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UNITED STATES NUCLEAR REGULATORY COMMISSION SEP 25 P1:51
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKET REPORT
STARON

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 & Technical
Issues

INTERVENORS' BRIEF IN SUPPORT OF APPEAL
OF MEMORANDUM AND ORDER DENYING
PETITION TO WAIVE REGULATIONS 50.33(f) AND 50.57(a)(4)
TO THE EXTENT NECESSARY TO REQUIRE APPLICANTS
TO DEMONSTRATE FINANCIAL QUALIFICATION
TO OPERATE AND TO DECOMMISSION SEABROOK STATION

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September 24, 1987

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NUCLEAR REGULATORY COMMISSION

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TO DEMONSTRATE FINANCIAL QUALIFICATION
TO OPERATE AND TO DECOMMISSION SEABROOK STATION

PROCEDURAL SUMMARY

Under date of July 22, 1987, Applicants' lead owner, Public Service Company of New Hampshire ("PSNH"), filed with the Securities and Exchange Commission a FORM 8-K indicating PSNH is on the brink of bankruptcy. Exhibit A, attached.

On July 31, 1987, and based upon the FORM 8-K filing, the Town of Hampton, New England Coalition on Nuclear Pollution, and Seacoast Anti-Pollution League (hereinafter "Intervenors"), pursuant to 10 CFR 2.758, filed with the Atomic Safety and Licensing Board ("Wolfe Board") INTERVENORS' PETITION TO WAIVE REGULATIONS 50.33(f) AND

50.57(4) TO THE EXTENT NECESSARY TO REQUIRE APPLICANTS TO DEMONSTRATE FINANCIAL QUALIFICATION TO OPERATE AND TO DECOMMISSION SEABROOK STATION. Exhibit B, attached.

The Applicants and NRC Staff opposed Intervenor's petition.¹

On August 20, 1987, the Wolfe Board denied Intervenor's petition. Exhibit D, attached.

On August 27, 1987, Intervenor's appealed the Wolfe Board decision to this Board. Pursuant to 10 CFR 2.758, Intervenor's request this Board to reverse the decision of the Wolfe Board and to certify Intervenor's petition directly to the Commission.

LEGAL STANDARD

Pursuant to 10 CFR 2.758(b), a party may petition the Licensing Board that application of a commission rule be waived, or an exception made, where:

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Although formally opposed, the NRC Staff, by letter dated August 17, 1987, requested PSNH to disclose certain financial information. Exhibit C, attached. The Staff apparently made this request based upon the concerns expressed in Intervenor's petition. "Nonetheless, the Staff is transmitting a letter to the Applicants requesting information as to the projected costs of low power operation and subsequent permanent shutdown and maintenance of the facility, as well as the sources and likelihood of availability of funds to cover such costs in the event that PSNH is unable to pay its share of the costs." See, NRC STAFF'S RESPONSE TO INTERVENOR'S PETITION TO WAIVE REGULATIONS 50.33(f) AND 50.47(4) TO THE EXTENT NECESSARY TO REQUIRE APPLICANTS TO DEMONSTRATE FINANCIAL QUALIFICATION TO OPERATE AND TO DECOMMISSION SEABROOK STATION, p. 11, n. 12.

. . . special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted.

Pursuant to 2.758, the Licensing Board is given limited authority only to determine whether petitioner has made a prima facie showing of special circumstances for waiver.²

Upon a prima facie showing, the Licensing Board must certify the issue of waiver for decision to the Commission. 10 CFR 2.758.

PURPOSE OF FINANCIAL QUALIFICATION REGULATIONS

To obtain a waiver or exception under 2.758, Intervenors must demonstrate that, in this case, application of the regulation generically exempting regulated utilities from financial qualification review would not serve the purposes for which that rule was adopted. The purpose of the financial qualification rule is clear.

2

Commission rules do not define "prima facie showing." While not uniform, case law has construed that standard to require evidence which "must be legally sufficient to establish a fact or case unless disproved." Pacific Gas & Electric Co. (Diablo Canyon Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1981). See also, Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-860, 25 NRC 63, 65 (1987); id., "Memorandum and Order (Ruling on Applicants' Petition with Respect to Emergency Planning Zone in Excess of One Mile)" dated April 12, 1987, slip op. at 3-4; Cf Carolina Power & Light Company (Shearon Harris Plant), LBP-85-5, 21 NRC 410 443 Note 16 (1985) (requiring a "substantial" showing to establish a prima facie case.)

The Commission believes that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule, the Commission concludes that, other than in exceptional cases, no case-by-case litigation of the financial qualification of such applicants is warranted.
49 Fed.Reg. 35750 (9/12/84) (Emphasis supplied)

The purpose of the financial qualification rule, therefore, is to ensure safe operation. For publicly regulated utilities, however, the Commission created an exemption based on the generic determination that state PUCs, through rate making, would provide adequate revenues for these facilities to be operated, maintained and decommissioned safely.

The Commission thereby clearly articulated the purpose of the financial qualification regulation and the purpose for generically exempting regulated utilities from financial review. Equally clearly, the Commission detailed those "special circumstances" that warrant a waiver of the generic exemption and require review of a utility's financial qualifications.

An exception to or waiver from the rule precluding consideration of financial qualification in an operating license proceeding will be made if, pursuant to 10 CFR 2.758, special circumstances are shown. For example, such an exception to permit financial qualification review for an operating license applicant might

be appropriate where a threshold showing is made that, in a particular case, the local public utility commission will not allow the total cost of operating the facility to be recovered through rates. 49 Fed.Reg. 35751 (9/12/84). (Emphasis supplied)

Waiver of the financial qualification rule is therefore appropriate where the rate process does not "assure"³ the funds necessary for safe operation.

The Wolfe Board apparently concurs in Intevenors' view of the purpose of the financial qualification regulations and of those special circumstances that necessitate a waiver.

Clearly the purpose of the rule was to exempt operating license applicants from the financial qualification requirement because the rate process assured that funds needed for safe operation would be available . . . The Commission's example reflects that it deems a special circumstance to be one where there is a threshold showing that a public utility commission will not allow an electric utility to recover, to a sufficient degree, all or a portion of the costs of construction and sufficient costs of safe operation.

Exhibit D, p. 7. (Emphasis supplied).

To warrant a waiver of the financial qualification rule, therefore, Intervenors need only demonstrate that, in this case, the New

3

49 Fed.Reg. 35750 (9/12/84), supra; See also, Black's Law Dictionary, 5th Ed. (1979); "Assure" defined as "To make certain and put beyond doubt."

Hampshire PUC will not, or cannot, "assure" that the total cost of operating Seabrook Station, including low power and decommissioning costs, will be recovered through rates. This Intervenor has done.

It is incontrovertible that New Hampshire law bars Applicants from recovering the costs to operate at low power,⁴ and to decommission Seabrook Station,⁵ if that facility never commences full power operation.

It cannot be disputed, therefore, that at least with respect to low power operation, New Hampshire law contravenes and undermines the Commission's generic determination that all costs necessary for safe

4

NH RSA 378:30-a. "Public Utility Rate Base; Exclusions. Public utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers." (Emphasis supplied). Low power operation does not generate any net electric power. Bridenbaugh Affidavit para. 4, 15. RSA 378:30-a therefore bars Applicants from recovering costs to operate or decommission Seabrook Station if the facility never operates beyond low power.

5

Pursuant to NH RSA 162-F:19, decommissioning costs will be paid from a fund established in the office of the State Treasurer. Revenues for the decommissioning fund are obtained through charges against customers, but those charges may only be assessed, and payments to the fund shall commence, "in the billing month which reflects the first full month of service from the facility." NH RSA 16-F:19(II). Since Seabrook Station has not, and may never, commence full power operation, no such fund has been established to pay decommissioning costs.

operation, including low power and decommissioning costs, can be "assured" through the rate process. There can be no "assurance" that New Hampshire law will permit recovery of these costs precisely because there is no assurance that Seabrook Station will ever operate at full power.

Since this "assurance" was the "sole objective" of the financial qualification rule,⁶ Intervenors have squarely demonstrated the special circumstances and the "exceptional case" contemplated by the Commission that justifies financial qualification review.

WOLFE BOARD DECISION

The Wolfe Board denied Intervenors' petition primarily on grounds that the special circumstances asserted in the petition are "wholly speculative."⁷

As stated by the Board:

In the first place, it is pure speculation that PSNH will file in bankruptcy or that it will be unable to secure funds necessary to operate at low power and to permanently shutdown and maintain the facility in a safe condition. Second, even if PSNH does file in bankruptcy, there is no suggestion that other Applicant-members of the consortium are financially incapable of operating and safely maintaining the facil-

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49 Fed.Reg. 35750 (9/12/84), quoted at p. 4, supra.

7

Exhibit D, p. 10.

ity. Moreover, it is a matter of speculation as to whether a bankruptcy trustee would be appointed and whether he would discontinue efforts to secure a full power operating license. Further, no reason has been presented suggesting that any successor to PSNH (be it a reorganized company, or an acquiring company, or a trustee in bankruptcy) would not persevere in efforts to secure a full power operating license and to put the plant into commercial operation, and thereby recover the large investment through its inclusion in the rate base. Exhibit D, p. 10.

The Wolfe Board thereby misperceives Intervenor's burden of proof to obtain a waiver of the financial qualification rule. It is not, Intervenor suggest, Intervenor's burden to guarantee the course of future events that PSNH will in fact file for bankruptcy or that Seabrook Station will never operate at full power. Based upon the Commission's explicit statement of purpose of the financial qualification rule, Intervenor need only demonstrate that the rate process cannot "assure" meeting all costs of operation, including the costs of low power operation and decommissioning. New Hampshire law, and PSNH's dire financial condition, preclude this assurance. The financial qualification rule, therefore, should be waived.

It is indeed ironic that the Wolfe Board berates Intervenor's petition as "wholly speculative" when the Wolfe Board, itself, blatantly engages in its own brand of "pure speculation" that operating costs may be recovered "if full power operation is commenced." Exhibit D, p. 11. Under present circumstances, it is at least as likely that Seabrook Station will never operate at full power, as to

argue the contrary. Speculation on the likelihood of full power operation, however, is not at issue. Presently, low power operation and decommissioning costs cannot be "assured." That lack of assurance warrants a waiver of the financial qualification rule.

To adopt the Wolfe Board's holding that, to obtain a waiver, Intervenor must demonstrate conclusively that PSNH will file bankruptcy, or guarantee that a full power license will never issue, is to speculate with the public health and to gamble on the availability of funds necessary to promptly and safely dispose of the high level nuclear waste generated by low power operation.⁸ This holding is not supported by the history of the financial qualification regulation, by the facts of this case, or by the requirements of 2.758.⁹

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See, Intervenor's petition, Exhibit B, pp. 4-5, with Affidavit of Dale G. Bridenbaugh attached, estimating decommissioning and fuel storage costs, following low power operation, to be in the tens of millions of dollars.

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The Commission has previously ruled that speculation over the outcome of "full power issues," such as emergency planning, does not warrant delay of low power operation. Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-84-9, 19 NRC 1323, 1327 (1984). Intervenor's petition, however, concerns the unique financial and environmental problems following low power operation. Accordingly, it is essential for these low power issues to be resolved prior to operation at any level of power.

Additionally, the Wolfe Board would require Intervenors to demonstrate that the remaining Applicant members of the consortium are financially incapable of operating and safely maintaining the facility, irrespective of the dire financial straits of PSNH. The Wolfe Board thereby would require Intervenors to present proof in support of their petition which is the very information which Intervenors seek to compel Applicants to produce, if the petition is granted. Necessarily, Intervenors cannot fully assess the financial health of PSNH or the financial strengths or commitments of the other applicant members unless and until the petition is granted and that information is compelled to be disclosed.¹⁰

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Even assuming the financial ability of other applicant members to assist PSNH, no applicant members are apparently legally obligated to provide this assistance. See Exhibit E, Response to NRC Question 2, p. 3. It is also significant that PSNH has declined to disclose to the Staff, although expressly requested, the "estimated dollar amount" of the funding sources to cover low power operating and decommissioning costs. PSNH would only respond that the "Seabrook Project maintains a positive cash balance." PSNH's lack of candor on this critical issue raises legitimate concerns whether these funding sources are adequate and underscores the inadequacy of the Staff's informal financial review.

The Wolfe Board therefore would play Russian Roulette with the public health and leave the issue of Applicants' financial health to chance.

Procedural Issues

The Wolfe Board, sua sponte, cites two alleged procedural errors in Intervenor's petition. Neither provides grounds to support the Board's denial of the petition.

First, the Wolfe Board concluded that the Town of Hampton lacks "standing" to bring the subject petition since the Town did not appeal a prior ruling of the Wolfe Board which purportedly held that "TH could not participate in the instant case involving on-site emergency planning and safety issues." Exhibit D, p. 2. The Wolfe Board never issued such a ruling.¹¹

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The Wolfe Board confuses the issue of "standing" with that of res judicata. Under Commission precedent, a party has "standing" in a licensing proceeding where (a) the action sought in a proceeding may cause that party "injury in fact" and (b) the injury is arguably within the zone of interest protected by the Atomic Energy Act. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983), citing Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). In addition to its rights conferred under 10 CFR 2.715(c), the Town of Hampton is located less than two miles from Seabrook Station, and therefore stands in immediate proximity to the high level nuclear waste that will be generated if low power operation commences. Under any reasonable interpretation of established case law, the Town of Hampton has "standing" to bring the subject petition. The Wolfe Board rather appears to rely, improperly, on res judicata as precluding the Town from presenting its petition. Generally, that doctrine precludes relitigation of issues, but, while relevant, has not even been fully adopted in NRC administrative proceedings. Public Service Company of New Hampshire (Seabrook Station Units 1 and 2), CLI-77-13, 5 NRC 1303, 1321 (1977). In any event, res judicata cannot properly be applied here against the Town of Hampton. *Infra*.

By its terms, the Wolfe Board's prior referenced order was limited to consideration of three contentions then pending before the Board. None involved financial qualification.¹²

TH has no genuine interest in participating in this case wherein the record has been reopened for the limited purpose of supplementing the evidence pertaining to the aforementioned NECNP and NH contentions. Accordingly, TH's motion is denied, and it may not participate.

Wolfe Board MEMORANDUM AND ORDER, July 25, 1986, p. 6 (Exhibit F, attached).

The Wolfe Board's July 25, 1986 order, therefore, was expressly limited in scope, and did not concern financial qualification issues. Additionally, PSNH's FORM 8-K filing, which forms the basis for Intervenor's petition, was submitted to the SEC on July 22, 1987. Since the foundation of Intervenor's petition did not arise until well after the Wolfe Board order denying the Town of Hampton participation to supplement the record on limited issues, res judicata cannot bar the Town from now presenting the issue of financial qualification review. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-349, 4 NRC 235 (1976).

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See, In the Matter of Public Service Company of New Hampshire, et al. (Seabrook Station Units 1 and 2), ALAB Memorandum, August 4, 1987 "On March 25, 1987 that Licensing Board rendered a partial initial decision in which it decided all of the issues then before it (none of which involved financial qualifications)."

Second, the Wolfe Board claims that counsel for the Town of Hampton, who signed the petition as the authorized representative for NECNP and SAPL, failed to comply with Section 2.713 of the Commission's Rules of Practice "in ignoring both the requirement that he file a written notice of appearance and the requirement that he state the bases of his authority to act on behalf of those two parties." Exhibit D, p.3. It is indeed disingenuous for the Wolfe Board, in the same memorandum, to cite to a prior order where it ruled on the merits of a Town of Hampton motion, and now claim that the Town, and the counsel that filed that motion, have somehow failed to provide proper notice of appearance to the Board.

Further, the Town of Hampton was admitted as an interested party in this proceeding by Licensing Board Order of December 20, 1982. Present counsel for the Town of Hamptor filed appearances with the off-site ASLB, on February 19, 1986. Copies of those appearances were forwarded at that time to the Chairman of the Wolfe Board. These filings comport with Commission regulations 10 CFR 2.713(b); Exhibit G, attached.¹³

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Even assuming some technical flaw in appearance filing, the Wolfe Board acquiesced in the appearance of the Town of Hampton and its counsel, by ruling on the merits of the Town's prior motion. The Wolfe Board's present citation to alleged technical flaws, to sustain its decision, is both arbitrary and fundamentally unfair.

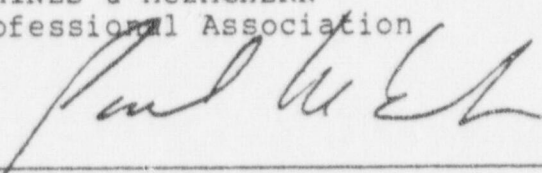
Additionally, the fact that Town of Hampton counsel signed, in the petition, as "authorized representative" for SAPL and NECNP is based upon the authority provided by those parties to Town of Hampton counsel by telephone. Intervenors state that this process is consistent with Commission regulations and represents the norm regarding joint filings by Intervenors in this case. The Wolfe Board therefore grasps at alleged technicalities to support its decision, and thereby indicates less than complete confidence in its own ruling on the merits of Intervenors' petition.

For reasons stated, the decision of the Wolfe Board should be reversed and Intervenors' petition certified directly to the Commission.

Respectfully submitted,

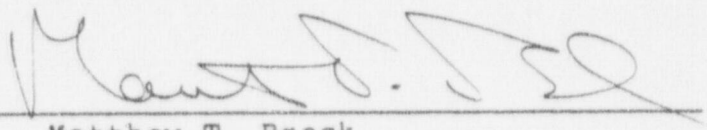
TOWN OF HAMPTON,
By Its Attorneys,
SHAINES & McEACHERN
Professional Association

By


Paul McEachern

Dated: September 24, 1987

By


Matthew T. Brock

FORM 8-K

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report: July 22, 1987

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
(Exact name of registrant as specified in its charter)

NEW HAMPSHIRE
(State, or other jurisdiction
of incorporation)

1-6392
(Commission
File Number)

02-0181050
(IRS Employer
Identification No.)

1000 ELM STREET, MANCHESTER, NEW HAMPSHIRE
(Address of principal executive offices)

03105
(Zip Code)

Registrant's Telephone Number, Including Area Code

603-669-4000

EXHIBIT A

Item 5. Other Materially Important Events

On June 29, 1987, the New Hampshire Public Utilities Commission (NHPUC) found, in a 2-1 decision on the Company's outstanding rate request, that the Company was entitled to recover approximately \$20.5 million of the \$58.9 million (14%) rate increase originally requested in May, 1986. The Company had acknowledged during the course of the proceedings that the effect of the Tax Reform Act of 1986 and other minor adjustments would reduce its claimed increase to approximately \$38.6 million.

The NHPUC ordered the Company to refund the difference between rates collected under bond since January 1987 and the level of rates approved by the order, plus interest on such sums at the rate of 10% through June and 6.5% thereafter. Refunds are to be paid on a customer specific basis commencing in November. The NHPUC found that the increased rates shall be applied on a uniform percentage to the base rates of each customer class. The NHPUC determined that the Company's cost of common equity was 15% (the Company had requested 19%) and fixed an overall rate of return at 14.94%. In addition, the NHPUC rejected a second step increase of approximately \$35 million (7%), which the Company had requested become effective January 1, 1988.

On July 20, 1987, the Company petitioned the NHPUC for a rehearing of the order on the grounds that the decision was unlawful and unreasonable in several respects, the most significant being that the decision failed to allow a just and reasonable capital structure and failed to determine a lawful, just and reasonable cost of common equity capital for the Company.

Further delays have occurred in the process of attempting to obtain all governmental approvals required to commence operation of the Seabrook Nuclear Power Plant (in which the Company has an ownership interest of about 35%). In a position filed with the Nuclear Regulatory Commission (NRC) in June of 1987, the Federal Emergency Management Agency (FEMA) has indicated that it was unable to conclude that certain aspects of the radiological emergency response plans for the seventeen towns in New Hampshire which are within a 10 mile radius of the Plant, are adequate to ensure the timely evacuation of the New Hampshire beaches in the event of an emergency at the Plant. This conclusion was contrary to that of the NRC staff and an independent consultant's report. The NRC has decided that a radiological emergency response plan for the six Massachusetts towns within a 10 mile radius of the Plant must be filed by the Joint Owners prior to low-power testing of the Plant, a requirement that had not been imposed with respect to any prior nuclear plant. It is obvious from these developments, and from the politicizing of the process regarding licensing of the Seabrook Plant, that the date of operation will be further delayed.

Item 5. Other Materially Important Events (Cont.)

As a result of these adverse developments with respect to the Plant and the NHPUC's rate order described above, and in view of the difficulties encountered by the Company in placing a planned \$150 million short-term financing in May 1987 (when only \$100 million could be placed) and the reaction of the financial markets to the foregoing, the Company's management and its financial advisors have concluded that, absent a change in the Company's circumstances, financings in the amounts projected to meet the Company's cash needs during the next several years were no longer available. Management has also concluded that, even if financing were available in the short term, it would not be in the best interests of the Company, its customers, or investors to proceed with such a financing program, unless financial plans can be developed which would improve the Company's long term cash position. Consequently, on July 16, 1987, the Company withdrew its requests for NHPUC permission to raise funds for Seabrook expenses and non-Seabrook construction. Earlier this year the Company had filed two petitions with the NHPUC seeking approval to borrow up to \$545 Million in two separate financings.

The Company has instituted strict cash conservation measures that should allow it to meet its estimated cash requirements, including the refunds described above, through the end of 1987. The Company is working jointly with the investment firms of Merrill Lynch Capital Markets and Drexel Burnham Lambert, Inc. to develop alternate financial plans. Given the uncertainties surrounding the Company, its limited financial flexibility, the amount of debt service which the Company can reasonably expect to carry, the political, economic and competitive limits on rate increases in New Hampshire, and the regulatory approvals that will be required, it will be extremely difficult to develop and implement such a plan to improve significantly the Company's circumstances within the limited time available. Should an adequate plan not be developed and placed into effect before the end of 1987, it will be difficult, if not impossible, for the Company to avoid proceedings under the Bankruptcy Code.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

July 22, 1987

By s/ R. J. Harrison
R. J. Harrison
President

before the
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
Public Service Company of
Hew Hampshire, et al.
(Seabrook Station, Units 1

INTERVENORS' PETITION TO
WAIVE REGULATIONS 50.33(f) AND 50.57(4)
TO THE EXTENT NECESSARY TO REQUIRE APPLICANTS TO
DEMONSTRATE FINANCIAL QUALIFICATION
TO OPERATE AND TO DECOMMISSION SEABROOK STATION

SHAINES & McEACHERN - PROFESSIONAL ASSOCIATION
25 MAPLEWOOD AVENUE - P. O. BOX 360 - PORTSMOUTH, N.H. 03801

1. Under date of July 22, 1987, Applicants' lead owner, Public Service Company of New Hampshire (PSNH), filed with the Securities and Exchange Commission a FORM 8-K, which in relevant part provided:

The Company has instituted strict cash conservation measures that should allow it to meet its estimated cash requirements, including the refunds described above, through the end of 1987. The Company is working jointly with the investment firms of Merrill Lynch Capital Markets and Drexel Burnham Lambert, Inc. to develop alternate financial plans. Given the uncertainty surrounding the Company, its limited financial flexibility, the amount of debt service which the Company can reasonably expect to carry, the political, economic and competitive limits on rate increases in New Hampshire, and the regulatory approvals that will be required, it will be extremely difficult to develop and implement such a plan to improve significantly the Company's circumstances within the limited time available. Should an adequate plan not be developed and placed into effect before the end of 1987, it will be difficult, if not impossible, for the Company to avoid proceedings under the Bankruptcy Code. See Exhibit A attached. (Emphasis supplied).

By its own admission, Applicants' lead owner is on the brink of bankruptcy.

2. 10 CFR §50.33(f) and 50.57(4) require certain applicants, prior to receipt of an operating license, to demonstrate that these applicants possess, or have reasonable assurance of obtaining, the funds necessary to cover estimated operation costs, for the period of the license, plus the costs to permanently shut down the facility and maintain it in a safe condition. 50.33(f)(2), (3) and (4).

3. By rulemaking on September 12, 1984, the Commission exempted publicly regulated utilities, including Seabrook Station owners, from demonstrating these financial qualifications prior to receipt of an operating license. As sole grounds for this exemption, the Commission stated:

The Commission believes that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule, the Commission concludes that, other than in exceptional cases, no case-by-case litigation of the financial qualification of such applicants is warranted.
49 Fed.Reg. 35750 (9/12/84). (Emphasis supplied.)

4. The purpose of the financial qualification rule, therefore, was to ensure safe operation. For publicly regulated utilities, however, the Commission created an exemption based on the generic determination that state PUCs, through ratemaking, would provide adequate revenues for these facilities to be operated, maintained, and decommissioned safely.¹ Accordingly, the Commission concluded, generically, that it was not "warranted" to subject publicly regulated utilities to financial qualification review when that function was effectually being performed already by state PUCs.

¹

"No sound basis has been shown for . . . the allegation that publicly-owned utilities are not assured of funding through the rate-making process. The NRC's analysis of the NARUC survey, discussed infra, has shown that all State public utility commissions have sufficient ratemaking authority to ensure sufficient utility revenues to meet the cost of NRC safety requirements. Similarly, it has been shown that publicly-owned utilities have independent rate-setting authority which is used to cover the costs of operation, including those of meeting NRC safety requirements." 49 Fed.Reg. 35750 (9/12/84)

5. In their present financial distress, Applicants for Seabrook Station present special circumstances that contravene this generic determination, and undermine the Commission's purpose² that all facilities have adequate revenues to ensure safety. These special circumstances include:

a. Under New Hampshire law, Applicants are barred from recovering the costs to decommission Seabrook Station unless, and³ until, that facility commences full power operation. Accordingly, if Applicants are permitted to proceed to low power operation, without proof of financial qualification, Applicants will irradiate the facility, generate high level nuclear waste, yet may lack the tens of millions of dollars necessary "to permanently shut down

2

The Commission specifically declined to base the financial qualification exemption for publicly regulated utilities upon allegations that there is not a sufficient relation between financial health and safe operation, noting it "is not relying on this premise for the current rule." 49 Fed.Reg. 35751 (9/12/84).

3

Pursuant to NH RSA 162-F:19, decommissioning costs will be paid from a fund established in the office of the State Treasurer. Revenues for the decommissioning fund are obtained through charges against customers, but those charges may only be assessed, and payments to the fund shall commence, "in the billing month which reflects the first full month of service from the facility." NH RSA 162-F:19(II). Since Seabrook Station has not, and may never, commence full power operation, no such fund has been established to pay decommissioning costs.

the facility and maintain it in a safe condition" if a full power
license is later denied. See §50.33(f)(2).⁴ Similarly, the
costs incurred in operating the plant at low power would not be
recoverable if Seabrook never proceeds to full power operation.⁵

⁴
The cost of decontaminating, decommissioning, and disposal of
fuel and portions of the reactor system following a low power
testing period is estimated to be tens of millions of dollars. The
cost of spent fuel disposal alone is \$20 to \$30 million. Reactor
component removal, handling, and disposal would require additional
expenditures. See Affidavit of Dale G. Bridenbaugh, ¶14, Exhibit B,
attached hereto. From the recent FORM 8-K filing by Applicants'
lead owner, supra, it is reasonable to assume Applicants do not
have adequate funds to pay decommissioning costs following low
power operation.

⁵
NH RSA 378:30-a. "Public Utility Rate Base; Exclusions.
Public utility rates or charges shall not in any manner be based
on the cost of construction work in progress. At no time shall
any rates or charges be based upon any costs associated with
construction work if said construction work is not completed.
All costs of construction work in progress, including, but not
limited to, any costs associated with constructing,
owning, maintaining or financing construction work in progress
shall not be included in a utility's rate base nor be allowed
as an expense for rate making purposes until, and not before, said
construction project is actually providing service to consumers."
(Emphasis supplied). Low power operation does not generate any net
electric power. Bridenbaugh Affidavit ¶4, 15. RSA 378:30-a
therefore bars Applicants from recovering costs to operate or
decommission Seabrook Station if the facility never operates beyond
low power.

b. The likely bankruptcy of Applicants' lead owner is without precedent. Clearly the pending bankruptcy of such a publicly regulated utility presents an extreme circumstance not addressed by the Commission at the time it approved the financial qualification exemption.⁶ On the present record, it would be grossly irresponsible for Applicants to proceed to operate Seabrook, even at low power, without clear evidence of their financial means to operate, and to decommission, safely.

c. In addition to the financial uncertainties presented, the direction of Applicants' management may be radically altered if PSNH is superceded by a bankruptcy trustee. Whether the trustee may decline to pursue a full power license in the face of insuperable regulatory obstacles remains uncertain. The Commission, however, should not permit Applicants to proceed to any level of power operation, absent proof of financial qualification, when their lead owner may soon forfeit its management rights over Seabrook Station.

d. If appointed to manage Seabrook Station, a trustee or examiner may refuse to expend additional monies on a wasting asset which continues to drain all available capital from PSNH. A Bankruptcy Court, rather than Applicants, may ultimately determine if additional monies will be spent on Seabrook Station. The

⁶

See 49 Fed.Reg. 35750 (9/12/84), quoted at page 2, supra.

Commission therefore should move to address this contingency, and require evidence of financial qualification, before bankruptcy occurs.

5. Even as the Commission exempted publicly regulated utilities from financial qualification requirements, the Commission was careful to preserve its right to require proof, in special circumstances, that a particular utility applicant is financially qualified.

By this rule, the Commission does not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954 as amended, to require such additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked. An exception to or waiver from the rule precluding consideration of financial qualification in an operating license proceeding will be made if, pursuant to 10 CFR 2.758, special circumstances are shown. For example, such an exception to permit financial qualification review for an operating license applicant might be appropriate where a threshold showing is made that, in a particular case, the local public utility commission will not allow the total cost of operating the facility to be recovered through rates. 49 Fed.Reg. 35751 (9/12/84). (Emphasis supplied).

6. The special circumstances contemplated by the Commission are now squarely presented. If Seabrook Station never operates at full power, Applicants cannot recoup the tens of millions of dollars necessary to promptly and safely decommission the facility,

and dispose of the high level nuclear waste, following low power operation. Prior to operation at any level of power, therefore, Applicants should demonstrate independent financial means to meet these decommissioning costs. See note #3, supra.

7. Apparently in recognition of the potential hazards, and associated costs, of decommissioning, the Commission itself has proposed financial qualification requirements for the decommissioning of all licensed facilities. 50 Fed.Reg. 5600, et seq (2/11/85).

The objective of the proposed rule on financing the decommissioning of nuclear facilities is to require licensee to provide reasonable assurance that adequate funds are available to ensure that decommissioning can be accomplished in a safe manner and that lack of funds does not result in delays that may cause potential health and safety problems. The licensee is responsible for completing decommissioning in a manner that protects health and safety. Id. at 5602.

This rule has not yet been finally adopted. By the proposed rule, however, the Commission has expressed clear concern that all facilities be promptly and safely decommissioned. The Commission itself thereby provides significant evidence that Applicants should be required to demonstrate financial qualification before proceeding to operate Seabrook Station.

7 Applicants additionally should be required to demonstrate that Applicants possess, or have reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. See §50.33(f)(2). Even in the unlikely event a full power license is granted, it remains doubtful that PSNH will receive sufficiently prompt rate increases to avoid bankruptcy. The Commission, therefore, should require proof of financial qualification to meet operating costs to reduce the anticipated financial and management disruptions of a bankruptcy proceeding.

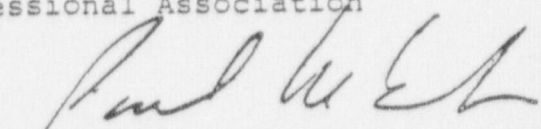
CONCLUSION

Intervenors therefore respectfully request that Applicants' exception from financial qualification be waived for purposes of this proceeding, and that Applicants, prior to low power operation, be required to demonstrate financial qualification in accordance with Commission regulations 50.33(f)(2), (3) and (4) and 50.57(4).

Respectfully submitted,


TOWN OF HAMPTON
By Its Attorneys
SHAINES & McEACHERN
Professional Association

By


Paul McEachern

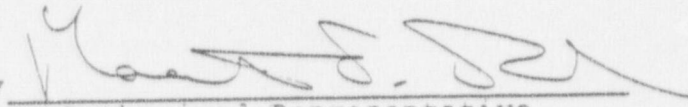
Dated: July 31, 1987

By


Matthew T. Brock

TOWN OF HAMPTON, NEW ENGLAND
COALITION ON NUCLEAR POLLUTION, and
SEACOAST ANTI-POLLUTION LEAGUE

By


Authorized Representative

FORM B-K

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report: July 22, 1967

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
(Exact name of registrant as specified in its charter)

NEW HAMPSHIRE
(State, or other jurisdiction
of incorporation)

1-6392
(Commission
File Number)

02-0181050
(IRS Employer
Identification No.)

1000 ELM STREET, MANCHESTER, NEW HAMPSHIRE
(Address of principal executive offices)

03105
(Zip Code)

Registrant's Telephone Number, Including Area Code

603-669-4000

EXHIBIT A

Item 5. Other Materially Important Events

On June 29, 1987, the New Hampshire Public Utilities Commission (NHPUC) found, in a 2-1 decision on the Company's outstanding rate request, that the Company was entitled to recover approximately \$20.5 million of the \$58.9 million (14%) rate increase originally requested in May, 1986. The Company had acknowledged during the course of the proceedings that the effect of the Tax Reform Act of 1986 and other minor adjustments would reduce its claimed increase to approximately \$38.6 million.

The NHPUC ordered the Company to refund the difference between rates collected under bond since January 1987 and the level of rates approved by the order, plus interest on such sums at the rate of 10% through June and 6.5% thereafter. Refunds are to be paid on a customer specific basis commencing in November. The NHPUC found that the increased rates shall be applied on a uniform percentage to the base rates of each customer class. The NHPUC determined that the Company's cost of common equity was 15% (the Company had requested 19%) and fixed an overall rate of return at 14.94%. In addition, the NHPUC rejected a second step increase of approximately \$35 million (7%), which the Company had requested become effective January 1, 1988.

On July 20, 1987, the Company petitioned the NHPUC for a rehearing of the order on the grounds that the decision was unlawful and unreasonable in several respects, the most significant being that the decision failed to allow a just and reasonable capital structure and failed to determine a lawful, just and reasonable cost of common equity capital for the Company.

Further delays have occurred in the process of attempting to obtain all governmental approvals required to commence operation of the Seabrook Nuclear Power Plant (in which the Company has an ownership interest of about 35%). In a position filed with the Nuclear Regulatory Commission (NRC) in June of 1987, the Federal Emergency Management Agency (FEMA) has indicated that it was unable to conclude that certain aspects of the radiological emergency response plans for the seventeen towns in New Hampshire which are within a 10 mile radius of the Plant, are adequate to ensure the timely evacuation of the New Hampshire beaches in the event of an emergency at the Plant. This conclusion was contrary to that of the NRC staff and an independent consultant's report. The NRC has decided that a radiological emergency response plan for the six Massachusetts towns within a 10 mile radius of the Plant must be filed by the Joint Owners prior to low-power testing of the Plant, a requirement that had not been imposed with respect to any prior nuclear plant. It is obvious from these developments, and from the politicizing of the process regarding licensing of the Seabrook Plant, that the date of operation will be further delayed.

Item 5. Other Materially Important Events (Cont.)

As a result of these adverse developments with respect to the Plant and the NHPUC's rate order described above, and in view of the difficulties encountered by the Company in placing a planned \$150 million short-term financing in May 1987 (when only \$100 million could be placed) and the reaction of the financial markets to the foregoing, the Company's management and its financial advisors have concluded that, absent a change in the Company's circumstances, financings in the amounts projected to meet the Company's cash needs during the next several years were no longer available. Management has also concluded that, even if financing were available in the short term, it would not be in the best interests of the Company, its customers, or investors to proceed with such a financing program, unless financial plans can be developed which would improve the Company's long term cash position. Consequently, on July 16, 1987, the Company withdrew its requests for NHPUC permission to raise funds for Seabrook expenses and non-Seabrook construction. Earlier this year the Company had filed two petitions with the NHPUC seeking approval to borrow up to \$545 Million in two separate financings.

The Company has instituted strict cash conservation measures that should allow it to meet its estimated cash requirements, including the refunds described above, through the end of 1987. The Company is working jointly with the investment firms of Merrill Lynch Capital Markets and Drexel Burnham Lambert, Inc. to develop alternate financial plans. Given the uncertainties surrounding the Company, its limited financial flexibility, the amount of debt service which the Company can reasonably expect to carry, the political, economic and competitive limits on rate increases in New Hampshire, and the regulatory approvals that will be required, it will be extremely difficult to develop and implement such a plan to improve significantly the Company's circumstances within the limited time available. Should an adequate plan not be developed and placed into effect before the end of 1987, it will be difficult, if not impossible, for the Company to avoid proceedings under the Bankruptcy Code.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

July 22, 1987

By s/ R. J. Harrison
R. J. Harrison
President

AFFIDAVIT OF DALE G. BRIDENBAUGH

1. My name is Dale G. Bridenbaugh. I am President of MHB Technical Associates ("MHB"), a technical consulting firm specializing in nuclear power plant safety, licensing, and regulatory matters, located at 1723 Hamilton Avenue, Suite K, San Jose, California 95125. I received a Bachelor of Science degree in mechanical engineering from South Dakota School of Mines and Technology in 1953 and am a licensed professional nuclear engineer. I have more than 30 years experience in the engineering field, primarily in power plant analysis, construction, maintenance, and operations. Since 1976, I have been employed by MHB and have acted as a consultant to domestic and foreign government agencies and other groups on nuclear power plant safety and licensing matters. Between 1966 and 1976, I was employed by the Nuclear Energy Division of General Electric Company ("GE") in various managerial capacities relating to the sale, service, and product improvement of nuclear power reactors manufactured by that company. Between 1955 and 1966, I was employed in various engineering capacities working with gas and steam turbines for GE. Included in my duties at GE was supervision of startup testing of equipment

in fifteen to twenty fossil and nuclear power plants. I also was responsible for various nuclear fuel projects ranging from the remote disassembly of irradiated fuel to the supply of reload fuel for operating nuclear plants. I have authored technical papers and articles on the subject of nuclear power equipment and nuclear power plant safety and have given testimony on those subjects. Other details of my experience and qualifications are contained in Attachment #1.

2. My experience with the Seabrook plant began in September 1983 when my firm was retained by the Massachusetts Attorney General to evaluate the prudence of expenditures by Fitchburg Gas and Electric Company on Seabrook Unit 2. Since that initial assignment I have evaluated various phases of the Seabrook project in five different engagements. In my work as consultant on the Seabrook plant, I have performed diverse assignments, focusing primarily on technical reviews and analysis of safety and cost issues. I have visited the plant on several occasions and have participated in a number of interviews and/or depositions of key Seabrook management personnel.

3. The purpose of this Affidavit is to explain the technical reasons why low power testing to 5 percent power at Seabrook is of no value if subsequent power operation at or near full power is not authorized. It will further explain that there are, in fact, several irreversible changes which would result from testing at the 5% level while no significant electrical power would be produced. These changes would limit the options available for the plant and plant site in the event that full power operation is not subsequently authorized.

SEQUENCE OF TESTING AND POWER OPERATION

4. Every nuclear plant needs to have fuel loaded and systems tested before it is permitted to operate at power levels sufficient to turn the turbine and generate electric power. The typical test sequence is to perform non-nuclear zero-power tests first, then proceed to "zero-power" nuclear tests and subsequently to low-power nuclear operation with no electrical production. Electrical production is usually deferred until the test program achieves a power level of 10-15%. Permission to proceed to a higher power level is in general predicated on fulfillment of the test objectives at

the lower levels. When the testing is completed satisfactorily at the lower levels and other requirements are satisfied, the plant is then permitted to operate at higher power levels and ultimately at a level at which sufficient steam is generated to allow production of electricity. Power levels are gradually increased and tests are conducted until full power operation has been achieved and the unit is considered to be in commercial operation. The minimum length of time in which this process can be completed is about three months. At Seabrook, the test program as specified in the Final Safety Analysis Report is scheduled for four months. All other factors being equal, the initial operating phase at a new nuclear unit can be most efficiently performed if a smooth transition is made from fuel loading to low power operation and on to the power testing above 5%. If a significant delay between the testing steps occurs, it is most burdensome for that delay to take place after power operation has begun. The reason for this is because the power test program is designed so as to be able to proceed from the completed tests at a lower authorized power level to tests at the next power step. If lengthy delays are introduced, it then becomes necessary to repeat certain activities such as instrument calibrations

and heat balance calculations to assure safe and smooth transition to the next authorized level. A delay prior to initial nuclear operation does not bring about the need for duplication of these operations.

5. In the case of Seabrook Unit 1, the loading of fuel into the reactor has now been completed and the Company has completed the tests intended to be performed prior to nuclear operation of the unit. This work was authorized by the granting of a "zero" power license by the Nuclear Regulatory Commission ("NRC") on October 17, 1986, and fuel loading was begun on October 22, 1986. William B. Derrickson's ^{1/} September 26, 1986 presentation to the NRC's Advisory Committee of Reactor Safeguards ("ACRS") indicated that the scheduled time for completion of the non-nuclear tests following fuel loading was 4 to 6 weeks:

Our request is to be able to load fuel and do the hot testing with the coolant system at operating temperature and pressure.

We have several tests to run, from tests from the original hot function tests. This whole effort from the day we receive the license to completion of the hot functional tests will

^{1/} Mr. Derrickson is a Senior Vice-President of Public Service of New Hampshire and has primary responsibility for the Seabrook project.

take about a month or six weeks. (ACRS Transcript, pp. 14-15)

6. In the case of Seabrook, the operating license has been requested in not one, but three separate phases. The first phase which consists of fuel loading and hot functional tests (but no criticality and no irradiation of the fuel) has now been completed. The second phase, now under review, would permit low power testing and subsequent heatups involving operation at up to 5% of full power. The third phase, if authorized, will permit operation between 5% and 100% power.

7. The NRC action to permit low power operation at Seabrook at this time is a deviation from common past practice. The traditional licensing practice was in the past to grant an operating license as a result of a single licensing action. In those cases, fuel loading and low power test activities were then performed and integrated with ascension to full power. Shortly after the Three Mile Island accident, the NRC began to issue licenses in a two-step (low power-full power) process. This two-step process was implemented to help ease the licensing review backlog which resulted from the licensing hiatus following the 1979 accident. Initially, this two-step process worked

reasonably well. Plants that were granted a low power license generally completed the fuel loading and low power testing by the time the full power license was issued, with the low power testing and the full power licensing relatively close together in time. 2/ Since 1984, however, there have been several cases of lengthy delay between the low power license and the approval for operation above 5%. Examples of these delayed cases include:

- 1) Diablo Canyon 1, where a three year delay was experienced between the initial low power license (September 1981) and full power approval (November 1984).
- 2) Shoreham, where a low power license was awarded in July 1985 and full power authorization is yet to be issued.
- 3) Perry, which received low power authorization in March 1986, did not receive full power approval until December 1986.

2/ Of the 15 plants licensed for low power operation between March 1979 and June 1984 which also received a full power license during that period, the average time between the low power and full power licenses was less than 5 months. The average time from initial criticality to award of the full power license was only 1/2 month (excluding Grand Gulf which was delayed for approximately two years because of improperly drafted Technical Specifications). See Attachment #2, portions of letter from NRC Chairman Palladino to Congressman Edward Markey, June 15, 1984.

These delays illustrate clearly that NRC approval of low power operation gives no assurance that timely authorization of power operation is forthcoming. This would appear to be particularly relevant for Seabrook which is heavily engaged in the resolution of complex emergency planning issues.

IRREVERSIBLE CHANGES IN STATUS QUO
RESULTING FROM LOW POWER OPERATION

8. Before a reactor "goes critical" as it does for the first time during low power testing, neither the nuclear fuel nor the reactor or its components, are irradiated or contaminated by radiation. (The uranium contained in the fuel is of course naturally radioactive, but this material is at a very low level and is fully contained within the fuel rods.) Low power testing, however, necessarily causes irreversible changes to a nuclear reactor and its supporting systems.

9. There is necessarily significant irradiation of the nuclear fuel as a result of low power testing. This irradiation results in the build-up of quantities of fission products within the fuel which requires that the fuel subsequently be handled, transported, and treated as

irradiated fuel. Once these fission products have been produced, they cannot be removed from the fuel by any usual means. Thus, the irradiation from low power testing is irreversible. During low power testing some components of the Seabrook plant would also be irreversibly irradiated while other components will become contaminated with activated corrosion products and/or fission products. These include the reactor pressure vessel and internals, the steam generators, the control rods, incore nuclear instrumentation, and other reactor components, equipment, and piping. Once contaminated by substantial quantities of radioactive fission products, special care would be required in handling these items.

10. The irreversible changes to the plant resulting from power operation as described above makes a significant change in the way in which the Seabrook plant must be considered. Prior to power operation, the plant equipment and components are radiation free (with the exception of nuclear fuel and some sensors), and there is no limitation as to what future option for the plant and the plant site may be selected. It is possible in this condition that the plant could be abandoned, converted to non-nuclear use, or operated as a nuclear unit as planned. Once radioactive,

the options are reduced. Both the plant and plant site become nearly irreversibly committed to a nuclear facility. This is because much of the plant equipment will be made radioactive and because the site itself becomes (de-facto) a long-term radioactive waste storage facility since there is no approved storage facility available to receive the irradiated nuclear fuel.

11. Because of the unavoidable irradiation and contamination described above, the conduct of low power testing of necessity requires some worker exposure to potentially harmful radiation during the course of the testing as well as after the testing is completed. The amount of exposure may not be large and unless errors are made, probably would not exceed allowable limits. However, it is an additional unavoidable impact which results from low power testing. The necessity of performing the associated health physics protection requirements further complicates maintenance and operation steps and makes plant security a more critical and time consuming function.

12. In its non-irradiated condition, the fuel loaded into the Seabrook core probably has a recovery (or salvage) value that is likely equal to or a major fraction of the

original purchase value of that fuel. This fuel, if not irradiated, likely could be sold to other nuclear plants to use as is, or, if necessary, to be reconfigured for a different reactor. (For example, some bundles might require manual disassembly and rod rearrangement or reconfiguration of the pellets for the necessary pattern of enrichment.) Once the fuel is substantially irradiated and there is a significant build-up of fission products as would occur during the proposed 5% power operation, it makes fuel reconfiguration, and therefore most opportunities for reuse of the fuel, more complicated and costly and therefore far less likely to be implemented. Based on present day nuclear fuel costs, the value of the Seabrook fuel is approximately \$50-80 million. Salvage value approximately equal to this amount could be realized from the fuel in its present condition. While it is technically possible that irradiated fuel could be transferred to a different reactor of the same design and subsequently used, there would be significant penalties associated with such an action. It would be necessary to ship the fuel in shielded casks which may or may not be readily available. The fuel itself would not be of optimum design for equilibrium operation. Such a transfer has, to my knowledge, never been done in U.S. power

reactors and would probably require lengthy review by the NRC and/or other regulatory bodies. Consequently, I conclude that the fuel has little or no value if used for testing up to 5% power.

13. The proposed 5% power operation would also result in the loss of potential salvage value for other plant components that would be substantially irradiated or contaminated (i.e., steam generators, reactor components such as control rods and other internals, coolant pumps and seals, valves, piping and instrumentation sensors). I estimate the salvage value of these components to be at least \$20-30 million. These components are virtually identical in all Westinghouse Pressurized Water Reactors, many are periodically replaced, and others are useful for replacement in the event of component failures. Thus, a resale market for them should exist unless they are irradiated. In an interview conducted in conjunction with a Vermont proceeding (Vermont Public Service Board, Docket 5132), William B. Derrickson, Vice-President of PSNH stated his estimate of the salvage value of the cancelled Seabrook Unit 2 to be approximately \$25 million. (See Attachment #3, November 12, 1986 Interview, William B. Derrickson, p. 74.) It is likely, however, that if these same components were

irradiated and/or contaminated by power operation, they would have little or no or perhaps negative salvage value.

14. Additional costs resulting from a decision to perform low power testing are the costs of decontaminating, decommissioning, and disposal of the fuel and portions of the reactor system following a low power testing period in the event that a full power license is not obtained. The cost of necessary removal/disposal/decontamination efforts could be tens of millions of dollars, depending on the specific disposal requirements. Such efforts also carry with them the potential for additional worker radiation exposure. In addition, the irradiated fuel will need to be treated as high level radioactive material and would likely ultimately be disposed of as spent fuel. Because of the lengthy time periods during which spent fuel must be isolated from the environment, Federal law has assigned the responsibility for its ultimate disposition to the U.S. Department of Energy (DOE). 3/ DOE will perform the

3/ Guidelines for the recommendation of nuclear waste sites were enacted in 10 CFR Chapter III, Part 960 on November 30, 1984. These guidelines do not specify precisely the length of time that high level waste must be safeguarded from the environment. The guidelines do, however, give an indication of the time periods required by including numerous statements of "Qualifying" and "Favorable" Conditions such as:

ultimate disposal of high level waste, but is also required to recover the full cost of disposal from the utility. DOE has published expected costs for the receipt and ultimate disposal of irradiated fuel. These expected costs are currently being collected at a rate of \$.001/kwhr of generation for fuel exposed now to be disposed of by DOE in the future. Fuel typically operates at a design exposure of 20,000 MWD (t)/ton. For such fuel, this collection rate is equivalent to approximately \$150,000 per ton. DOE has not established a rate for fuel exposed to the lower level

(b) Favorable Conditions. (1) Site conditions such that the pre-waste-emplacement ground-water travel time along any path of likely radionuclide travel from the disturbed zone to the accessible environment would be more than 10,000 years.

(2) The nature and rates of hydrologic processes operating within the geologic setting during the Quaternary Period would, if continued into the future, not affect or would favorably affect the ability of the geologic repository to isolate the waste during the next 100,000 years.

(Part 960 - General Guidelines For the Recommendation of Sites for Nuclear Waste Repositories, 10 CFR, Chapter III)

Citation of the above guideline is not intended to imply that the Seabrook Site will be required to store the irradiated fuel for the next 10,000 to 100,000 years. It does however, give an indication of the irreversible effects involved in the decision being considered.

associated with the 5% power test operation, but there is no reason to expect that the cost per ton could be negotiated to much below DOE's published rates as DOE is required by law to obtain full cost recovery. Accordingly, the potential cost for disposal by DOE of the 90 tons at Seabrook could be as much as \$13,000,000, not counting transportation or possible cost increases. In addition, no disposal facility is planned or expected until after the year 2000, at least 15 years in the future. It would therefore be necessary to store and safeguard the spent fuel on site until that time. Assuming an operations and security staff of at least 10-15 people for this chore, an annual cost of \$500,000 to \$1,000,000 is not unreasonable and is probably low. The cost of spent fuel disposal alone thus becomes a \$20 to 30 million obligation. Reactor components removal, handling and disposal would be additionally required.

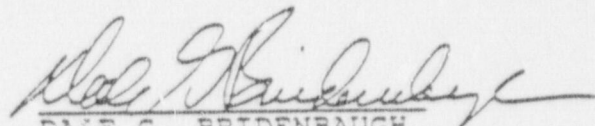
THERE IS NO PURPOSE SERVED, AND THE BENEFITS
PRODUCED BY LOW POWER TESTING ARE OUTWEIGHED BY THE
ADVERSE AND IRREVERSIBLE CHANGES IN THE STATUS QUO

15. The essential purpose of a low power license is to test reactor systems which cannot be effectively tested in noncritical conditions. It is necessary to conduct such

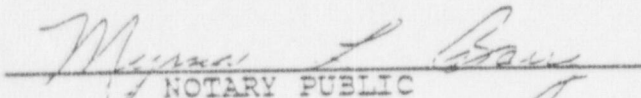
testing prior to operating the plant at higher power levels (i.e., greater than 5% power). At 5% power, the reactor would barely produce enough steam to spin the turbine and synchronize the generator. Taking into account the station auxiliary power needs, it is likely that there would be no net electric power supplied to the grid as a result of the testing, and there would be no displaced oil or fuel cost savings. Instead, power from the grid would be required to run the plant during the tests. Thus, none of the benefits assumed in the NRC's Environmental Impact Statement for Seabrook would be achieved by low power testing; however, as noted, low power operation would result in environmental impacts, such as plant contamination with radioactive material, the likely loss of the resale value of the fuel and other components once they become irradiated, the cost of decontamination, decommissioning and disposal, worker exposure, and last but not least, the potential commitment of the site to lengthy radioactive waste storage use.

16. Because low power testing standing alone produces no net benefits but does have serious adverse effects, it is my opinion that there is no reason to conduct low power testing just for its sake alone. Rather, low power testing can be rationally justified only in circumstances where

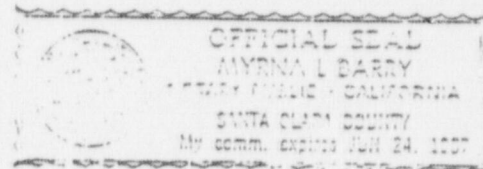
there is no substantial doubt that the plant subsequently will operate at higher power levels so that its benefits (i.e., generation of electricity) will be available to offset the adverse effects (fuel irradiation, radioactive contamination, potential worker exposure) which cannot be avoided. In my technical opinion, the optimum time for performing low-power testing of any nuclear reactor is shortly before full-power operational approval is reliably anticipated to be obtained.


DALE G. BRIDENBAUGH

Subscribed and sworn to before me
on this 31 day of March, 1987.


NOTARY PUBLIC

My Commission expires: 6/24/87



PROFESSIONAL QUALIFICATIONS OF DALE G. BRIDENBAUGH

DALE G. BRIDENBAUGH
MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125
(408) 266-2716

EXPERIENCE:

1976 - PRESENT

President - MHB Technical Associates, San Jose, California

Co-founder and partner of technical consulting firm. Specialists in energy consulting to governmental and other groups interested in evaluation of nuclear plant safety and licensing. Consultant in this capacity to state agencies in California, New York, Illinois, New Jersey, Pennsylvania, Oklahoma and Minnesota and to the Norwegian Nuclear Power Committee, Swedish Nuclear Inspectorate, and various other organizations and environmental groups. Performed extensive safety analysis for Swedish Energy Commission and contributed to the Union of Concerned Scientists's Review of WASH-1400. Consultant to the U.S. NRC - LWR Safety Improvement Program, performed Cost Analysis of Spent Fuel Disposal for the Natural Resources Defense Council, and contributed to the Department of Energy LWR Safety Improvement Program for Sandia Laboratories. Served as expert witness in NRC and state utility commission hearings.

1976 - (FEBRUARY - AUGUST)

Consultant, Project Survival, Palo Alto, California

Volunteer work on Nuclear Safeguards Initiative campaigns in California, Oregon, Washington, Arizona, and Colorado. Numerous presentations on nuclear power and alternative energy options to civic, government, and college groups. Also resource person for public service presentations on radio and television.

1973 - 1976

Manager, Performance Evaluation and Improvement, General Electric Company - Nuclear Energy Division, San Jose, California

Managed seventeen technical and seven clerical personnel with responsibility for establishment and management of systems to monitor and measure Boiling Water Reactor equipment and system operational performance. Integrated General Electric resources in customer plant modifications,

coordinated correction of causes of forced outages and of efforts to improve reliability and performance of BWR systems. Also responsible for development of Division Master Performance Improvement Plan as well as for numerous Staff special assignments on long-range studies. Was on special assignment for the management of two different ad hoc projects formed to resolve unique technical problems.

1972 - 1973

Manager, Product Service, General Electric Company - Nuclear Energy Division, San Jose, California

Managed group of twenty-one technical and four clerical personnel. Prime responsibility was to direct interface and liaison personnel involved in corrective actions required under contract warranties. Also in charge of refueling and service planning, performance analysis, and service communication functions supporting all completed commercial nuclear power reactors supplied by General Electric, both domestic and overseas (Spain, Germany, Italy, Japan, India, and Switzerland).

1968 - 1972

Manager, Product Service, General Electric Company - Nuclear Energy Division, San Jose, California

Managed sixteen technical and six clerical personnel with the responsibility for all customer contact, planning and execution of work required after the customer acceptance of department-supplied plants and/or equipment. This included quotation, sale and delivery of spare and renewal parts. Sales volume of parts increased from \$1,000,000 in 1968 to over \$3,000,000 in 1972.

1966 - 1968

Manager, Complaint and Warranty Service, General Electric Company - Nuclear Energy Division, San Jose, California

Managed group of six persons with the responsibility for customer contacts, planning and execution of work required after customer acceptance of department-supplied plants and/or equipment--both domestic and overseas.

1963 - 1966

Field Engineering Supervisor, General Electric Company, Installation and Service Engineering Department, Los Angeles, California

Supervised approximately eight field representatives with responsibility for General Electric steam and gas turbine installation and maintenance work in Southern California, Arizona, and Southern Nevada. During this period was responsible for the installation of eight different central station steam turbine-generator units, plus much maintenance activity. Work included customer contact, preparation of quotations, and contract negotiations.

1956 - 1963

Field Engineer, General Electric Company, Installation and Service Engineering Department, Chicago, Illinois

Supervised installation and maintenance of steam turbines of all sizes. Supervised crews of from ten to more than one hundred men, depending on the job. Worked primarily with large utilities but had significant work with steel, petroleum and other process industries. Had four years of experience at construction, startup, trouble-shooting and refueling of the first large-scale commercial nuclear power unit.

1955 - 1956

Engineering Training Program, General Electric Company, Erie, Pennsylvania, and Schenectady, New York

Training assignments in plant facilities design and in steam turbine testing at two General Electric factory locations.

1953 - 1955

United States Army - Ordnance School, Aberdeen, Maryland

Instructor - Heavy Artillery Repair. Taught classroom and shop disassembly of artillery pieces.

1953

Engineering Training Program, General Electric Company, Evendale, Ohio

Training assignment with Aircraft Gas Turbine Department.

EDUCATION & AFFILIATIONS:

BSME - 1953, South Dakota School of Mines and Technology, Rapid City, South Dakota, Upper 1/4 of class.

Professional Nuclear Engineer - California. Certificate No. 0973.

Member - American Nuclear Society .

Various Company Training Courses during career including Professional Business Management, Kepner Tregoe Decision Making, Effective Presentation, and numerous technical seminars.

HONORS & AWARDS:

Sigma Tau - Honorary Engineering Fraternity.

General Managers Award, General Electric Company.

PERSONAL DATA:

Born November 20, 1931, Miller, South Dakota
Married, three children
6'2", 190 lbs., health - excellent
Honorable discharge from United States Army
Hobbies: Skiing, hiking, work with boy Scout Groups

PUBLICATIONS & TESTIMONY:

1. Operating and Maintenance Experience, presented at Twelfth Annual Seminar for Electric Utility Executives, Pebble Beach, California, October 1972, published in General Electric NEDC-10697, December 1972.
2. Maintenance and In-Service Inspection, presented at IAEA Symposium on Experience from Operating and Fueling of Nuclear Power Plants, Bridenbaugh, Lloyd & Turner, Vienna, Austria, October, 1973.
3. Operating and Maintenance Experience, presented at Thirteenth Annual Seminar for Electric Utility Executives, Pebble Beach, California, November 1973, published in General Electric NEDO-20222, January 1974.
4. Improving Plant Availability, presented at Thirteenth Annual Seminar for Electric Utility Executives, Pebble Beach, California, November 1973, published in General Electric NEDO-20222, January, 1974.
5. Application of Plant Outage Experience to Improve Plant Performance, Bridenbaugh and Burdsall, American Power Conference, Chicago, Illinois, April 14, 1974.
6. Nuclear Valve Testing Cuts Cost, Time, Electrical World, October 15, 1974.
7. Testimony of D. G. Bridenbaugh, R. B. Hubbard, and G. C. Minor before the United States Congress, Joint Committee on Atomic Energy, February 18, 1976, Washington, D.C. (Published by the Union of Concerned Scientists, Cambridge, Massachusetts.)
8. Testimony of D. G. Bridenbaugh, R. B. Hubbard, and G. C. Minor to the California State Assembly Committee on Resources, Land Use, and Energy, March 8, 1976.
9. Testimony by D. G. Bridenbaugh before the California Energy commission, entitled, Initiation of Catastrophic Accidents at Diablo Canyon, Hearings on Emergency Planning, Avila Beach, California, November 4, 1976.
10. Testimony by D. G. Bridenbaugh before the U. S. Nuclear Regulatory Commission, subject: Diablo Canyon Nuclear Plant Performance, Atomic Safety and Licensing Board hearings, December, 1976.
11. Testimony by D. G. Bridenbaugh before the California Energy Commission, subject: Interim Spent Fuel Storage Considerations, March 10, 1977.

12. Testimony of D. G. Bridenbaugh before the New York State Public Service Commission Siting Board Hearings concerning the Jamesport Nuclear Power Station, subject: Effect of Technical and Safety Deficiencies on Nuclear Plant Cost and Reliability, April, 1977.
13. Testimony by D. G. Bridenbaugh before the California State Energy Commission, subject: Decommissioning of Pressurized Water Reactors, Sundesert Nuclear Plant Hearings, June 9, 1977.
14. Testimony by D. G. Bridenbaugh before the California State Energy Commission, subject: Economic Relationships of Decommissioning, Sundesert Nuclear Plant, for the Natural Resources Defense Council, July 15, 1977.
15. The Risks of Nuclear Power Reactors: A Review of the NRC Reactor Safety Study WASH-1400, Kendall, Hubbard, Minor & Bridenbaugh, et. al., for the Union of Concerned Scientists, August, 1977.
16. Testimony by D. G. Bridenbaugh before the Vermont State Board of Health, subject: Operation of Vermont Yankee Nuclear Plant and Its Impact on Public Health and Safety, October 6, 1977.
17. Testimony by D. G. Bridenbaugh before the U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board, subject: Deficiencies in Safety Evaluation of Non-Seismic Issues, Lack of a Definitive Finding of Safety, Diablin Canyon Nuclear Units, October 18, 1977, Avila Beach, California.
18. Testimony by D. G. Bridenbaugh before the Norwegian Commission on Nuclear Power, subject: Reactor Safety/Risk, October 26, 1977.
19. Swedish Reactor Safety Study: Barseback Risk Assessment, MHB Technical Associates, January, 1978. (Published by the Swedish Department of Industry as Document DsI 1978:1)
20. Testimony by D. G. Bridenbaugh before the Louisiana State Legislature Committee on Natural Resources, subject: Nuclear Power Plant Deficiencies Impacting on Safety & Reliability, Baton Rouge, Louisiana, February 13, 1978.
21. Spent Fuel Disposal Costs, report prepared by D. G. Bridenbaugh for the Natural Resources Defense Council (NRDC), August 31, 1978.
22. Testimony of D. G. Bridenbaugh, G. C. Minor, and R. B. Hubbard before the Atomic Safety and Licensing Board, in the matter of the Black Fox Nuclear Power Station Construction Permit Hearings, September 25, 1978, Tulsa, Oklahoma.
23. Testimony of D. G. Bridenbaugh and R. B. Hubbard before the Louisiana Public Service Commission, Nuclear Plant and Power Generation Costs, November 19, 1978, Baton Rouge, Louisiana.

24. Testimony by D. G. Bridenbaugh before the City Council and Electric Utility Commission of Austin, Texas, Design, Construction, and Operating Experience of Nuclear Generating Facilities, December 5, 1978, Austin, Texas.
25. Testimony by D. G. Bridenbaugh for the Commonwealth of Massachusetts, Department of Public Utilities, Impact of Unresolved Safety Issues, General Deficiencies, and Three Mile Island-Initiated Modifications on Power Generation Cost at the Proposed Pilgrim-2 Nuclear Plant, June 8, 1979.
26. Improving the Safety of LWR Power Plants, MHB Technical Associates, prepared for U.S. Dept. of Energy, Sandia Laboratories, September 28, 1979.
27. BWR Pipe and Nozzle Cracks, MHB Technical Associates, for the Swedish Nuclear Power Inspectorate (SKI), October, 1979.
28. Uncertainty in Nuclear Risk Assessment Methodology. MHB Technical Associates, for the Swedish Nuclear Power Inspectorate (SKI), January 1980.
29. Testimony of D. G. Bridenbaugh and G. C. Minor before the Atomic Safety and Licensing Board, in the matter of Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station following TMI-2 accident, subject: Operator Training and Human Factors Engineering, for the California Energy Commission, February 11, 1980.
30. Italian Reactor Safety Study: Caorso Risk Assessment, MHB Technical Associates, for Friends of the Earth, Italy, March, 1980.
31. Decontamination of Krypton-85 from Three Mile Island Nuclear Plant, H. Kendall, R. Pollard, and D. G. Bridenbaugh, et al, The Union of Concerned Scientists, delivered to the Governor of Pennsylvania, May 15, 1980.
32. Testimony by D. G. Bridenbaugh before the New Jersey Board of Public Utilities, on behalf of New Jersey Public Advocate's Office, Division of Rate Counsel, Analysis of 1979 Salem-1 Refueling Outage, August 1980.
33. Minnesota Nuclear Plants Gaseous Emissions Study, MHB Technical Associates, for Minnesota Pollution Control Agency, September, 1980.
34. Position Statement, Proposed Rulemaking on the Storage and Disposal of Nuclear Waste, Joint Cross-Statement of Position of the New England Coalition on Nuclear Pollution and the Natural Resources Defense Council, September, 1980.
35. Testimony by D. G. Bridenbaugh and G. C. Minor, before the New York State Public Service Commission, in the matter of Long Island Light Company Temporary Rate Case, prepared for the Shoreham Opponents Coalition, September 22, 1980, Shoreham Nuclear Plant Construction Schedule.

36. Supplemental Testimony by D. G. Bridenbaugh before the New Jersey Board of Public Utilities, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, Analysis of 1979 Salem-1 Refueling Outage, December, 1980.
37. Testimony by D. G. Bridenbaugh and G. C. Minor, before the New Jersey Board of Public Utilities, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, Oyster Creek 1980 Refueling Outage Investigation, February 1981.
38. Economic Assessment: Ownership Interest in Palo Verde Nuclear Station, MHB Technical Associates, for the City of Riverside, September 11, 1981.
39. Testimony of D. G. Bridenbaugh before the Public Utilities Commission of Ohio, in the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of the Toledo Edison Company and Related Matters, subject: Davis-Besse Nuclear Power Station 1980-81 Outage Review, November, 1981.
40. Supplemental Testimony of D. G. Bridenbaugh before the Public Utilities Commission of Ohio, in the matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of the Toledo Edison Company and Related Matters, subject: Davis-Besse Nuclear Power Station 1980-81 Outage Review, November 1981.
41. Systems Interaction and Single Failure Criterion, Phase 2 Report, MHB Technical Associates for the Swedish Nuclear Power Inspectorate (SKI), January, 1982.
42. Testimony of D. G. Bridenbaugh and G. C. Minor on behalf of Governor Edmund G. Brown Jr., before the Atomic Safety and Licensing Board, regarding Contention 10, Pressurizer Heaters, January 11, 1982.
43. Testimony of D. G. Bridenbaugh and G. C. Minor on behalf of Governor Edmund G. Brown Jr., before the Atomic Safety and Licensing Board, regarding Contention 12, Block and Pilot Operated Relief Valves, January 11, 1982.
44. Testimony of D. G. Bridenbaugh before the Commonwealth of Massachusetts, Department of Public Utilities, on behalf of the Massachusetts Attorney General, Pilgrim Nuclear Power Station, 1981-82 Outage Investigation, March 11, 1982.
45. Testimony of D. G. Bridenbaugh before the Pennsylvania Public Utility Commission, on behalf of the Pennsylvania Office of Consumer Advocate, Beaver Valley Outage, March, 1982.
46. Interim testimony of D. G. Bridenbaugh and G. C. Minor before the Atomic Safety and Licensing Board, on behalf of Suffolk County, in the matter of Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, regarding Suffolk County Contention 11, Passive Mechanical Valve Failures, April 13, 1982.

47. Testimony of D. G. Bridenbaugh and G. C. Minor before the Atomic Safety and Licensing Board, on behalf of Suffolk County, in the matter of Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, regarding Suffolk County Contention 11, Passive Mechanical Valve Failures, April 13, 1982.
48. Testimony of D. G. Bridenbaugh and R. B. Hubbard, in the Matter of Jersey Central Power and Light Company For an Increase in Rates for Electrical Service, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, Three Mile Island Units 1 & 2, Cleanup and Modification Programs, May, 1982.
49. Testimony of D. G. Bridenbaugh and G. C. Minor on behalf of Suffolk County, before the Atomic Safety and Licensing Board, in the matter of Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, regarding Suffolk County Contention 22, SRV Test Program, May 25, 1982.
50. Testimony of D. G. Bridenbaugh and G. C. Minor on behalf of Suffolk County, before the Atomic Safety and Licensing Board, in the matter of Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, regarding Suffolk County Contention 28(a)(vi) and SOC Contention 7A(6), Reduction of SRV Challenges, June 14, 1982.
51. Testimony of D. G. Bridenbaugh before the Illinois Commerce Commission, on behalf of the Illinois Attorney General's Office, Expected Lifetimes and Performance of Nuclear Power Plants, June 18, 1982.
52. Testimony of D. G. Bridenbaugh and R. B. Hubbard on behalf of the Ohio Consumers Counsel, before the Public Utilities Commission of Ohio, regarding Construction of Perry Nuclear Generating Unit No. 1, October 7, 1982.
53. Issues Affecting the Viability and Acceptability of Nuclear Power Usage in the United States, prepared by MHB Technical Associates for Congress of the United States, Office of Technology Assessment for use in conjunction with Workshop on Technological and Regulatory Changes in Nuclear Power, December 8 & 9, 1982.
54. Testimony of D. G. Bridenbaugh on behalf of Rockford League of Women Voters, before the Atomic Safety and Licensing Board, in the matter of Commonwealth Edison Company, Byron Station, Units 1 and 2, regarding Contention 22, Steam Generators, March 1, 1983.
55. Testimony of G. C. Minor and D. G. Bridenbaugh before the Pennsylvania Public Utility Commission, on behalf of the Office of Consumer Advocate, Regarding the Cost of Constructing the Susquehanna Steam Electric Station, Unit 1, Re: Pennsylvania Power and Light, April 20, 1983.
56. Surrebuttal Testimony of D. G. Bridenbaugh before the Pennsylvania Public Utility Commission, on behalf of the Office of Consumer Advocate, Regarding the Cost of Constructing the Susquehanna Steam Electric Station, Unit 1, Re: Pennsylvania Power and Light, April 20, 1983.

57. Testimony of D. G. Bridenbaugh In the Matter of Public Service Gas & Electric, Base Rate Case, Nuclear Construction Expenditures, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, October 13, 1983.
58. Affidavit of D. G. Bridenbaugh, in the Matter of Jersey Central Power and Light, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, TMI Fault Investigation, November 23, 1983.
59. Testimony of D. G. Bridenbaugh, in the Matter of Public Service Electric & Gas, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, LEAC Investigation, Salem-1 Outages, December 1, 1983.
60. Rebuttal Testimony of D. G. Bridenbaugh, in the Matter of Public Service Electric & Gas, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, LEAC Investigation, Salem-1 Outages, January 18, 1984.
61. Testimony of D. G. Bridenbaugh, L. M. Danielson, R. B. Hubbard and G. C. Minor before the State of New York Public Service Commission, PSC Case No. 27563, in the matter of Long Island Lighting Company Proceeding to Investigate the Cost of the Shoreham Nuclear Generating Facility -- Phase II, on behalf of County of Suffolk, February 10, 1984.
62. Testimony of D. G. Bridenbaugh, in the Matter of Jersey Central Power & Light Company, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, Base Rate Case, Oyster Creek 1983-84 Outage and O&M and Capital Expenditures, May 23, 1984.
63. Direct Testimony of Dale G. Bridenbaugh and Richard B. Hubbard, Before the Illinois Commerce Commission, Illinois Power Company, Clinton Nuclear Station, Docket No. 84-0055, available from Illinois Governor's Office of Consumer Services, July 30, 1984.
64. Joint Direct Testimony of Dr. Robert N. Anderson, Professor Stanley G. Christensen, G. Dennis Eley, Dale G. Bridenbaugh and Richard B. Hubbard Regarding Suffolk County's Emergency Diesel Generator Contentions, Before the Atomic Safety and Licensing Board, Long Island Lighting Company, Shoreham Nuclear Plant, NRC Docket No. 50-322-OL, July 31, 1984.
65. Direct Testimony of Dale G. Bridenbaugh, Regarding Peach Bottom Units 2 and 3 - Investigation of Outages Due to Intergranular Stress Corrosion Cracking, Before the Pennsylvania Public Utility Commission, Philadelphia Electric Co., Docket No. M-FACE8408, on behalf of Pennsylvania Office of Consumer Advocate, September 1984.
66. Surrebuttal Testimony of Dale G. Bridenbaugh, Lynn M. Danielson, Richard B. Hubbard, and Gregory C. Minor, Before the New York State Public Service Commission, PSC Case No. 27563, Shoreham Nuclear Station, Long Island Lighting Company, on behalf of Suffolk County and New York State Consumer Protection Board, October 4, 1984.

67. Direct Testimony of Dale G. Bridenbaugh, Lynn M. Danielson and Gregory C. Minor on Behalf of Massachusetts Attorney General, DPU 84-145, Before the Massachusetts Department of Public Utilities, regarding the prudence of expenditures by Fitchburg Gas and Electric Light Company on Seabrook Unit 2, November 23, 1984, 84 pgs.
68. Direct Testimony of Dale G. Bridenbaugh, Richard B. Hubbard and Lynn K. Price on Behalf of Massachusetts Attorney General, DPU 84-152, Before the Massachusetts Department of Public Utilities, regarding the investigation by the Department of the Cost and Schedule of Seabrook Unit 1, December 12, 1984.
69. Direct Testimony of Dale G. Bridenbaugh, Lynn M. Danielson and Gregory C. Minor on Behalf of Maine Public Utilities Commission Staff regarding Seabrook Unit 2, Docket No. 84-113, December 21, 1984.
70. Direct Testimony of Dale G. Bridenbaugh and Gregory C. Minor Regarding Suffolk County's Emergency Diesel Generator Load Contention, Docket No. 50-322-OL, January 25, 1985.
71. Direct Testimony of Dale G. Bridenbaugh, in the Matter of the Motion of Public Service Electric & Gas, on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, Motion To Increase The Level of the Levelized Energy Adjustment Clause, Docket No. ER 8501166 and Docket No. 837-620, April 24, 1985.
72. Direct Testimony of Dale G. Bridenbaugh on behalf of the Attorney General of the Commonwealth of Massachusetts, in the Matter of Boston Edison Company DPU 85-1B, A Hearing to Determine Whether Fuel and Purchased Power Costs Associated with the Outage at Pilgrim Nuclear Power Station Which Began on December 10, 1983 and Ended on December 30, 1984 Were Reasonably and Prudently Incurred. May 13, 1985.
73. Direct Testimony of Dale G. Bridenbaugh on behalf of the Residential Ratepayer Consortium, in the Matter of the Application of Consumers Power Company for a Power Supply Cost Reconciliation proceeding for the 12-month period ended December 13, 1984, regarding Palisades Outage Review, Case No. U-7785-R, August 28, 1985.
74. Direct Testimony of Dale G. Bridenbaugh, Lynn M. Danielson, and Gregory C. Minor on behalf of the Department of Public Service, State of Vermont Public Service Board Docket No. 5030, Central Vermont Public Service Corporation, November 11, 1985.
75. Direct Testimony of Dale G. Bridenbaugh on behalf of New Jersey Department of the Public Advocate, in the matter of JCP&L for an increase in rates, Base Rate Case, Oyster Creek O&M and Capital Expenditures, November 25, 1985.
76. Direct Testimony of Dale G. Bridenbaugh on behalf of New Jersey Department of the Public Advocate, in the matter of JCP&L, TMI-Restart - LEAC, Re: TMI-Restart Commercial Operation Standards & Reliability of Service, January 31, 1986.

77. Direct Testimony of Dale G. Bridenbaugh, Gregory C. Minor, Lynn K. Price, and Steven C. Sholly on behalf of State of Connecticut Department of the Public Utility Control Prosecutorial Division and Division of Consumer Counsel regarding the prudence of expenditures on Millstone Unit 3, February 18, 1986.
78. Direct Testimony of Dale G. Bridenbaugh and Gregory C. Minor on behalf of Massachusetts Attorney General regarding the prudence of expenditures by New England Power Co. on Seabrook Unit 2, February 21, 1986.
79. Direct Testimony of Dale G. Bridenbaugh and Gregory C. Minor on behalf of Massachusetts Attorney General regarding WMECo Construction Prudence for Millstone Unit 3, March 19, 1986.
80. Direct Testimony of Dale G. Bridenbaugh and Gregory C. Minor on behalf of Massachusetts Attorney General regarding WMECo's Commercial Operating Dates and Deferred Capital Additions on Millstone Unit 3, March 19, 1986.
81. Rebuttal Testimony of Dale G. Bridenbaugh and Gregory C. Minor on behalf of Massachusetts Attorney General regarding New England Power Company's Seabrook 2 Rebuttal, April 2, 1986.
82. Direct Testimony of Dale G. Bridenbaugh and Gregory C. Minor on behalf of State of Maine Staff of Public Utilities Commission regarding Construction Prudence of Millstone Unit 3, April 21, 1986.
83. Direct Testimony of Dale G. Bridenbaugh and Peter M. Strauss on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, regarding Base Rate Case: In-Service Criteria for Hope Creek, Hope Creek O&M and Decommissioning Costs, and Operating Plant O&M Costs, May 19, 1986, 107 pp.
84. Direct Testimony of Dale G. Bridenbaugh on behalf of New Jersey Department of the Public Advocate, Division of Rate Counsel, regarding Base Rate Case: Hope Creek Commercial Operating Date and Criteria, Hope Creek O&M Costs, Operating Life, Capital Additions, and Decommissioning Costs, May 27, 1986, 85 pp.
85. Direct Testimony of Dale G. Bridenbaugh, Richard B. Hubbard, and Lynn K. Price on behalf of State of Illinois Office of the Attorney General and Office of Public Counsel, regarding Evaluation of Clinton Costs, Docket No. 84-0055, July 9, 1986.
86. Direct Testimony of Dale G. Bridenbaugh and Gregory C. Minor on behalf of the Vermont Department of Public Service, regarding Tariff Filing of Central Vermont Public Service Corporation Requesting a 12% Increase in Rates, Docket No. 5132, August 25, 1986.
87. Direct Testimony of Dale G. Bridenbaugh and Richard B. Hubbard on behalf of the Pennsylvania Office of Consumer Advocate, regarding Pennsylvania Public Utility Commission vs. Duquesne Light Company and Pennsylvania Power Company, Docket Nos. R-860378 and R-860267, September 22, 1986.



CHAIRMAN

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

June 15, 1984

The Honorable Edward J. Markey, Chairman
Subcommittee on Oversight and Investigations
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Your letter of March 30, 1984 requested an explanation of the risks associated with low power operation at commercial nuclear power reactors. In addition, you raised five specific questions which we have responded to in Attachment 1 to this letter.

With regard to the risks associated with low power operation, Attachment 2 is a Commission paper developed by the staff addressing this issue. As indicated by this paper, the overall conclusion that the staff must reach for fuel loading and low power testing up to 5 percent power, is that there is no undue risk to the health and safety of the public for the limited operations authorized. In practice, the staff has developed analyses that indicate that the risks of 5 percent power operation can be expected to be appreciably less than the risks of 100 percent power operation.

Commissioner Gilinsky did not participate in the preparation of this reply.

We trust that this information is responsive to your concerns.

Sincerely,

A handwritten signature in cursive script, reading "Nunzio J. Palladino".

Nunzio J. Palladino

Attachments:
As stated

cc: Rep. Ron Marlenee

QUESTION 5:

For all reactors licensed since the accident at Three Mile Island, please provide the following (A) the date of issuance of the low power license; (B) the date of initial criticality; (C) the date of 5 percent power operation; (D) the date of issuance of the full power license; (E) the date that power levels of 25 percent or higher were first attained; (F) the date that power levels of 90 percent or higher were first attained; (G) exemptions granted by the NRC to the low power licensee and, (H) exemptions granted by the NRC to the full power licensee.

ANSWER:

The data requested is provided in the attached Table 5.1. We interpreted the date of 5 percent power operation to be the date that this power level was exceeded. Where the plant has not achieved the event listed the symbol N/A has been used.

1000

1. 100	1000	10000
2. 200	2000	20000
3. 300	3000	30000
4. 400	4000	40000
5. 500	5000	50000
6. 600	6000	60000
7. 700	7000	70000
8. 800	8000	80000
9. 900	9000	90000
10. 1000	10000	100000
11. 1100	11000	110000
12. 1200	12000	120000
13. 1300	13000	130000
14. 1400	14000	140000
15. 1500	15000	150000
16. 1600	16000	160000
17. 1700	17000	170000
18. 1800	18000	180000
19. 1900	19000	190000
20. 2000	20000	200000
21. 2100	21000	210000
22. 2200	22000	220000
23. 2300	23000	230000
24. 2400	24000	240000
25. 2500	25000	250000
26. 2600	26000	260000
27. 2700	27000	270000
28. 2800	28000	280000
29. 2900	29000	290000
30. 3000	30000	300000
31. 3100	31000	310000
32. 3200	32000	320000
33. 3300	33000	330000
34. 3400	34000	340000
35. 3500	35000	350000
36. 3600	36000	360000
37. 3700	37000	370000
38. 3800	38000	380000
39. 3900	39000	390000
40. 4000	40000	400000
41. 4100	41000	410000
42. 4200	42000	420000
43. 4300	43000	430000
44. 4400	44000	440000
45. 4500	45000	450000
46. 4600	46000	460000
47. 4700	47000	470000
48. 4800	48000	480000
49. 4900	49000	490000
50. 5000	50000	500000
51. 5100	51000	510000
52. 5200	52000	520000
53. 5300	53000	530000
54. 5400	54000	540000
55. 5500	55000	550000
56. 5600	56000	560000
57. 5700	57000	570000
58. 5800	58000	580000
59. 5900	59000	590000
60. 6000	60000	600000
61. 6100	61000	610000
62. 6200	62000	620000
63. 6300	63000	630000
64. 6400	64000	640000
65. 6500	65000	650000
66. 6600	66000	660000
67. 6700	67000	670000
68. 6800	68000	680000
69. 6900	69000	690000
70. 7000	70000	700000
71. 7100	71000	710000
72. 7200	72000	720000
73. 7300	73000	730000
74. 7400	74000	740000
75. 7500	75000	750000
76. 7600	76000	760000
77. 7700	77000	770000
78. 7800	78000	780000
79. 7900	79000	790000
80. 8000	80000	800000
81. 8100	81000	810000
82. 8200	82000	820000
83. 8300	83000	830000
84. 8400	84000	840000
85. 8500	85000	850000
86. 8600	86000	860000
87. 8700	87000	870000
88. 8800	88000	880000
89. 8900	89000	890000
90. 9000	90000	900000
91. 9100	91000	910000
92. 9200	92000	920000
93. 9300	93000	930000
94. 9400	94000	9400

[illegible]

Product	Weight	Price
1. 100% Cotton	100g	1.00
2. 100% Cotton	100g	1.00
3. 100% Cotton	100g	1.00
4. 100% Cotton	100g	1.00
5. 100% Cotton	100g	1.00
6. 100% Cotton	100g	1.00
7. 100% Cotton	100g	1.00
8. 100% Cotton	100g	1.00
9. 100% Cotton	100g	1.00
10. 100% Cotton	100g	1.00
11. 100% Cotton	100g	1.00
12. 100% Cotton	100g	1.00
13. 100% Cotton	100g	1.00
14. 100% Cotton	100g	1.00
15. 100% Cotton	100g	1.00
16. 100% Cotton	100g	1.00
17. 100% Cotton	100g	1.00
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STATE OF VERMONT
PUBLIC SERVICE BOARD

----- X
: IN RE: Tariff Filing Of :
: Central Vermont Public Service :
: Corporation Requesting A : Docket No. 5132
: 12 Percent Increase In Rates :
: To Take Effect June 2, 1986. :
: ----- X

INTERVIEW WITH: WILLIAM B. DERRICKSON

Seabrook Station
New Hampshire Yankee
General Office Building
Seabrook, New Hampshire
Wednesday, November 12, 1986
10:07 a.m.

TAMMIE J. TISCHLER
CERTIFIED SHORTHAND REPORTER
REGISTERED PROFESSIONAL REPORTER

P.O. Box 571
Exeter, N.H. 03833

(603) 778-7470 or
1-800-527-3311

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PRESENT:

M.H.B. Technical Associates
Gregory C. Minor, Vice President and
Judith R. Lieberman, Associate Consultant
1723 Hamilton Avenue, Suite K
San Jose, California 95125

Cahill, Gordon & Reindel
(by Thomas R. Jones, Esquire)
80 Pine Street
New York, New York 10005;
for Public Service Company of New Hampshire.

Downs, Rachlin & Martin
(by Elizabeth B. Mullikin, Esquire)
100 Dorset Street, Suite 1
P.O. Box 190
Burlington, Vermont 05402-0190;
for Central Vermont Public Service Corporation.

Department of Public Service
(by Christopher Micciche, Special Counsel)
120 State Street
Montpelier, Vermont 05602

Swidler & Berlin (by Andrew Weissman, Esquire)
1000 Thomas Jefferson Street, NW
Washington, D.C. 20007;
for C.V.P.S.C.

I N D E X
- - - - -

Interview with: Direct
William B. Derrickson 3
(by Mr. Minor)

PROCEEDINGS

3

EXAMINATION

BY MR. MINOR:

Q This is not a deposition. I guess I should start by saying that. Just for the usual pattern of these type of things, I will introduce myself. I am Greg Minor of M.H.B. To my right is Judy Lieberman, also of M.H.B.; Chris Micciche of the Department of Public Services in Vermont.

And we are here, Mr. Derrickson, to ask you some questions about the project; and I understand you have schedule restraints; and I appreciate your being here today.

I would like to just go back and start, if you would, by telling me your first association with this project and whether that was as a consultant to Florida Power and Light or direct involvement with the position at New Hampshire Yankee.

A Okay. We did have an involvement at Florida Power and Light Company with respect to Public Service to send some people up here to provide some assistance to Public Service in 1983, I believe, and we did

1 uniquely cut and bent for this plant. Structural
2 steel is the same way, uniquely cut, specific
3 connections out here. You would have to design a
4 building around that structural steel. I don't
5 think we are going to find too many people excited
6 to do that. I think moisture separators,
7 reheaters, simply because not that many plants are
8 being built. They have copper nickel tubes, and I
9 don't think there is much of a market for those.

10 Other components we are going to have to look
11 at on a case-by-case basis. Original large motors
12 for replacement, and we will go to and make an
13 attempt to see what we can do in those areas.

14 Other than that, I don't know. We haven't looked
15 at that. We have to get a team together to really
16 go out and catalog model, make and see if we can
17 find a match up around the country someplace.

18 Q Is it viable to sell the Model F steam generators
19 as a replacement part unit?

20 A There are two uses for them. One would be a
21 complete steam generator change out in another
22 facility that could use them. Another would be a
23 lot of utilities are getting training facilities in

1 where they are taking the tube section, the tube
2 sheet section and using it to practice any current
3 testing and tube plugging. We may be able to do
4 something like that. I don't know. We will work
5 on it. If that is the marching orders, that is
6 what we will do.

7 Q Have you made any estimate of salvage values?

8 A I think the guys did. I think they are looking at
9 \$26 million. I say 25 plus or minus. That is for
10 scrap and for what they thought they could sell
11 intact, which is a lot.

12 Again, we are competing with Marble Hill's
13 exact nuclear steam system, so we are competing
14 with someone else's parts. I have been around the
15 country, and I found Marble Hill all over the
16 country. So it's quite interesting.

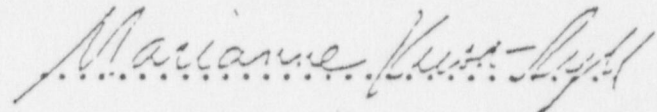
17 MR. MINOR: Thank you very much
18 for coming in, Mr. Derrickson.

19
20 (Whereupon, at 11:50 a.m., the
21 interview was adjourned.)
22
23

C E R T I F I C A T E
- - - - -

STATE OF NEW HAMPSHIRE

I, Marianne Kusa-Ryll, Registered Professional
Reporter, do hereby certify the foregoing to be
a true copy of the interview of WILLIAM B. DERRICKSON,
held at the New Hampshire Yankee General Office
Building, Seabrook, New Hampshire, on Wednesday,
November 12, 1986.



Marianne Kusa-Ryll, CSR, RPR



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

August 17, 1987

Docket No.: 50-443

Mr. Robert J. Harrison
President & Chief Executive Officer
Public Service Company of New Hampshire
Post Office Box 330
Manchester, New Hampshire 03105

Dear Mr. Harrison:

SUBJECT: RECENT FILINGS BY PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE (PSNH)
BEFORE THE SECURITIES AND EXCHANGE COMMISSION (SEC)

Recent information in your July 22, 1987 filing (on SEC Form 8-K) before the SEC reported potential difficulty in developing and implementing a financial recovery plan. You reported that without such a plan PSNH may not be able to avoid proceedings under the Bankruptcy Code.

The staff seeks clarification with regards to the applicants ability to provide financial coverage for the cost of low power operation of Seabrook and the cost of any permanent shut down of the facility and maintenance in a safe condition following this low power operation. It would be appreciated if you would provide the information requested in the enclosure by September 8, 1987.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. A. Boger", is written over a horizontal line.

Bruce A. Boger, Assistant Director
for Region I Reactors
Division of Reactor Projects I/II

Enclosure:
As stated

cc: See next page

EXHIBIT C

REQUEST FOR FINANCIAL INFORMATION

SEABROOK UNIT NO. 1

DOCKET NO. 50-443

1. Please provide detailed estimates of (a.) the total cost to operate Seabrook Unit No. 1 at low power only (up to five percent power); and (b.) the total cost to permanently shut down the facility after low power operation only and to maintain it in a safe condition. Also provide an estimate of the cost to store or dispose of the irradiated fuel assuming low power operation only. Describe in detail the assumptions underlying the estimates. Include assumptions as to power level, duration of operation, method of fuel disposal or storage and method of permanent shutdown and safe maintenance.
2. Please provide a detailed statement of the source of funds for covering total costs of low power operation and total costs of permanent shutdown of the facility and maintenance in a safe condition after a period of low power operation only. Identify each of the sources as to when it will be available and estimated dollar amount. Indicate the assumptions underlying the projection of each source of funds.
3. In the event that Public Service Company of New Hampshire (PSNH) were to enter bankruptcy proceedings how would this affect PSNH's ability to pay its share of Seabrook's low power operating costs and the costs of permanently shutting the facility down and maintaining it in a safe condition? If PSNH were unable to pay its share of costs, what are the sources and likelihood of availability of funds to cover the PSNH's share? Please describe in detail.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

'87 AUG 21 09:25

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

DP
BOOK

SERVED AUG 21 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

(On-Site Emergency Planning
and Safety Issues)

(ASLBP No. 82-471-02-OL)

August 20, 1987

MEMORANDUM AND ORDER
(Denying Petition To Waive Regulations)

MEMORANDUM

I. Background

On July 31, 1987, a petition was filed to waive regulations §§50.33(f) and 50.57(a)(4) to the extent necessary to require Applicants to demonstrate financial qualification to operate and to decommission Seabrook Station. Two attorneys for the Town of Hampton (TH) signed the petition and one of the attorneys for TH signed as the authorized representative of New England Coalition On Nuclear Pollution (NECNP) and Seacoast Anti-Pollution League (SAPL). In a Memorandum issued August 4, 1987, the Appeal Board noted that, on March 25, 1987, this Licensing

EXHIBIT D

Board had rendered a partial initial decision¹ deciding all on-site emergency planning and safety issues then before it,² but that none of those issues had involved financial qualifications. Observing that appeals had been taken and were currently under submission, the Appeal Board stated that, despite this consideration, it appeared that the waiver petition was correctly filed with the Licensing Board, and that there was no necessity to explore any jurisdictional question because it thought it desirable that the Licensing Board entertain the waiver petition in the first instance.

On August 7, 1987, Applicants filed an opposing response. The Staff filed its opposing response on August 17, 1987.

II. Discussion

We deny the petition to waive regulations because, at the threshold, we find that TH has no standing to seek such a waiver and that neither NECNP nor SAPL are properly represented before this Board. In our Memorandum and Order of July 25, 1986,³ we ruled that TH could not participate in the instant case involving on-site emergency planning and safety issues, which included Applicants' request of June 17, 1986

¹ LBP-87-10, 25 NRC ____.

² In LBP-87-10, having resolved the on-site emergency planning and safety issues before it, pursuant to 10 C.F.R. §§ 50.57(c) and 50.47(d), this Board decided another issue before it and authorized issuance of a license to operate Seabrook Unit 1 up to 5% of rated power, subject to certain conditions.

³ LBP-86-24, 24 NRC 132.

for authorization to operate Seabrook, Unit 1 up to and including 5% of rated power. The instant petition arises out of and is specifically directed to Applicants' request for low power. TH did not appeal that ruling. Further, TH's attorney, who signed the petition as the authorized representative for NECNP and SAPL, failed to comply with §2.713 of the Commission's Rules of Practice in ignoring both the requirement that he file a written notice of appearance and the requirement that he state the bases of his authority to act on behalf of those two parties. However, assuming arguendo that NECNP and SAPL are properly represented, as discussed below, we have proceeded to consider NECNP's and SAPL's petition for waiver.

NECNP's and SAPL's petition seeks a waiver, under 10 C.F.R. §2.758,⁴ of 10 C.F.R. §§50.33(f) and 50.57(a)(4)⁵ to the extent

⁴ 10 C.F.R. §2.758 provides in pertinent part:

* * *

(b) A party to an adjudicatory proceeding involving initial licensing subject to this subpart may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the particular proceeding. The sole ground for petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted. The petition shall be accompanied by an affidavit that identifies the specific aspect or aspects of the

(Footnote Continued)

necessary to require the Applicants to demonstrate, prior to low power operation, that they are financially qualified to operate and decommission the facility. The two petitioners attached to the petition an affidavit of Mr. Dale G. Bridenbaugh, President of MHB Technical Associates, a technical consulting firm specializing in nuclear power plant safety, licensing and regulatory matters.⁵ Mr. Bridenbaugh

(Footnote Continued)

subject matter of the proceeding as to which application of the rule or regulation (or provision thereof) would not serve the purposes for which the rules or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response thereto, by counter-affidavit or otherwise.

(c) If, on the basis of the petition, affidavit and any response thereto provided for in paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a prima facie showing that the application of the specific Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

⁵ 10 C.F.R. §§50.33(f) and 50.57(a)(4), in substance, exempt electric utility applicants for licenses to operate utilization facilities from the requirement to furnish information demonstrating financial qualifications, and no finding of financial qualification is necessary.

⁶ The Bridenbaugh affidavit dated March 31, 1987, had been attached previously to the Commonwealth of Massachusetts' application of
(Footnote Continued)

attested that, in his opinion, there is no reason to conduct low power testing just for its sake alone because, standing alone, low power testing produces no net benefits and has several adverse effects, i.e., (1) environmental impacts (such as plant contamination with radioactive material), (2) the likely loss of the resale value of the fuel and other components once they become irradiated, (3) the cost of decontamination, decommissioning and disposal, (4) worker exposure, and (5) the potential commitment of the site to lengthy radioactive waste storage use. He attested further that low power testing can be rationally justified only where there is no substantial doubt that the plant subsequently will operate at higher power levels so that its benefits (i.e., generation of electricity) will be available to offset the adverse effects and that the optimum time for performing low-power testing is shortly before full-power operational approval is reliably anticipated to be obtained.

SAPL and NECNP also attached to the petition a Form 8-K submitted on July 22, 1987 by the Public Service Company of New Hampshire to the Securities and Exchange Commission. Sheet 2 of that report reflects the following:

(Footnote Continued)

April 6, 1987 for a stay of the Licensing Board Order (LBP-87-10, 25 NRC ____) authorizing issuance of operating license to conduct low-power operation. In ALAB-865, 25 NRC ____ (May 8, 1987), the Appeal Board denied the Mass. motion as well as other motions for stay, after discussing, inter alia, the points raised in the Bridenbaugh affidavit. The Appeal Board's reasoning in rejecting the matters raised in the Bridenbaugh affidavit is equally dispositive here and we will not discuss these matters again.

The Company has instituted strict cash conservation measures that should allow it to meet its estimated cash requirements, including the refunds described above, through the end of 1987. The Company is working jointly with the investment firms of Merrill Lynch Capital Markets and Drexel Burnham Lambert, Inc. to develop alternate financial plans. Given the uncertainties surrounding the Company, its limited financial flexibility, the amount of debt service which the Company can reasonably expect to carry, the political, economic and competitive limits on rate increases in New Hampshire, and the regulatory approvals that will be required, it will be extremely difficult to develop and implement such a plan to improve significantly the Company's circumstances within the limited time available. Should an adequate plan not be developed and placed into effect before the end of 1987, it will be difficult, if not impossible, for the Company to avoid proceedings under the Bankruptcy Code.

Drawing down from these two attachments, the two petitioners argue that, prior to low power operation, Applicants should be required to demonstrate that they possess, or have reasonable assurance of obtaining, the funds necessary to cover estimated costs for the period of the license, plus the costs to permanently shut down the facility and to maintain it in a safe condition. They urge that, were a low power operating license to be authorized, special circumstances would exist because of the likely bankruptcy of Public Service Company of New Hampshire, the lead owner, and that, in that event, the adverse effects set forth in the Bridenbaugh affidavit would follow.

In the Statement of Consideration attached to the current rule, the Commission stated that the sole objective of the financial qualification rule making process was to demonstrate generically that the rate process assures that funds needed for safe operation would be made available to regulated electric utilities. Having been so assured, the Commission concluded that, other than in exceptional cases, no case-by-case

litigation of the financial qualification of such applicants was warranted. 49 Fed. Reg. 35747, 35750 (1984). The Commission proceeded to give an example of the special circumstances that must be shown pursuant to 10 C.F.R. §2.758 - i.e., such an exception to permit financial qualification review for an operating license applicant might be appropriate where a threshold showing is made that, in a particular case, the local public utility commission will not allow the total cost of operating the facility to be recovered through rates. 49 Fed. Reg. 35747, 35751 (1984).

Clearly the purpose of the rule was to exempt operating license applicants from the financial qualification requirement because the rate process assured that funds needed for safe operation would be available. The Commission did not implicitly or expressly contemplate or state that an operating license Applicant's financial distress and possible bankruptcy were special circumstances which could result in an exception or waiver under 10 C.F.R. §2.758. Rather the Commission's example reflects that it deems a special circumstance to be one where there is a threshold showing that a public utility commission will not allow an electric utility to recover, to a sufficient degree, all or a portion of the costs of construction and sufficient costs of safe operation. Footnotes 3 and 5 of the petition reflect that, pursuant to New Hampshire statutes, (a) revenues for a decommissioning cost fund will be obtained through charges against customers which shall be assessed and paid in the billing month which reflects the first full month of service of the facility, and (b) all costs of construction work in progress

should not be included in a utility's rate base nor be allowed as an expense for rate making purposes until the project is actually providing services to the consumers.

The petitioners do not argue that, if full power operation is commenced, the New Hampshire Public Utilities Commission will not authorize adequate funding for safe operation through the ratemaking process, will not permit charges against customers for payment into the decommissioning cost fund,⁷ and will not allow costs of construction work in progress to be included in the Applicants' rate base.⁸ Thus, the petition fails to set forth the sole ground for waiver -- i.e., that special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted.

⁷ As the Staff points out, while the Commission has adopted regulations governing the safe shutdown and post-operative maintenance of a facility (see, e.g., 10 C.F.R. §§50.82, 20.105, Part 70, and Part 73), Commission regulations do not now require a demonstration of financial qualifications to decommission a facility. In this regard, the Commission has promulgated a proposed rule change to address the costs and other aspects of decommissioning. See Proposed Rule, "Decommissioning Criteria for Nuclear Facilities", 50 Fed. Reg. 5600 (Feb. 11, 1985).

⁸ Petitioners barrenly speculate that, even in the unlikely event a full power license is granted, it remains "doubtful" that PSNH will receive sufficiently prompt rate increases to avoid bankruptcy (Petition, n. 7 at 8; emphasis added).

Despite the fact that the petition is fatally deficient, we proceed to consider the petitioners' arguments (1) that Applicants' lead owner (PSNH) "is on the brink of bankruptcy" (Petition at 2); (2) that "if a full power license is later denied", the Applicants will be unable to recover their costs through ratemaking proceedings, and PSNH's potential bankruptcy therefore presents "uncertainties" as to whether the Applicants will have the ability to operate the facility at low power, shut it down permanently and maintain it in a safe condition (Id., at 4-6; emphasis added); (3) that the Applicants "may lack the tens of millions of dollars necessary 'to permanently shut down the facility and maintain it in a safe condition,' if a full power license is later denied" (Id., at 4-5; emphasis added); (4) that "the direction of Applicants' management may be radically altered if PSNH is superseded by a bankruptcy trustee" (Id., at 6; emphasis added); (5) that if a trustee is appointed, it is "uncertain" whether he "may decline to pursue a full power license" (Id., emphasis added); and (6) that such a trustee "may refuse to expend additional monies" on Seabrook, and "[a] Bankruptcy Court, rather than the Applicants, may ultimately determine if additional monies will be spent on Seabrook Station" (Id.; emphasis added).⁹

⁹ In passing, we note petitioners' assertion that financial problems such as those facing PSNH are without precedent (Petition, at p. 6). This is incorrect. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-84-30, 20 NRC 426 (1984).

Thus, in substance the petitioners urge that under these special circumstances it would be grossly irresponsible for the Applicants to be permitted to proceed to operate Seabrook, even at low power, without clear evidence of their financial means to operate, and to decommission, safely (Petition, at 6, 8). Even assuming for the sake of argument that special circumstances have been shown, they are wholly speculative in nature and, therefore, the petitioners have failed to make a prima facie showing that the application of the two regulations to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which they were adopted and that application of these regulations should be waived or an exception granted. In the first place, it is pure speculation that PSNH will file in bankruptcy or that it will be unable to secure funds necessary to operate at low power and to permanently shutdown and maintain the facility in a safe condition. Second, even if PSNH does file in bankruptcy, there is no suggestion that other Applicant-members of the consortium are financially incapable of operating and safely maintaining the facility. Moreover, it is a matter of speculation as to whether a bankruptcy trustee would be appointed and whether he would discontinue efforts to secure a full power operating license. Further, no reason has been presented suggesting that any successor to PSNH (be it a reorganized company, or an acquiring company, or a trustee in bankruptcy) would not persevere in efforts to secure a full power operating license and to put the plant into commercial operation, and thereby recover the large investment through its inclusion in the rate base. Finally, as observed

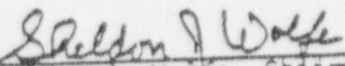
above, although barrenly speculating that it is unlikely that a full power license will be granted, the petitioners apparently do not deny that, if full power is commenced, the New Hampshire PUC will authorize adequate funding for safe operation through the rate making process, will permit charges against customers for payment into the decommissioning cost fund, and will allow costs of CWIP to be included in the rate base.

ORDER

For the foregoing reasons, the petition to waive regulations is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 20th day of August, 1987.



Public Service of New Hampshire

Robert J. Harrison
President and Chief Executive Officer

NYN-87104

September 3, 1987

United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Document Control Desk

References: a) Facility Operating License NPF-56
Docket No. 50-443
b) USNRC Letter dated August 17, 1987
"Recent Filings by Public Service Company
of New Hampshire Before the Securities
and Exchange Commission"
B. A. Boger to R. J. Harrison

Re: Request for financial information

Gentlemen:

In Reference (b), the NRC requested clarification as to the ability of Public Service Company of New Hampshire (PSNH) to provide financial coverage for certain activities at Seabrook Station.

At the outset, PSNH reaffirms its intention to continue its participation in Seabrook Station and to successfully complete the licensing process in the most expeditious manner in order to permit Seabrook Station to commence operation. Toward that end, PSNH remains firmly committed to providing its share of all necessary support, financial and otherwise, to ensure safe low power testing and to maintain the Seabrook Station in a safe condition following that testing.

While PSNH's most recent Form S-K Report, dated July 22, 1987, underscored the severe financial difficulties being experienced by PSNH as the result of several factors, including primarily the costly licensing delay for Seabrook Station, it also outlined the affirmative financial plans which PSNH intended to pursue to counter those difficulties. Since then PSNH has continued to work toward the implementation of those plans. First, on August 5, 1987, PSNH filed a petition with the New Hampshire Public Utilities

EXHIBIT E

United States Nuclear
Regulatory Commission

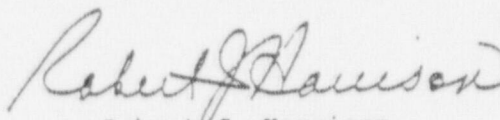
September 3, 1987

Commission (NHPUC) for an emergency rate relief increase of approximately \$71,000,000 annually. The NHPUC has set hearings on that petition for October 5-9, 1987, the earliest dates possible after compliance with its regulatory procedures. Second, pursuant to a PSNH request submitted with the petition, the NHPUC on August 11, 1987, transferred a question of law to the New Hampshire Supreme Court, concerning the application of NH Statute RSA 378:30-a, the so-called anti-CWIP law, to the Company's investment in the Seabrook Station under the extreme financial circumstances currently being experienced by PSNH. On September 2, 1987, that Court issued an order directing the NHPUC to make, on an expedited basis, certain findings of fact regarding the Company's cash requirements to meet its interest payments, debt maturities, and customer service expansion needs for the remainder of 1987. The Court indicated that upon receipt of the NHPUC findings it would move promptly to consider the constitutional issues of applicability of the anti-CWIP law to PSNH. Third, PSNH has instituted a program of cash conservation which is designed to substantially reduce its capital and operating expenditures, thereby enabling PSNH to extend its current available cash resources. Fourth, PSNH will, in the near future, formally file with the Securities and Exchange Commission and with the NHPUC a detailed program for restructuring certain of its indebtedness. This program is designed to substantially reduce PSNH's need for external financing and lessen the burden of interest and maturity payments on its debt, which has become difficult and costly due to the lengthy Seabrook Station licensing delays.

Further, the permanent shutdown scenario described in your letter is considered to be a hypothetical situation that will never occur, irrespective of PSNH's financial status. Detailed responses to your questions, which are set forth in the attachment to this letter, have been prepared to the best of our ability based on the assumptions indicated.

If you need any further information or clarification, please contact me.

Sincerely,



Robert J. Harrison

RJH:LD
Attach.

cc: ASLB Service List

NRC Question 1:

Please provide detailed estimates of (a) the total cost to operate Seabrook Unit No. 1 at low power only (up to five percent power); and (b) the total cost to permanently shut down the facility after low power operation only and to maintain it in a safe condition. Also provide an estimate of the cost to store or dispose of the irradiated fuel assuming low power operation only. Describe in detail the assumptions underlying the estimates. Include assumptions as to power level, duration of operation, method of fuel disposal or storage and method of permanent shutdown and safe maintenance.

Response to NRC Question 1a:

The current operating budget for Seabrook Station averages \$10 million per month. In conjunction with the performance of low power testing, certain incremental costs beyond the current operating budget will be incurred. These costs, which cover all required manpower, material and electrical power for preparatory work, heatup and actual performance of low power testing, are estimated to be \$3,658,000, which will be incurred over a three month period. A further breakdown is included in Table 1.

PSNH's share of this cost is 35.56942%, as defined in the Joint Owners' Agreement, or approximately \$1,301,000. In addition to the above costs, there will be increased costs incurred for premiums on insurance coverage for Seabrook Station associated with the receipt of the low power license and upon completion of low power testing. It is expected that this cost for insurance will increase approximately \$2,785,000 per annum, of which \$1,565,000 will be paid upon receipt of the low power license and \$1,220,000 will be paid, in installments, following completion of the testing. PSNH's share of these increased premiums, aggregating approximately \$991,000, would be payable at the times indicated above.

Response to NRC Question 1b:

Seabrook Station's low power testing program calls for five to six days of intermittent testing at between 1/100th of 1% power and 1/10th of 1% power followed by two days of intermittent testing at 2% power and one-half day of intermittent testing at 3% power. These tests will result in a fuel burn-up of approximately equivalent to 1-1/2

effective full power hours and will occur over a period of three weeks.

Upon completion of the testing program, the unit would be cooled down and maintained in a cold shutdown (Mode 5) condition. Depending on the licensing status at that time, certain systems could be placed in a lay-up condition to afford maximum protection of plant equipment. The costs associated with these efforts are included in the normal operating budget of \$10-11 million per month.

If the unit was permanently shut down at some point following low power testing, the fuel would be moved to the spent fuel storage pool. In addition, the reactor coolant systems, decay heat removal systems and associated auxiliaries would be decontaminated, as necessary, following this short duration of low power testing. These systems would be cleaned by flushing the systems, hydrolasing, and/or localized chemical cleaning. This cleaning process would be repeated as necessary until contamination levels have been reduced below required control limits. The radiological controlled area would then be limited to the Fuel Storage Building and associated auxiliaries. The operating costs during this phase are not expected to exceed the normal budget of \$10-11 million per month.

In the unlikely event of a decision to permanently shut down the unit, the Joint Owners would seek to sell or transfer ownership of the fuel to others such that the fuel could be removed from the site. It is estimated that it would take 2-3 years before the fuel could be removed from the site.

In order to determine the actual salvage value of the fuel after the low power testing program, a market analysis would have to be undertaken at that time together with a study of special costs for handling and shipping the fuel. Although the Joint Owners have not performed a rigorous study of these costs, a review was performed in late 1986 which indicated that the salvage value of the fuel would approximately offset the costs of handling and transportation of the fuel to a third party resulting in no net cost to the Joint Owners for the disposal of the fuel.

Following a permanent shutdown of the unit and during the transition period when the fuel remains on-site, certain personnel and program costs would be incurred to ensure the proper storage of the fuel in the on-site spent fuel storage pool. These direct costs are estimated to be approximately \$700,000 per month which includes costs for operations, maintenance, health physics, environmental monitoring, security and electric power.

In addition, certain nuclear liability and nuclear property insurance costs, estimated not to exceed \$2.5 million per year, can also be expected to be incurred. Finally, there are other miscellaneous costs which are not directly related to maintenance of the facility, including such items as taxes, legal, accounting, and other administrative costs, which are not included in the \$700,000 monthly estimate provided above. While the amount of these costs cannot be precisely estimated, they are not expected to exceed the current level of such expenditures or approximately \$2.2 million per month, which includes \$1.8 million for taxes. Therefore, the estimated total monthly operating cost for Seabrook Station while the fuel is being stored on site in the fuel storage Building is not expected to exceed \$3.1 million.

As indicated in response to question 1(a), all the above monthly costs are for the entire unit. PSNA's share of those potential costs would be in proportion to its ownership share (i.e., 35.56942%), or \$1.1 million per month.

NRC Question 2:

Please provide a detailed statement of the source of funds for covering total costs of low power operation and total costs of permanent shutdown of the facility and maintenance in a safe condition after a period of low power operation only. Identify each of the sources as to when it will be available and estimated dollar amount. Indicate the assumptions underlying the projection of each source of funds.

Response to NRC Question 2:

The Seabrook Project is currently being funded by several utility companies (the "Joint Owners") which are participants under the Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units, dated May 1, 1973, as amended (the "Joint Ownership Agreement"). The Ownership Shares of these utilities are shown in Table 2. Approval for funding is determined by the Joint Owner Executive Committee or the Joint Owners collectively in accordance with the procedures set forth in the Joint Ownership Agreement. Once a funding level has been established, each Joint Owner is obligated under the Joint Ownership Agreement to provide its Ownership Share of the operating expenses of the Seabrook Project. Invoices are rendered as required and payments are due monthly. Each Joint Owner raises such funds as part of its normal financial sources. The Seabrook Project maintains a positive cash balance to be available to meet its monthly

obligations and to provide additional flexibility should fluctuations in monthly cash requirements occur. This account balance, supplemented by the Joint Owner payments, is the source for meeting Seabrook Station's cash operating requirements.

NRC Question 3:

In the event that Public Service Company of New Hampshire (PSNH) were to enter bankruptcy proceedings how would this affect PSNH's ability to pay its share of Seabrook's low power operating costs and the costs of permanently shutting the facility down and maintaining it in a safe condition? If PSNH were unable to pay its share of costs, what are the sources and likelihood of availability of funds to cover the PSNH's share? Please describe in detail?

Response to NRC Question 3

The initiation of bankruptcy proceedings for PSNH would not of itself affect the obligations of PSNH under the Joint Ownership Agreement to pay currently its share of Seabrook's low-power operating costs and to pay ultimately its share of the costs of permanently shutting down the facility and maintaining it in a safe condition. To the extent that such obligations are contained in executory contracts a debtor with bankruptcy court approval has a right to reject or affirm such contracts. However, because of the magnitude of PSNH's investment in Seabrook Station (approximately 69% of its total assets) and the potential significant level of revenues to be derived from the sale of Seabrook Station electricity by PSNE, PSNE intends to make every available effort to protect that asset. Even if a bankruptcy proceeding were to intervene, PSNE has no intention of rejecting its contractual obligations under the Joint Ownership Agreement or abandoning its interest in Seabrook Station. In the event of bankruptcy, PSNE, as debtor in possession, will have access to a cash flow from its continuing utility operations substantially equivalent to that currently generated by those operations and must be assumed to have access to external borrowings for administration expenses. These combined resources would be more than sufficient to meet PSNE's share of the Seabrook Station low power operating costs (as enumerated above) due in principal part because PSNE would have been temporarily relieved of the obligation to pay interest charges on its outstanding unsecured indebtedness incurred prior to the institution of the proceedings. If Seabrook Station were subsequently shut down, these resources would similarly be sufficient to cover PSNH's share of the shutdown costs enumerated above. Furthermore, if Seabrook Station were

shut down after completion of low-power testing, it is reasonable to conclude that because of the presence of the nuclear fuel and the NRC license conditions with respect thereto, PSNH's obligation to Seabrook Station could not be avoided by it, as a debtor in possession (Midlantic National Bank v. New Jersey Dept. of Environmental Resources, 474 U.S. 494 (1986)) and that the cost of meeting those obligations would be an administration expense (In re Sterns, 68 B.R. 774 (D. Me. 1987)).

Given the nature of the on-going utility operations of PSNH after an assumed bankruptcy filing and the ability and obligation of PSNH, as debtor in possession, to fulfill its commitments to the Seabrook Project and its present intention to do so, PSNH cannot hypothesize any plausible situation in which those obligations would remain unpaid.

TABLE 1

NEW HAMPSHIRE YANKEE
SEABROOK STATION - UNIT 1
INCREMENTAL COSTS FOR LOW POWER OPERATION*

Cost Area	Activity			Total (By Cost Area)
	Mobilization & Heatup Preparation	Heatup	Low Power Testing	
Manpower	1,000,550	572,000	667,600	2,240,150
Material	45,900	69,700	157,800	273,400
Electric Power**	-	572,100	572,100	1,144,200
Total (By Activity)	1,046,450	1,213,800	1,397,500	3,657,750 =====

*The current budget for Seabrook Station averages \$10 million per month.

**Electrical power service to Seabrook Station during the test program will all be purchased from PSNH.

TABLE 2

<u>Owner</u>	<u>Ownership Share</u>
Public Service Company of New Hampshire	35.56942%
The United Illuminating Company	17.50000
EUA Power Corporation	12.13240
Massachusetts Municipal Wholesale Electric Company	11.59340
New England Power Company	9.95766
The Connecticut Light and Power Company	4.05985
Canal Electric Company	3.52317
Montaup Electric Company	2.89989
New Hampshire Electric Cooperative, Inc.	2.17391
Vermont Electric Generation and Transmission Cooperative, Inc.	0.41259
Taunton Municipal Lighting Plant	0.10034
Hudson Light and Power Department	0.07737
	<u>100.00000%</u>

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

SERVED JUL 1986

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)

(ASLBP No. 82-471-02-OL)

July 25, 1986

MEMORANDUM AND ORDER

(Rulings on Applicants' Motion of June 17, 1986, on
TH's Motion of June 23, 1986, and on Hearing Matters)

Memorandum

I. Background

During the hearing held in August 1983, the then presiding Board heard evidence upon, among others, three contentions which related to onsite emergency planning and safety issues.¹ On August 23, 1983, the

¹ NECNP Contention I.B.2 asserted that Applicants had not satisfied the requirements of GDC 4 that all equipment important to safety be environmentally qualified because Applicants had failed to specify the time duration over which the equipment was qualified.

Similar Contentions NECNP III.1 and NH-20 asserted, in substance,
(Footnote Continued)

Board closed the record and, in an Order of September 15, 1983, directed that all parties file proposed findings. The Applicants, the NRC Staff and the Intervenor, New England Coalition on Nuclear Pollution (NECNP) filed proposed findings with respect to NECNP Contention I.B.2. The Applicants, the Staff, and NECNP filed proposed findings with respect to Contentions NECNP III.1 and NH-20, and the State of New Hampshire filed proposed findings with respect to NH-20. Applicants' reply findings were ultimately filed on November 23, 1983.

The present Board was appointed on September 9, 1985 to preside over all safety and onsite emergency planning issues. In an Order of October 4, 1985 (unpublished), noting that during the 1983 hearing certain documents relied upon by the parties were to be updated, revised or completed within a short time thereafter, the Board directed that the Staff inform it whether certain documents identified in the Order had been submitted by the Applicants and whether the Staff's evaluations of these submissions had been completed. Upon being advised by the Staff that one of the documents had not been submitted by the Applicants in final form and that the Staff had not completed its reviews of other submissions, our Order of November 4, 1985 (unpublished) stated as follows:

We have reviewed the record and have concluded that the record needs to be reopened for the limited purpose of

(Footnote Continued)

that the emergency plans did not contain an adequate emergency classification scheme as required by 10 C.F.R. §50.47 and Appendix E, and by NUREG-0654.

supplementation. It is not our intention, and we will not permit the retriving of issues heard before the closing of the record on August 23, 1983. After a prehearing conference, and after discovery, if any, a supplementary hearing will be ordered to take evidence on the above-identified matters pertaining to Contentions NECNP I.B.2, NECNP III.1 and NH 20,² which involve significant health and safety issues, and which were not previously ripe for hearing.

² If NH Contention 10 is not informally resolved, evidence will be taken on that contention as well during the supplementary hearing.

Thereafter, in the Order of January 8, 1986 (unpublished), the Staff was requested to furnish reports upon the status of its revisions to certain documents identified in the Order of November 4, 1985. Ultimately, on June 4, 1986, the Staff appended to its fifth monthly status report copies of Section 13.3 and Section 18, which will appear in Supplement 4 to the Safety Evaluation Report (SSER 4) when published. Section 13.3 reflects the Staff's completed review of the Seabrook emergency classification and action level schemes (the focus of NECNP Contention III.1 and New Hampshire Contention 20). Section 18 reflects the Staff's review of the Seabrook control room design (the focus of NH Contention 10).² On June 11, 1986, the Staff submitted copies of

² During prehearing proceedings in 1982, the Board had permitted the Seacoast Anti-Pollution League (SAPL) to participate as a joint intervenor with respect to NH-10. See Memorandum and Order of September 13, 1982 LBP-82-76, 16 NRC 1029, 1083. In the Memorandum and Order of July 21, 1986, among other things, the Board granted New Hampshire's motion to withdraw its Contention 10, and ruled that said contention was converted to and replaced by SAPL Supplemental Contention 6, which would reflect the identical

(Footnote Continued)

Section 3.11, which will appear in SSER 5, when published. Section 3.11 reflects the Staff's completed review of the Applicants' environmental qualification of electrical equipment (the focus of NECNP Contention I.B.2).

On June 17, 1986, Applicants filed a motion requesting that the Board take the following actions:

1. To incorporate into the hearing record as evidence therein Section 13.3 of SSER No. 4 and the environmental qualification review submitted by the Staff under date of June 11, 1986 as Section 3.11 of SSER Supp. No. 5.
2. To issue an order directing NECNP (with respect to NECNP Contentions I.B.2 and III.1) and the State of New Hampshire (with respect to NH 20) and, if the Board deems them entitled thereto, SAPL and Mass AG to state whether they desire any cross-examination with respect to the materials incorporated into the record and, if so, to state with particularity the reasons why such cross-examination is necessary to develop a sound record.
3. In the event further proceedings are requested and allowed, to schedule and hold the same as soon as possible consistent with the Board members' convenience and availability.
4. To close the record and thereafter issue a partial initial decision authorizing operation of Seabrook Unit No. 1 up to and including 5% of rated power.

II. Discussion of Submissions Opposing, In Part,
The Applicants' Motion of June 17, 1986

1. The Town of Hampton (TH)

On June 23, 1986, in a submission, in the form of a motion, TH partially excepted to the Applicants' motion of June 17, 1986 apparently

(Footnote Continued)

wording and basis of former Contention NH-10. See LBP-06-22, 24
NRC ____.

because Applicants' motion sought to prevent interested parties and participants (other than those named in Applicants' motion) from fully participating in this proceeding. Applicants filed an opposing response on June 27, 1986, and the NRC Staff objected in a response of July 11, 1986.

We consider TH's exceptions only to the extent that, in requesting a hearing and permission to participate, they are advanced on its own behalf and to protect its own interests.³ As Applicants point out, the Board's Order of December 20, 1982 had directed TH to indicate with reasonable specificity the subject matters on which it desired to participate but that TH did not comply. Applicants also point out that TH failed to file proposed findings with respect to the onsite emergency planning and safety issues. The Staff points out that TH does no more than assert a general desire to have a hearing and vaguely allude to the Chernobyl accident - i.e., TH fails to specify the deficiencies in the relevant sections of SSER's 4 and 5 that relate to NECNP Contentions 1.B.2 and III.1 and to NH-20. Finally, we note that at no time during the August 1983 evidentiary hearing did a representative of TH even appear. Clearly §2.715(c) of our Rules of Practice does not mandate

³ TH's status as a 10 C.F.R. §2.715(c) interested municipality does not make it a spokesman for other parties or participants in this proceeding. See Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 33 (1979); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-544, 9 NRC 630, 632 (1979).

that an interested municipality must file proposed findings. However, TH's failure to file proposed findings of fact, its failure to comply with the Order of December 20, 1982, its failure to appear at the evidentiary hearing upon onsite emergency planning and safety issues, and its current failure to specify the deficiencies in the pertinent sections of the SSERs 4 and 5, compel us to conclude that TH has no genuine interest in participating in this case wherein the record has been reopened for the limited purpose of supplementing the evidence pertaining to the aforementioned NECNP and NH contentions. Accordingly, TH's motion is denied, and it may not participate.

2. Seacoast Anti-Pollution League (SAPL)

In a response of June 27, 1986, SAPL does not oppose Applicants' motion of June 17, provided all parties to this proceeding are allowed to participate in the hearing with respect to the issues allegedly resolved by Section 13.3 of SSER 4 and by Section 3.11 of SSER 5, and provided that the Board's partial initial decision will not authorize operation of Seabrook Unit No. 1 up to 5% of rated power. As reflected in the cases cited in footnote 3, above, an intervenor's status as a party does not make it the spokesman for other parties and participants. Thus, we consider only whether SAPL has a right to participate in the hearing. Further, we reject SAPL's second condition since 10 C.F.R. §2.758(a) precludes a Licensing Board from considering attacks or challenges to the Commission's rules or regulations and since SAPL, in any event, has not complied with §2.758 procedures for petitioning that

the application of §§50.47(d) and 50.57(c) be waived or an exception be made in this proceeding.

However, in its response SAPL, unlike TH, specifies what it deems to be deficiencies in Sections 13.3 and 18 of SSER 4⁴ and Section 3.11 of SSER 5, and states that it is entitled to participate via cross-examination in the reopened hearing.⁵ We also take note of the fact that SAPL, unlike TH, did attend the 1983 hearing sessions. Finally, there can be no question but that SAPL has the right to present evidence upon and to cross-examine upon its Supplemental Contention 6 (see Memorandum and Order of July 21, 1986). Thus, although SAPL did not file proposed findings of fact after the closing of the record with regard to Contentions NECNP I.B.2, NECNP III.1, and NH-20, we conclude that SAPL has shown a genuine interest in participating in the reopened hearing and may participate therein.

3. Commonwealth of Massachusetts (Mass.)

In its answer of July 2, 1986, Mass. objects to the Applicants' motion of June 17 only insofar as the motion requests the issuance of an

4 With respect to Section 18 of SSER 4, SAPL incorporates by reference the reasons why it deems the Staff's review was inadequate, which were set forth in its objection of June 19, 1986 to New Hampshire's motion to withdraw Contention NH-10.

5 We are not told and we do not decide at this time whether the alleged deficiencies are within the scope of Contentions NECNP I.B.2, NECNP III.1, NH-20 and SAPL Supplemental Contention 6 (formerly NH-10). See especially footnote 3 of the Memorandum and Order of July 21, 1986.

operating license for operation not in excess of 5% rated power. Standing alone, the objection (like SAPL's) is denied as being a challenge to the Commission's regulations which is barred by §2.758(a). However, Mass. relies upon and incorporates by reference the 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, which cites 10 C.F.R. §2.758. We have reviewed the Mass. Petition, which had also been filed on July 2, 1986, and have reviewed the Applicants' response of July 8 and the Staff's response of July 22, 1986. As will be reflected in a Memorandum and Order to be issued as soon as is possible, the Board has determined that Mass., as the petitioning party, has failed to comply with §2.758(b) and moreover has raised issues that have been previously rejected by the Commission. Thus, the petition is being denied since Mass. has not made a prima facie showing that the application of §50.47(d) in this proceeding would not serve the purpose for which the regulation was adopted and that the application of the regulation should be waived or an exception granted.

No purpose would be served by delaying the issuance of the instant Memorandum and Order until after the formal issuance of our determination with respect to the Mass. §2.758 petition. Accordingly, we deny the objection to the granting of Applicants' motion. Mass. attended the August 1983 evidentiary hearings and, as an interested State, it may continue to participate in the reopened hearing.

4. New England Coalition On Nuclear Pollution (NECNP)

On July 2, 1986, NECNP filed an opposition to Applicants' motion for issuance of partial initial decision authorizing low power operation. Therein, NECNP concedes that it challenges the Commission's interpretation of 10 C.F.R. § 50.57(c) and challenges 10 C.F.R. § 50.47(d). It argues that § 50.57(c) "may only be interpreted to require the completion of all hearings relevant to full power operation before any license, including a license authorizing low power operation, is issued." With respect to § 50.47(d), it argues that it is neither necessary nor appropriate to request a waiver pursuant to § 2.758 because § 50.47(d) is "contrary to the requirements of the Atomic Energy Act." The short of it is that this Board is not the proper forum for consideration of such matters because it has neither the jurisdiction nor authority either to consider challenges to the Commission's interpretation of its own regulations or to consider challenges to a Commission regulation on the ground that it is contrary to the Atomic Energy Act.⁶

NECNP does not otherwise oppose Applicants' motion. It requests that it be permitted to participate in the reopened hearing with respect to its Contention I.B.2 (duration of environmental qualification).

⁶

10 C.F.R. § 2.758(a); see Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974).

Since NECNP participated in the 1983 hearing, cross-examined and filed proposed findings of fact with respect to Contention I.B.2 and specifies what it deems to be deficient in the Applicants' reports and in Section 3.11 of SSER 5,⁷ its request is granted.

ORDER

1. TH's motion of June 23, 1986 is denied.
2. Applicant's motion of June 17, 1986 is granted to the extent that, as set forth below in paragraph 3, the Board schedules a hearing. Other parts of the motion have been granted, as modified below, in the Board's rulings on hearing matters. We grant the final part of the motion (Applicants' requested action 4) but only to the extent that the Board, in its partial initial decision, will decide, inter alia, whether or not to authorize issuance of an operating license for operation of Seabrook Unit 1 up to and including 5% of rated power.
3. With respect to hearing matters:
 - a. During the reopened hearing, the Board will receive supplementary evidence upon NECNP Contention I.B.2 and upon NECNP III.1 and NH-20. The Board will also

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We are not told and we do not decide at this time whether the alleged deficiencies are within the scope of NECNP Contention I.B.2. See especially footnote 3 of the Memorandum and Order of July 21, 1986.

receive evidence upon SAPL Supplemental Contention 6 (formerly NH-10).

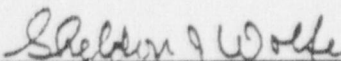
- b. Since the Staff has advised in a letter of July 23, 1986, that copies of SSER 4 were served on June 11, 1986 and that it expected that SSER 5 would be published and served within the next two weeks, the Staff should offer these two documents into evidence as exhibits in order to comply with 10 C.F.R. 2.743(g).
- c. SAPL, NECNP, the State of New Hampshire and the Commonwealth of Massachusetts, and, of course, the Applicants and the Staff may participate in this reopened but limited hearing with respect to NECNP I.B.2, NECNP III.1 and NH-20. NECNP, however, indicates that it wishes to participate only with respect to NECNP Contention I.B.2. The above-named parties and States, as well as any admitted interested municipality, which has expressly shown a genuine, specific interest in the subject matter of SAPL's Supplemental Contention 6 (formerly NH-10), may participate with respect to this contention.
- d. Discovery shall begin immediately. With respect to written interrogatories and requests for production of documents, August 8, 1986 is the final due date for the serving thereof by express mail. Answers

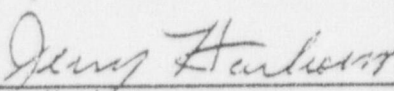
to interrogatories shall be served by express mail by August 25, 1986 and documents shall be produced for inspection and copying by that same date. Depositions shall be completed by August 25, 1986.

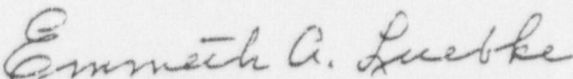
- e. Written direct testimony shall be served by express mail by September 12, 1986.
- f. The reopened hearing will be held in a four-day session sometime between September 29 and October 10. As soon as hearing room accommodations are secured, an Order will be issued specifying the date, time and location of the hearing.
- g. At the beginning of the reopened hearing, the parties (including any §2.715(c) entity allowed to participate in 3c, supra) will submit only to the Board three copies of their cross-examination plans. A party (including any §2.715(c) entity) will not be permitted to cross-examine if it fails to submit a cross-examination plan. These plans must set forth the cross-examination questions to be asked, and explain what is being attempted to be established through asking a discrete question or pursuing a series of questions. Each plan will be incorporated into the record upon completion of a party's cross-examination.

- h. In light of the rulings on hearing matters, supra, a conference prior to the hearing will not be necessary. The parties are expected to confer informally and resolve any procedural controversies. If there are any unresolved procedural controversies, a telephone conference call to the Board may be utilized.

THE ATOMIC SAFETY AND LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE


Jerry Harbour
ADMINISTRATIVE JUDGE


Emmeth A. Luebke
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 25th day of July, 1986.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Nuclear Regulatory Commission

In the matter of

Docket Nos. 50-443-OL
50-444-OL

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE
(Seabrook Station, Units I and II)

NOTICE OF APPEARANCE

In accordance with 10 CFR Section 2.713(b), the undersigned attorney files this Notice of Appearance.

Name: Paul McEachern

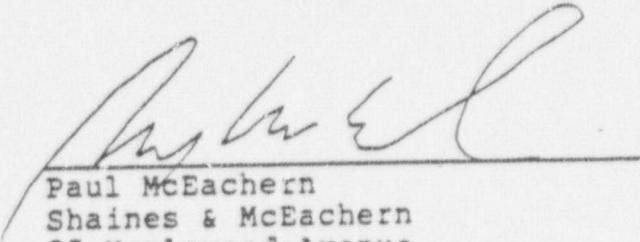
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United States District Court,
New Hampshire
United States Court of Claims
Supreme Court of New Hampshire

Party Represented Town of Hampton, New Hampshire

Dated: February 19, 1986



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PUBLIC SERVICE COMPANY
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Docket Nos. 50-443-OL
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NOTICE OF APPEARANCE

In accordance with 10 CFR Section 2.713(b), the undersigned attorney files this Notice of Appearance.

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United States District Court,
Maine

Party Represented:

Town of Hampton, New Hampshire

Dated: February 19, 1986



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CERTIFICATE OF SERVICE

I, Matthew T. Brock, one of the attorneys for the Applicants herein, hereby certify that on the 21st day of February, 1986, I made service of the within document by mailing copies thereof, postage prepaid, to:

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'87 SEP 25 P1:51

CERTIFICATE OF SERVICE

I, Matthew T. Brock, one of the attorneys for the Town of Hampton herein, hereby certify that on September 24, 1987, I made service of the following document INTERVENORS' BRIEF IN SUPPORT OF APPEAL OF MEMORANDUM AND ORDER DENYING PETITION TO WAIVE REGULATIONS 50.33(f) AND 50.57(a)(4) TO THE EXTENT NECESSARY TO REQUIRE APPLICANTS TO DEMONSTRATE FINANCIAL QUALIFICATION TO OPERATE AND TO DECOMMISSION SEABROOK STATION by depositing copies thereof in the United States Mail first class postage prepaid for delivery (or, where indicated, by Express Mail, prepaid) addressed to:

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