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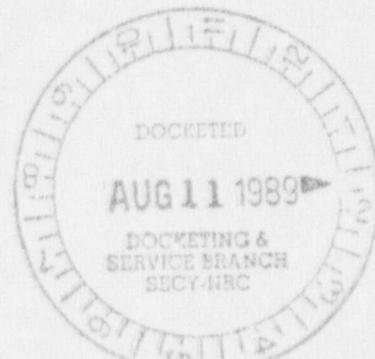
August 11, 1989

UNITED STATES OF AMERICA

before the

NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
 PUBLIC SERVICE COMPANY OF ) Docket Nos. 50-443-OL  
 NEW HAMPSHIRE et al. ) 50-444-OL  
 ) (Emergency Planning  
 (Seabrook Station, Units 1 and 2) ) Issues)  
 )



APPLICANTS' APPLICATION FOR AN EXEMPTION  
FROM THE REQUIREMENT OF 10 CFR PART 50,  
APPENDIX E, SECTION IV.F.1, FOR THE  
CONDUCT OF AN EXERCISE OF THE LICENSEES'  
ONSITE EMERGENCY PLANS WITHIN ONE YEAR  
BEFORE ISSUANCE OF A FULL-POWER  
OPERATING LICENSE

Pursuant to 10 CFR §50.12(a), and for the reasons set out below, Public Service Company of New Hampshire, et al., the joint owners and licensees of Seabrook Station ("Seabrook"), hereby apply to the Nuclear Regulatory Commission ("Commission") for an exemption from the requirement of 10 CFR Part 50, Appendix E, § IV.F.1, that an onsite emergency planning exercise be conducted within one year before the issuance of a full-power operating license for Seabrook Unit 1 (hereinafter the "onsite exercise one year rule").

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Applicants further request that the Commission retain jurisdiction over this application, and not delegate consideration hereof to any subordinate Board, because the issue presented hereby can ultimately only be resolved by the Commission itself.

#### BACKGROUND

The NRC review process for the operating license for Seabrook Unit 1 began with the docketing of the FSAR on October 1, 1981. After petitions for leave to intervene were filed pursuant to a Notice of Opportunity for Hearing,<sup>1</sup> an Atomic Safety and Licensing Board ("ASLB") was duly appointed and the first pre-hearing conference was held in May 1982. The Commonwealth of Massachusetts, participating as an interested state through its Attorney General ("MAG"), and other intervenors became parties to this proceeding. Full evidentiary hearings have been held and initial decisions rendered with respect to all contentions save two categories: (1) contentions arising out of the emergency plans for the portion of the Seabrook Emergency Planning Zone ("EPZ") that lies in Massachusetts and (2) contentions arising out of the full participation graded exercise held June 28-29, 1988. Hearings on these two categories of contentions were

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<sup>1</sup> 46 Fed. Reg. 51330 (October 19, 1981).

completed on June 30, 1989, and a decision is expected on or before November 30, 1989.<sup>2</sup>

Construction of Seabrook Unit 1 was completed in 1986. The build-up of Seabrook's operating staff began in 1980 and was completed in 1986. Since the completion of construction and the loading of fuel in the fall of 1986, Applicants have maintained the operating staff in a state of readiness to operate the plant. A low power license was issued in May, 1989. Low power physics testing was completed in June, 1989. Emergency plans have been an important element in this program to maintain operational readiness throughout the extended period.

This delay between implementing operational status and initiating low power operation was caused in large part because The Commonwealth of Massachusetts, one of the two affected states, withheld its cooperation on emergency planning, which resulted in the bifurcation of such planning and an unusually lengthy process to obtain NRC approval. This delay, however, did provide an opportunity to exercise the onsite emergency plan on an annual basis since 1986.<sup>3</sup>

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<sup>2</sup> Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ASLB Report to the Commission (July 6, 1989).

<sup>3</sup> Typically, a nuclear facility will be operationally ready only 12 to 18 months prior to full power licensing and thus have a more limited time to demonstrate onsite capability to respond to an emergency. See the Commission's Statement of Consideration, 52 Fed. Reg. 16823, 16825 (May 6, 1987).

The Seabrook Station Emergency Response Organization ("ERO"), which implements the onsite emergency plan and initially notifies and establishes coordination with offsite response organizations and public officials, was established in 1985. In addition to extensive training and drills, the ERO has participated in three exercises which were formally evaluated by the NRC. A full participation exercise, including the onsite plan and the New Hampshire Radiological Emergency Response Plan ("NHRERP"), was held in February 1986. An exercise of the onsite plan was held in December 1987. Another full participation exercise, including the onsite plan, the NHRERP and the Seabrook Plan for Massachusetts Communities ("SPMC"), was held on June 28 and 29, 1988. Each of these exercises involved the evaluation by NRC of the onsite emergency response and the interface between onsite personnel and offsite authorities, and in each instance the NRC found the emergency response actions were adequate to protect the public health and safety.

There are currently over 500 members of the ERO assigned to the major facilities involved in the onsite plan. Their average ERO experience level is two and one-half years. Over half of these members participated in one of the three graded exercises and about one quarter have participated in two.<sup>4</sup> Many of the newer ERO members are in less critical positions.

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<sup>4</sup> See Affidavit of Edward A. Brown (hereafter referred to as the "Brown Affidavit") at ¶ 8, Appendix A hereto.

The decision-making positions are staffed at least three deep by individuals with an average of about three and one-third years of ERO experience. At least one person in each of those positions participated in the June 1988 graded exercise.<sup>5</sup> Thus, a highly experienced ERO staff is in place as the adjudicatory proceedings for the operating license approach their conclusion.

#### ARGUMENT

##### APPLICANTS HAVE MET THE REQUIREMENTS FOR AN EXEMPTION UNDER 10 C.F.R. 50.12(A)

Applicants have met the exemption requirements of 10 C.F.R. §50.12(a), which provides in relevant part:

"The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are -

- (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.
- (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever . . .
  - (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or
  - (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the

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<sup>5</sup> See Brown Affidavit at ¶8 and Attachment A thereto.

regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; or

- (vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption . . . "

**A. The Exemption is Authorized By Law, Will Not Present An Undue Risk To The Public Health And Safety, And Is Consistent With The Common Defense And Security**

**1. Issuance Of An Exemption Is Authorized By Law**

Issuance of an exemption from the onsite exercise one year rule clearly falls within the Commission's authority under the Atomic Energy Act of 1954, as amended ("the Act"), to make rules and regulations governing the issuance of full-power operating licenses.<sup>6</sup> The Commission, in granting numerous exemptions from the prior one year timing requirement for full participation exercises,<sup>7</sup> in thereafter increasing from one to two years the timing requirement for

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<sup>6</sup> See Section 161(p) of the Act, 42 U.S.C. §2201(p).

<sup>7</sup> See, e.g. 52 Fed. Reg. 713 (January 8, 1987) (Shearon Harris Nuclear Power Plant); 51 Fed. Reg. 41035 (November 12, 1986) (Perry Nuclear Power Plant, Unit 1); 50 Fed. Reg. 32129 (August 8, 1985) (Limerick Generating Station, Unit 1); 50 Fed. Reg. 28485 (July 12, 1985) (Enrico Fermi Atomic Power Plant, Unit 2); 50 Fed. Reg. 9917 (March 12, 1985) (Waterford Steam Electric Station, Unit 3); 50 Fed. Reg. 5829 (February 12, 1985) (Byron Station, Unit 1).

full participation exercises,<sup>8</sup> and in adopting 10 C.F.R. 50.47(c),<sup>9</sup> has repeatedly exerted that authority.

2. Issuance Of The Exemption Will Not Present an Undue Risk to the Public Health and Safety and Will Be Consistent With The Common Defense And Security

Given the number of times the Seabrook onsite emergency plan has already been exercised and evaluated by the NRC, exempting Seabrook from the onsite exercise one year rule will not present an undue risk to public health or safety and will be consistent with the common defense and security. In the statement of considerations which accompanied the 1985 revision of Section 50.12(a), the Commission explained its interpretation of the "public health" and "common defense" aspects of the qualifying requirements for an exemption:

"In a departure from the text of the existing rule, the proposed rule would require a finding that the exemption will not 'present an undue risk to the public health and safety' and would be 'consistent with the common defense and security.' These criteria provide an explicit recognition of traditional staff practice in evaluating the safety implications of a particular exemption. It is anticipated that this evaluation will consider such factors as compensatory measures, length of time that the exemption will be in effect, and stage of plant operation [i.e., fuel loading, low power, full power, etc.] The Commission believes that the 'not endanger' language in the current rule was never intended to embody any special

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8 See 52 Fed. Reg. 16823 (May 6, 1987).

9 See 52 Fed. Reg. 42078 (November 3, 1987).

standards for exemptions that differed from the statutory standards that licensing must provide adequate protection to the health and safety of the public and be in accord with the common defense and security. The 'no undue risk' standard of the proposed rule is a refinement of the statutory standard that reflects current staff practice in the exemptions area."<sup>10</sup>

Therefore, this factor involves the same evaluation as the adequacy of the onsite emergency plan itself and the ERO's implementation thereof. As indicated above, the plan has been exercised three times since 1986. Each exercise has been evaluated by the NRC Staff and each time the emergency response actions have been found to adequately protect the health and safety of the public.<sup>11</sup> No violations were ever noted by the NRC during these exercises, and all of the NRC's comments were addressed and closed out. Moreover, the ASLB's Partial Initial Decision, dated March 25, 1987,<sup>12</sup> found that the onsite emergency plan satisfies all NRC criteria. These findings regarding onsite response capabilities, together with the favorable evaluations of the two subsequent exercises of the onsite plan, are adequate to support full power licensing. To require Applicants to again demonstrate this principle would be of marginal utility.

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10 50 Fed. Reg. 16506, 16508 (April 26, 1985).

11 Brown Affidavit at ¶ 7.

12 Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177 (1987).

Should the ASLB conclude that reasonable assurance exists with respect to the emergency plan for the Massachusetts portion of the EPZ and the 1988 graded exercise, a full power license should issue promptly thereafter. Then both an onsite and offsite exercise will have been successfully conducted within about seventeen to eighteen months of full power operation.

Given the facts recited above relating to Seabrook and given the absence of any deficiencies in the existing Seabrook onsite plan and its prior exercises, the Applicants submit that the requested exemption, which has the effect of a five to six month extension of the period between the most recent onsite exercise and issuance of the operating license, will pose no undue risk to the public health and safety and will be consistent with the common defense and security.

B. Special Circumstances Are Present.

1. Application Of The Regulation In The Circumstances Surrounding Seabrook Would Not Serve the Underlying Purpose Of The Rule (§50.12(a)(2)(ii))

The underlying purpose of the onsite exercise one year rule has been expressed as (1) the Commission's desire to ensure "that the licensee's new personnel are adequately and promptly trained and that existing licensee personnel maintain their emergency response capability"<sup>13</sup> and (2) the "Commission's general desire to have pre-operational

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13 52 Fed. Reg. 16823, 16824-25 (May 6, 1987).

emergency planning exercises as close as practicable to the time of licensing."<sup>14</sup> If the licensing of Seabrook proceeds on its present course, the effect of granting the requested exemption would be to extend the one year requirement with respect to the onsite exercise by about five or six months, which would not contravene either of these principles.

On May 6, 1987, when the Commission amended its rules to extend from one to two years the time within which a full participation exercise must be conducted prior to full power operation, it rejected a suggestion to completely eliminate the requirement that an onsite exercise be conducted within one year of full power operation. The Commission noted that requiring full participation exercises within two years while requiring onsite exercises within one year "is a recognition of the distinct nature of the participants involved in each instance."<sup>15</sup> State and local organizations, the Commission observed, are in almost all instances organized and trained to deal with emergency situations long before facility operations. The Commission contrasted this to the onsite situation in which "an applicant makes a full-scale shift from a facility construction to a facility operation mode within the last twelve to eighteen months prior to operation."<sup>16</sup> From this the Commission concluded that "as a

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14 Id. at 16825 (emphasis added).

15 Id.

16 Id.

general rule many new operational personnel are retained who must be ready to carry out the utility's onsite emergency response responsibilities."<sup>17</sup>

The situation at Seabrook is strikingly different from that "general rule." As noted above, Seabrook completed its "full scale shift from a facility construction to a facility operation mode" in 1986. A result of the delay in obtaining operating authority after that date has been the additional exercises of the Seabrook onsite plan in the intervening years. A large proportion of the Seabrook ERO members have participated in one or more exercises. All the key positions in the Seabrook ERO continue to be staffed by persons who participated in the June 1988 graded exercise or a prior exercise.<sup>18</sup> Therefore, Seabrook does not present the "typical" situation which the Commission cited as requiring retention of the one year requirement, i.e., a newly hired operational staff which needs to be tested; rather, Seabrook presents a trained staff which has successfully exercised the onsite emergency plan more than once.

Given the experience and favorably rated performance of the Seabrook staff in three prior exercises of the onsite plan, and given the risk of protracted litigation discussed in Section 2, below, Applicants submit that rigid application

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17     Id. (emphasis added).

18     Brown Affidavit at ¶ 8.

of the regulation in the Seabrook circumstances would not serve the underlying purpose of the regulation.

2. Compliance Will Result In Undue Hardship And Other Costs That Are Significantly In Excess Of Those Contemplated When The Regulation Was Adopted (§50.12(a)(2)(iii))

Application of the onsite exercise one year rule would result in undue hardship in this instance. In 1987, when the Commission declined the suggestion to eliminate that requirement, it based that decision on the fact that

"no one has identified any existing response or timing difficulty with the onsite requirement, [therefore] we find no reason to revise the requirement at this time."<sup>19</sup>

Seabrook now dramatically presents a "timing difficulty" which was not recognized at that earlier date.

On June 28-29, 1988, Seabrook conducted a full participation exercise in anticipation of satisfying the exercise requirements of 10 C.F.R. Part 50, Appendix E, Section IV.F.1. At the time, it was reasonable to expect that this exercise would serve as the basis for a full power operating license.

Intervenors were afforded full opportunity to submit contentions on both onsite and offsite demonstrations resulting from the full participation exercise. Extensive litigation of these contentions ensued in the months following the graded exercise. The hearing itself was

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<sup>19</sup> 52 Fed. Reg. 16823, 16825 (May 6, 1987) (emphasis added).

completed on June 30, 1989, almost a year to the day after the graded exercise, and a decision by the ASLB is not expected until October or November 1989.<sup>20</sup>

In hopeful anticipation of utilizing the regulation at issue to continue to delay full power operation of Seabrook, MAG filed a motion with the ASLB to hold open the record pending an additional onsite exercise.<sup>21</sup> That motion, filed just 30 days before the close of the hearings, requested that the record be held open and an opportunity be given to litigate the next onsite exercise. The motion purported to assert rights in accordance with Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984). The Licensing Board denied that motion on June 30, 1989. However, that motion is, one can be sure, a mere precursor to MAG's avowed effort to continue to try and kill Seabrook with delay.<sup>22</sup>

If the next onsite exercise becomes the subject of further litigation, that process very likely will not be complete before June 29, 1990, at which time the two year

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20 See n. 2, supra.

21 "Motion of the Massachusetts Attorney General to Hold Open the Record Pending Low Power Testing and the Required Yearly Onsite Exercise and for Other Related Relief," May 31, 1989.

22 As recently as two days ago, Attorney General Shannon is reported to have declared that "we're going to do everything we can to stop [Seabrook]. Judge Smith and everyone else at the NRC should reads [sic] my lips on that." Boston Globe, Aug. 9, 1989, at 21, col. 1, Attachment B hereto.

window for a full participation offsite exercise prior to full power licensing will have expired. The Applicants would then have to either seek an exemption from that requirement or conduct another full participation offsite exercise and be faced with the inevitably lengthy litigation, and another "endless loop of litigation" will have commenced, the delays and expense of which the Commission has recently disapproved.<sup>23</sup> By granting the exemption requested, the Commission can assure that the potential "endless loop" for Seabrook will be severed permanently.

In addition to the threat of protracted litigation, there are other tangible costs to be considered. As appears from the Brown Affidavit, the costs of further delay in full power licensing of Seabrook Station are quantifiable and real. A delay in commencement of commercial operation translates into increased plant costs of \$1.7 million per day, and a revenue loss of \$2.8 to \$3.6 million per day.<sup>24</sup> Such costs arising solely from an "endless loop of litigation" cannot have been contemplated by this Commission in adopting the rule at issue. Nor could this Commission have envisioned that litigation of onsite exercise issues would have an impact on issuance of a full power operating

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<sup>23</sup> Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-88-9, 28 NRC 567 (1988).

<sup>24</sup> Brown Affidavit at ¶ 13.

license because of the interplay between the one year and the two year exercise scheduling requirements.

3. The Public Interest Will Be Served If An Exemption Is Issued (§50.12(a)(2)(vi))

There is a real public interest in getting Seabrook on line. The New England power situation is extremely tight and getting tighter. Since August 1987, New England has experienced severe shortages of electrical power during both the summer and winter peak demand periods. The power shortage situation is not likely to change for the better anytime soon. Since 1983, electrical energy consumption has grown at a compound annual growth rate of 4.6%. As a result, it is projected that in 1990 New England will experience capacity deficiencies in 35 of 52 weeks if power from Seabrook is not available.<sup>25</sup> This factor should be given its due weight in assessing the public interest.

The public interest in having Seabrook on line is further illustrated by the Declaration Of James D. Watkins, Secretary of Energy, which was filed by this Commission under date of May 22, 1989, in Commonwealth of Massachusetts v. NRC, (D.C. Cir. Nos. 89-1306 et al.), the provisions of which are incorporated herein by reference.

CONCLUSION

In the Seabrook setting, application of the onsite exercise one year rule will serve no real purpose but to

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25 Brown Affidavit at ¶¶ 14-18.

provide MAG with a possible<sup>26</sup> device to further delay the licensing of Seabrook for procedural as opposed to technical or safety reasons.

Over twelve years ago, this Commission described the then ongoing Seabrook construction permit proceedings as follows:

"This case has been widely depicted as a serious failure of governmental process to resolve central issues in a timely and coordinated way -- a paradigm of fragmented and uncoordinated government decisionmaking on energy matters and of a system strangling itself and the economy in red tape."<sup>27</sup>

History should not be allowed to repeat itself in the operating license phase by the creation of an endless loop of litigation. The exemption should be granted.

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26 It is doubtful that the legal theory upon which MAG is espousing an absolute right to litigate the onsite exercise, if it is held before issuance of a full power license and this exemption is not granted, is well founded in law. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-918, 29 NRC \_\_\_\_\_ (June 20, 1989). Nevertheless, the exemption is needed to assure that litigatory mischief will not triumph over technical judgment in this matter.

27 Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 517 (1977).

Respectfully submitted,



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