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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Helen F. Hoyt, Chairperson
Gustave A. Linenberger, Jr.
Jerry Harbour

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SERVED FEB 17 1987

In the Matter of)	Docket Nos. 50-443-OL
)	50-444-OL
PUBLIC SERVICE COMPANY)	(ASLBP No. 82-471-02-OL)
OF NEW HAMPSHIRE, <u>et al.</u>)	(Offsite Emergency Planning)
(Seabrook Station, Units 1 and 2))	February 12, 1987

MEMORANDUM AND ORDER

On February 10, 1987 this Board received NRC Staff Motion for Clarification of the Licensing Board's Order of February 3, 1987. The Staff states it "seeks clarification . . . in the following respect: does the Board wish the Staff (and the other parties) to address whether the Applicants have established a prima facie case for a waiver as defined in the Board's order of January 7, 1987, or does the Board wish the Staff (and the others) to provide a complete response to the issue of whether the Applicants should be granted a waiver pursuant to 10 CFR § 2.758?"

Important to our response here is the Staff's, and indeed other Intervenor's, concern with the Board's footnote on the term prima facie in our order of January 7, 1987 (Board order, page 3). The Staff and Intervenor's have emphasized that portion of the footnote containing the

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phrase "reasonable minds to inquire further." The entire footnote was as follows:

Although prima facie is not defined in 10 CFR 2.758, one Licensing Board has found it "reasonable to equate 'prima facie' showing with 'substantial' showing." Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant), LBP-85-5, 21 NRC 410 (1985). We believe, however, prima facie to mean evidence of a sufficient nature that would cause reasonable minds to inquire further.

None of the responses we received considered that we had set forth our understanding that the evidence of a sufficient nature rather than the "substantial showing" standard of another Licensing Board was the appropriate quantitative evidentiary standard. It was our intent to indicate to the parties that we do not view the prima facie standard as one requiring either the highest standard of evidentiary proof which the substantial showing approaches, or the minimum evidentiary showing at the other end of the scale.

We found a Licensing Board "substantial evidence" standard in conflict with the Appeal Board's "legally sufficient" standard of Pacific Gas & Electric Co. (Diablo Canyon Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1981). The Appeal Board there found that "prima facie evidence must be legally sufficient to establish a fact or case unless disproved."

We agree with the Staff that if the Applicants' petition meets the prima facie threshold, the Commission should be provided with a sufficient record to reach a well-founded conclusion as to whether the application of the 10-mile EPZ requirement ought to be waived in this

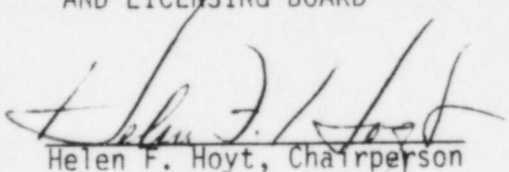
proceeding. (NRC Response of January 28, 1987, page 3). We also agree that there are a number of complex and novel issues. Many of these very issues have been the subject of NRC Staff study. We believe that at least there are preliminary conclusions which this Board in the exercise of its duty to assemble the necessary record of information on Applicants' petition is entitled to have for review. It is clear to the Board that the Staff's final studies and reports are not available and will not be before probably "late 1987."

Other parties have noted to us a time period in which complete responses could be made. (Board order February 3, 1987, page 2). The Board in its February 3, 1987 order considered these dates and elected to permit the parties, including the Staff, until February 27, 1987 to supplement and possibly complete their initial responses.

We have reviewed our February 3, 1987 order and find it does not need clarification. The Staff has been involved in evaluating certain of Applicants' technical supporting documents. The Board deems these evaluations to be of material aid.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 12h day of February 1987.