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October 2, 1979

Harold R. Denton, Director
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, DC 20555

RE: Request for an Order to Show Cause filed on behalf of the Seacoast Anti-Pollution League-March 12, 1979
Docket Nos. 50-443, 50-444

Dear Mr. Denton:

As you know, on March 12, 1979 the Seacoast Anti-Pollution League (SAPL) filed a Request for an Order to Show Cause why the Seabrook construction permit should not be suspended or revoked due to lack of financial qualifications.

Since that time, the NRC Staff has directed three sets of questions to the Applicants dealing with financial issues, and a good deal of data has been provided in response. The most recent data comes under a cover of a letter dated September 27, 1979, signed by Attorney John A. Ritsher of Ropes and Gray. This data has to do with the recent developments before the New Hampshire Public Utilities Commission regarding authorization under State law for the proposed sell-off of a portion of the ownership of the plant held by Public Service Company of New Hampshire (PSCO) to other New England Utilities. In addition, under cover of a letter dated September 17, 1979, Mr. Ritsher also provided certain information to the Staff regarding various matters, including the "status of nuclear fuel financing."

It is my purpose in this letter to suggest that both of these submissions raise serious questions that should be considered by the Staff in ruling either upon the SAPL Request for an Order to Show Cause, or upon the Request for Approval of an Amendment to the License, Proposed Amendment No. 40, filed for by the Applicants on May 16, 1979. Indeed, we suggest that the materials now available suggest that the proposed Amendment to the License may involve "a significant hazards consideration" within the meaning of 10 C.F.R. §50.91.

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First, I would direct your attention to the materials furnished under cover of September 27, 1979. These include the NHPUC Order of September 20, 1979 and Report of September 24, 1979 and a Supplement to the Final Prospectus for the sale of 60 million in General and Refunding Mortgage Bonds dated September 25, 1979. The Supplement to the Prospectus reveals, for the first time, that the lead applicant PSCO "believes it can finance about a 35% ownership interest in the Seabrook plant assuming that the completion of Unit 2, currently scheduled for 1985, is deferred four years."

The Financial Analysts on your Staff, I am sure, will certainly realize that the implications of this statement are very serious, in view of the fact that retaining the 35% ownership as suggested by the Supplement greatly increases the financial burden on the lead applicant.

However, my purpose is simply to point out that your Staff should certainly have, in evaluating these statements, the testimony of Mr. Robert J. Harrison, Financial Vice-President, before the Public Utilities Commission on August 6, 1979. The transcript of Mr. Harrison's testimony on that date, at page 90, will reveal he testified about this matter as follows:

> "There is no time to develop and implement some other plan, <u>including deferral of Seabrook 2</u>, even though deferral could theoretically allow the Company to keep a greater percent of ownership."

Mr. Harrison went on to point out that a deferral of either Units would require the consent of participants having a 75% ownership interest in the plant.

We submit that Mr. Harrison's testimony, quoted above, and also in its entirety, presents a serious conflict with the suggestion in the Supplement to the Prospectus of September 25th that retention of 35% ownership in the facility on the part of PSCO, and deferral of Unit 2 for four years, is a feasible and prudent course of action.

Moreover, throughout his testimony on August 6, 1979, Mr. Harrison was very emphatic that the proposed deal to transfer 22% ownership of the facility from PSCO to other Utilities was a single package, and that it all had to be approved, or all would fail. At page 78, he testified as follows:

> "The transaction which we negotiated with our buying partners contemplated the entire transfer of ownership shares as one deal...."

At page 79, Mr. Harrison further testified as follows:

> "Consequently, not one of them [the Seabrook partners] were willing to have a transaction

go through which would result in the Company owning anymore than 28%.

In view of that, the whole deal is for the transfer of 22% ownership. If that deal is not approved or consumated then there is no deal and we have to start over."

At page 80, Mr. Harrison further testified:

"We just do not have time to go back and start over. So it is this transaction that we are seeking approval for and we must get approval for the entire 22%."

In this regard, the Commission's Staff should pay particular attention to the following statement on page 4 of the Final Prospectus dated September 20, 1979, under the caption "Problems Facing the Company."

"The Company is negotiating contracts for the sale of approximately 2/3rds of its interest in Millstone #3 subject to the receipt of necessary regulatory approvals, including that of the Nuclear Regulatory Commission; the Company did not receive expressions of interest in Pilgrim #2." (Emphasis added.)

The significance of the underscored statement from the September 20th Prospectus is made clear in the August 6th testimony of Mr. Harrison, but is not set out in the Prospectus. In response to a question from PUC Chairman Michael Love, at page 83 of the transcript, asking if the Massachusetts Department of Public Utilities were "to not approve 1% to Montaup, 1% to New Bedford, they could in essence kaposh the whole deal, is that correct? ANSWER, That is correct." Mr. Harrison's opinion that the sale of every percentage proposed was essential to the deal was made equally applicable to the proposed divestiture of PSCO's complete interest in both the proposed Pilgrim 2 and Millstone III units. Indeed, at page 15 of the transcript, he testified that the maximum that PSCO could retain in the Seabrook facility should these interests not be completely sold was 25%, not 28% as previously proposed, much less the 35% now being considered according to the Supplement to the Prospectus of September 25, 1979. At page 20, Mr. Harrison testified:

"The 28% level is indeed a maximum stretch."

Mr. Harrison went on, at pages 20-21:

"In my judgment, which I share with the financial experts with whom we do business, is that 28% is by far the maximum amount that we could be financially able to finance, given the current status of the

matter of CWIP in New Hampshire. Now I should point out that the numbers underlying the 28% scenario reflect the start of the adjustment period as has been defined in this proceeding starting 1/1/80 and the Pilgrim, our entire interest in Pilgrim and Millstone will be sold as of January 1, 1980."

Mr. Harrison had earlier discussed the time when these decisions were made, March 3, 1979, at a meeting of the PSCO Board of Directors, attended by representatives of the investment bankers, and of the underwriters. He stated, at page 13:

"Based upon the analysis of the data presented by the Board, which was emphatically backed up by the opinion of the investment bankers, it was obvious that 25% was the maximum amount that the Company could finance, excluding CWIP. And that that would be a stretch. It was further decided that we could stretch this from 25% up to 28% by selling our entire ownership interest in the Pillgrim and Millstone plants."

We submit that the foregoing excerpts from the transcript should be sufficient for the Commission's Staff to require the entire transcript be produced for its review, and we further suggest that the transcript will provide further compelling support that the materials before the Commission's Staff, including the Prospectus of September 20, 1979 and the Supplement of September 25th, do not provide a complete and accurate picture of the financial position of the lead applicant.

Lastly, we believe the Commission's Staff should be particularly directed toward the statement on page 6 of the final Prospectus of September 20th indicating that "In order not to fully utilize its existing credits, the Company, with the concurrence of the parties involved, has deferred temporarily payment of approximately 4.5 million of liabilities, principally to Seabrook contractors." Although we have no doubt that the proceeds of the 60 million sale of Second Mortgage Bonds has now been applied to paying off these sums due to Seabrook contractors, we suggest that the admission that construction bills on the Seabrook project were not being paid in a timely manner raises the gravest concerns about the safe construction of the facility. We submit that it does justify a finding that a "significant hazards consideration" is involved in the decision which the Commission's Staff now has before it, and that a hearing on the Amendment to the Construction Permits, as applied for by the Applicants, should be provided.

The other matter I wish to address is the PSCO submission on the "Status of Nuclear Fuel Financing"which was furnished with Mr. Ritsher's letter of September 17th. This status report indicates that 25 million of secured notes proposed to be sold to a group of three banks, to be secured by a lien on the nuclear fuel.

First, it should be noted that the "status of nuclear fuel financing" suggests that a closing in October will occur for only 25 million, although it states that "the Company has entered into discussions with a fourth bank, which could lead to such fourth bank being included in the sale of secured notes, bringing the total amount to 32 million." The Final Prospectus of September 20th, states that "the Company is negotiating a nuclear fuel financing of up to 30 million...."

At this time, however, it is only our purpose to suggest that the sale of notes to be secured by a lien on nuclear fuel, which lien will be held by foreign banks, in major part, may well raise "a significant hazards consideration" under 10 C.F.R. §50.91.

We note that under 42 U.S.C. §2232 that the Commission is specifically authorized to inquire into the character and citizenship of an applicant. Under 42 U.S.C. §2234, "the Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee...."

However, from the regulations, it appears that it has been a matter of concern to the Commission that the ownership of utilization facilities, and special nuclear materials, be under the control of entities which are American citizens. See 10 C.F.R. §50.33(d)(iii) which states an Application shall state "whether it is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and if so, give details."

I hope this is of some assistance to you in evaluating the issues raised by the License Amendment, and by the Request for a Show Cause Order.

Very truly yours,

Robert A. Backus

RAB/sld
cc: All Parties on Service List

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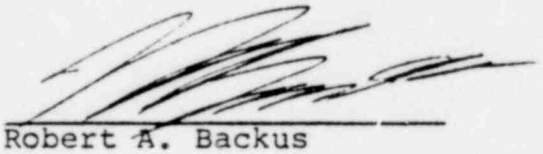

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