-427

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Commissioners:
Lando W. Zech, Jr., Chairman
Thomas M. Roberts
Kenneth M. Carr
Kenneth C. Rogers
James R. Curtiss

In the Matter of	)	Docket No. 50-443-OL
	)	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al	)	(Onsite Emergency Planning and Safety Issues)
	)	
(Seabrook Station, Unit 1)	)	November 2, 1988

SEACOAST ANTI-POLLUTION LEAGUE'S CONTENTIONS ON
APPLICANTS' PLAN IN RESPONSE TO NRC ORDER CLI-88-07

NOW COMES the Seacoast Anti-Pollution League and moves the Commission, as is required by CLI-88-07 and pursuant to 10 CFR §2.734, to reopen the record in the onsite portion of the licensing proceedings for Seabrook Station and admit the contentions set forth herein for litigation. Pursuant to 10 CFR §2.734(d), a motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in §2.714(a)(1)(i) through (v). Accordingly, SAPL addresses both the standards at §2.734 and §2.714(a)(1) below.

§2.734(a)(1) The Motion Must Be Timely.

SAPL is filing the within contentions in the ten day time period following Applicants' service of the decommissioning plan as required by the Commission's Sept. 22, 1988 order, CLI-88-07. Until the Applicants submitted their decommissioning plan pursuant

to the Commission's order, SAPL had no way of learning the facts related to that plan. SAPL needed these facts in order to file contentions and bases with requisite reasonable specificity. This filing is therefore obviously timely.

(a)(2) The Motion Must Address a Significant Safety or Environmental Issue.

The within contentions do raise significant safety and environmental issues. The Seabrook site, after low power operation, will be contaminated with fission products and activation products which would, if not removed from the site, pose significant safety hazards to individuals who would have unrestricted access to the site. The Commission has recognized the potential health and safety problems in CLI-88-07. The very fact that the Commission is requiring a decommissioning plan for low power operation highlights the significance of this issue.[1]

1/ The Commission should be aware, however, that in November of 1986, the president of New Hampshire Yankee, Edward A. Brown, flatly testified before a Congressional Committee that low power operation would not result in any radioactive contamination. "The only radioactivity that exists at the end of the 5 percent for this type of plant would be in the fuel itself." Mr. Brown further testified that the cost of handling the fuel would be "minimal" or "would probably net close to zero." The reliability of Mr. Brown's testimony must be seriously questioned in light of the October 20th New Hampshire Yankee filing. See excerpt from Hearing before the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce, House of Representatives, November 18, 1986, attached hereto.

(a)(3) The Motion Must Demonstrate the Likelihood of a Materially Different Result Had Proffered Evidence Been Considered Initially.

Since the Commission has before it the issue of the financial qualification of Seabrook's owners for the first time since the Commission's regulations were changed to eliminate the requirement for financial qualification reviews for publicly regulated utilities, it is difficult to prove that a materially different result would have obtained since no result of the Commission's review has yet obtained. The point that is of importance is, will consideration of the issues raised in SAPL's contentions lead the Commission to material evidence that the Seabrook owners are not financially qualified to operate Seabrook Station? SAPL believes the clear answer to this question is yes. The Applicants have not shown that the costs of dealing with the high level waste spent fuel have been considered, much less met, or that proper and lawful arrangements have been made for the ultimate disposition of said fuel. Also, Applicants have not dealt with the costs of, or a plan for, handling of low level radioactive waste beyond the site boundary. Further, the Applicants have failed to show that there is assurance of coverage for decommissioning costs in the context of the total termination costs for the project. In view of these serious inadequacies in "The Plan in Response to NRC Order CLI-88-07," there is a clear likelihood that the Commission would find that Seabrook owners are not financially qualified and

that the decommissioning plan is deficient because of its own shortcomings and in light of the ailing financial condition of many of the Seabrook Joint Owners.

(b) The Motion Must Be Accompanied By One or More Affidavits.

See attached Affidavit of Jane Doughty.

(c) A Motion Predicated on a Confidential Informant Must Identify the Source of the Allegations.

The instant motion is not so predicated and hence this section is not applicable.

(d) The Motion Must Also Satisfy the Requirements of §2.714(a)(1)(i) through (v).

§2.714(a)(1)(i) Good cause, if any, for failure to file on time.

See §2.734 (a)(1) supra.

(ii) The availability of other means whereby the petitioner's interest will be protected.

SAPL's interests in the issues raised in the within contentions will not likely be protected unless the Commission does reopen the record and consider these issues. SAPL has no other means of addressing the safety inadequacies in the Applicants' decommissioning plan. The extent to which the U.S. Bankruptcy Court may address the financial issues is not known.

(iii) The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record.

SAPL is intending to bring an expert witness to testify as to adequate funding levels for decommissioning Seabrook, possibly Mr. Bruce Biewald of Energy Systems Research Group. As to legal issues raised by the plan, SAPL's legal counsel will present SAPL's position as to how the requirements of the law may properly be met.

(iv) The extent to which petitioners interest will be represented by existing parties.

SAPL's members are largely from the State of New Hampshire and no other party is likely to represent their interests. SAPL has its own perspective on safety, financial and legal issues and there is no guarantee that any other party will present SAPL's views on these issues.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The litigation of these issues will necessarily broaden the proceeding since the on-site record has been closed. However, the Applicants have projected the date for full power operation of Seabrook as January 1, 1990 for financial planning purposes.[2] (See "Public Service Company of New Hampshire 1987 Form 10-K Annual Report") Full power operation will not, therefore, be delayed. Further, should the Commission decide the issues in the

---

2 / "Public Service Company of New Hampshire 1987 Form 10-K Annual Report", p. 2.

Applicants' favor, since low power operation is anticipated to be only of three weeks duration, it is highly unlikely that low power licensing could not be scheduled sufficiently prior to the date of full power operation to avoid any delays.

SAPL CONTENTION DC-1

The Applicants have not provided adequate documentation of their plan or appropriate commitments under that plan, as required by CLI-88-07 in that "The Plan in Response to NRC Order CLI-88-07" does not fully document the reasonably anticipated necessary handling of irradiated fuel from low power operation and does not provide appropriate financial and institutional commitments for handling said irradiated fuel.

BASES:

1. The Plan Does Not Provide Appropriate Financial Commitments for Handling Irradiated Fuel.

The Applicants concede that low power testing will result in irradiation of the nuclear fuel now in the reactor. Such testing will consequently result in costs for the handling, packaging, transportation, storage and monitoring of the fuel which would not otherwise be incurred. These costs, at the Shoreham Plant, are estimated to be a large part, if not the largest part, of the entire cost of decommissioning that facility after low power testing only.

The Applicants state, as to the irradiated fuel, that their plan includes funding for handling the irradiated fuel only to t'e

extent of "Storage of fuel until preparations are made for shipments offsite " (p. 1-2) They further state that: [the] "Cost of fuel shipping, reprocessing and disposal of any associated high level waste is not included in The Plan in accordance with the provisions of 10 CFR 50.2." (p. 2-1 "General Overall Assumptions") 10 CFR §50.2 is presumably cited because, by the amendments of June 27, 1988 in the final decommissioning rule, the regulation provides that "'decommissioning' means to remove [as a facility] safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license." The Plan at 9-3 contemplates the shipment of irradiated fuel to France for reprocessing but without associating any costs with this proposal.

The Applicants are in error in believing resort to the 10 CFR §50.2 definition entitles them to ignore the full cost requirements of their plan, including the proposed foreign reprocessing of the irradiated fuel.

First, it is the Commission's order in CLI-88-07 which sets up the obligation that the Applicants must meet here, not the decommissioning rule, although that rule does provide requirements that are generally applicable to a decommissioning plan. Indeed, the Commission specifically said there that it was addressing the issue of a decommissioning funding requirement outside the context of the decommissioning rule.

Second, the decommissioning rule, by its terms, applies to plants which have entered service. (The definitional section cited by the Applicants states: "'Decommission' means to remove (as a facility) safely from service . . .") 53 Fed. Reg. 24044 The Seabrook facility at low power testing will have never entered service, since the small amounts of power anticipated to be produced will be entirely consumed in plant. Thus, although the introduction to the decommissioning rule, at 53 Fed. Reg. 24019, states that "Decommissioning activities do not include the removal and disposal of spent fuel which is considered to be an operational activity . . . " this is not relevant to Seabrook since the premise of the decommissioning rule is that spent fuel can be considered an operational expense, and the expense of its handling treated as a federal responsibility under the Nuclear Waste Policy Act, (42 USC §10222(a) and (b)) and the costs covered through a one mil per kilowatt hour charge on the power produced. Such handling is not available in the event of low power testing which is not followed by commercial operation resulting in sales to customers as to which such a charge can attach.

In short, the decommissioning rule assumes fuel costs can be ignored or, rather treated as an operational expense because, after a course of commercial operation, the federal government can take title to and responsibility for the fuel, with costs to be defrayed by the generation of revenues from sales of the electricity produced. The decommissioning of Seabrook after low

power testing does not present this situation. (Other aspects of the decommissioning rule, such as the requirement for dedicated funding, are indeed fully applicable here).

Thus, there is no basis for the assertion that Applicants appear to be making that they can ignore the cost of treating the irradiated fuel from low power testing by reference to the new decommissioning rule.

Accordingly, there is no basis in the decommissioning rule to justify the Applicants' failure to fully plan for or to fully commit to funding the safe and adequate handling of irradiated fuel from low power operation. A hearing to determine the adequacy and cost of the plan for shipment of the fuel overseas is therefore required.

2. The plan does not provide appropriate Institutional Commitments for Handling Irradiated Fuel.

The decommissioning plan for handling irradiated fuel states that the cost of "fuel shipping, reprocessing and disposal of any associated high level waste is not included in the The Plan in accordance with the provisions of 10 CFR 50.2" (p. 2-1).

However, although not providing any funding for the handling of irradiated fuel from low power beyond the point of its onsite storage, loading into casks, and loading onto trucks for a period of 47 months (see p. 9-7 and 9-3), Applicants do contemplate that the fuel will be shipped overseas to Europe for reprocessing. (p. 9-3) This is an inadequate plan within the meaning of CLI-88-07,

because the shipment of irradiated fuel, which is special nuclear material as defined in the Atomic Energy Act, §11, 42 USC §2014 (aa), may not be shipped to a foreign country without possibly violating the provisions of the Nuclear Non-Proliferation Act of 1978. (42 USC §2155, et seq.) It is clear that, in any event, in the Nuclear Nonproliferation Act of 1978, incorporated in the Atomic Energy Act, an export license would be required, which could only be granted after "the preparation of the executive branch judgment on export applications under this section."

The Act, at §126, 42 USC §2156, clearly indicates congressional concern about shipment of irradiated fuel overseas for reprocessing, an event which, on information and belief has not previously occurred.

42 USC §2156 provides the following:

> The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production utilization facilities, in any sensitive nuclear technology:
> . . .
>
> > (5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

Therefore, when The Plan provides for the following:

(at p. 9-3)

- Load and wash cask, ship to U.S. Port
- Travel by sea U.S. Shipping Port to La Hague, France
- Transportation from port to processing facility and off loading
- Return cask to port
- Travel by sea La Hague, France to U.S. Port
- U.S. Port to Seabrook Station,

it is proposing to deal with irradiated fuel in an unprecedented manner which may involve the security interests of the United States, and it is asking this Commission to assume that in all probability the requirements of the Nuclear Non-Proliferation Act of 1978, if not otherwise violated, can be satisfied. The Plan should document the basis for believing that these requirements can be met, before it can be described as an adequate plan.

Additionally, The Plan does not, by its own terms, address what might be done with the waste to be created from any reprocessing, and the Commission cannot assume that the waste will be handled without cost to the Applicants or the taxpayers merely because the re-processing is contemplated to be done in France.

Furthermore, The Plan, since it does not provide for any costs in regard to the proposed shipment to foreign shores, handling in a foreign country, or handling of the waste to be created by any of these operations, does not provide "appropriate commitments" under The Plan "to provide reasonable assurance that

adequate funding for decommissioning will be available in the event that a full power license is not granted for Seabrook Unit 1." CLI-88-07, Slip Opinion, p. 3.

Finally, Applicants' "plan" states at 9-3 that the reprocessed fuel from France will be returned "US port to Seabrook Station." This suggests that the site, even under Applicants' "plan" will not be available for unrestricted use after 52 months, as is claimed.

SAPL CONTENTION DC-2

The Applicants have not provided "appropriate commitments" to fund the decommissioning plan, contrary to the requirements of CLI-88-07.

BASES:

1. The Applicants assert that the cost of decommissioning, as defined by them (see Bases to DC-1) is 21.1 million dollars. They assert that this amount can be prefunded "after issuance of a Commission order requiring such funding;" (Letter NYN-88142, October 20, 1988, pp. 9-10)

This funding is to come 50 percent from balances presently alleged to be available in the project account, and 50 percent from new contributions. The Applicants recognize there is special concern about funding from four of the joint owners: PSNH due to its bankruptcy, MMWEC and Vermont Electric Generation and Transmission Cooperative, Inc. as a result of their continuing

defaults, and EUA Power because it has no operating revenues from which funds can be obtained.

It is conceded that if the costs reasonably to be needed are appropriately estimated and prefunded, that the Applicants would have provided reasonable assurance that adequate funding would be available. However, the Applicants' representations as set forth in Letter NYN-88142 do not establish reasonable assurance that this prefunding will occur or that the funds will be available.

(1) One reason there may be a shortfall in funds for decommissioning is that decommissioning costs may be incurred at the same time when, according to the Applicants' own representations (Letter NYN-88142, p. 6) other, nonradioactive related termination costs, estimated between 320 and 390 million dollars in 1988 dollars may be required. This is represented to be the total cost of the termination of the project prior to any low power testing. If these costs were to be incurred at a time when decommissioning from low power testing also needed to be undertaken, the cost facing the joint owners, on their own representation, would not be 21.1 million, but 21.1 million on top of 330 to 390 million dollars, or perhaps as much as or more than 400 million dollars.

Applicants contend that these other costs are irrelevant in determining the adequacy of funding of decommissioning, since under 10 CFR §50.2, the Commission is concerned only with the costs of removing the facility "from service" and reducing

"radioactivity to a level that permits release of the property for unrestricted use and termination of license."

However, the Commission has not so narrowly confined its concerns in dealing with what it has described as "the unique and unusual circumstances of this case." (CLI-88-07, Slip Opinion, p. 2) Indeed, the Commission has specifically said: (a) it "intends to address the rule waiver issue [on the overall financial qualification of the Seabrook owners] in a subsequent memorandum and order" and (b) that it is considering a decommissioning requirement for Seabrook for low power operation quite apart from the fact that in the normal course, decommissioning funding would be considered only under the newly adopted decommissioning rule.

Thus, in reviewing the Applicants' representations as to the funding necessary for decommissioning from low power testing, the Commission has indicated it does want to consider the Seabrook situation in light of an overall concern about the financial capability of the Seabrook joint owners. It must therefore be concerned with other costs that may impact on the financial qualification of this already financially stressed ownership group.

This must lead to a conclusion that relying on claimed project surpluses is not an adequate assurance that decommissioning costs will be met. Applicants have conceded that project balances are needed to meet project contingencies,

including owner defaults. They in fact said this in Letter NYN-88115 (8/31/88), p. 4.

> It has been the policy of the Seabrook Project since the summer of 1984 to maintain a positive cash balance in the Project account from which its monthly obligations are paid. This policy was designed to assure additional flexibility should fluctuations in monthly cash requirements or delays in receipt of Joint Owner payments occur. The Project account as supplemented by the Joint Owner monthly payments, is the source for meeting Seabrook Station's cash operating requirements. At January 1, 1988 the Project account had a balance of approximately $21.8 million, or about two months' cash needs.

In Letter NYN-88115, New Hampshire Yankee's response to a NRC Staff financial information request dated August 31, 1988, there is included an attachment 4. That attachment shows that as of August 18, 1988, the project funding for the year 1988, including supplemental funding, amounted to $107,689,418.84, as against billings by the disbursing agent of $110,459,000.00. In other words, for the first eight months of this year, the project funding had resulted in a deficiency which was presumably covered by pre-existing project balances. Thus, it is clear that the project balances that may exist from time to time may be necessary for purposes other than meeting additional requirements from low power testing, such as new or continuing defaults on the part of joint owners.[3]

---

[3] / The default of VEG&T although only a 0.41259 percent owner, after nearly three years, has amounted to 2.446 million dollars. Continued on following page

In short, all the Applicants may accomplish by representing that half of the decommissioning funding requirement can be paid from present project balances is to further impair their ability to demonstrate "reasonable assurance" that they are financially qualified as to other aspects of nuclear operation. The Commission should, in light of the Applicants' own representation that the costs to be faced in the event of project termination may reach 390 million dollars exclusive of radioactive decontamination funding requirements, require the holding of a hearing to determine whether or not the Applicants are financially qualified for the total costs that may be imposed, not merely the alleged costs of decommissioning after low power testing.

(2) The Applicants' representation that 50 percent of the necessary decommissioning funds can come from "new monies paid in by the Joint Owners" (NY-188142, p. 10) is not reasonably assured because of the status of several of the Joint Owners.

(a) Public Service, the largest owner at 35.6 percent, is in bankruptcy. Funding into a decommissioning account as a condition of exercising a low power authorization would not necessarily appear to be in its ordinary course of business. It certainly is not "ordinary" since it would be an unprecedented cost item for the bankrupt. Accordingly, payment would have to be authorized by the Bankruptcy Court. That court has already denied

---

Continued from previous page
The MMWEC default, as of August 18th, although representing only two months default, already has amounted to over 5 million dollars. (Attachment 3 to Letter NYN-88115)

the debtor's request to engage in one "out of the ordinary course" business transaction, the requested authorization to set up its New Hampshire Yankee Division as a separate corporation. See NYN-88121, September 9, 1988, and the attached order of the U.S. Bankruptcy Court "Memorandum Opinion Re Proposed Restructuring Relating to Operation of Seabrook Nuclear Power Generating Station". Thus, there is no reasonable assurance that Public Service will receive the necessary authorization to enter into the out of ordinary course transaction that be necessary to meet decommissioning cost requirements.

(b) MMWEC, the fourth largest owner with 11.6 percent, is said to be able to meet its share of the decommissioning cost despite its being in default since June 1st on project payments because "MMWEC has publicly announced that it has funds available to meet up to 10 million of decommissioning obligations. Letter NYN-88142, October 20, 1988, p. 10. This "public announcement" is apparently the news release which is the attachment to NYN-88124, September 9, 1988, the "Second Supplemental Response to Request for Additional Information." The attached press release states at the second page, para. 3:

> MMWEC's cancellation or abandonment exposure will be limited to a maximum of $10 million--down from the present estimate of $60 million (MMWEC has the funds necessary to cover this exposure in the bank because of its decision to stop making additional investments in Seabrook last June).

This news release cannot suffice to constitute an "appropriate commitment under [The] Plan" within the meaning of CLI-88-07 for the following reasons.

(a) A "news release" is not a commitment. No contract or any other commitment has been produced.

(b) The figure of 10 million is said to be related to "cancellation or abandonment exposure", which according to the Applicants is not related to decommissioning, and which the Applicants have themselves in letter NYN-88142 estimated could be as high as 390 million dollars. MMWEC's 11.6 percent share of this would be 45.24 million.

(c) MMWEC's cash on hand, which it admits is due to its own default, may well be subjected to claims, and liens sought to protect those claims, on the part of other Seabrook owners, such as the Northeast Utilities subsidiary which covered three months of MMWEC's defaults. It is highly foreseeable that the Joint Owners will seek to remedy what they will claim are the damages of MMWEC's default through legal action. In Letter NYN-88115, August 31, 1988, the Applicants' response to an NRC Staff request for additional information, the Applicants in fact state:

> [I]t should be emphasized that in all instances of failure to comply with the terms of the Joint Ownership Agreement the Joint Owners reserve their rights to seek legal redress and enforcement of the terms of that agreement. (p. 5)

(d) The lack of any commitment on the part of MMWEC is further emphasized by the fact that the Applicants represented to the NRC Staff in Letter NYN-88115, August 31, 1988, that:

> The contracts to document this arrangement [to replace funding no longer being paid by MMWEC] are in preparation and expected to be completed on or before September 15, 1988. A further response which provides the requested details of these arrangements will be filed at that time. (NYN-88115, p. 9) (Emphases added.)

and then, on September 12th, they represented to this Commission that:

> Applicants expect to file with the staff a further response documenting contractual arrangements now in place that insure adequate funding for the Seabrook project, including low power operation through at least December 31, 1989. (Applicants Reply to Intervenors' Motion for Acceptance of Additional Reply to Commission Order of July 14, 1988, Regarding ALAB-895) (Emphasis added.)

Contrary to those representations, one made to the staff, and the other directly to this Commission, no "further response" "detailing" the contractual arrangements which were represented to be "now in place" has yet been furnished. Thus, it appears that Applicants representation to the Commission and the staff regarding "commitments" to overcome the MMWEC default have not

been merely evasive, but may have even been intentionally misleading, if not flatly untrue.[4]

SAPL CONTENTION DC-3

The initiation of low power testing at Seabrook in these unique circumstances and at this time would be contrary to the Commission's general policy of keeping radioactivity levels "as low as reasonably achievable" (ALARA) and contrary to the requirements of the National Environmental Policy Act of 1969 (42 USC §4321, et seq.). That is because the initiation of low power operation, without a probability of commercial operation within a time frame reasonably close to the termination of low power testing, will result in the unnecessary production of radioactivity and therefore will not keep radiation exposures as low as reasonably achievable. Further, no NEPA cost benefit balance has ever been struck in regard to a facility which does

---

4/ As further evidence of the fact that no agreements to resolve the NHWEC default were "now in place", as Applicants represented to this Commission in their September 12th pleading, there is attached hereto a recent filing by PSNH in the U.S. Bankruptcy Court. In this pleading, "Ex-Parte Motion of Public Service and Owners of Approximately 50 Percent of the Seabrook Nuclear Power Project for Extension of Time for Filing of Certain Claims", the debtor and the other Joint Owners recite that they desire to have the bar date for claims against the debtor by the other owners extended from October 31, 1988 to December 9, 1988, because although "all present and former Joint Owners of the Seabrook project and other parties are actively engaged in negotiations that may result in a release of claims among such parties which relate to the Seabrook Project," no such general agreement has yet been obtained. The stipulation attached to the Appliants' pleading indicates the claims of the Joint Owners against the debtor are "potentially substantial."

not have a demonstrated probability of achieving near term commercial operation.

BASES:

The Applicants concede that low power testing has only the benefit of assisting and achieving commercial operation. The only claimed benefit from operation of a nuclear plant is the production of electricity for sale to consumers. They also concede that low power testing has the cost of creating radioactive contamination in the reactor, and will cause irradiation of nuclear fuel, and will thereby impose significant cause for decontamination during decommissioning.

Given the uncertainties surrounding the likelihood of full power operation at this time, and the fact that the Applicants have themselves not projected commercial operation before 1990,[5] the initiation of low power nuclear operation at Seabrook is inconsistent both with the Commission's ALARA policy and with NEPA.

In Letter NYN 87-104, September 3, 1987, the Applicants stated that low power operation was estimated to take only a period of three weeks. (Response to NRC Question 1-b) The costs and risks of low power testing should not be incurred prior to the time when these costs are reasonably required to be incurred,

---

[5] / In the PSNH 10-K for 1987, the Company, for financial planning purposes, estimated a commercial operation date of January 1, 1990, but added that "the Company cannot predict when, if at all, the plant will commence operation". (SEC Form 10-K on behalf of PSNH, p. 2)

which would be at a period in time when it is reasonably probable that the facility will be authorized to commence commercial operation, and at the time at which the low power testing is reasonably necessary to obtain that result.

Nowhere do the Applicants contend that low power testing, if it takes only a period of three weeks as they have contended, would need to occur more than a maximum of six months from the date of estimated commercial operation. Thus, the initiation of low power testing, with its concomitant risks and costs, is contrary to both the Commission's policy, and the requirements of the National Environmental Policy Act.

Respectfully submitted,

Seacoast Anti-Pollution League
By its Attorneys,

BACKUS, MEYER & SOLOMON

By: _____

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105
(603) 668-7272

DATE: November 2, 1988

I hereby certify that copies of the foregoing Contentions have been sent by Federal Express to the parties indicated by an asterisk on the attached service list and sent by first-class, postage prepaid, to all other parties indicated on the attached service list.

Robert A. Backus

EMERGENCY PLANNING AT SEABROOK NUCLEAR POWERPLANT

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY CONSERVATION AND POWER

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

NOVEMBER 18, 1986

Serial No. 99-180

Printed for the use of the Committee on Energy and Commerce

Mr. ATKINS. Now, once you have done those tests, what would you have to do if you are not able to be licensed for full power and try to convert the facility to some other form of power generation? What would the cost be?

Mr. BROWN. OK. The 5 percent power test at a plant the type of Seabrook is entirely different from the 5 percent power test of a plant the type of Shoreham; and I think there has been a great deal of confusion over this even including some of the affidavits that were sent into the Attorney General Belotti's petition to appeal the fuel loading.

A great deal of confusion existed because a 5 percent power test that a pressurized water reactor results in no contamination of the plant, compared to the type of testing that has to be done in Shoreham.

Mr. ATKINS. Could I interrupt you for just a moment? I mean, just to be sure that I understand what you have said.

The 5 percent test that you are seeking approval from the Nuclear Regulatory Commission to conduct at the Seabrook facility—those 5 percent tests will result after they have been completed in zero contamination of the facility.

Mr. BROWN. Yes, sir.

The only radioactivity that exists at the end of the 5 percent for this type of plant would be in the fuel itself.

Mr. ATKINS. So, the fuel will be radioactive?

Mr. BROWN. Yes, sir.

Mr. ATKINS. And what will you do to handle the radioactive fuel?

Mr. BROWN. The radioactive fuel? And this is based on your assumption that the plant is going to be shut down?

Mr. ATKINS. My assumption is not that the plant will be shut down, but rather that the NRC—I am just asking you on the hypothetical, and it certainly would seem to me to be something that you would have to prudently plan for, that the plant does not get approval from the NRC for full-power licensing.

So, you are now in a situation where you have done your 5 percent test, the NRC has turned you down for full-power operation; you have made a determination to try to rescue as large a portion of your investment as you can for your stockholders, and your question now is: what is the cost of getting rid of the contaminated fuel?

Mr. BROWN. The cost of—quote: "getting rid of contaminated fuel" is minimal. As a matter of fact, we have had an analysis which shows that the net salvage value of the fuel and recovery and disposal of the fuel would probably net close to zero.

However, I would point out——

Mr. ATKINS. You are saying it would not cost you anything to dispose of that fuel?

Mr. BROWN. That is correct.

Mr. ATKINS. How——

Mr. BROWN. The fuel would be—and you are getting into a hypothetical area that I want to be sure we understand.

Mr. ATKINS. I appreciate that, but also, it seems to me there are two alternatives in the NRC process. You can either hypothetically—we are both assuming that you get the approval for low-power testing. We now have a situation where you can either be approved

or disapproved for the full-power testing, and the question is what do you do, and what costs have you assumed by proceeding with the low-power testing?

And you are telling me there is no cost of disposing of that radioactive fuel?

Mr. BROWN. That's correct, sir.

Mr. ATKINS. How would you do that at no costs?

Mr. BROWN. There are a number of other reactors that use the exact same configuration of fuel that is being used at Seabrook, the same type of fuel rods, and the same type of enrichment, Millstone 3 being one of them.

That fuel is low-level; it is not a highly radioactive fuel having gone through just minimum testing. It could be used in Millstone 3; it could be used at Wolf Creek in Kansas; it could be used at Callaway out in Missouri—they are all the same type of reactor.

Mr. ATKINS So, you are telling me that you could then sell that fuel to another reactor?

Mr. BROWN. Yes, sir.

Mr. ATKINS. Now, if we were to determine through the NRC that other parts of the plant, in addition to the fuel, would be contaminated as a result of your low-power testing, would you be willing to forego your request for low-power testing at this time?

Mr. BROWN. Well, I—I don't believe it is a prudent thing to forego low-power testing at this point in time if conversion is the only alternative. And the reason I say that is in the conversion process, assuming that there is——

Mr. ATKINS. Could I interrupt you for just a moment?

Mr. BROWN. Sure.

Mr. ATKINS. You had said earlier, I thought, with what appeared to me to be total certainty that there would be no contamination in the plant with the exception of the fuel.

Mr. BROWN. Yes, sir.

Mr. ATKINS. And I am asking you now the NRC which we just had them on previously, I am sure you heard their testimony—I do not think anybody would accuse the NRC of being anti-industry, or anti-nuclear—if they were to determine that other portions of the plant would be contaminated, I am asking you if you would make a commitment then to forego your request for low-power testing?

Mr. BROWN. I have to see what it is they are talking about. We have had our people take a look at this and have been assured by different groups within our operation that, based upon what has happened in other plants, that there would be no contamination of the equipment on components of the nuclear steam supply system because of low-level testing, because of less than 5 percent power testing.

I do not know what the Nuclear Regulatory Commission is talking about, but I would like to see what it is that they are saying.

Mr. ATKINS. Well, let me ask you this: if you would make a commitment to appear at a public forum with the NRC to raise again the issue of your request of low-power testing if the NRC indicates to us that, in fact, they believe that there will be contamination of the plant and the equipment and the vessel itself with low-power testing?