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SECY-NRC

Kenneth M. Carr, Chairman  
Thomas M. Roberts  
Kenneth C. Rogers  
James R. Curtiss  
Forrest J. Remick

Docket Nos. 50-443-OL  
50-444-OL

(Seabrook Station, Units 1 and 2)

August 7, 1990

The New England Coalition on Nuclear Pollution ("NECNP"), the Seacoast Anti-Pollution League ("SAPL") and the Massachusetts Attorney General ("Mass AG") (collectively, the "Intervenors") move the Commission to reopen the record on the State of New Hampshire's offsite emergency response plan ("NHRERP"), specifically in regard to the adequacy of the staffing supporting that plan pursuant to 10 CFR 50.47(b)(1), (2), (3) and (10). In addition, based on the prima facie showing made out in this motion and the accompanying affidavit of Michael C. Sinclair that there are serious staffing inadequacies across the board in New Hampshire, the Intervenors move that the Commission rescind its "immediate effectiveness"

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finding pursuant to 10 CFR 2.764(f). In short, the Intervenor move that the permission granted on March 1, 1990 to the Applicants to operate Seabrook Station at full power be revoked.<sup>1/</sup>

#### DISCUSSION

Intervenor challenged the adequacy of the State of New Hampshire's staffing of the NHRERP. Their contentions in this regard were admitted and litigated before the Licensing Board.<sup>2/</sup> LBP-88-32, 28 NRC 667, 678-691, 717-721. The Appeal Board affirmed these rulings in ALAB-924, 30 NRC 331,

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<sup>1/</sup> Intervenor do not reiterate their position concerning the "finality" of the NRC's licensing action at Seabrook. Notwithstanding that Intervenor believe the "final curtain" has fallen in this proceeding as a result of their petition for judicial review filed after the Commission's March 1, 1990 action, it is obvious that the Commission believes that the last act has not ended. Thus, in the Commission's view no "final" licensing action has been taken. There are two consequences to this view in these circumstances: 1) Seabrook is presently operating pursuant only to a nonfinal "reasonableness" finding made pursuant to 2.764(f). Once the instant motion to reopen is granted, it will no longer be "reasonable" to permit operation pending the completion of these reopened hearings and the resolution of the staffing issue. (Indeed, such a conclusion is inescapable in light of the fact that a prima facie case supporting record-reopening must set out significant safety issues.) 2) 10 CFR 2.206 is not relevant to Intervenor's present efforts to have the Commission revisit the NHRERP staffing issues since the Seabrook "proceeding" is not yet "final" according to the Commission's interpretation of its own regulations.

<sup>2/</sup> For example, SAPL Contention 8 reads as follows:

The New Hampshire State and local plans fail to meet the requirements that there be adequate manpower and 24-hour per day emergency response, including 24-hour per day manning of communications links, as required by 10 CFR §50.47(a)(1), §50.47(b)(1), §50.47(b)(2), and NUREG-0654 II.A.1.e, II.A.4. and II.F.1.a.

361 n. 12] (November 7, 1989) and ALAB-932, slip opinion at 3-26 (May 31, 1990). Included among the staffing issues already litigated was the Intervenor's charge that there were inadequate personnel at the State level to carry out the protective action responses called for by the State's direct as well as compensatory responsibilities under the NHRERP. See LBP-88-32, 28 NRC 667 at 691. Indeed, the Licensing Board found as follows:

Notwithstanding Colburn's confidence that sufficient numbers of DHHS workers would be available to respond to an emergency at Seabrook, the Board believes that SAPL's concerns regarding the availability of DHHS volunteers have merit. The Board finds that further efforts should be made by state officials to develop a list of workers who, in fact, may reliably be called upon to staff the reception centers regardless of the time of day. The Board also notes that the FEMA witnesses indicated that call-list rosters for local personnel should be made available. FEMA Dir., ff. Tr. 5091, at 80. The Board finds that similar rosters should be prepared for the DHHS workers who are depended upon for reception center duty.

Id. at 719-720. Moreover, the Licensing Board established as a condition for the issuance of an operating license<sup>3/</sup> that:

(a) The Director of Nuclear Reactor Regulation, in consultation with the Federal Emergency Management Agency, shall confirm that the State of New Hampshire has provided for FEMA review satisfactory personnel rosters and call lists of compensatory plan and reception center emergency workers, as discussed in §5.

Id. at 804.

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<sup>3/</sup> Again, the Commission found the Licensing Board's rulings "reasonable" and allowed a license to issue in March 1990 pending the completion of the assertedly not-yet-final adjudicatory proceeding. Thus, present operation is manifestly dependent on continuing compliance with the very licensing conditions established by the Licensing Board which this Commission "approved" in March 1990.



The Intervenor's affiant, Michael C. Sinclair, had responsibility for the creation of these personnel rosters. Sinclair Aff't, ¶3. (Sinclair Aff't is attached as Exhibit 1.) As such, Sinclair is particularly knowledgeable about the capacities of the State of New Hampshire in meeting and maintaining its staffing obligations. As the attached Sinclair affidavit makes clear, sometime after March 1990 (the date this Commission allowed the license to issue) the State no longer had the staffing sufficient to implement the NHRERP. Indeed, according to Sinclair, the Director of the New Hampshire Office of Emergency Management, George Iverson, believed by mid-July 1990 that there was as much as a 20-25% staffing deficiency in the NHRERP across the board. Sinclair Aff't, ¶8.<sup>4/</sup>

These facts mandate that the record should be reopened on the adequacy of staffing the NHRERP. It appears that the State of New Hampshire does not now have sufficient personnel to fully implement its plan in the event of an accident. Sufficient personnel is an express licensing condition and on this ground alone the record should be reopened to consider these developments.<sup>5/</sup> Moreover, the standards for reopening

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<sup>4/</sup> Attached as Exhibit 2 is a July 18, 1990 Memorandum from the Director of Public Health in New Hampshire which provides independent verification that the staffing shortages alleged by Sinclair exist.

<sup>5/</sup> In the absence of such reopening the concerns expressed by Sinclair in his July 20, 1990 letter to Judge Ivan Smith (Exhibit A to Sinclair Aff't) will be a reality:

(footnote continued)

a record set out in §2.734(a) are met in this instance as follows:

(1) Timeliness. Intervenors received a copy of Sinclair's letter to Judge Smith on July 30, 1990 by service on the Seabrook service list. They have acted within one week of their knowledge that serious and persistent staffing inadequacies now exist.

(2) Safety Significance. A 20-25% across-the-board staffing shortage is a significant safety issue because in the event of an accident the NHRERP could not be implemented. Sinclair Aff't, ¶11. Indeed, the significance of the issue is reflected by the fact that the Licensing Board made sufficient staffing a licensing condition, a ruling this Commission found "reasonable".

(3) Materially Different Result. Sinclair prepared the very personnel rosters required by the Licensing Board as a licensing condition. Based on facts and information available to him he now asserts that sufficient personnel no longer are available to meet the staffing roster requirements. Inescapably, a different result would have been likely had this

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(footnote continued)

My purpose in bringing this issue to your attention is that I believe it involves the integrity of the licensing process . . . . As a witness in the proceedings, I accepted, as the Board did, the assurances of FEMA, the state and the applicant utility that the emergency response capability reflected in the plans would be constantly monitored and maintained. I am no longer confident that the commitment is being kept . . . . Obviously the system is flawed when it allows a situation such as this to arise and go unaddressed.

newly proffered evidence been considered initially. Indeed, had the Commission been apprised of the fact<sup>6/</sup> that just as it was approving the issuance of a full power license for Seabrook Station, the State of New Hampshire's capacity to staff its emergency plan was deteriorating markedly, it would have had no basis for finding the then existing adjudicatory record sufficient to support its "reasonableness" judgment which undergirds current operation.

#### CONCLUSION

This Commission should reopen the record on the adequacy of NHRERP staffing. Licensing conditions are not presently met. FEMA and the NRC Staff obligations to police these conditions have been ignored. Absent a public hearing, there is no basis for asserting that the NHRERP can be implemented. Present operation of Seabrook Station is based only on the "reasonableness" of the underlying adjudicatory record as viewed by this Commission. In light of the marked

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<sup>6/</sup> It is unclear who, aside from the Intervenor, would have apprised the Commission of these facts. As the Sinclair letter to Judge Smith makes painfully obvious, his efforts to get FEMA involved in reviewing staffing issues was unsuccessful. As to the independent obligation resting upon the Director of Nuclear Reactor Regulation and the NRC Staff to police the express licensing condition set out by the Licensing Board in December 1988, it should no longer surprise the Commission that the NRC Staff has no regard whatever for the adequacy of emergency planning at Seabrook. Indeed, the NRC Staff has had little or no regard for the facts or law at all in this proceeding. See, e.g., Intervenor's January 22, 1990 Brief to the Appeal Board in Support of their Appeal of LBP-89-38 at 23-24 n. 30 (setting forth partial record of Staff misrepresentations of fact and law). As the NRC's Inspector General's July 23, 1990 Report on Staff misrepresentations concerning emergency planning at Pilgrim makes clear, the Staff's failure to keep the Commission correctly informed at Seabrook is hardly unique.



deterioration of NHRERP staffing coincident with this Commission's "approval" of full power operation, serious and fundamental doubts now exist as to the actual nature of the NRC's emergency planning regulations and the purpose and function of litigation on such issues. Only a public hearing on the record can adequately address these matters. Operation should be halted pending the outcome of such a hearing.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

NEW ENGLAND COALITION ON  
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EXHIBIT 1