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'89 SEP 22 A11:16 September 20, 1989

UNITED STATES OF AMERICA
OFFICE OF
NUCLEAR REGULATORY COMMISSION
before the

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

APPLICANTS' MEMORANDUM IN SUPPORT OF
APPLICANTS' MOTION TO STRIKE SAPL RESPONSE
IN ACCORDANCE WITH APPEAL BOARD
ORDER OF AUGUST 30, 1989

INTRODUCTION

On August 30, 1989, this Appeal Board issued an order directing that the Applicants furnish to the Appeal Board the following information:

- A. Numerical figures utilized by the Applicants in the mathematical model for calculating evacuee loads for registration and monitoring in each of the four host communities, including:
1. The peak population (PP) figures for EPZ communities assigned to each host community;
 2. The Special Facilities Population (SFP) for special facilities in the assigned communities;
 3. The transit dependent (TDP) in the assigned communities;

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- B. Citations to the record where the numerical figures are indicated;
- C. Descriptions of any calculations or assumptions necessary to arrive at the numerical figures;
- D. Population figures (with record citations) and calculations which support the Licensing Board's finding that "the [evacuee load] planning basis works out to be about 25% of all evacuees."

In addition, the Appeal Board stated, in the order, that:

"Intervenors shall file and serve any comments on applicants' responses to this Order by September 15, 1989."¹

Under date of September 7, 1989, Applicants responded to this Order.² Under date of September 15, 1989 (Revised), Seacoast Anti-Pollution League (SAPL) filed a document styled "SAPL Response in Accordance with Appeal Board Order of August 30, 1989" (hereafter "SAPL Response").

ARGUMENT

The SAPL Response should be stricken. Rather than commenting upon the information set out in the Applicants' Response, SAPL elected to utilize its comment privilege to put forth an entirely new theory, never before espoused by SAPL, for finding the staffing and equipping of reception centers to be inadequate. Indeed, the SAPL Response does not challenge at all the correctness of any of the information

¹ Order at 3.

² Applicants' Response to Appeal Board Order of August 30, 1989 (hereafter referred to as "Applicants' Response.")

set forth in the Applicants' Response; rather, SAPL attempts to argue a new theory as to why the information does not support the result reached by the Licensing Board.

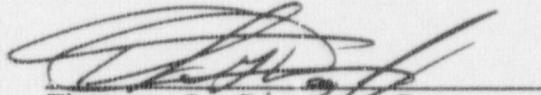
A review of the filings of SAPL, which was the only party which filed proposed findings and rulings and an appeal on this aspect of the case, demonstrates that the theory and line of argument included in the SAPL Response was never previously raised by SAPL in its proposed findings or appellate brief.³ Given this state of affairs, SAPL should not be heard to raise this argument at this late date. See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 348, reconsideration denied, ALAB-467, 7 NRC 459 (1978). See also, Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), ALAB-856, 24 NRC 802, 812 (1986); Duke Power Co., (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 82-83 (1985); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 220, 235 (1986).

³ See Seacoast Anti-Pollution League's Proposed Findings of Fact, Rulings of Law and Conclusions of Fact (May 9, 1988) at 54-69; Seacoast Anti-Pollution League's Brief on Appeal of the Partial Initial Decision on the NHRERP LBP-88-32 (March 21, 1989) at 42-57.

CONCLUSION

The Motion to Strike should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

89 SEP 22 A11:16

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on September 20, 1989, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

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