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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

before the  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

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OFFICE OF SECRETARY  
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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

On-site Emergency Planning  
and Safety Issues

Dated: July 2, 1986

ANSWER OF ATTORNEY GENERAL FRANCIS X. BELLOTTI TO  
APPLICANTS' MOTION FOR ISSUANCE OF OPERATING  
LICENSE FOR OPERATION NOT IN EXCESS OF 5% RATED POWER

Attorney General Francis X. Bellotti hereby objects to the  
Applicants' Motion for Issuance of Operating License for  
Operation Not in Excess of 5% Rated Power, and as basis  
therefor asserts the following:

(1) No hearing has yet been held on off-site emergency  
preparedness issues. Issuance of an operating license,  
authorizing operation at up to 5% of rated power prior to such  
hearing violates the statutory hearing provision of Section  
189A of the Atomic Energy Act. See Petition of Attorney  
General Francis X. Bellotti to Revoke Regulation 50.47(d) or in  
the Alternative to Suspend its Application in the Seabrook  
Licensing Proceeding, dated July 2, 1986 [hereinafter Petition  
of Attorney General Bellotti] at ¶¶ (1)-(5).

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(2) The issuance of a low-power operating license prior to a full hearing on all issues material to licensure violates the Atomic Energy Act's statutory scheme which used to authorize such licenses prior to a full hearing, but no longer does. See 42 U.S.C. § 2242 (1982) (expired December 31, 1983). See Petition of Attorney General Bellotti at ¶ 5.

(3) Attorney General Bellotti maintains that a number of contentions filed in this proceeding (raising issues material to licensure) were wrongly rejected or wrongly decided by summary disposition (e.g., Seacoast Anti-Pollution League [SAPL] Supplemental Contention 3; New England Coalition Against Nuclear Power Contentions III.12 and 13); that there remain as to these contentions genuine issues of material fact on which no evidentiary hearing has been held;<sup>1/</sup> and therefore that any issuance of an operating license prior to a full evidentiary hearing on such issues would violate the statutory right to a hearing provided by Section 189A of the Atomic Energy Act. 42 U.S.C. § 2239(a) (1982).

(4) Application of Regulation 50.47(d) should be waived in the instant proceeding. Given the likelihood that the Seabrook power plant may never receive a license to operate at full power due to the status of emergency planning in Massachusetts and the significant fundamental deficiencies of the New

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<sup>1/</sup> The parties do not have a right to appeal the dismissal of these contentions until a Partial Initial Decision is issued. See 10 C.F.R. § 2.762 and § 2.730(f).

Hampshire emergency plans (such as the lack of any sheltering facilities for the large summer beach population), it would be highly imprudent to issue the Seabrook plant a license to operate at low power, with its attendant significant and irreversible adverse consequences, at least until there is some reasonable basis for assuming that the § 50.47 emergency planning standards will ever be met for this plant. See Petition of Attorney General Bellotti at ¶¶ 6-17 and accompanying affidavits.

(5) No license to operate at low power should be issued in this case, where full power authorization is not likely to be granted for at least a year or longer, until an analysis is performed of the consequences of long-term operation at 5% power. See Petition of Attorney General Bellotti at ¶¶ 18-21 and accompanying affidavits.

(6) No license to operate should be issued until there is conducted a full investigation and assessment of the accident at Chernobyl, its causes and the implications of such accident for off-site planning. See Petition of Attorney General Bellotti at ¶ 22; and ¶ 8 infra.

(7) The Applicants have not complied with the provision of 10 C.F.R. § 50.33(g) requiring the submission of "radiological response plans of state and local governmental entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ), as well as the plans of state governments wholly or partially within the

ingestion pathway EPZ." There are six local governments in Massachusetts within the plume exposure EPZ for Seabrook Station and a large portion of the state of Massachusetts lies within the ingestion pathway EPZ, yet no emergency response plans of these Massachusetts state or local governments have been submitted. Regulation 50.47(d) provides only that no "NRC or FEMA review, findings or determination" concerning the adequacy of state and local off-site emergency plans are required prior to issuance of a license authorizing fuel loading and/or low power operation; it does not obviate the requirement that plans of the state and local governments be submitted prior to issuance of a low power license. Indeed, since the § 50.33(g) requirement of plan submission is a requirement for the license application, no license authorizing any level of operation may be issued until such requirement is met. Thus, even when Congress did authorize the issuance of temporary low power operating licenses prior to the completion of a full hearing, the petition for such license could only be filed after the filing of "a state, local or emergency preparedness plan for the facility." See 42 U.S.C. § 2242 (1982); 10 C.F.R. § 50.57(d)(iv) (expired December 31, 1983). Until the emergency response plans of all the state and local governments within the Seabrook EPZ are at least submitted, there can be absolutely no basis for presuming that the applicable regulatory emergency planning standards of 10 C.F.R.

§§ 50.47(a) and (b) can ever be met, and therefore that a license to operate at full power could ever issue. It would thus be, not only highly imprudent (because of the irreversible adverse consequences of low-power operation), but a clear violation of Regulation 50.33(g) to allow issuance of a license for low-power operation before the submission of all the Massachusetts state and local governments' emergency response plans.

(8) There are significant new circumstances and information relevant to environmental concerns and bearing on the operation of the Seabrook plant at full and low power and the effects of such operation. Therefore, pursuant to 10 C.F.R. § 51.72, it is necessary to file a supplement to the Final Environmental Statement for Seabrook Station [FES] filed in December, 1982. The significant new circumstances and information requiring supplementation of the FES are: (a) the recent accident at Chernobyl; and (b) the strong likelihood that the Seabrook power plant will either never become licensed to operate at full power (due to the current non-participation in emergency planning of the Massachusetts local and state governments) or if it does become licensed the fact that such licensure will be conditioned either on the plant's not operating during summer months or on the building of massive shelters along the beaches in the EPZ. See Affidavit of Secretary of Public Safety Charles J. Barry [attached hereto].

The recent accident at Chernobyl provides significant new information (by way of verifiable factual data, rather than the disputed hypotheses previously set forth) on the impact of serious radiological accidents and the probabilities of such accidents occurring. Information such as the types of elements released in the accident, the fact that an area 18 miles in radius has been evacuated from around the Chernobyl plant, the long distance over which the radiation was dispersed, the fact that the accident occurred while the plant was operating at only 6% or 7% of rated power, and the collapse of the plant's containment structure must be considered and weighed in a supplement to the Seabrook FES before any operation of the plant can be allowed. Such supplementation is especially appropriate in this case where, as asserted in SAPL's supplemental contention 3 (dismissed by summary disposition on May 11, 1983)<sup>2/</sup> inadequate consideration was given to the consequences of serious accidents and inaccurate "uncertainty bounds" and incorrect assumptions were employed in the accident analysis contained the FES.

A supplement to the FES must also be filed based on the fact that the Governor of Massachusetts has stated that even if he should decide to submit emergency response plans for

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<sup>2/</sup> Attorney General Bellotti intends to join SAPL in its appeal of the Licensing Board's summary disposition of this contention.

Massachusetts (a decision which he has not yet made) he will submit such plans only on condition that the Applicants agree to shut down the plant in summer months or build adequate shelters along the beaches (in Massachusetts and New Hampshire) to protect the large summer beach population. See Affidavit of Secretary Barry. Thus a supplement to the FES must be filed which will: (a) reassess the benefits of the plant's operation and need for such power in light of the fact that it will be shut down in summer months, the period of peak energy demand; and (b) weigh the benefits of plant operation against the impact to the environment of building adequate shelters in a coastal wetland area. The supplement must also consider the third alternative, that the Governor will submit no emergency response plans for Massachusetts, thereby creating a very strong likelihood that this plant will never be licensed to operate at full-power. All three of these alternatives must be considered in a supplement to the FES before this plant can be allowed to operate at low-power. The likelihood that the plant will never operate at full-power necessitates that any benefits of 5% power operation be weighed against the irreversible adverse consequences of operation at low-power -- e.g., plant irradiation; fuel irradiation; worker exposure; and the release of radiation to the environment -- as well as the costs of decommissioning and waste disposal, and the effect that irradiation of the plant will have on conversion of the plant



to other power sources. See e.g., Affidavit of Albert Carnesale. See also Affidavit of Dale G. Bridenbaugh and Gregory C. Minor [attached], filed in the Shoreham licensing proceeding but relevant hereto.

(9) Attorney General Bellotti further objects to the issuance of a low-power license at this stage, because all of the pertinent emergency planning standards of § 50.47(b) and Appendix E have not yet been met. In particular, the notification provision of § 50.47(b)(5) has not been met because the design number of notification sirens are not in place in the Towns of Merrimac, Rye and South Hampton; and there are neither procedures nor adequate communications equipment in place for notification by the licensee of the Massachusetts local response organizations.

(10) Attorney General Bellotti further objects to the draft low-power license proposed by the NRC addressed to the Applicants by letter dated June 20, 1986. Specifically the Attorney General objects to ¶ C(6) of the draft license, entitled "Emergency Preparedness", which provides:

In the event that the NRC finds that the lack of progress in completion of the procedures in the Federal Emergency Agency's Final rule, 44 C.F.R. Part 350, is an indication that a major substantive problem exists in achieving or maintaining an adequate state of emergency preparedness, the provisions of 10 C.F.R. Section 50.54(s)(2) will apply.

The provisions of Regulation 50.54(s)(2) apply only to operating reactors licensed prior to April 1, 1983, the



effective date of the Commission's emergency planning regulations. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1) LBP-81-59, 14 NRC 1211, 1458-59 (1981). Before the Seabrook plant may receive its full power license to operate, it must satisfy the emergency planning standards set forth in 10 C.F.R. § 50.47. See e.g., Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit 1) ALAB-818, 22 NRC 651 (1985). The NRC should not countenance the Applicants' attempts to cause itself to be regulated according to inapplicable regulations carrying a lesser guarantee of public safety.

Respectfully submitted,

FRANCIS X. BELLOTTI  
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By:

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Dated: July 2, 1986

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CERTIFICATE OF SERVICE

I, Carol S. Sneider, hereby certify that on July 2, 1986 I made service of the within documents by mailing copies thereof, postage prepaid, by first class mail, or as indicated by an asterisk by express mail, to:

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