FILED: DECEMBER 14, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al	Docket Nos.	50-443 OL 50-444 OL

(Seabrook Station, Units 1 and 2)

MEMORANDUM IN SUPPORT OF SAPL'S MOTION TO DISMISS THE OPERATING LICENSE APPLICATON FOR SEABROOK UNIT 2 AND PETITION FOR LATE FILED CONTENTION

Pursuant to 10 C.F.R. §2.730(c), the Seacoast Anti-Pollution League, (hereinafter "SAPL") respectfully seeks leave to submit this Memorandum in Support of its Motion to Dismiss the Operating License Application for Seabrok Unit 2. (Filed September 26, 1983.) SAPL also seeks leave to file a late filed contention pursuant to 10 C.F.R. §2.714(a).

In its orignal Motion, SAPL urged this Board to dismiss the Operating License Applicaton for Unit 2 based on the fact that no completion date exists for that unit, and that the licensing process is premature at this stage of construction.

Both the Staff and Applicants have filed vigorous objections to SAPL's Motion, and we wish to further clarify our position in response to their arguments.

I. THE APPLICANTS' JURISDICTIONAL ARGUMENTS ARE INCORRECT AS A MATTER OF LAW.

At the outset it should be noticed that not a single objection raised by either the Applicants or Staff goes to the merits of SAPL's Motion. That position is, quite simply, that the entire hearing process as it pertains to Unit 2 is premature at this time because there is no way in which this agency can make the requisite findings under 10 C.F.R. §50.57(a)(1) in the foreseeable future.

Instead, the objecting parties have attempted to thwart the Motion by arguing that this Board either cannot nor should not rule on the matter.

First, we turn to the Applicants' position. As their sole argument, the Applicant's assert that:

> "...in operatin license proceedins, Atomic Safety and Licensing Boards decide only matters in controversy, leaving the making of the ultimate 50.57 findings to the Staff." (See Applicants' Answer to SAPL's Moton to Dismiss the Operating License Application for Seabrook Unit 2, filed October 6, 1983, page 3.) [Emphasis added.]

The Applicants are wrong. Atomic Safety and Licensing Boards have independent responsibilities to the health and safety of the public regardless of the scope of issues brought before them by third parties. Calvert Cliffs Coordinating Committee v. U.S. Atomic Energy Commission, 449 F.2d at 1109 (D.C. Cir., 1971). In fact, ASLB's are empowered to raise virtually any issue of relevance to safety, environmental, or national security concerns regardless of any co-existing review obligations on the part of the NRC Staff. 10 C.F.R. §2.104(c), §2.760(a) In the matter of Texas Utilities Generating Company, et al, (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-23, 14 NRC 159 (1981).

Applicants cite the Appeal Board ruling in Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 410-11 (1974) as both controlling and dispositive in this instance. We disagree.

In the case of Commonwealth Edison, the Units in question had established completion dates. Consequently, there was no significant indication that the Staff or any other branch of the NRC had particular difficulty in making the requisite statutory completion findings.

Here, the Applicants argue that the Board should refrain from consideration of the merits of SAPL's Motion because the Staff will undertake responsibility for the findings prior to the issuance of the license.

> "This in no way compromises the public health and safety because the Staff will have to assure itself there is an adequate basis on which to make the necessary finding on completion before actually issuing the Unit 2 license whenever that occurs." (Applicants' Answer, at 6.)

SAPL further disagrees. Aside from the procedural merits of this argument, it is clear from the Staff's response that it is decidedly unconcerned about the completion issue. We cite the following statement in support of this observation:

> "Moreover, the Staff is unaware of any precedent to the effect that a slowed construction schedule, no matter how pervasive, provides the basis for not proceeding in its regulatory review and construction inspection functions, or, the more drastic action requested by SAPL of dismissal of the Application with regard to Unit 2, and SAPL has pointed to no such precedent. If further action is to be taken regarding Unit 2, it is for the Applicants, not SAPL to say." Staff's Response, filed October 17, 1983 at pages 2-3.

First, SAPL has not suggested any type of action with respect to construction of Unit 2. What we do allege is that the formal operating license review hearings are premature with respect to

Unit 2. It is obvious that we have no "say" regarding construction schedules of anything else with respect to the project's future.

Secondly, we never suggested that this agency's regulatory review and construction inspection "functions" should be halted, or even slowed. To the contrary, SAPL encourages the beefing up of such overview procedures. We are confused as to how Staff counsel arrived at that conclusion.

Third, and most importantly, the Staff's arguments demonstrate clearly its non-concern for the completion issue. The Staff says that virtually any construction schedule, no matter how slow, regardless even of the existance of a completion date, is acceptable for purposes of going forward with hearings and the granting of an operating license. This position completely ignors the significance of 10 C.F.R. §50.57(a)(1). Taken to its logical conclusion, the Staff's argument suggests that even if the plant remains less than one quarter completed[1] for the next 500 years, now is a proper time to render a final determination as to whether an operating license should issue.

Such remarks demonstrate conclusively that the Staff is, in fact, prepared to allow a license to issue in the near future

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1. The current level of Unit 2 completion is an important evidentiary issue here. Although the Applicants now allege that Unit 2 is some 26% complete, SAPL is aware of significant testimony presented under oath before the Connecticut Department of Public Utility Control alleging that Unit 2 is no more than 7% complete. This is due, in part, to the fact that as of September 30, 1983, according to the Applicants' Construction Status Report, only 4% of the large bore processed pipe, 2% of the large bore pipe hangers, restraints and snubbers, and only 2% of the small bore pipe had been installed at the plant. As of that date, virtually no other work has been completed with respect to Unit 2 other than general site preparation and structural concrete implacement.

regardless of the level of completion of Unit 2. Consequently, the Applicants attempts to dissuade this Board's inquiry by suggesting that the matter be left to the Staff should be rejected.

The Staff's citation of the Advisory Committee on Reactor Safeguard's Statement that "We would expect to examine the need for additional review of Unit 2" in the even of further schedule slipages is hardly tantamount to an assurance of compliance with 10 C.F.R. §50.57(a)(1). Indeed, the ACRS role is merely advisory in nature. 10 C.F.R. 50.58.

Overall, the Staff's objection to SAPL's Motion amounts to an attack on its own regulations and the Staff obviously wishes to see the operating license process continue regardless of the level of progress being made.

II. THIS BOARD HAS THE AUTHORITY AND LEGAL OBLIGATION TO INSURE COMPLIANCE WITH THE "SUBSTANTIAL COMPLETION" STANDARD.

Pevious Licensing Boards have seen fit to raise safety and environmental issues sua sponte despite co-existing review obligations on the part of the NRC Staff. In Texas Utilities, infra, one of the intervenor parties opted to withdraw from the proceedings due to lack of funds. At the time, it was the sole sponsor of numerous contentions relating to safety and environmental concerns. Texas Utilities, infra, at 169. In response to the Intervenor's voluntary withdrawal as a party, the Applilcants urged dismissal of that party's contentions. Texas Utilities, infra, at 160.

The Licensing Board rejected Applicants' Motion with respect to a vast majority of the Intervenor's contentions and opted to raise those issues sua sponte. It also rejected the Applicants' assertion

that sua sponte authority should be deferred because of a co-existing obligations on the part of the NRC Staff to insure compliance with safety regulations.

> "It is therefore clear that the power of the Staff alone to decide whether any other matters need not be considered prior to the issuance of an operating license, arises only after the Board has resolved the question of potential sua sponte issues, and it does not qualify or limit the Board's jurisdiction in that regard." Texas Utilities, at 166.

In the Texas Utilities case the Board recognized that Commission regulations have specifically abandoned the formally adopted requirement that ASLB sua sponte jurisdiction be used "sparingly" under "extraordinary circumstances". Presently, Licensing Boards may raise issue where the presiding officer determines that a "serious, safety, environmental, or common defense and security matter exists." See 10 C.F.R. 2.760(a), 44 Fed. Reg. 67088, November 23, 1979. Compare 40 Fed. Reg. 2974, January 17, 1975.

SAPL asserts that this question of substantial completeness vis-a-vis the timeliness of operating license issuance is an issue of serious, environmental and safety importance to the health and safety of the public. We premise this conclusion on a fundamental observation: The laws are designed to insure that plants under construction are in fact built to the demanding standards specified by law and set forth in the construction permit and license application. To hold conclusive hearings and make a decision on OL issuance without requiring the facility to be in physical conformity, i.e. actually "or substantially" built is to ignore the entire thrust of the statute and regulations. 42 U.S.C. §2235, 10 C.F.R. §2.760(a), 2.104(c), 10 C.F.R. §50.57(a)(1). We submit that were the completion issue not of crucial importance in maintaining compliance with

technical standards, there would in fact be no need for a two stage license process at all. Approval of plant operations could be rendered in advance of substantial completion along with the other requisite findings for issuance of the construction permit. The very existence of a two stage licensing process indicates the need to insure physical conformity of the plant with the applicable regulatory criteria.

Therefore, it is SAPL's position that the completeness issue is, in fact, a matter of concern which should be addressed by this Board. We believe that requisite assurance of substantial completeness is crucial to determine compliance with the applicable environmental and safety related regulations. As the Licensing Board noted in Texas Utilities, infra,

> "A serious safety matter is potentially involved in an operating license proceeding, the public interest would not condone a Licensing Board having its hands tied by being wholely dependent on an intervenor furnishing discovery information or retaining the status of a party." Texas Utilities, infra, at 168.

The Board also held the situation to be comparable to that described by the Court in Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d at 608, 614, 620 (2nd Cir. 1965);

> "In this case, as in many others, the Commission has claimed to be the representative of the public interest. This role does not permit it to act as an empire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission."

The Scenic Hudson decision concernin Federal Power Commission review of the Storm King Pump Storage Energy Project strongly supports SAPL's position on this issue. In Scenic Hudson, the Second Circuit Court of Appeals struck down the F.P.C.'s Licensing Order for the

project for failure to allow testimony on the record as to long term environmental impacts and possible alternatives. Scenic Hudson, infra. In commenting on the respective roles of intervenors in the Agency itself the Court stated that:

> "In viewing the public interest, the Commission's vision is not to be limited to the horizons of the private parties to the proceeding.
>
> Where, as here, a regulatory agency has ignored factors which are relevant to the public interest, the scope of judicial review is sufficiently broad to order their consideration. These limits are not to be confused with the narrower ones governing review of an agency's conclusions reached upon proper consideration of the relevant factors." [Citing Michigan Consolidated Gas Company v. Federal Power Commission, 283 F.2d at 224 (D.C. Cir. 1960).

This view has been adopted in other cases involving judicial review of agency actions. See Greene County Planning Board v. Federal Power Commission, 455 F.2d 412 (2nd Cir. 1972), Isbrandtsen Company v. United States, 96 F. Supp. 883, 892 (S.D.N.Y. 1951), City of Pittsburgh v. Federal Power Commission, 237 F.2d at 741 (D.C. Cir. 1956).

III. PREVIOUS NRC DECISIONS TO RESTRICT ASLB REVIEW TO ENVIRONMENTAL ISSUES RAISED BY OUTSIDE PARTIES OR STAFF MEMBERS HAVE BEEN STRUCK DOWN.

Another Court of Appeals Decision bearing directly on the issue at hand is Calvert Cliffs Coordinating Committee v. United States Atomic Energy Commission, 449 F.2d at 1109 (D.C. Cir. 1971).

The famous Calvert Cliffs decision focused on NRC procedures for implementing review of environmental concerns pursuant to the National Environmental Policy Act of 1969. 42 U.S.C.A. §4321 et seq., 35 Fed. Reg. 18469 (December 4, 1970), subsequently referred to as Appendix D of Part 50 of the Commission's Rules and Regulations.

One of the established procedures struck down by the Court provided that:

> "(1) Although environmental factors must be considered by the Agency's regulatory staff under the rules, such factors need not be considered by the Hearing Board conducting an independent review of Staff recommendations, unless affirmatively raised by outside parties for Staff members." Calvert Cliffs, infra, citing Appendix D to part 50 of the Commission's Regulations, 35 Fed. Reg. 18469 (December 4, 1970), 10 C.F.R.§50, Appendix D at 249 (1971).

In fact, the bottom line of the Agency's procedure was that when no party to a proceeding raised environmental issues, the Commission's responsibilities under NEPA would be fully carried out "outside of the hearing process". 10 C.F.R. §50, Appendix D. 249 (1971). The Court of Appeals ruled that such an approach to environmental review "made a mockery of the Act". (Referring to NEPA.) Calvert Clifffs, infra, at 1118. Noting that NEPA requires agencies to consider the environmental impact of their actions "to the fullest extent possible", NEPA demands that such issues be considered at every important stage in the decision making process concerning a particular action. Id.

> "Of course, consideration which is entirely duplicative is not necessarily required. But independent review of Staff proposals by Hearing Boards is hardly a duplicative function. A truly independent review provides a crucial check on the Staff's recommendations." Id. [Emphasis added.]

The Court supposed that the Commission's rationale for its procedure may have been based on economy of resources. However, the Court flatly rejected the validity of such a rationale:

> "Of course, independent review of the 'detailed statement' and independent balancing of factors in an uncontested hearing takes some time. If done properly it will take a significant amount of time. But all of the NEPA procedures take time. Such administrative costs are not enough to undercut the Act's requirement that environmental protection be considered 'to the fullest extent possible.'" Id, at 118.

Finally the Court pointed out that it is false to assume intervenor or citizen groups will always have the time and resources necessary to bring important concerns to the attention of Hearing Boards. Id. 1119. The primary responsibility for fulfilling the NEPA mandate lies with the Commission. Echoing the principals articulated in Scenic Hudson, infra, the Court stated:

> "NEPA establishes environmental protection as an integral part of the Atomic Energy Commission's basic mandate. The primary responsibility for fulfilling that mandate lies with the Commission. Its responsibility is not simply to sit back, like an umpire, and resolve adversary contentions at the hearing stage. Rather, it must itself take the initiative of considering environmental values at every distinctive and comprehensive stage of the process beyond the Staff's evaluaton and recommendaton." Id. at 1119. [Emphasis added.]

See also Udall v. F.P.C., 387 U.S. 428, 87 S.Ct. 1712, 18 L.Ed. 2d at 869 (1967); Environmental Defense Fund, Inc. v. Ruckelshaus, 142 U.S. App. D. C. 74, 439, F.2d at 584 (1971); Moss v. C.A.D., 139 U.S. App. D.C. 150, 430 F.2d at 891 (1970); Environmental Defense Fund, Inc. v. U.S. Department of H.E.& W., 138 U.S. App. D.C. 381, 428 F.2d at 1083 (1970). In commenting on the Atomic Energy Commission's pre-NEPA duty to consider health and safety matters, the Supreme Court said: "The responsibility for safeguarding the health and safty belongs under the statute to the Commission". Calvert Cliffs, infra, citing Power Reactor Development Company v.

International Union of Electric Radio and Mach. Workers, 367 U.S. 396, 404, 81 S. Court 1529, 1533, 6 L. Ed. 2d 924 (1961).

To date, this Board has not considered Unit 2 completion levels and recent changes in construction scheduled as they relate to environmental and safety concerns.[2] Given the critical importance of the substantial completion requirements and their relationship to plant safety requirements and design criteria, we believe that this Board must allow the receipt of evidence and oral argument on completeness as it is crucial to a consideraton of environmental impact "to the fullest extent possible" under NEPA. National Environmental Policy Act of 1969, Public Law 91-190, §102.

Under the Calvert Cliffs decision, the operating license proceeding is indeed an important stage in the decision making process where alternations in the proposed action might be made to minimize the environmental costs. That alteration, in this case, is to postpone consideration of whether Unit 2 should be granted an operating license until it is apparent that the plant's construction will be substantially completed in a time frame concurrent with the license approval. Failure to examine this issue may result in a license issuance without assurance that the plant will in fact be constructed in accordance with proper specifications. NEPA requires the Board's analysis of this issue and the Commission's rules on sua sponte jurisdiction give the Board full independent authority to do so.

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2. We believe that in this context, there is no significant distinction between an "environmental" or "safety" concerns. Any unforseen radiological accident resulting in human safety impairment will have a de facto impact on the environment.

IV. MOTION FOR LATE FILED CONTENTION.

In the event that this Board fails to allow a full evidentiary hearing with respect to SAPL's Motion to Dismiss, SAPL hereby seeks leave to file the following contention for adjudication in this proceeding.

SAPL'S CONTENTION UNIT 2-1

THE OPERATING LICENSE HEARINGS FOR SEABROOK UNIT 2 ARE UNTIMELY AND PREMATURE BECAUSE UNIT 2 CONSTRUCTION WILL NOT MEET THE LEVELS OF SUBSTANTIAL COMPLETION REQUIRED FOR LICENSE ISSUANCE FOR MANY YEARS.

Commission regulations state that an operating license for Seabrook Unit 2 may be issued upon a finding that construction of that facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission. 42 U.S.C. §2235, 10 C.F.R. §50.57(a)(1).

Further construction of Unit 2 beyond absolute minimum level has been delayed by the Seabrook Ownership Group pending completion of Unit 1. Seabrook Unit 2 presently has no established completion date. See "PSNH agrees to delay Unit 2", the Manchester Union Leader, pages 1 through 22, September 9,, 1983).

The New Hampshire Public Utilities Commission has determined, prior to the construction delay, that Unit 2 will not be comlete until March 1990. (New Hampshire Public Utilities Commission Supply and Demand Docket, #DE 81-312, April, 1983.) It is now apparent that assuming the lead time between Unit 1 and Unit 2 completion

formally held by the Applicants of approximately 2 1/2 years[3] Unit 2 may not be ready for operation until sometime in 1993. Other factors indicate that even the 1993 figure may be optimistic. Recent sworn testimony before the Connecticut Department of Public Utility Control in the recent rate case of United Illuminating Company, a major Seabrook owner indicates that Unit 2 may, in fact, be no more than 7% complete.

Based on the best available completion information available from testimony before the Connecticut and New Hampshire Public Utilities Commissions, as well as the NRC staff, it is clear that Unit 2 will not reach a level of substantial completion for seven or more years. On this basis SAPL alleges that the current series of operating license hearings do not apply to both Seabrook Units, but rather to Unit 1 only. The licensing hearings for Unit 2 should be held only when the Staff is capable of making the requisite findings for license issuance. It is improper for this hearing Board to conduct hearings and close the record before installation of important safety systems such as High Pressure Core Injection, High Pressure Core Spray, Low Pressure Core Injection, Low Pressure Core Spray, Pressurizer, Stand-by Liquid Control System, Containment Spray, Residual Heat Removal System, Reactor Coolant Leak Detection, ESF Sequencer and Makeup System (CVCS), and other systems critical to the public health and safety. To do so forecloses the ability of Intervenors and other interested parties to file timely contentions based on problems with these systems as they may develop in the future with respect to their

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3. And assuming the first quarter, 1986 completion date for Unit 1 held by the NRC Staff.

actual, physical construction and installation. Present adjudication of all issues related to these systems while they exist only on paper violates the letter and spirit of the Commissions legal requirements that Unit 2 construction be substantially complete before issuance of an operating license.

V. LATE FILED CONTENTION CRITERIA.

The admissibility of a late filed contention is determined after a balanced consideration of the five factors set forth in 10 C.F.R. §2.714(a). Duke Power Company, (Catawba Station, Units 1 and 2), CLI-83-19, 17 NRC_____(June 30, 1983).

1). Good Cause for Failure to File on Time.

Prior to April 1983, SAPL was not aware or in possession of credible evidence discounting the Applicants' July, 1987 completion date for Unit 2. In April, however, New Hampshire Public Utilities Commission issued its Report in #DE 81-312, Investigation into the Supply and Demand for Electricity, (April 29, 1983). That Report included a finding by the Commission concerning likely completion dates for both Units. Those dates were March of 1986 for Seabrook Unit 1 and March of 1990 for Seabrook Unit 2 respectively.

Following this development was the September 8, 1983 vote of the Seabrook Ownership Group to delay continued construction of Unit 2. A consequence of that vote was the Applicants abandonment of all completion estimates for Unit 2. To date, none has been established.

The combination of these developments have put SAPL on notice that Unit 2 probably will not be operational until some ten years from now. (See basis for SAPL contention Unit 2-1.) Directly

following this notice, SAPL filed its Motion to Dismiss the Operating License Application for Unit 2. (Filed September 26, 1983.)

SAPL did not couch the problem in terms of the late filed contention because the very nature of SAPL's concern is that the proceedings themselves are premature as to their relevance to OL issuance for Unit 2. Merely introducing a contention on the matter suggests that the proceedings should continue. We believe they should not continue, at least with respect to their respective effect on the licensing of Unit 2, in light of these developments. Nevertheless, SAPL reserves the right to pursue relief through this late filed contention option.

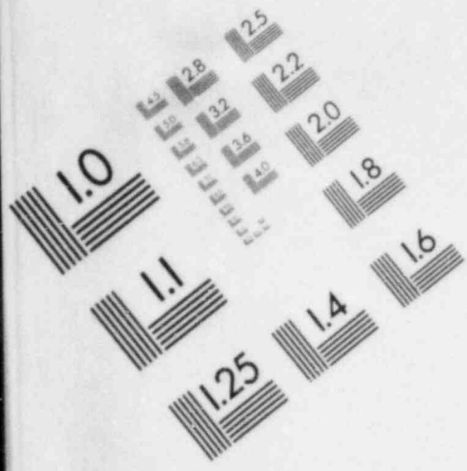
Both the Applicants and Staff submit that SAPL's concerns about substantial completion are unwarranted. It is alleged that all is well since the Staff has an obligation under the regulations to make the 10 C.F.R. §50.57(a)(1) findings regardless of what transpires in the hearing process.

2). SAPL's interest in seeing the hearing process deferred will not be protected by the Staff for two reasons.

First, SAPL asserts that it will be virtually impossible for the Staff to make a finding of Unit 2 "substantial completeness" for many years. Just how far into the future such a finding may be made depends on several variables including (1) the potential for continued and more pervasive delay pushing Unit 2 completion well into the mid-1990's, and (2) what level of actual, physical completion this agency determines to be "substantial". SAPL asserts, however, that whatever the variables, it is reasonable to assume that such a finding could not be made until the late 1980's. For the Staff and Applicants

to assert that such a finding can be made earlier is too discount extensive data to review and findings made by both this Agency, the New Hampshire Public Utilities Commission, and the Connecticut Department of Public Utilities Control. In the event that Applicants and Staff do believe the completeness findings can be made sooner, then significant factual questions are raised which should be properly determined either through formal hearing on the merits of SAPL's Motion to Dismiss, or in the alternative, allowance of this contention within the proceeding itself.

The second reason why SAPL's interests will not be protected by the Staff is that is manifestly apparent from the Staff's pleading on this issue that it is unconcerned about the completeness factor. As noted above, it will be years before the Staff will be able to make such a determination. Meanwhile, the hearing record will close. In the long interim, Intervenors will be unable to assert safety concerns associated with construction practices within the context of Unit 2 licensing without (a) meeting the stiff burdens of reopening the hearing record, or (b) meeting the criteria for a 10 C.F.R. §2.206 "show cause" petition. This is highly prejudical to SAPL and the rights of Intervenors generally to be able to scrutinize the construction process and bring the deficiencies to the attention of a timely convened Licensing Board for purposes of deciding whether to grant an operating license.



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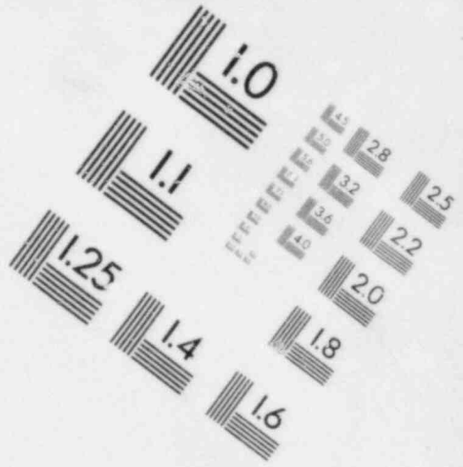

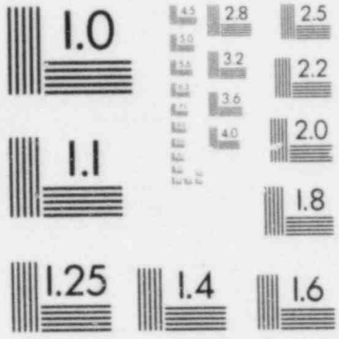

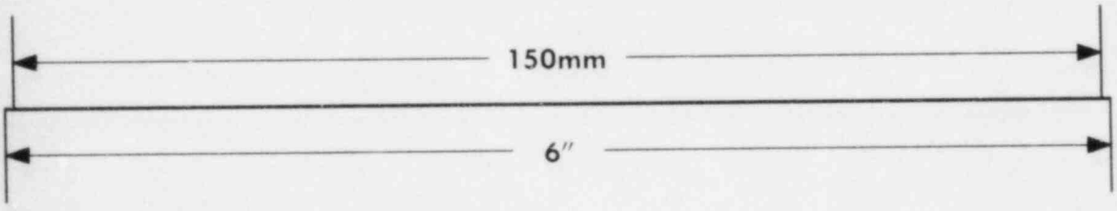

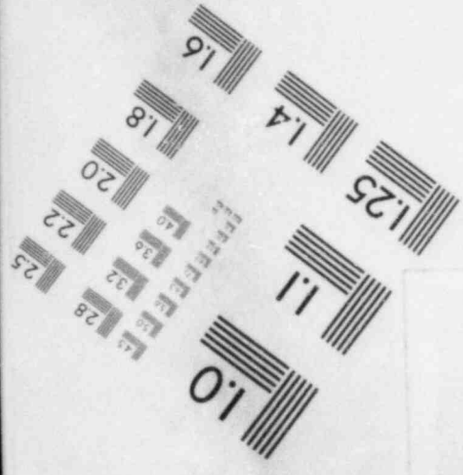

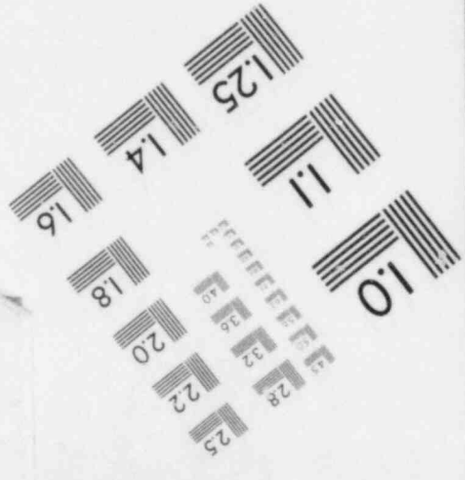

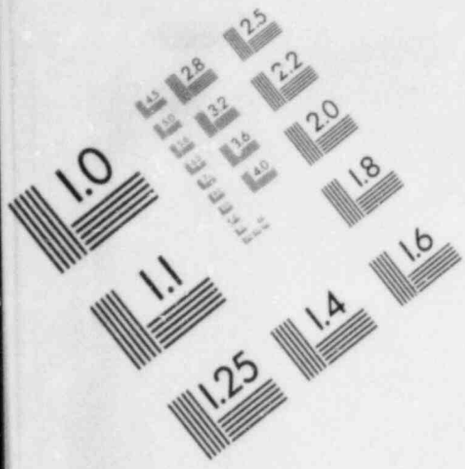

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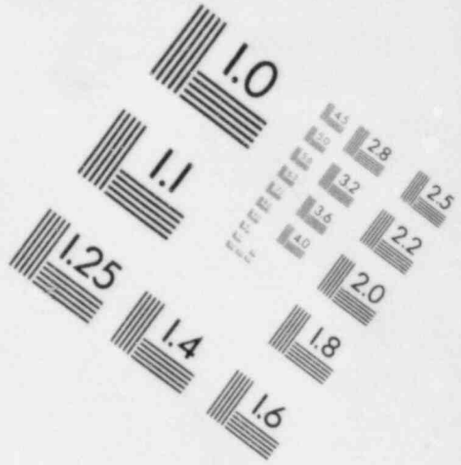

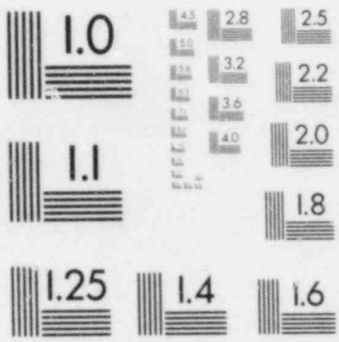

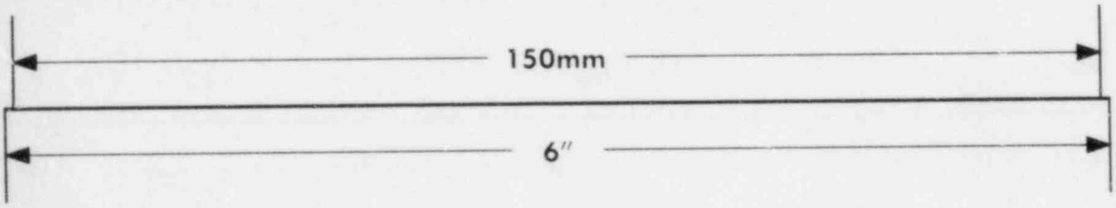

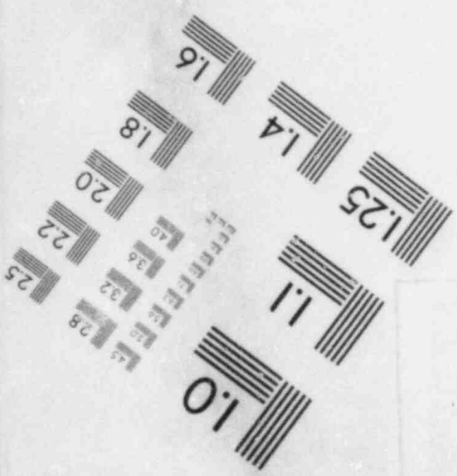

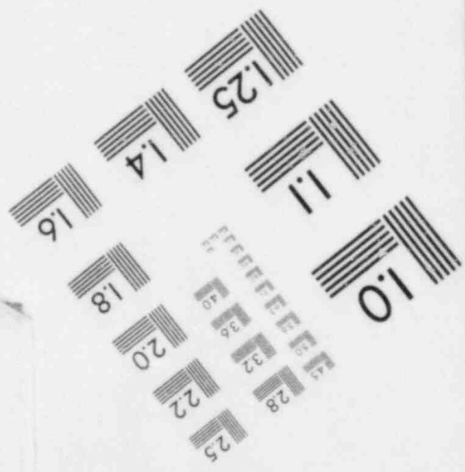

3). The Extent to Which the Petitioners Participation May Reasonably be Expected to Assist in Developing a Sound Record.

Recently, this Board denied a late filed Petition to Intervene filed by Mr. John Dougherty. ASLB Order, issued November 15, 1983. In that Decision, Judge Hoyt expressed concern that there was no indication as to the type of evidence Petitioner sought to introduce, nor was there information on the record concerning the time needed for review of the contention, etc. To avoid that problem here, SAPL wishes to address Judge Hoyt's concerns.

As stated above, SAPL believes that a proper means to resolve this issue would be for the Board to dismiss consideration of Unit 2 OL issuance from the scope of this proceeding entirely. However, in the alternative, determination of the issue throught SAPL's contention would be appropriate.

This contention can be litigated along with the other contentions concerning off-site emergency preparedness. As it is now apparent that the hearings will not go forward until sometime in the spring, a prompt ruling on this contention's admissibility would allow sufficient time for discovery and summary disposition to transpire prior to the hearing date. (Yet to be determined.)

Within this context, SAPL believes that hearing time spent on the contention would be less than one day. This is because the factual focus of the issue would be on one central concern: a completion schedule for Unit 2. Given the importance of the question and its relationship to health and safety, we believe that in comparison to the time spent on all other issues in this proceeding, the additional time for this contention is more than warranted. Of

course, if the Applicants and Staff continue to assert that construction of Unit 2 will be completed within the near future, and should they desire to present extensive testimony on the matter, hearing time spent on the contention might run into several days.

SAPL has not yet determined who would be presented as a witness, as this question cannot be answered with finality until the scope of this contention is determined by the Board. Nevertheless, SAPL is prepared to present its case in a concise, efficient manner. We do not believe more than two witnesses would be necessary to establish a record. Indeed, one may be entirely sufficient. How long cross-examination would take would, again, be determined by the eventual scope of the contention and the nature of the argument set forth by opposing parties.

4). The Extent to Which the Petitioner's Interest Will be Represented by Existing Parties.

SAPL's interest in severing the Unit 2 operating license application from these hearings for OL issuance will not be represented by existing parties as no other parties have seen fit to raise the issue. This is especially true with respect to the party responsible for making the requisite findings: NRC staff. See generally Section 2, above.

5). The Extent to Which the Petitioner's Contention Will Broaden the Issues or Delay the Proceeding.

SAPL's contention will broaden the issues in this proceeding as no other party has raised the issue of Unit 2 completion. We anticipate the addition in factual scope will be limited to evidence concerning Unit 2 completion scheduling. The legal issues may concern the definition of "substantial" completion, and the reasonableness

of time lag between close of the hearing record and issuance of the license. Clearly these issues can be sufficiently briefed by the parties in advance of the hearings in order to facilitate concise, efficient oral argument on these issues once the hearings commence.

It is unclear at this point whether prompt admission of this contention will delay these proceedings in any significant way. Given that off-site emergency planning hearings will now be delayed in any event, it is entirely possible to arrange a hearing on this contention within the same time frame. This is also true in light of the fact that contentions have not yet been submitted with respect to Massachusetts State or local emergency plans, and those plans have yet to be submitted. While it is true that submission of any new contention will increase, to an extent, the time spent on the proceeding by all parties involved, SAPL asserts that admission of this contention will not serve to delay the proceedings over all. In fact, perhaps the most significant contributing factor to recent delay has been the emergency planning contractor's inability to get the plans completed. Consequently, existing delays are beyond SAPL's control, and we submit that the mere addition of a single contention will not delay the proceedings to any great extent.

Finally, we wish to emphasis the significance of balancing the interests involved. The submission of any new contention at this point will involve additional time and resources by the parties concerned. Balanced against that factor is the health and safety of the public, and the rights of Intervenors generally to submit and adjudicate contentions with respect to Unit 2 on a timely basis as it nears physical completion and its true operating date. It is our

position that together, the importance of convening timely hearings to adjudicate health and safety issues is far more important than a minimal amount of time that would be saved at this point. This is especially relevant in light of the fact that the construction schedule for both Units has continued to slip, and an additional delay will have absolutely no prejudicial effect upon the Applicants.

CONCLUSION

SAPL's position on this issue is straightforward. The hearing process with respect to Unit 2 is premature, it is virtually impossible for any division of this agency to find Unit 2 construction "substantially completed" within six to seven years, and possibly beyond.

Further, we contend that the completion requirements are crucial to the function and need for a two stage licensing process. It is improper to conduct hearings and render an operating license years before the plant even remotely approaches completion. To do so flies in the teeth of the Atomic Energy Act and the Commission's own regulations. [42 U.S.C.§ §2235, 10 C.F.R.§50.57(a)(1)] In addition, the question is intimately related to the numerous health and safety concerns associated with proper, legal construction of the facility. Approving Unit 2 for commercial operation on paper is not the same as approving it in physical form. We submit that resolution of the issue through admission of this contention is in the public interest, and will have minimal impact on the completion of these hearings overall.

Respectfully submitted,
Seacoast Anti-Pollution League
By its attorneys,
BACKUS, SHEA & MEYER

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December 14, 1983

CERTIFICATE OF SERVICE

DATED: December 14, 1983

I, Robert A. Backus, hereby certfy that I have mailed to the attached list of people, first-class, postage prepaid a copy of the enclosed Memorandum in Support of SAPL's Motion to Dismiss the Operating License Application for Seabrook Unit 2 and Petition for Late Filed Contention and SAPL's Answer to Applicants and Staff's Response to SAPL Contentions on the Evacuation Time Study. If served by Federal Express or Express Mail it is so indicated by * by the person's name.

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