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DOCKETED  
February 13, 1990

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
before the  
ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY  
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In the Matter of )

PUBLIC SERVICE COMPANY OF )  
NEW HAMPSHIRE, et al. )

(Seabrook Station, Units 1 and 2) )

Docket Nos. 50-443-OL

50-444-OL

Off-site Emergency

Planning Issues

**APPLICANTS' REPLY TO "RESPONSE  
OF THE MASSACHUSETTS ATTORNEY GENERAL  
AND THE NEW ENGLAND COALITION ON  
NUCLEAR POLLUTION TO BOARD ORDER OF JANUARY 11, 1990"**

Pursuant to this Board's Order of January 11, 1990,  
Applicants reply herein to the "Response of the Massachusetts  
Attorney General and the New England Coalition on Nuclear  
Pollution to Board Order of January 11, 1990" (Feb. 1, 1990)  
(hereinafter "Response"). Applicants' reply to the January  
19 response letter of the Seacoast Anti-Pollution League  
("SAPL"), wherein SAPL refused to participate in any further  
proceedings before this Board, is fully contained in  
"Applicants' Motion to Dismiss Abandoned Remand Issues"

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(Jan. 26, 1990), and no purpose would be served by repeating it here.

In their Response, the Attorney General of The Commonwealth of Massachusetts ("Mass AG") and the New England Coalition on Nuclear Pollution ("NECNP") offer two pieces of "advice" to the Board which Applicants believe warrant a reply.

1. Mass AG and NECNP first argue that the Licensing Board's Partial Initial Decision in LBP-89-32 was "unlawful" and demand that the Board "revoke and vacate" that decision.<sup>1</sup> Prescinding from the fact that this demand is scarcely responsive to the Board's actual request in its January 11, 1990 order, Applicants note that the Commission has asserted jurisdiction over the question of whether LBP-89-32 should be vacated.<sup>2</sup> Applicants also note that Mass AG's and NECNP's claim that LBP-89-32 "openly and directly contradict[s] the express holding of ALAB-924 as to the possibility of approving the NHRERP in its present posture,"<sup>3</sup> simply

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<sup>1</sup> Response at 1, 3.

<sup>2</sup> See Order (Unpublished) (Nov. 16, 1989), at 2. Applicants have argued to the Commission, and continue to believe, that LBP-89-32 was wholly proper. See Applicants' Response to Intervenor's Immediate Effectiveness Review Comments, Stay Requests and Supplement to Intervenor's Motion to Vacate Those Portions of LBP-89-32 Authorizing Issuance of a Seabrook Operating License (Dec. 8, 1989.)

<sup>3</sup> Response at 2 (emphasis in original).

collapses in the face of the Appeal Board's unpublished Order of November 14, 1989.

2. Later in the Response, Mass AG and NECNP assert, without analysis or explanation,<sup>4</sup> that hearings are required as to all remanded issues. The only point in this portion of the Response warranting a reply is the assertion, in a footnote, that Mass AG has a "right as an interested state to participate fully in all remanded issues."<sup>5</sup> As to this point, the Response is incorrect. While an "interested state" is accorded special treatment pursuant to 10 C.F.R. §2.715(c) at the initial stage of its intervention, once it is into the case it is bound by the same requirements as any other party.<sup>6</sup>

In this case, the simple fact is that Mass AG neither participated in the trial of, nor filed proposed finding with

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<sup>4</sup> Instead of providing the advice requested by the Board, Mass AG and NECNP "reference the detailed analyses of the four remanded issues set out at 35-62 of" another brief attached by them as an "Exhibit" to the Response. Response at 5. To the extent that Mass AG and NECNP seek to incorporate these 27 pages of brief by reference, they are flouting the 20-page limit set by the Board in its January 11 order.

<sup>5</sup> Response at 5 n. 3. The Response does not claim--nor could it--that NECNP is entitled to "interested state" treatment, or that NECNP claimed such a right in the November 9, 1989 filing referenced in the footnote.

<sup>6</sup> E.g., Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-76-32, 4 NRC 293, 299 (1976); see also Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-25, 6 NRC 535, 537 n. 1 (1977); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-317, 3 NRC 175, 180 n. 7 (1976).



respect to, the three remanded issues specified in  
Applicants' Motion to Dismiss Abandoned Remand Issues

(Jan. 26, 1990). According, Mass AG could not appeal (and in fact he did not appeal) those issues.<sup>7</sup> A fortiori, having been barred from appealing those issues, Mass AG may not now jump in to litigate them on remand, notwithstanding his claim to have asserted a "right" to do so in a footnote to a brief filed three months ago.<sup>8</sup> Mass AG and the other intervenors simply left those issues to be prosecuted by SAPL (while they threw their energies into pursuing myriad other issues).

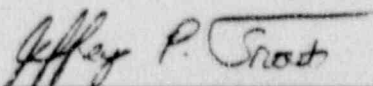
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<sup>7</sup> Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 220, 251-253 (1986); Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 542-43 n. 58 (1986); see also Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-583, 11 NRC 447 (1980). Moreover, to the extent that prior case law may have been inconsistent or ambiguous, the Commission codified this rule effective as of September 11, 1989. See 54 Fed. Reg. 33168, 33177-78 (Aug. 11, 1989) (citing the Limerick decision as the direction in which "[p]ractice under the Commission's existing regulations have been moving").

<sup>8</sup> "Parties may not dart in and out of proceedings on their own terms and at their own convenience and still expect to enjoy the benefits of full participation without the responsibilities." Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982).

Having made that tactical choice, Mass AG must now live with the consequences of SAPL's withdrawal.<sup>9</sup>

Respectfully submitted,



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Thomas G. Dignan, Jr  
George H. Lewald  
Kathryn A. Selleck  
Jeffrey P. Trout  
Ropes & Gray  
One International Place  
Boston, MA 02110-2624  
(617) 951-7000

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<sup>9</sup> Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382-83 (1985); see also Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642 (1977).

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CERTIFICATE OF SERVICE

I, Jeffrey P. Trout, one of the attorneys for the Applicants herein, hereby certify that on February 13, 1990, 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):

Administrative Judge Ivan W. Smith  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Administrative Judge Richard F. Cole  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Administrative Judge Kenneth A.  
McCollom  
1107 West Knapp Street  
Stillwater, OK 74075

George Dana Bisbee, Esquire  
Associate Attorney General  
Office of the Attorney General  
25 Capitol Street  
Concord, NH 03301-6397

\*Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

Adjudicatory File  
Atomic Safety and Licensing  
Board Panel Docket (2 copies)  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Robert R. Pierce, Esquire  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
East West Towers Building  
4350 East West Highway  
Bethesda, MD 20814

Mitzi A. Young, Esquire  
Edwin J. Reis, Esquire  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission  
One White Flint North, 15th Fl.  
11555 Rockville Pike  
Rockville, MD 20852

Diane Curran, Esquire  
Andrea C. Ferster, Esquire  
Harmon, Curran & Tousley  
Suite 430  
2001 S Street, N.W.  
Washington, DC 20009

Robert A. Backus, Esquire  
116 Lowell Street  
P. O. Box 516  
Manchester, NH 03105



Philip Ahrens, Esquire  
Assistant Attorney General  
Department of the Attorney  
General  
Augusta, ME 04333

Paul McEachern, Esquire  
Shaines & McEachern  
25 Maplewood Avenue  
P.O. Box 360  
Portsmouth, NH 03801

\*Senator Gordon J. Humphrey  
U.S. Senate  
Washington, DC 20510  
(Attn: Tom Burack)

\*Senator Gordon J. Humphrey  
One Eagle Square, Suite 507  
Concord, NH 03301  
(Attn: Herb Boynton)

H. Joseph Flynn, Esquire  
Office of General Counsel  
Federal Emergency Management  
Agency  
500 C Street, S.W.  
Washington, DC 20472

Gary W. Holmes, Esquire  
Holmes & Ells  
47 Winnacunnet Road  
Hampton, NH 03842

Mr. Richard R. Donovan  
Federal Emergency Management  
Agency  
Federal Regional Center  
130 228th Street, S.W.  
Bothell, Washington 98021-9796

Suzanne P. Egan, City Solicitor  
Lagoulis, Hill-Whilton &  
Rotondi  
79 State Street  
Newburyport, MA 01950

John Traficante, Esquire  
Assistant Attorney General  
Department of the Attorney  
General  
One Ashburton Place, 19th Fl.  
Boston, MA 02108

R. Scott Hill-Whilton, Esquire  
Lagoulis, Hill-Whilton &  
Rotondi  
79 State Street  
Newburyport, MA 01950

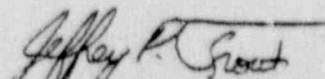
Barbara J. Saint Andre, Esquire  
Kopelman and Paige, P.C.  
77 Franklin Street  
Boston, MA 02110

Judith H. Mizner, Esquire  
79 State Street, 2nd Floor  
Newburyport, MA 01950

Ashod N. Amirian, Esquire  
145 South Main Street  
P.O. Box 38  
Bradford, MA 01835

Mr. Jack Dolan  
Federal Emergency Management  
Agency - Region I  
J.W. McCormack Post Office &  
Courthouse Building, Room 442  
Boston, MA 02109

George Iverson, Director  
N.H. Office of Emergency  
Management  
State House Office Park  
South  
107 Pleasant Street  
Concord, NH 03301

  
\_\_\_\_\_  
Jeffrey P. Trout

(\* = Ordinary U.S. First Class Mail)