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November 14, 1985

UNITED STATES NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Public Service Company of
New Hampshire, et al.

(Seabrook Station,
Units 1 and 2)

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Docket Nos.
50-443, -444OL
Onsite Emergency Planning
and Safety Issues

New England Coalition on Nuclear Pollution's Request for
Clarification and Objection to Board Order of November 4, 1985

On November 4, 1985, the Licensing Board, sua sponte, issued an order that reopened the Seabrook licensing record in order to take additional evidence on three contentions that were litigated in hearings in August of 1983. The Board also stated that it will hold a supplementary hearing to take evidence on matters pertaining to those contentions if they pose "significant health and safety issues" and "were not previously ripe for hearing."

The applicability of the requirement to show significant health and safety issues is ambiguous. It is not clear whether the Board intends to apply that test only to the submission of new evidence into the record; or whether the Board will require the parties to show that the introduction of rebuttal evidence or cross-examination of witnesses regarding the supplemental evidence raises "significant health and safety issues." For this reason, the New England Coalition on Nuclear Pollution ("NECNP") requests clarification of the Board's order. NECNP also objects to any portion of the Board's order that is intended to require

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more than a showing of relevance in support of its efforts to submit rebuttal testimony or cross-examine witnesses regarding supplemental documents submitted into evidence by Applicants and the NRC Staff.

The Board may reasonably require any party to demonstrate the existence of significant safety issues before reopening a hearing record and accepting new or supplemental evidence. The Board may also decide whether that evidence was "previously ripe for litigation" and should not be accepted at this late date. However, once the evidence is admitted, the only limitation that can be placed on the scope of cross-examination is one of relevance to the issues in controversy. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1, 2 (1975); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 94 (1977) ["Permissible inquiry at [a] reopened hearing necessarily extend[s] to every matter within the reach of the testimony submitted by the applicants and accepted by the Board."]

Moreover, it would be fundamentally unfair to intervenors to require a showing of substantial safety significance before permitting cross-examination of witnesses or the submission of rebuttal testimony regarding the supplemental documents submitted by Applicants and Staff. To the extent that this new threshold showing is intended to limit untimely litigation that will delay licensing, it is Applicants and Staff, not the intervenors, who should be required to meet the burden. Any licensing delay or

inconvenience that may be caused by hearings on these supplemental documents is the fault of the Applicants and Staff. At the time of the August, 1983, hearing, Applicants and Staff made no effort to persuade the Board that the Seabrook license application was incomplete and the hearing should be postponed. As a result, the hearing record shows that the Applicants are not entitled to an operating license because their license application is incomplete in fundamental respects. If Applicants wish to reopen that record, they have the burden of demonstrating significant reasons why they should be given another opportunity to show compliance with the regulations. The Board may decide sua sponte, as it apparently has, that there is good reason to give the Applicants that opportunity. However, it may not impose what amount to sanctions on NECNP and other intervenors, nor may it limit the scope of the intervenors' cross-examination and rebuttal rights with regard to evidence so admitted.

NECNP therefore respectfully requests that the Board issue an order clarifying that the parties may cross-examine witnesses and submit rebuttal testimony without further restriction than a showing of relevance to the supplemental evidence admitted by the Licensing Board.

Respectfully submitted,

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November 14, 1985

CERTIFICATE OF SERVICE

I certify that on November 14, 1985, copies of NECNP's Request for Clarification and Objection to Board Order of November 4, 1985, were served on the following by first-class mail:

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