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TO MASSACHUSETTS BAR

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May 7, 1984

Nunzio J. Palladino, Chairman
U. S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Victor Gilinsky
U. S. Nuclear Regulatory Commission
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Commissioner Thomas M. Roberts
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Commissioner Jams K. Asselstine
U. S. Nuclear Regulatory Commission
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Commissioner Frederick M. Bernthal
U. S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

RE: Public Service Company of New Hampshire, et al
Docket Nos. 50-443 and 50-444 *OC*

Gentlemen:

I am counsel of record for the Seacoast Anti-Pollution League, an Intervenor in the above captioned. I am responding to a May 1st letter to you from Mr. Thomas Dignan, counsel for Public Service Company of New Hampshire. The purpose of Mr. Dignan's letter was to convince you to continue to prohibit your Seabrook Licensing Board from considering the financial qualifications of PSNH in the pending operating license proceeding. On behalf of SAPL, I urge you to reject Mr. Dignan's entreaties.

First, you of course have an obligation to carry out the lawful mandate of a court of competent jurisdiction. In this case the Court

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of Appeals in New England Coalition on Nuclear Pollution v. NRC, No. 83-1581 (D.C. Cir., February 7, 1984), granted a Petition seeking review of the Commission's rule abolishing the financial inquiry requirement. It remanded the matter to the Commission "for further proceedings consistent with this Opinion."

"This Opinion" found that the rule entitled "Elimination of Review of Financial Qualifications of Electric Utilities in Licensing Hearings for Nuclear Power Plants," 47 Fed. Reg. 13,750 (1982) did not "comply with procedures required by law." Therefore, the Commission's action "must be set aside as invalid" although you were left free "to enter a new order after remedying the defects that vitiated the original action. Slip Opinion at 9, citing Williams v. Washington Metropolitan Area Transit Commission, 415 F.2d 922, 939-940.

Thus, at this time, the rule eliminating the financial qualification requirement has been itself eliminated, and the preexisting rule, requiring Applicants for nuclear licenses to show that they had "reasonable assurance" that they could obtain the necessary funds for the appropriate license is again in effect.

We suggest Mr. Dignan is in error in suggesting that the present effectiveness of the financial qualification rule is a matter as to which you have the authority to chose. You cannot legally avoid the mandate of the Court. Unless, and until, a new and validly adopted rule is in place, you are bound to treat the financial qualification rule as of continuing validity, because it is valid as a result of the judgment of the Court.

Second, SAPL urges you, at long last, to cease attempting to avoid all inquiry into the financial qualifications of nuclear applicants. Instead of eliminating the inquiry, we would urge you to make it for the first time a meaningful inquiry.

The Commission's past attempts to administer the financial qualification rule have, admittedly, not been successful. Seabrook is perhaps the most dramatic example. Your Licensing Board and your Appeal Board both found, on very questionable evidence, that Public Service was financially qualified to build 50% of the Seabrook reactor. (It should be noted that Appeal Board member Farrar dissented and would have denied the applicant PSNH a favorable finding on this issue.)

Your Staff, in the face of successive petitions pursuant to 10 C.F.R. §2.206 pointing out the deteriorating PSNH financial position, continued to find PSNH financially qualified even when PSNH was admitting it was "teetering on the brink", and could not finance 50% of the facility.

This is not a distinguished record, but the failure of the Commission to properly administer the financial qualification requirement in the past is not a ground for dropping it. Rather, it is a ground for now treating the inquiry as a serious one, requiring rigorous, honest

and thorough fact finding. Surely, it must now be apparent that is no longer sufficient to treat the inquiry as unimportant on the simplistic assumption that since electric utilities are regulated monopolies, that state regulatory commissions will always see that they have the wherewithall to complete nuclear power plants which they initially approved.

Every study of this Commission's practices has agreed that there has been too much attention to detail, and not enough attention to the viability of the Applicants on whose integrity the primary assurance of nuclear safety must rest.

For example, the Report of the President's Commission on the Accident at Three Mile Island, commonly known as the Kemeny Commission, pointed out the following:

"Both popular discussions of nuclear power plants tend to concentrate on questions of equipment safety. Equipment can and should be improved to add further safety to nuclear power plants, and some of our recommendations deal with this subject. But as the evidence accumulated, it becomes clear that the fundamental problems are people-related problems and not equipment problems.

When we say that the basic problems are people-related, we do not mean to limit this to shortcomings of individual human beings--although those do exist. We mean more generally that our investigation had revealed problems with the 'system' that manufactures, operates, and regulates nuclear power plants." (Page 8.)

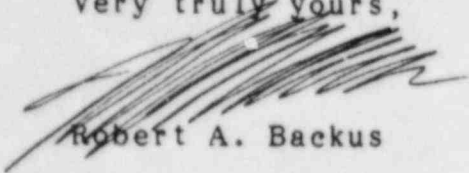
The Commission has, in justifying its attempt to abolish the financial qualification inquiry, stated its belief that assurance of nuclear safety can be provided through inspection and enforcement. As to this, the Kemeny Commission stated the following:

"The existence of a vast body of regulations by NRC tends to focus industry attention narrowly on the meaning of regulations than on a systematic concern for safety. Furthermore, the nature of some of the regulations, in combination with the way rate bases are established for utilities, may in some instances have served as a deterrent for utilities or their suppliers to take the initiative in proposing measures for improved safety." (Page 20.)

We suggest, in short, that the attempt to abolish the financial inquiry is directly contrary to the direction the Commission should be taking: a far more rigorous and in depth examination of the strength of the

entities who would take on the awesome task of safely operating nuclear power reactors.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert A. Backus", with a large, sweeping flourish extending to the left.

Robert A. Backus

RAB/sld

cc: All Parties