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UNITED STATES OF AMERICA
before the
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SEABROOK
DOCKETING & SERVICE
CHAS. N.

In the Matter of

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1
and 2)

Docket No. 50-443-OLA

LICENSEES' MOTION TO DISMISS APPEAL

Inter alia, for the reasons set forth in the Staff's Brief filed under date of June 15, 1991, the Licensees move that the appeal of Seacoast Anti-Pollution League taken from the Licensing Board's decision in Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-91-28, 33 NRC ____ (June 28, 1991), be dismissed.

SAPL undoubtedly will argue that because it was the sole petitioner for intervention in the matter at bar, the decision was not interlocutory in nature and that therefore the appeal of LBP-91-28 should be controlled by the procedures set out in 10 C.F.R. § 2.762 as opposed to 10 C.F.R. § 2.714a.¹ However, any such argument must be rejected on the basis of the Commission's

¹The Notice of Appeal filed by SAPL did not reference any particular regulation as the jurisdictional basis for the appeal.

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recent decision in Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-5, 33 NRC 238 (1991). Therein, the Commission held the procedures under 10 C.F.R. § 2.714a to be fully applicable to appeals where the petitioner denied intervention is the "sole petitioner in the proceeding." 33 NRC at 239. In addition, it is to be noted that the Turkey Point holding was a case where the failure to brief was by a lay person. And this Commission held that this made no difference where, as here, the Licensing Board had fully advised the petitioner of the appellate rights under 10 C.F.R. § 2.714a. Here the filing was by a counsel and client long experienced in NRC proceedings as stated in the Notice of Appeal itself.²

CONCLUSION

The appeal should be dismissed.

By their attorneys,



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²Notice of Appeal at 2, last ¶.

CERTIFICATE OF SERVICE

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I, Thomas G. Dignan, Jr., one of the attorneys for the Licensees herein, hereby certify that on July 17, 1991, 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) the individuals listed below:

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