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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

'90 JAN -8 P2:59

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

(Offsite Emergency  
Planning)  
ASLBP No. 82-471-02-OL

January 8, 1990

MEMORANDUM AND ORDER

(Ruling On Intervenors' Motions To Admit A Late Filed  
Contention and Reopen the Record Based Upon the  
Withdrawal of the Massachusetts E.B.S. Network and WCGY)

Background

By Motions served on November 9<sup>1</sup> and November 22,<sup>2</sup>

<sup>1</sup>Intervenors' Motion To Admit a Late Filed Contention and Reopen the Record On the SPMC Based Upon the Withdrawal of the Massachusetts E.B.S. Network and WCGY (November 9, 1989) ("Motion"). The instant Motion is facially identical to a motion filed by the Intervenors on October 30, 1989 and then withdrawn on November 8. The October 30 Motion was submitted to the Board with the unsigned and unattested affidavit of Mr. Royce Sawyer, the Communications/Warning officer for the Massachusetts Civil Defense Agency. The Motion explains that Mr. Sawyer signed the affidavit on November 3. However, for reasons unexplained, "late on the afternoon of November 7, the Mass AG became aware for the first time that the Intervenors would be unable to sponsor Sawyer as an expert witness in this proceeding." Motion at 5. The October 30 Motion was therefore withdrawn on November 8. The Intervenors then promptly undertook to

1989, the Massachusetts Attorney General, the Seacoast Anti-Pollution League, and the New England Coalition on Nuclear Pollution (collectively "Intervenors"), move this Board pursuant to 10 C.F.R. § 2.734 to admit a contention alleging that the Applicants' Seabrook Plan for Massachusetts Communities ("SPMC") is inadequate because it does not meet the public notification requirements of 10 C.F.R. § 50.47(b)(5)<sup>2</sup> and 10 C.F.R. Part 50, Appendix E.IV.D.<sup>4</sup>

The Intervenors' case is grounded upon the action of the Massachusetts Emergency Broadcast System ("EBS") and the management of one radio station ("WCCY") both of whom

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locate another expert on the issues raised in their contention and found Mr. Robert Boulay, the Director of the Massachusetts Civil Defense Agency, to serve as an expert witness on November 9. The instant Motion was filed that same day. Motion at 6.

<sup>2</sup>Intervenors' Motion To Add an Additional Basis to the Late Filed Attached Contention to the Motion of November 9, 1989 (November 22, 1989) ("Basis Motion").

<sup>3</sup>That section states in relevant part: "[M]eans to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established." Id.

<sup>4</sup>That section states in relevant part: "The design objective of the prompt notification system shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system." Id.

recently repudiated letters of agreement ("LOAs") with the New Hampshire Yankee ("NHY") Offsite Response Organization ("ORO"). The LOAs provided for their participation with NHY in emergency planning and the activation of the EBS network in the EPZ in the event of a radiological emergency at Seabrook Station. The Massachusetts EBS and Station WCGY repudiated the LOAs with NHY for an alleged failure on the part of NHY to provide electronic equipment to WCGY for a direct communications link between NHY and that station.<sup>5</sup> Intervenor's Motion alleges that without the cooperation of WCGY, the Applicants will not be able to activate the EBS

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<sup>5</sup> The question of the legal effect of the October 20 repudiation of the letter of agreement in light of a clause in that agreement requiring 90 days' notice prior to termination remains unaddressed. Motion, Attachment B, A Letter of Agreement Between Radio Station WCGY and New Hampshire Yankee's Offsite Response Organization. The significance of the Intervenor's Motion is further clouded by the fact that NHY states that it is ready to follow through with its contractual obligations as outlined in the LOA and subsequent correspondence. Applicants' Answer to Intervenor's Motion To Admit A Late Filed Contention and Reopen the Record Based Upon the Withdrawal of the Massachusetts E.B.S. Network and WCGY ("Answer") (November 15, 1989), Exhibit III, Affidavit of George R. Gram at Paragraph 9 and Exhibit B. We are further concerned by the fact that WCGY's repudiation seems to be predicated upon the actions of a quasi-state government official, Mr. Douglas Rowe, the Co-Chairman of the Massachusetts EBS. Prior to WCGY's repudiation, Mr. Rowe unilaterally informed the management of WCGY of NHY's intentions with respect to the furnishing of the EBS equipment, of his decision to no longer recognize NHY as an EBS activating entity, and of his decision to void the Massachusetts EBS letter of agreement with NHY, withdrawing the Massachusetts EBS from participation in NHY emergency planning. Motion, Attachment F, Affidavit of John F. Basset Regarding the Voiding of the EBS Letters of Agreement at Paragraph 4.

servicing the Seabrook Emergency Planning Zone ("EPZ") in Massachusetts.<sup>6</sup> In particular, the Intervenor's argue that the alleged inability of NHY to activate the EBS poses two significant safety issues: (1) that without WCGY, the EBS in the Merrimac Valley area (which covers the EPZ) supposedly cannot be activated and that the stations upon which the Applicants now rely for notification, sister stations WLYT-FM and WHAV-AM, do not have adequate broadcast coverage,<sup>7</sup> and (2) that without WCGY, the Applicants cannot meet the 15-minute prompt alert and notification criteria.<sup>8</sup> These allegations, according to the Intervenor's, warrant admission of their late filed contention and the reopening of the record.

Standards For Reopening a Closed Record

A motion to reopen a closed record<sup>9</sup> to consider additional evidence will not be granted unless the requirements of 10 C.F.R. § 2.734 are met.<sup>10</sup> Indeed, we are

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<sup>6</sup>Motion at 2.

<sup>7</sup>Id. at 15. See n.3, supra.

<sup>8</sup>Motion at 16-18. See n.4, supra.

<sup>9</sup>The evidentiary record of the Seabrook proceedings closed June 30, 1989.

<sup>10</sup>(1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented; (2) the motion must address a significant safety issue; and (3) the motion must demonstrate that a materially

mindful "that the Commission expects its adjudicatory boards to enforce the section 2.734 requirements rigorously -- i.e., to reject out-of-hand reopening motions that do not meet those requirements within their four corners."<sup>11</sup>

#### Timeliness

In order for the Intervenors to succeed in reopening the record in this proceeding, they must first demonstrate that their motion is timely.<sup>12</sup> Because their motion relates to a contention not previously in controversy among the parties, the motion must also satisfy the requirements for nontimely contentions found at 10 C.F.R. § 2.714(a)(1)(i) through (v).<sup>13</sup>

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different result would be or would have been likely had the newly proffered evidence been considered initially. The motion must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant's claim. In addition, a motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions set forth in 10 C.F.R. § 2.714(a)(1)(i) through (v). See 10 C.F.R. § 2.734.

<sup>11</sup>Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 432 (1989), citing Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1 (1986); Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-7, 23 NRC 233 (1986), aff'd sub nom. Ohio v. NRC, 814 F.2d 258 (6th Cir. 1987).

<sup>12</sup>10 C.F.R. § 2.734(a)(1).

<sup>13</sup>A determination to admit a late-filed contention must be made upon a balancing of the following factors: (1) Good cause, if any, for failure to file on time; (2) the extent to which the petitioner's interest will be protected; (3)

The Intervenor's argue that their motion is timely because it was the event of WCGY's repudiation that created the safety issue they now seek to litigate. This is so, they state, because WCGY is a "gateway" station which controls the activation of the EBS system in the Merrimac Valley where the EPZ is located. They cite various provisions of the SPMC to support an assertion that the SPMC contemplates the use of the EBS radio network as a whole to alert the citizens of the EPZ.<sup>14</sup> However, without the cooperation of WCGY, the Intervenor's argue, "the Applicants will not be able to activate the EBS servicing the Seabrook Emergency Planning Zone" in Massachusetts. According to the Intervenor's, the EBS network functions in much the same way as a "telephone pyramid." The primary relay EBS station in Massachusetts, WROR in Boston, by transmission of its activating tone, trips the tone alert radios at the EBS

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the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) the extent to which the petitioner's interest will be represented by existing parties; and (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding. 10 C.F.R. § 714(a)(1)(i) - (v); See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-883, 27 NRC 43, 49 (1988).

<sup>14</sup>Motion at 8-9, citing SPMC, Section 3.2.5, Public Notification, at 3.2-13 and 3.2.15. We also note that the letter of agreement in question states that "[t]he management of WCGY . . . (when requested) agrees to activate the Emergency Broadcast System for the Emergency Planning Zone located within the Commonwealth of Massachusetts." Motion, Attachment B.

operational area "gateway" stations. WCGY, after receiving the signal from WROR, trips the tone alert radios located in the other Merrimac Valley EBS stations. Those stations in turn pick up the EBS message and transmit it out on their own frequencies to the public. According to the Intervenor, the activation of the EBS cannot take place through NHY's contract with WLYT, because WLYT is not a gateway or lead EBS station, and the other Merrimac Valley EBS stations are not tuned to receive WLYT's signal. Motion at 10. See Motion, Exhibit 1, Massachusetts Emergency Broadcast System Operational Plan, at 2. In this context, we must infer, as long as the Applicants maintained a letter of agreement with WCGY, the notification scheme appeared to be adequate. Therefore, the Intervenor's claim, it was not until the time that WCGY repudiated the letter of agreement with NHY that the issue of the adequacy of the notification system came to light.<sup>15</sup>

The Applicants make a strong case that WCGY's October 20 repudiation of the letter of agreement is not relevant to the timeliness issue. They argue that in the Seabrook Station Public Alert and Notification System FEMA-REP-10 Design Report ("REP-10 Report") published in redacted version on April 30, 1988, "it was made perfectly clear [to the Intervenor] that Applicants were relying on a single

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<sup>15</sup>Motion at 4.

contract FM and AM stations for initial notification and dissemination of information."<sup>16</sup> Moreover, the Intervenor were sent a letter enclosing the unredacted pages of the REP-10 Report in June 1988.<sup>17</sup> The Applicants argue that the letter and enclosed documentation also made clear that the SPMC would be relying solely on station WLYT-FM and its sister station WHAV-AM for notification requirements. The Applicants also cite the deposition of Gregory Howard taken on November 16, 1988<sup>18</sup> and the cross-examination of Applicants' witness Desmarais conducted by Massachusetts Assistant Attorney General Jonas on May 2, 1989<sup>19</sup> to evidence their claim that the Intervenor were aware of WCGY's supporting, but unessential, role in the design of NHY's notification system.<sup>20</sup> Therefore, the Applicants continue, the Intervenor should have been well aware over one year ago that the SPMC did not contemplate the use of WCGY in order to meet the NRC's notification requirements. Had the Intervenor wanted to litigate problems arising out of the fact that the two sister EBS stations were being

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<sup>16</sup>Answer at 3, citing REP-10 Report at 1-3, et seq.

<sup>17</sup>Answer, Exhibit I, Affidavit of Anthony Callendrello at Paragraph 3 and Attachment A.

<sup>18</sup>Howard Deposition at 129, et seq. See MAG Ex. 126, at 129.

<sup>19</sup>Tr. 147-51 (Bloch Board) (5/2/89).

<sup>20</sup>Answer at 2; Exhibit 3, Gram Affidavit at Paragraphs 6-8.



relied upon to notify the public and to disseminate information, and not WCGY, the Applicants argue that the Interveners could and should have litigated such matters long ago. Applicants' versions of the facts surrounding notice to Interveners, actual or constructive, is well supported by the evidence cited by them. Interveners knew or should have known as early as 1988 that the Massachusetts EBS and the agreement with WCGY was not essential to the method of alerting the public relied upon by NHY.

The NRC Staff initially faltered in expressing its position on the timeliness issue. In its Response<sup>21</sup> to the Interveners' Late Filed Contention Motion, they state that the timeliness factor "weigh[s] in Interveners favor" because "given the recent withdrawal of station WCGY from participation in the SPMC (October 20, 1989), the contention might be considered timely filed [emphasis supplied]."<sup>22</sup> However, in its Response to the Interveners' Motion to Add an Additional Basis, the Staff states that the "Interveners' EBS contention and supplemental basis are not timely."<sup>23</sup> Instead, they now agree with the Applicants' assessment of

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<sup>21</sup>NRC Staff Response to Interveners' Motion To Admit A Late Filed Contention and Reopen the Record of the SPMC Based Upon the Withdrawal of the Massachusetts E.B.S. Network and WCGY (November 20, 1989).

<sup>22</sup>Id. at 8.

<sup>23</sup>NRC Staff Response to Interveners' Motion To Add an Additional Basis to the Late Filed Attached Contention to the Motion of November 9, 1989 (December 6, 1989).

the timeliness issue. We can understand the cause of Staff's ambivalence since the Board itself does not see the timeliness issue as a simple one. Resolution of the issue turns upon whether the essential elements of the broad issue could have been litigated earlier, or whether the recent events giving rise to the motions are sufficiently material in themselves to support Intervenors' argument that the motion is timely.

Mr. Gram's affidavit testimony to the effect that the commitment to Station WCGY was always viewed by NHY as a backup arrangement has not been disputed. Moreover, the fact that the notification system depends in the first instance upon the single contract stations, WLYT-FM and WHAV-AM, has long been known to Intervenors as we note above. In assessing the timeliness of the motion, we must, therefore, assess the significance of the withdrawal of the backup, qua backup, method of public notification. In particular, the following circumstances are relevant:

1. The FEMA REP-10 Design Report of April 30, 1988 refers to the contract stations by call letters, but not at all to Station WCGY. The Massachusetts plan discusses the "EBS radio station" but not by call letters. SPMC, section 3.2.5, Public Notification at 3.2-15. Intervenors deny, contrary to the weight of the evidence and our finding, supra at 9, that they knew, or should have known, that only the two sister contract EBS stations were

relied upon as the primary channel for public notification. Therefore they cannot now assert that they understood the nature of the role assigned to WCGY was as a backup, but that, even as a backup, the arrangement lulled them into not timely challenging the coverage afforded by WLYT/WHAV alone.

Intervenors' case for timeliness depends, we infer, upon the argument that the Massachusetts EBS system is referred to in the SPMC (3.2-15, supra). That fact, in turn, renders relevant the fact that the respective portion of the Massachusetts EBS depends upon WCGY as the gateway station for activation. Thus the letter of agreement with WCGY is material. This argument is flawed, however, because as we discuss below, it is factually inaccurate.

Intervenors, of course, have the burden of sustaining their argument that the motion is timely.

2. Neither the alerting requirements of 10 C.F.R. § 50.47(b)(5) nor of Appendix E.IV.D. requires the use of an EBS as such in notifying the public. NUREG-0654, II.E.5 requires notification to "appropriate broadcast media" but only suggests, as an example, the use of an EBS. Assuming for present purposes that the functional coverage and timing requirements are met without the relevant Merrimac Valley EBS network, Intervenors cannot successfully claim that the withdrawal of the EBS gateway station from cooperation with NHY somehow unravels compliance with the NRC's regulatory alerting requirements.

3. However, even if activation by NHY of the Merrimac Valley EBS network through WCGS is not a regulatory requirement, and even if NHY's contract with WLYT/WHAV alone can provide adequate and timely notification to the public, the arrangement with WCGY did exist. We must consider why that was so, and what the effect that circumstance has upon the motion. To state, as do Applicants, that it was an unessential backup to WLYT/WHAV is too simple for present needs. Applicants placed the arrangement with WCGY into evidence in the recently closed hearings. Applicants' Exhibit No. 40, the 1989 Emergency Plan Information Calendar at (2), advises the public that WCGY (along with WLYT and WHAV) is a station that would broadcast an emergency message. The letter of agreement with WCGY itself was placed into evidence by Applicants in Appendix C of the SPMC. Therefore we question whether, intentionally or unwittingly, Applicants may have exceeded regulatory requirements -- "sweetened the pot" so to speak -- as an inducement or strategy for the issuance of its license in this litigation. If so, the withdrawal of WCGY, even as an unnecessary and voluntary backup to the primary public notification scheme, would be more material to the issue of timeliness.

We acknowledge that the relationship between Applicants' purpose for offering evidence of NHY's backup arrangement with WCGY and the issue of timeliness of the

must measure timeliness by whether the withdrawal of WCGY is material to NHY's public alerting scheme. It would be a question of fairness in litigation were Applicants to take credit for the arrangement in seeking their license, then renounce as immaterial the dissolution of that arrangement in defending against Intervenor's motion. Therefore we examine carefully the background of the letter of agreement with WCGY.

We learn from the affidavit of NHY's Executive Director of Emergency Preparedness and Community Relations, George Gram, that NHY pursued a "defense in depth" strategy to assure that backup mechanisms were available to implement the SPMC. In furtherance of that strategy, discussions were held in 1987 with Mr. Rowe representing the Massachusetts EBS as its Co-Chairman. Mr. Rowe expressed to NHY his interest in upgrading the Massachusetts EBS, and noted that WCGY, as the Merrimac Valley EBS gateway station, required additional equipment to allow the NHY ORO to activate directly that portion of the Massachusetts EBS. Consequently the agreement with WCGY was made, and some of the equipment was installed. Gram Affidavit at Para. 6, 7. That being so, Applicants had no choice but to include the letter of agreement with WCGY in Appendix C to the SPMC and in its public information calendar, which in turn, were appropriately offered into evidence. Facts are facts, whether they are essential to licensing or not.

The Board concludes that the letter of agreement with WCGY was entered into for sound and laudable reasons.<sup>26</sup> It was not a litigation-inspired transaction. Applicants' effort to enhance marginally the effectiveness of the public notification system, beyond the requirements of NRC regulations, appears for the moment to have failed. As we explain further in the following discussion of the safety significance of the issues raised by the motion, that failure is not a material aspect of the broader issue of coverage and timely notification to the public. Therefore it does not support Intervenors' argument that the recency of the failure renders timely their motion to litigate the broader issue. Intervenors' motion is not timely.

Intervenors' Motion To Add an Additional Basis to its motion is also late. Intervenors could have made the argument long ago that reliance on WLYT and WHAV is inadequate in that neither can activate the Merrimac Valley portion of the EBS and that the stations have limited coverage on their own.

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<sup>26</sup>Although it is not directly relevant to the disposition of the motion, we believe that the Applicants' extra efforts to improve the public alerting system should not return to haunt them in litigation if those efforts subsequently fail.

Safety Significance

The second criterion of 10 C.F.R. § 2.734(a) requires us to determine whether the Intervenor's motion presents a significant safety issue, which in itself may warrant the admission of the contention even in the face of its untimely filing.<sup>25</sup>

As we have stated before, the Intervenor's allege two separate and distinct significant safety risks presented by WCGY's withdrawal from the Applicants' notification scheme. First, without WCGY's activation of the Merrimac Valley EBS network, local stations will not pick up the EBS messages that are designed to carry information to the public.<sup>26</sup> Moreover, they argue, WLYT/WHAV does not have adequate broadcast coverage to adequately alert the EPZ public.<sup>27</sup>

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<sup>25</sup>An exceptionally grave safety issue may be considered in the discretion of the presiding officer even if the issue is untimely presented. See 10 C.F.R. § 2.734(a)(1).

<sup>26</sup>Motion at 15.

<sup>27</sup>The Intervenor's Basis Motion alleges that the two sister stations upon which the Applicants rely for EBS notification have a combined listenership of less than one-half of one percent (0.5%) of the person population over age 12 in that listening area. Basis Motion at 7-8. Because of this, the Intervenor's allege that upon hearing the notification sirens, a vast majority of the people will have to tune up and down the dial to find the stations. Id. at 13. In contrast the combined estimated share of the listenership for all the stations comprising the Merrimac Valley EBS "is over 10 times as great." Id. According to the Intervenor's, notification of the public in an emergency plan "cannot in any right headed world be left to chance." Id. at 13-14. However, Intervenor's do not explain at what point (between 0.5% and 5% coverage of the listenership)

Second, there is no assurance that NHY will be able to notify the public "within the 15 minute minimum" required by Commission regulations<sup>28</sup> because NHY failed to install a dedicated phone line or radio link with WCGY which would obviate the problem of WCGY's telephones all being busy on occasion. Moreover, the Intervenor's claim, even though the Governor can activate the EBS network for Merrimac Valley by calling WCGY directly, or activate the State EBS network by calling WROR directly, there is no assurance that the notification of the public can take place within the regulatory time period because there is neither assurance that the Governor can reach WCGY by telephone (again, because all the lines are sometimes busy) nor any assessment of how much time it would take to activate the EBS through WROR and then transmit that activation to WCGY.<sup>29</sup>

The Applicants' Answer is an impatient disavowal of the Intervenor's allegations. They reiterate, correctly, we find, that there is adequate broadcast coverage of the EPZ by the sister stations under contract, WLYT and WHAV, and that NHY's ability to provide public notification within 15 minutes has been "exercised and fully litigated."<sup>30</sup> Thus,

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chance disappears.

<sup>28</sup>Motion at 17.

<sup>29</sup>Motion at 17-18.

<sup>30</sup>Answer at 12-13.



according to the Applicants, "there simply is no safety question, never mind a significant safety question."<sup>31</sup>

The NRC Staff's Response places the EBS issue in a different light. The Staff directs the Board's attention to an Appeal Board advisory opinion issued in the Shoreham<sup>32</sup> proceeding. There, the Appeal Board affirmed a Licensing Board ruling that an applicant could properly rely on a state's EBS network to provide emergency information to the public even if it had not obtained letters of agreement with the participating stations. Moreover, the Shoreham Appeal Board found a presumption that the participating EBS stations would broadcast emergency information willingly.<sup>33</sup>

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<sup>31</sup>Id. at 13.

<sup>32</sup>Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-911, 29 NRC 247, 254-55 (1989).

<sup>33</sup>By Order dated March 3, 1989 (see Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-89-2, 29 NRC 211 (1989)), the Commission ordered an end to the Shoreham proceedings. See id. at 232. However, notwithstanding the Commission's Order, the Appeal Board undertook a sua sponte review of three emergency planning issues which had come before it on appeal prior to the issuance of CLI-89-2 and issued an "essentially advisory opinion." ALAB-911, supra, 29 NRC at 251. The Appeal Board stated that the purpose of its review was the "protection of the public interest in general (as opposed to a particular litigant's interest) by providing another independent level of review of significant health, safety, and environmental issues on which a substantial evidentiary record already exists." Id. at 250. Regardless of the Appeal Board's intentions, on March 22, 1989, the Secretary of the Commission issued a one page Commission Order (unpublished) stating that "because certain statements in [ALAB-911] may give rise to misunderstanding, the attention of the Boards and parties is directed to the statements in CLI-89-2 . . . that 'This decision constitutes the final adjudicatory

The Staff argues that the Shoreham decision is fatal to the Intervenor's motion because its application effectively precludes the issues of WCGY's withdrawal from NHY's notification scheme, and the adequacy of the coverage of WLYT-FM/WHAV-AM, from being safety issues material to this proceeding.<sup>34</sup>

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decision in this matter.' [CLI-89-2, 29 NRC at 232]. Because ALAB-911 is without legal effect, petitions for review of it would be unnecessary . . . ." The Commission gave no further guidance as to whether "without legal effect" pertains only to the legal effect on the Shoreham parties or to the further application of that decision's precedent in other Commission proceedings.

However, we take note of three relevant considerations which shape our ultimate respect for the conclusions of ALAB-911 with regard to the EBS issue before us. First, ALAB-911 was a reasoned opinion of the Appeal Board based upon a "substantial evidentiary record." ALAB-911, 29 NRC at 250. Second, the Appeal Board affirmed a reasoned Licensing Board's decision based upon that record. Id. at 254, 263. Third, the Commission's Order did not vacate ALAB-911 regardless of its apparently erroneous interpretation of the procedural posture of the case. See id. at 250-51.

In final analysis, in light of the uncertainty that remains, we do not totally rely on ALAB-911 as legal precedent, nor is it essential to our conclusions here. But we do choose to follow the reasoning of the Appeal Board in that decision. There are no relevant dissimilarities in the fact pattern in Shoreham and the case before us. The logic of ALAB-911 is sound and totally applicable as we discuss in the body.

<sup>34</sup>We note that neither the Intervenor's Late-Filed Contention Motion nor their Motion To Add An Additional Basis addresses the merits of either the Licensing Board decision in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-88-24, 28 NRC 311 (1988) or the Appeal Board decision in ALAB-911 which affirmed the Licensing Board's ruling regarding the EBS issue.

In Shoreham, the applicant ("LILCO") planned to utilize the EBS network covering the Shoreham Station EPZ in which radio station WALK played a lead role. Subsequent to the Licensing Board determination that the WALK network provided an adequate emergency notification system, WALK withdrew its participation. After an aborted attempt to substitute another radio station, LILCO ultimately informed the Licensing Board that it proposed to rely upon an already existing State EBS network for the counties encompassing the EPZ.<sup>35</sup> That EBS was established by the State of New York and approved by the Federal Communications Commission. It could be activated by federal, state, or local authorities by contact with a lead station, WCBS in New York City. WCBS was responsible for both (1) broadcasting any emergency informational messages provided to it, and (2) transmitting the messages to a network of more than 30 radio stations for dissemination by those stations to the EPZ audiences.

The Licensing Board went on to find that LILCO could rely upon the requisite coverage being supplied by the full EBS network. They ruled that no evidence was presented that would raise serious questions as to whether an adequate warning to residents of the EPZ could be delivered through the network of stations in the State EBS. It also rejected the intervenors' argument that, in the absence of assertedly

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<sup>35</sup>LBP-88-24, supra, 28 NRC at 319.

required letters of agreement, it could not be assumed that the network stations will broadcast emergency messages. The Board concluded that NRC Regulations do not require such letters of agreement "where a preexisting agreement between the State and the broadcast industry complies with NRC guidance."<sup>36</sup>

The ALAB-911 advisory opinion affirmed the Licensing Board's ruling that in the absence of evidence that an EBS network is technically incapable of providing emergency broadcast information "the participants in the state-established EBS network will be both willing and able to broadcast messages throughout the EPZ . . . ." <sup>37</sup> The Board continued:

[I]t must be presumed that the State . . . and the FCC knew what they were doing in establishing and approving, respectively, a communications network designed to provide emergency information to the entire [EPZ]. . . . NRC and FEMA regulations require [no] more than the preexisting agreement between the state and the network stations to establish a presumption of a willingness to participate. . . . [I]t is noteworthy that, in announcing in the Federal Register the availability of FEMA-REP-10, FEMA observed that, in response to comments on earlier guidance, it had "replaced the requirement [in that earlier guidance] for written agreements that individual broadcasting stations will participate in the EBS with a requirement for documentation indicating that they are able to participate in the EBS." [Footnote omitted] In short, FEMA obviously proceeds on the premise that a station that undertakes to become part of an established EBS

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<sup>36</sup>LBP-88-24, supra, 28 NRC at 325-26.

<sup>37</sup>ALAB-911, supra, 29 NRC at 254.

will carry out in any emergency (nuclear or otherwise) the responsibilities it has assumed . . . . Because, however, the record contains nothing to rebut the presumption that such coverage will be supplied by the entire multi-station network (a presumption arising from the state's establishment and the FCC's approval of the network), we agree with the Licensing Board's ultimate resolution of the EBS issue . . . .<sup>38</sup>

We see no factual distinction between the case before us and that before the Boards in Shoreham. The Intervenors repeatedly assert that without WCGY, the EBS network cannot be activated in the EPZ, and therefore, the EPZ public cannot be adequately notified of an emergency. This argument inherently carries with it the logical implication that the EBS network for the EPZ is adequate for notifying the EPZ public, otherwise WCGY's withdrawal from that system would simply be irrelevant. Moreover, the Intervenors' motion, with its attached affidavits and exhibits, presents a compelling showing that adequate EBS coverage can be provided by the entire multi-station network through WCGY, or the lead station in Massachusetts, WROR, to the Massachusetts section of the EPZ, and that the State's EBS network meets the Commission's regulatory requirements.<sup>39</sup>

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<sup>38</sup>Id. at 254-55.

<sup>39</sup>NUREG-0654 requires applicants to provide evidence of capability of local and state agencies to provide information promptly over radio and TV at the time of activation of an alerting signal. Evidence of capability is to be provided as follows: "The emergency plans shall include evidence of such capability via agreements, arrangements or citation of applicable laws which provide for designated agencies to air messages on TV and radio in

However, the Intervenors argue a point that was not addressed in the Shoreham decision. Even though they admit that activation of the EBS for the EPZ can be made by the direct telephone request of the Governor or his representatives through WROR or WCGY,<sup>40</sup> they argue that neither one of these methods of EBS activation may support a finding that governmental notification can be carried out within the Commission's regulatory time limit. We now turn to the merits of this argument.

First, the Intervenors assert that governmental activation of the EBS through WCGY may not be possible to carry out within the 15 minute regulatory time period because neither the Governor nor any State or local entity may be able to reach WCGY because all of WCGY's telephone lines are sometimes busy.

As to the Intervenors' assertion that a "busy" signal at WCGY will preclude timely activation of the EBS network, it is incomprehensible that the Governor would allow a busy signal at WCGY to stand in the way of earliest possible notification of the public in the face of the type of grave

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emergencies." NUREG-0654, FEMA-REP-1, Rev. 1, Appendix 3, at 3-4. The Massachusetts Emergency Broadcast System Operation Plan submitted by the Intervenors as Exhibit 1 to their instant motion squarely fits this regulatory language.

<sup>40</sup>Motion at 17; Boulay Affidavit, supra, at 5; Plan, supra, at 3 and 4.

emergency the Intervenors postulate.<sup>41</sup> Moreover, for the Attorney General to explain to this Board that he believes that there exists such an impediment to the activation of the Massachusetts EBS, and to imply that nothing will be done about it, would be astonishing but for the fact that we have become familiar with his approach to issues of public safety in this proceeding.

In any event, the Intervenors' motion nowhere alleges that the Governor could not reach WROR because its lines would be busy, thereby precluding activation of the statewide EBS system in a more efficient manner. Therefore, under the best efforts presumption,<sup>42</sup> we find that the Governor, or his official representative, as a responsible government official facing an emergency, would either activate or authorize activation of the EBS system through

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<sup>41</sup>We note as we have in several instances in our SPMC Partial Initial Decision (Public Service Company of New Hampshire (Seabrook Nuclear Power Station, Units 1 and 2), LBP-89-32, 30 NRC \_\_\_\_, (1989)), the Intervenors present their argument from the extreme end of the accident spectrum, a fast breaking accident when it would be necessary to notify the public immediately of the Protective Action Recommendations with little or no time for deliberation on the content of the EBS message.

<sup>42</sup>See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22, 31 (1986); 10 C.F.R. § 50.47(c)(1)(iii)(B); Rulemaking affirmed, Commonwealth of Massachusetts v. United States, 856 F.2d 378 (1988).

WROR<sup>43</sup> in the event that tne he could not figure out how to reach WCGY timely.

Second, Intervenors assert that activation of the EBS through WROR may not be possible to be carry out within the 15 minute regulatory time period because:

No Massachusetts agency or entity has prescribed EBS messages for the Seabrook EPZ. If any EBS messages for the Seabrook EPZ were to be transmitted by means of a state agency activating WROR, the EBS messages would first have to be transmitted from NHY ORO to the state agency, then from the state agency to WROR.<sup>44</sup>

There simply is no merit to this argument. The Intervenors' assertion only presents part of the picture. The SPMC, the SPMC Implementing Procedures, and NUREG-0654 all require the NHY ORO decisionmakers to communicate with State officials prior to any decision to activate the EBS system, and further require that the content of EBS messages be coordinated between the NHY ORO decisionmakers and State

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<sup>43</sup>We note that the Governor's activation of the statewide EBS system through WROR would unnecessarily activate stations that are not integral to the notification of the public in the EPZ. However, as the Massachusetts EBS Operational Plan indicates, if the EBS is activated through WROR, only the seven Primary Relay/CPCS Stations receive the initial notification from WROR. Moreover, the Plan allows station management discretion in broadcasting and recording the EBS message received, and it provides that each station must "avoid unnecessary escalation and public confusion [and] must be cautious in providing information and news pertaining to the emergency." Plan at 7. Furthermore, we would expect that the area affected by the emergency would be identified by town or county in the EBS message.

<sup>44</sup>Motion at 18 n.6.



officials before they are broadcast over the EBS system.<sup>45</sup> Moreover, there is a regulatory requirement for prescribed EBS messages to be part of the licensee's notification scheme. NUREG-0654 provides:

Each organization shall provide written messages intended for the public, consistent with the licensee's classification scheme. In particular, draft messages to the public giving instructions with regard to specific protective actions to be taken by occupants of affected areas shall be prepared and included as part of the State and local plans. . . . The role of the licensee is to provide supporting information for the message.<sup>46</sup>

We also reject the notion that officials of the Commonwealth of Massachusetts will continue to refuse copies of the generic prescribed EBS messages called for in NUREG-0654 because they have refused to plan for an emergency at Seabrook.<sup>47</sup>

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<sup>45</sup>Seabrook Plan for Massachusetts Communities, Section 3.2, Notification and Mobilization, at 3.2-13, 3.2-16, 3.2-17; SPMC Implementing Procedure 2.13, Public Alert and Notification System Including EBS Activation, at IP 2.13, at 3 and 8; NUREG-0654, FEMA-REP-1, Rev. 1, Notification Methods and Procedures, at 43, 46.

<sup>46</sup>NUREG-0654, FEMA-REP-1, Rev. 1 at 46.

<sup>47</sup>Massachusetts decisionmakers are not totally unprepared to broadcast an initial clear informational message over the EBS system, even without such prescribed messages. The Commonwealth's Emergency Broadcast System Operational Plan provides a message format for state officials to use in the face of an extreme emergency. "The format is deliberately general in nature to allow for the uniqueness of each emergency situation, yet broad enough to insure completeness." Under the direction of the Governor or other state officials who are supposedly trained and prepared to carry out the Operation Plan, prepare EBS messages and activate the EBS system, we believe that this format is, in combination with current onsite information

It seems that the Intervenors have misinterpreted the provisions of 10 C.F.R. Part 50, Appendix E.IV.D.3. They may have confused the Commission's requirement that "a licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency" with an additional, but separate requirement that the "design objective" of the licensee's notification system "shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway . . . within about 15 minutes [of the time that state and local officials are notified of the situation]."<sup>48</sup>

We have faced and ruled on this issue before.<sup>49</sup> While the provisions of 10 C.F.R. Part 50, Appendix E.IV.D.3, place a burden on the licensee to demonstrate a capability to notify government officials of an emergency condition

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and protective action recommendations provided over the telephone by the ORO, adequate for initial notification of the EPZ, just as it would be used in any emergency that would not allow a more deliberate approach to public notification. Moreover, we expect that the lack of prescribed messages will be shortlived if and when Seabrook Station is ultimately licensed. In the Partial Initial Decision on the SPMC, LBP-89-32, 30 NRC \_\_\_\_, we refused to accept the suggestion that all emergency planning information submitted by Applicants to the Commonwealth was accepted for litigation purposes only and stopped at the office of the Attorney General. Slip op. at 455-56.

<sup>48</sup>10 C.F.R. Part 50, Appendix E.IV.D.3.

<sup>49</sup>See Memorandum and Order, Ruling on the June 1988 Exercise Contentions (December 15, 1988) (Unpublished) at 36.

within 15 minutes of a decision to declare an emergency at the nuclear plant:

The regulation, however, provides for a range of notification time requirements. The most demanding is immediate notification of the public within 15 minutes of the time that the government officials are informed that a situation exists requiring urgent action. A more likely event would anticipate a much more deliberate scenario where the government has substantial time available to decide whether or not to activate the public notification systems. The regulation also anticipates activation of the notification system in a graduated or staged manner [citing 10 C.F.R. Part 50, Appendix E.IV.D.3].

Therefore the requirement that government officials have the capability to make the public notification decision promptly can mean making the decision almost instantaneously in urgent situations, to a slower, more considered evaluation of whether the system should even be activated. Between those two poles one must necessarily include a determination of the important details of the public notification: that is, <sup>50</sup>about what is the public to be notified?

The regulations do not, as the Intervenors imply, absolutely require that the licensee make contact with State officials, complete their coordination of EBS message content and complete initial notification of the public within 15 minutes. In the overall context of the regulation, the "about 15 minutes" standard means that initial public notification must be completed about 15 minutes after the decision to notify the public has been made by government officials. As we have noted before, "a

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<sup>50</sup>Memorandum and Order, supra, at 36.

decision that some notification must take place is not the end of the notification decision process. That decision is not complete until the important aspects of the notification have also been decided."<sup>51</sup>

In summary, the affidavit of Mr. Boulay, the Director of the Massachusetts Civil Defense Agency, and the Massachusetts Civil Defense Agency Emergency Broadcast System Plan demonstrate that a state approved and FCC licensed EBS network is in place in the Massachusetts portion of the Seabrook Emergency Planning Zone. By the Intervenor's own admission, the system can be activated in the event of a radiological emergency either through WROR or WCGY. Absent any evidence that the network does not have the technical capacity for alerting the public, there is a strong presumption that the EBS stations will broadcast the emergency message. The State EBS network can provide public information to the Massachusetts portion of the Seabrook EPZ by transmitting messages over every participating station with approximately eight minutes of the initial broadcast of the EBS message.<sup>52</sup> This capability complies with Commission

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<sup>51</sup> Id. at 37.

<sup>52</sup> Massachusetts Emergency Broadcast System Operational Plan, supra, at 2 (Exhibit 1 to Boulay Affidavit). Intervenor's argue, contrary to the clear language of the Massachusetts EBS Operational Plan, that "[t]here has been no assessment made as to how long it would take to activate the EBS through WROR and then transmit that activation to WCGY." Motion at 17. We believe this statement to be a product of careless draftsmanship.

regulations which mandate a design objective of complete initial notification of the EPZ public within about 15 minutes of the decision of government officials to activate the EBS system. In the face of a grave emergency at Seabrook Station, the Governor or responsible State or local officials will exercise their best efforts to protect the public and those efforts will include the activation of the EBS in a most expeditious manner. Furthermore, while focusing upon the effectiveness of the Commonwealth and FCC-approved Emergency Broadcast System, we should not overlook the fact that, as we found above, Applicants' contract with sister stations, WLYT and WHAV is in itself sufficient to satisfy the FCC's public alerting requirements. Thus, there are multiple reasons why no significant safety issue was created by the repudiation of the letter of agreement by WCGY.

#### Materially Different Result

The third part of the criteria for reopening a closed record requires the Intervenors to demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.<sup>53</sup> We note again that the record on the Seabrook licensing proceeding has closed and we have found the SPMC

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<sup>53</sup>10 C.F.R. § 2.734(a)(3).

to be adequate and implementable. Given our conclusions in the foregoing section on the significance of the issues raised by the motion, we need not dwell long on whether the Intervenors' allegations would have us change our minds.

As our discussion of the safety significance of the Intervenors' assertions demonstrates, the Commonwealth of Massachusetts has an EBS network in place which has been approved by the FCC and the State and which is technically capable of prompt public notification of the general public within the Seabrook EPZ. In addition, the Governor of the Commonwealth or his appointed representative will use his best efforts to alert the public in the most efficient manner possible under the circumstances.

Had the Intervenors newly proffered evidence been considered initially by the Board, the only result which we can even envision would be a direction to the Applicants to revise the SPMC to provide for activation of the Merrimac Valley portion of the EBS through WROR if WCGY cannot be reached in a timely manner. However, given the fact that Applicants have established that their arrangement with WLYT and WHAV meets regulatory requirements, we lack authority to require the Applicants to revise the SPMC in that respect.<sup>54</sup>

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<sup>54</sup>The NRC Staff's Response invites the Board to incorporate a "fundamental flaw" standard in its analysis of the safety significance of the Intervenors' concern. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-903, 28 NRC 499, 506 (1988). We agree with the Staff. Under the fundamental flaw analysis,

However we believe that a worthwhile enhancement of the public alerting scheme can be realized by defining in the SPMC the procedures for activating the EBS through WROR in the event that WCGY cannot be contacted at the time of an emergency. Moreover we commend, but cannot require, Applicants' continued readiness to renew its negotiations with WCGY and the Massachusetts EBS.

Five Factors Regarding Late Filed Contentions

Even though the motion fails for the reason that it does not raise a significant safety issue, in evaluating a motion to reopen a closed record we must also address the factors to be applied in making a determination to admit or deny a late filed contention. These familiar factors are: (1) Good cause, if any, for failure to file on time; (2) the extent to which the petitioner's interest will be protected; (3) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) the extent to which the petitioner's interest will be represented by existing parties; and (5) the extent to which the petitioner's participation will broaden the

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if an identified defect in the plan is readily correctable, the defect does not amount to a fundamental flaw which would preclude a reasonable assurance finding that the plan is adequate. Even if such a change were necessary to comply with the NRC's alerting requirements, correcting the SPMC to include specific procedures to activate the EBS through Station WROR would not require a significant revision to the plan.

issues or delay the proceeding. 10 C.F.R. § 2.714(a)(1)(i) - (v).

For the reasons set out in our conclusion above that Intervenors' motion is not timely (10 C.F.R. § 2.734(a)(1)), we also conclude that they have not provided good cause for failure to file on time. Accordingly the Intervenors have a very substantial burden with respect to the other four factors.<sup>55</sup>

As is often the case with respect to the late filed contention criteria, factors two (the availability of other means whereby the petitioner's interest will be protected) and four (the extent to which the petitioner's interest will be represented by existing parties) weigh in favor of the Intervenors. However, the Commission has observed that the second and fourth factors are "accorded less weight, under established Commission precedent, than factors one, three and five."<sup>56</sup> Furthermore, this Board has held that where one seeks to reopen a closed record, more weight is given to the third and fifth factors and late filed contentions

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<sup>55</sup>E.g., Virginia Electric and Power Company (North Anna, Units 1 and 2), ALAB-289, 2 NRC 395, 398 (1975).

<sup>56</sup>Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241 (1986); South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).



should be rejected even though factors one, two and four weigh in Intervenor's favor.<sup>57</sup>

As to factor five the admission of the EBS contention would broaden the issues and delay this proceeding. The Intervenor's admit that the admission of the contention would lengthen the proceeding.<sup>58</sup> The Intervenor's argue that the "degree to which the issues before the Board will be broadened and the degree of the delay that will be occasioned by the admission of the contention" should be considered.<sup>59</sup> They claim that the focus of their contention is narrow, that discovery on the matter will be minimal and that hearings on the matter will not be lengthy. However, the Intervenor's motion places the Board on notice that additional filings on this issue are to be expected.<sup>60</sup> The

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<sup>57</sup> See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-3, 29 NRC 51, 59, aff'd, ALAB-915, 29 NRC 427 (1989).

<sup>58</sup> Motion at 12.

<sup>59</sup> Id.

<sup>60</sup> Motion at 11, n.4. Indeed, during the drafting of this Memorandum and Order we received the Intervenor's Basis Motion dated November 22, 1989. That Motion seeks to litigate the issue of whether WLYT-FM/WHAV-AM has adequate broadcast coverage in the Massachusetts EPZ. However, the Basis Motion raises subissues which do not portend simplistic litigation: the breadth of WLYT's listening audience, WLYT's participation in the EBS network, the adequacy of the Applicants' pre-emergency information, FEMA's finding of adequacy with respect to the notification system, and the ability of NHY to activate the EBS system without a letter of agreement with WCGY. Notwithstanding the potential for delay or the lack of delay the litigation of these matters may portend, our ruling on the instant

Intervenors' motion also alludes to other issues that have yet to be fleshed out.<sup>61</sup> With this uncertainty in mind, we do not have confidence in the Intervenors' assertion that the delay in the proceeding by the admission of the late filed contention will be minimal. This factor weighs against the admission of the contention.

With respect to the last of the five factors to be weighed (the extent to which the Intervenors will contribute to a sound record), the Commission has stated that a petitioner should address "with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony."<sup>62</sup> The Intervenors must also demonstrate that they possess "special expertise on the subjects which [they] seek to raise."<sup>63</sup>

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motion obviates the need to address these issues.

<sup>61</sup>Motion at 16, n.5. These issues include the question of whether NHY's letter of agreement with station WLYT-FM/WHAV-AM is still functional given the fact that the Massachusetts EBS no longer recognizes the NHY ORO as a responsible local organization authorized to request activation of the EBS.

<sup>62</sup>Braidwood, supra, 23 NRC at 246, citing with approval Mississippi Power & Light (Grand Gulf Nuclear Power Station, Unit 1), ALAB-704, 16 NRC 1725, 1730 (1982); accord, Public Service Company of New Hampshire (Seabrook Nuclear Power Station, Units 1 and 2), ALAB-918, 29 NRC 473, 483-84 (1989).

<sup>63</sup>Id.

We have already discussed the factual deficiencies in Intervenors' argument. But for this instant purpose we revisit the affidavit of Robert Boulay, who is qualified to testify in his role as Director of the Massachusetts Civil Defense Agency about his perspective of the Massachusetts EBS. He has not revealed an expertise respecting the SPMC or the technical aspects of the broadcast system. He states that the nonparticipation of WCGY precludes operation of the EBS in the EPZ.<sup>64</sup> We have, of course, already found this proposition not to be true. Mr. Boulay's affidavit is given largely to a description of mechanics of the EBS network in Massachusetts. He states that while the Applicants maintain a letter of agreement with WLYT-FM and WHAV-AM, those stations cannot activate the EBS in the Merrimac Valley operational area.<sup>65</sup> He concludes that while WLYT/WHAV may be able to transmit an informational message provided by NHY to its listening public, "that message will not reach the rest of the public who do not happen to be listening to those radio stations."<sup>66</sup> Moreover, Mr. Boulay explains that while in theory NHY could call the Governor of Massachusetts and have him activate the EBS on a statewide basis by activating station WROR in Boston, "there does not

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<sup>64</sup>Motion, Attachment D, Affidavit of Robert Boulay Regarding the Voiding of the EBS Letters of Agreement.

<sup>65</sup>Id. at 2-4.

<sup>66</sup>Id. at 4.

appear to exist any provision for insuring that notification is made to the public in the EPZ within the 15 minutes required by NUREG 0654, FEMA-REP-1, Revision 1, Appendix 3."<sup>67</sup> Nor is there reason to believe the Governor or any state activating agency could activate the EBS within the regulatory time period by calling WCGY directly, he states, because WCGY's telephone lines are all busy on occasion.<sup>68</sup> We have evaluated and rejected on the reliable record before us, the major thrust of Mr. Boulay's possible contribution to a reopened record. Also in that connection, the proffered affidavit of Mr. A. Anthony Delsy, Vice President and General Counsel of the Arbitron Company offers little prospect for a contribution to any reopened record. His views on the listenership of Station WLYT (very small) has been long conceded by Applicants, but is hardly material to the public alerting scheme which does not depend upon the normal listenership of the respective radio stations. We conclude that the third factor weighs against Intervenors.

The balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1)(i) - (v) weighs against the admission of the Intervenors' late filed contention.

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<sup>67</sup>Id. at 5.

<sup>68</sup>Id. We note that neither the Intervenors' Motion nor Mr. Boulay' Affidavit allege that there is no assurance that the Governor could reach WROR in a timely manner because all of its lines may be temporarily busy.

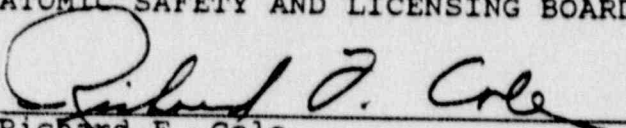
Conclusion

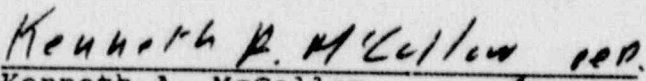
For the foregoing reasons, the Intervenor's have failed to meet the Commission's standards under 10 C.F.R. § 2.734 for reopening the record in this proceeding.

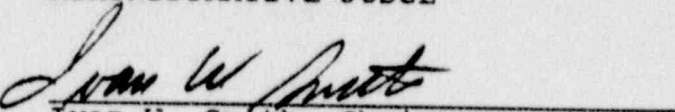
ORDER

The Intervenor's Motion To Admit Late Filed Contention and Reopen the Record on the SPMC Based Upon the Withdrawal of the Massachusetts E.B.S. Network and WCGY and the Intervenor's Motion to Add an Additional Basis to the Late Filed Attached Contention to the Motion of November 9, 1989 are denied.

ATOMIC SAFETY AND LICENSING BOARD

  
Richard F. Cole  
ADMINISTRATIVE JUDGE

  
Kenneth A. McCollom *rep.*  
ADMINISTRATIVE JUDGE *lws*

  
Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

January 8, 1990.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

PUBLIC SERVICE COMPANY OF NEW  
HAMPSHIRE, ET AL.  
(Seabrook Station, Units 1 and 2)

Docket No. (s) 50-443/444-0L

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LBP-90-1 dated 1/8/90 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No. (s) 50-443/444-DL  
-BF-90-1 dated 1/8/90

Dated at Rockville, Md. this  
8 day of January 1990

  
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Office of the Secretary of the Commission

\*Received copies by Express Mail.