As directed by the Appeal Board[5] the Licensing Board shall expeditiously determine whether considering the issues that it is hearing on remand, it is appropriate to renew at this time its authorization of low power or whether low power operations must await further decisions. The Appeal Board shall also consider whether any matter of which it has jurisdiction should be resolved before low power.[6] The Commission

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[4]See ALAB-875, 25 NRC ____ (October 1, 1987) affirming in part and remanding in part LBP-87-10, 25 NRC 177.

[5]See ALAB-875, slip op. at 48-50.

[6]The Commission here notes that it appears that certain issues relating to Newburyport sirens and the environmental qualification of coaxial cable may be before the Appeal Board.

ratifies the Appeal Board's order that any decision by the Licensing Board prior to completion of the remand, if it authorizes low power, shall not become effective for a period of ten days following the date of its service to enable any dissatisfied party to seek agency appellate relief.

Consonant with the foregoing discussion, the Commission lifts its stay of low power operations. The conditions regarding the providing of emergency planning information to FEMA, NRC staff, and the parties must be satisfied before any low power license can be authorized. Moreover, because no order currently in force authorizes low power operations at Seabrook and because the voluminous motions and related papers before us are in some respects outdated, the motions and supplemental motions seeking a Commission stay of such operations are dismissed. Should low power be authorized in the future, opposing parties are free to file updated stay motions.

We wish to emphasize that our decision today is dictated by the fact that the applicant has made a good faith submittal of a utility emergency plan. Our decision in no way results from or depends on the recently published revision of the Commission's emergency planning regulations. 52 Fed. Reg. 42078 (November 3, 1987; effective date

December 3, 1987). Our decision would be the same whether the old or the new supplemental emergency planning rules applied.

Commissioner Rogers disapproved in part, his additional views are attached.

It is so ORDERED.

For the Commission

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 25th day of November, 1987.

Additional Views of Commissioner Rogers

The majority has indicated that it requires the submission of information deleted in the utility plan to the staff and FEMA, and under protective order to the other parties prior to the issuance of any low power license.

I am of the opinion that the information withheld from the plan should be furnished to the Commission prior to the lifting of the stay, so that we can assure ourselves that the utility plan does indeed satisfy the policy concerns set out in CLI-87-03.