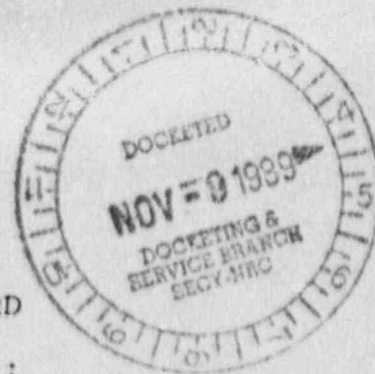


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
Before the Administrative Judges:

Ivan W. Smith, Chairman
Dr. Richard F. Cole
Kenneth A. McCollum



In the Matter of)

PUBLIC SERVICE COMPANY)
OF NEW HAMPSHIRE, ET AL.)

(Seabrook Station, Units 1 and 2))

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

) November 9, 1989

REQUEST OF INTERVENORS FOR PRE-HEARING
CONFERENCE IN RESPONSE TO ALAB-924

The Massachusetts Attorney General ("Mass AG"), the Seacoast Anti-Pollution League ("SAPL") and the New England Coalition on Nuclear Pollution ("NECNP") (collectively the "Intervenors") request that this Board schedule a pre-hearing conference in the Seabrook full-power licensing proceeding as soon as is practical and convenient for the Board and parties. In support of this request, Intervenors state as follows:

1. On November 7, 1989, the Appeal Board in ALAB-924 reversed and remanded "for further action consistent with this opinion" certain portions of this Board's decision on the

adequacy of the NHRERP. ALAB-924, slip opinion at 70. Review of the decision makes clear that the requisite "further action" by this Board includes, for example, the holding of an evidentiary hearing on the adequacy of the 1986 Special Needs Survey. Moreover, after a determination of the adequacy of that survey's methodology it would be appropriate for this Board to revisit its determination regarding the adequacy of the vehicles and drivers relied on in the NHRERP. The Appeal Board stated in this regard at 19-20:

Further, in light of our remand of this issue for additional proceedings, it is premature for us to render any judgment regarding intervenor SAPL's challenges to the Licensing Board's findings concerning availability of adequate numbers of vehicles and drivers. Once the propriety of this special needs survey's methodology has been aired, it then will be appropriate for the Licensing Board to consider whether the number of vehicles and drivers identified as available to assist in transportation of the "special needs" population is sufficient.

(emphasis supplied)

Similarly, further hearings certainly appear to be required in response to the now necessary changes in the NHRERP regarding: 1) the need for the "correction of the preparation time omission" in the estimate of the ETE for each special facility and, indeed, the more fundamental need to revise the NHRERP to set forth ETES for each special facility as required by NUREG-0654, App. 4 at 4-9 to 4-10 (ALAB-922 at 27, n.71); and 2) the need for implementing procedures for sheltering. (ALAB-922 at 68-69). In addition, some further evidentiary

hearings will be necessary to support any determination by this Board regarding "whether school personnel [in New Hampshire] usually would (or would not) be expected to accompany their students in emergency evacuation situations" (*id.* at 10), and, as a corollary to this determination, the need for LOAs with all teachers relied upon in the NHRERP.

2. As a preliminary matter, these further proceedings in the NHRERP case present several issues that the parties should be permitted to address at a pre-hearing conference and, if necessary, in briefs. In addition to the obvious concerns about the need for discovery and any schedule for these hearings, there may well be issues concerning which Intervenors will be permitted to participate in which portion of the remand.^{1/} Moreover, to the extent that changes to the NHRERP by the State of New Hampshire are necessary, the views and intentions of that State should be made known.

3. ALAB-924 also has a direct impact on certain issues presently before this Board for decision arising out of the litigation concerning the adequacy of the utility plan for Massachusetts. In this regard, particularly in light of this Board's present intent to issue an opinion on the SPMC perhaps within days, Intervenors request a pre-hearing conference to discuss the following concerns:

^{1/} The Mass AG hereby asserts his right as an interested state to participate fully in all remanded issues.

a. ALAB-924 clearly establishes the law of this case regarding the need for LOAs with teachers if they are relied upon to provide services under an emergency plan. This issue is squarely presented for decision on the SPMC. See Mass AG's August 14, 1989 Proposed Findings at ¶¶ 8.1.66B (350), 8.1.70 (353-354), 8.1.85.A (360) and 9.1.136 (481). Similarly, the absence of ETEs for each special facility in the Massachusetts EPZ is now clearly an inadequacy in the SPMC as charged in Mass AG's Proposed Findings, ¶¶ 8.1.63D-F (348-349). Intervenor's request that they be permitted to amend their proposed findings to expressly reference ALAB-924 in all relevant regards.

b. ALAB-924 also dealt at length with the issue of this Board's treatment of the 20% planning basis used in the NHRERP to calculate the necessary monitoring and reception centers in New Hampshire. ALAB-924 at 27-46. In its discussion affirming this Board's reliance on the FEMA presumption for the NHRERP, it is clear that the Appeal Board did not view SAPL's efforts through testimony and cross-examination as sufficient to directly challenge the 20% planning basis in the New Hampshire proceeding:

the Licensing Board was entitled to treat as presumptively correct the FEMA conclusion that, for planning purposes, it may be assumed that at least twenty percent of the total New Hampshire EPZ population would require or seek radiological monitoring in the event of an accident at Seabrook.

ALAB-924 at 42 (emphasis supplied). It is clear that the Appeal Board's affirmance of this Board's decision on the 20% issue in the NHRERP case undermines this Board's treatment of contentions presented by the Intervenor on the SPMC which did attempt to put at issue the adequacy of the 20% planning basis for Massachusetts. As this Board will recall, in April 1988 the Mass AG in Contention 65 attempted to put at issue the adequacy of the monitoring facilities in light of the "potentially large number of injured" among the beach population. After ALAB-905 issued, the Mass AG sought reconsideration of this Board's July 1988 refusal to admit Contention 65. See Mass AG's December 16, 1988 Motion For Reconsideration at 6-10. On January 4, 1989, this Board denied that motion. Again, in an exercise contention filed on September 21, 1988, the Mass AG sought to litigate the adequacy of the 20% planning basis for Massachusetts. In MAG Ex-18, the Mass AG asserted that the June 1988 exercise had revealed inadequate monitoring facilities because

many more persons would have been reporting to the reception centers for monitoring than ORO and the State of New Hampshire had the staff and equipment to monitor within a 12-hour period.

MAG Ex-18, Basis B. (emphasis supplied).^{2/} After further

2/ This exercise contention alleged a fundamental flaw in both plans as revealed by the June 1988 exercise. Thus, although ALAB-924 affirmed this Board's determination that the adequacy of the 20% planning basis was not presented during the NHRERP plan litigation, it was squarely presented as a fundamental flaw in the NHRERP disclosed by the June exercise of that plan.

briefing and argument on this contention, this Board ruled that the issue of the appropriate planning basis for Massachusetts was res judicata in light of LBP-88-32. (Tr. at 15288-15295, 15332-15340). This ruling simply will not square with ALAB-924.

In these circumstances, the Intervenor believe that judicial economy is served if this Board were to reconsider its treatment of Intervenor's challenges to the 20% planning basis in Massachusetts and admit that issue for litigation. In this regard, at a pre-hearing conference Intervenor would seek to press these points before the Board and to seek permission to file such a motion for reconsideration.^{3/}

4. In light of these considerations and the present interest of the Commission in an early decision by this Board on the SPMC, Intervenor respectfully suggest that the Board issue a partial initial decision on all matters not affected by the issuance of ALAB-924.

3/ Obviously, Intervenor may well be procedurally free to simply file such a motion regarding the 20% basis in Massachusetts without first seeking approval for such a step. In light of the present posture of the case, however, such a "preemptive strike" might be misinterpreted as an effort to further delay the issuance of this Board's SPMC decision. For the reasons set forth above, Intervenor believe there are significant substantive reasons for delaying that decision at least until a pre-hearing conference at which these matters can be discussed is held and these reasons aired and considered. Intervenor have no interest in filing a Motion For Reconsideration on the 20% issue simply to cause a short procedural delay until the parties can respond to that motion. See also this Board's September 26, 1989 "Unauthorized Pleadings" Order. For this same reason, Intervenor characterize this present pleading as a request and not a motion.

For the reasons set forth above, the Intervenor request a pre-hearing conference to discuss and consider the impact of ALAB-924 on the further course of this proceeding.

COMMONWEALTH OF MASSACHUSETTS

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DATED: November 9, 1989

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CERTIFICATE OF SERVICE

I, John Traficante, hereby certify that on November 9, 1989, I made service of the within REQUEST OF INTERVENORS FOR PRE-HEARING CONFERENCE IN RESPONSE TO ALAB-924 by telefax as indicated with (*) and by first class mail to:

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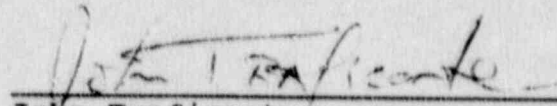
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