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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

(Offsite Emergency
Planning Issues)

**LICENSEES' ANSWER TO MASSACHUSETTS ATTORNEY
GENERAL'S MOTION TO AMEND BRIEF IN SUPPORT
OF HIS APPEAL OF LBP-89-32, LBP-89-33
AND RELATED RULINGS**

Under date of April 27, 1990, the Attorney General of The Commonwealth of Massachusetts (MAG) has filed a document entitled "Massachusetts Attorney General's Motion to Amend Brief in Support of his Appeal of LBP-89-32, LBP-89-33 and Related Rulings" (the Motion). Pursuant to 10 C.F.R. § 2.730(c), Licensees herein answer the Motion and say that for the reasons set forth below, the Motion should be denied.

Licensees cannot help but note at the outset the irony of MAG, having repeatedly asserted that this Appeal Board is powerless to act in light of the pendency of various petitions for review in the Court of Appeals, nevertheless, without

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hesitation, seeks affirmative relief from this Board when it serves his purpose to do so. In any event, the avowed purpose of the motion is to save an appeal of LBP-89-33 which has, to date, been waived by a failure to brief. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 413 (1976). The Motion is the equivalent of a motion to file a brief some three months late.

The Motion is inexcusably late. Accepting the view that it was not until MAG read the Licensees' filing before the Licensing Board on February 1, 1990, that he realized that he might be in default in pressing an appeal on LBP-89-33, there is no excuse for not filing a motion to amend his brief from that time forward. Indeed, he could have included the Motion as a part of his filing to this Appeal Board on February 6, 1990, but chose not to do so. This was a tactical decision by a sophisticated lawyer. He should be required to live with it.

The policy which governs the exercise of discretion involved here was stated approximately ten years ago in the Sheffield proceeding:

"Although the time limits established by the Rules of Practice with regard to appeals from Licensing Board decisions and orders are not jurisdictional, our general policy has been to enforce them strictly."

Nuclear Engineering Company, Inc. (Sheffield Illinois, Low-Level

Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 160
(1980). This policy should be adhered to here.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Licensees herein, hereby certify that on May 3, 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):

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