

November 15, 1989

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

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NUCLEAR SAFETY UNIT

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 Issues)

APPLICANTS' ANSWER TO INTERVENORS' MOTION TO ADMIT
A LATE-FILED CONTENTION AND REOPEN THE RECORD BASED UPON
THE WITHDRAWAL OF THE MASSACHUSETTS E.B.S. NETWORK AND WCGY

INTRODUCTION

The Attorney General of The Commonwealth of Massachusetts (MAG), on behalf of himself and other intervenors, has filed yet another motion seeking the reopening of the record and admission of a late filed contention ("The Motion"). In this effort MAG attempts to combine relevant facts well known to him for many months with the irrelevant fact of a recent withdrawal of a letter of agreement (LOA) to fashion an alleged significant safety issue supposedly only recently knowable by MAG. Underlying all of this effort is an affidavit by The Massachusetts Civil Defense Director who "pinch hit" for the original affiant after the original affiant apparently refused to endorse a form of affidavit

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previously filed by MAG unsigned but represented to be "authorized and approved" by the original affiant.¹

The Motion is styled "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." The title of the Motion presages its first erroneous basis, i.e., that execution of the Seabrook Plan for Massachusetts Communities (SPMC) is dependent upon the participation of the "Massachusetts EBS Network" in general and station WCGY in particular. The thrust of the Motion is that since WCGY and the Massachusetts EBS have declared their intention not to participate in SPMC because of alleged failures of the Applicants to live up to alleged commitments,² the SPMC cannot function. This is so, it is alleged, because the participation of WCGY as the "gateway" EBS station the Merrimac Valley operational area is essential to activate the other Merrimac Valley EBS Stations and, it is alleged, without operation of these stations, SPMC cannot be executed. In particular, it is alleged that two significant safety issues are raised by the withdrawals: (1) because WCGY has withdrawn, the EBS in the Merrimac Valley area supposedly

¹ Original Motion filed under date of October 30, 1989 at 12.

² See Affidavits of John F. Bassett and Douglas J. Rowe attached as Attachments "F" and "G" to The Motion, respectively.

cannot be activated,³ (this is a "coverage" issue⁴) and (2) that without WCGY the Applicants cannot meet the 15 minute prompt alert and notification criteria.⁵ The Motion is supposedly timely because it was not until the recent withdrawals that these issues existed and were known to MAG.

The problem for MAG is that he has known for some time that SPMC did not rely upon either WCGY or the Merrimac Valley EBS Network. Had he wanted to litigate problems arising out of the fact that only two sister EBS stations were being relied upon to notify the public and to disseminate information, he could have and should have litigated such matters a long time ago. 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 that Applicants were relying on a single contract FM and AM station for initial notification and dissemination for information.⁶ Indeed, when it was discovered that the station call letters had been set out in the SPMC in the unredacted version, MAG and the other parties were sent in June of 1988 a letter enclosing the unredacted pages of the REP-10 Report. This letter is attached to the Affidavit of

³ Motion at 15.

⁴ Motion at 16.

⁵ Motion at 16-18.

⁶ REP-10 Report at 1-3 et seq.

Anthony M. Callendrello (Exhibit I hereto) as Attachment "A" thereto.⁷ These pages make clear that the SFMC would be relying solely on WLYT-FM and its sister station WHAV-AM. That these were the two stations relied upon was also made clear to MAG during the deposition of Gregory Howard taken on November 16, 1988.⁸ On May 2, 1989, Massachusetts Assistant Attorney General Jonas conducted the following cross-examination of Applicants' Witness Desmarais before the Licensing Board chaired by Judge Bloch:⁹

"Q Mr. Desmarais, there is no assumption, I take it, for expectation that any member of the public would tune into the radio to hear an EBS message without having heard the siren first; is that correct?"

A (Desmarais) There is no assumption that someone would be previously tuned in. However, they may have that radio station on and just be listening to it.

Q Do you have any idea as a percentage of the population of the EPZ, how many people would be listening to that station?

A (Desmarais) No, I don't.

Q How many EBS stations are there?

A(Desmarais) I believe there are two. And they're listed in the REP-10 design report. There would be two stations for Massachusetts, I believe; and two for New Hampshire.

⁷ The letter is undated. The assertion in the text is based upon the fact that the site letter logging system shows that it was sent out during the month of June, 1988. See Callendrello Affidavit at ¶ 3.

⁸ Howard Deposition at 129 et seq. A portion of the deposition was put in evidence as MAG Ex. 126 on June 27, 1989, and p. 129 which has the specific reference to the two stations is the last page of that exhibit.

⁹ Tr. (5/2/89) at 147-51.

Q I take it that that's not all of the radio stations in the area?

A (Desmarais) That's right.

Q For FM, that's WLYT; is that right?

A (Desmarais) If I could take a quick look at the REP-10 design report I would be able to verify that.

JUDGE BLOCH: I recall that in some of the documents those names were not -- the station names were not given; was that correct?

MR. DIGNAN: That was part of the --

JUDGE BLOCH: And it's now public.

(Document proffered to witness.)

THE WITNESS: (Desmarais) Thank you.

JUDGE BLOCH: While he's looking, is there a stipulation you want about this?

MR. JONAS: Well, there are two stations, WLYT and WCGY on the FM dial; and one, WHAV on the AM dial.

JUDGE BLOCH: Yes.

MR. JONAS: That's just what I want to establish.

THE WITNESS: (Desmarais) I believe that's accurate, but my copy of the REP-10 design report has the stations blanked out as well.

MR. DIGNAN: They don't trust the lawyers.

THE WITNESS: (Desmarais) I believe it's accurate.

MR. DIGNAN: If you represent that that's what it says, I'm not going to argue with you.

JUDGE BLOCH: Is there some point about that?

MR. JONAS: Well, the point I'm raising only is that there are two --

BY MR. JONAS:

Q Do you know how many radio stations in the area?

A (Desmarais) No, I don't.

MR. DIGNAN: I will stipulate with you that it's unlikely that even a significant percentage of people will actually be listening to the stations that are the EBS stations at the time the balloon goes up. Does that help?

MR. JONAS: Okay.

BY MR. JONAS:

Q Now, is there an assumption about when -- about what percentage of the population will actually hear the siren?

A (Desmarais) 100 percent of the population.

Q Is there an assumption about what percentage of the population will hear that siren the first minute?

A (Desmarais) I don't believe it's in the first minute. But over the full three-minute activation 100 percent of the population will receive the siren alerting signal.

Q So some people will hear it in the first minute, some second, and some the third minute?

A (Desmarais) Yes.

Q And the people who hear it in the third minute presumably will then have to interpret it and then -- interpret it correctly, so that they will turn on their radio?

A (Desmarais) Yes.

Q Find the EBS station on the radio dial; is that right?

A (Desmarais) Yes.

Q And actually hear the message?

A (Desmarais) Yes.

Q Now there are going to be -- there would be the EBS activation announcement; the 25 second tone which takes 55 seconds; and then a repetition of three EBS messages?

A (Desmarais) In serial fashion.

Q In serial fashion?

A (Desmarais) That's correct.

Q And then the next repetition would be 15 minutes afterwards?

A (Desmarais) Yes.

Q So there will be some portion of the population that won't hear that EBS message until after the siren tone is completed?

A (Desmarais) It's conceivable that could occur.

Q You don't know what percentage?

A (Desmarais) No, I don't.

JUDGE BLOCH: Is there any way to know how long it would take for a person who doesn't know which station is EBS to find it?

THE WITNESS: (Desmarais) I don't have any estimates of that time."

It is difficult to see in light of the foregoing how anyone could claim that it was only with the withdrawal of WCGY and Massachusetts EBS that the "significant safety issue(s)" proposed to be litigated came to light. But, there is more. On June 28, 1989, Mr. Callendrello was cross-examined by Assistant Attorney General Talbot as follows:

"Q Well, isn't it a fact that EBS is only carried on local Essex County stations?

A (Callendrello) The EBS station that is identified in the SPMC is located in Essex County. However, I wouldn't call it a local Essex County station, it's a 50,000 watt FM station. Mr. Catapano can address the range. But I know it has got a substantial range. I've picked it up probably 40 or 50 miles away, although he can talk about what the licensed range would be.

Q If he wants to, fine.

A (Catapano) It is an area that extends well beyond the emergency planning zone."¹⁰

After learning of the decision of WCGY and the Massachusetts EBS to disavow their LOAs, MAG brought the instant motion claiming that a new safety issue has arisen to be litigated. Applicants herein respond to the Motion on the basis of the record to date in the proceeding and the Affidavits of Anthony M. Callendrello, Gary J. Catapano (Exhibit II hereto) and George R. Gram (Exhibit III hereto).

The Affidavit of Gram and a portion of the Affidavit of Catapano (§§ 6-8), establish that, contrary to the apparent understanding of MAG's affiants, there never was any commitment to equip all of the EBS stations in the Merrimac Valley area. The only commitment made was to provide certain equipment and services to WCGY, a commitment that Applicants stand ready and willing to complete.¹¹ The Gram affidavit also makes clear that the commitment to WCGY was always viewed as an arrangement to provide back-up to the existing methods and procedures to be employed in SPMC.¹² In fact, certain equipment has been provided to WCGY to enhance The Commonwealth's capability for actuation through WROR.¹³

¹⁰ Tr. 27893-94. See also Callendrello Affidavit at § 5.

¹¹ Gram Affidavit, §§ 7.

¹² Gram Affidavit at §§ 6-8.

¹³ Catapano Affidavit at § 6.

The Callendrello Affidavit establishes the following: the concept of operations is that the public will be advised by public information materials to tune in to WLYT-FM or WHAV-FM upon hearing the sirens.¹⁴ Those individuals with responsibility for activating the public alert and notification system can contact these stations with an in-place dedicated ring down circuit and these stations are fully equipped to carry out their necessary duties.¹⁵ The Callendrello Affidavit also establishes that the contemplated method of SPMC execution was fully tested and approved by FEMA in the graded exercise.¹⁶ Mr. Callendrello also points out that there exists the Massachusetts Emergency Broadcast Plan which provides the Commonwealth with the ability, assuming it elects to use it, to issue messages through all six Merrimac Valley EBS stations.¹⁷ These stations are not needed or contemplated, however, to accomplish the initial 15-minute alert.¹⁸

¹⁴ Callendrello Affidavit ¶¶ 4-5.

¹⁵ Callendrello Affidavit ¶¶ 6-7; Catapano Affidavit ¶ 4.

¹⁶ Callendrello Affidavit ¶¶ 10-12.

¹⁷ Callendrello Affidavit ¶¶ 14-16.

¹⁸ Callendrello Affidavit ¶ 13.

ARGUMENT

Introduction

In order to succeed in obtaining a reopening of the evidentiary record, the Movants must establish that the motion is timely, is directed to a significant safety issue, and that a materially different result would be likely if the newly proffered evidence had been considered initially.¹⁹ In addition, where, as here, the contention sought to be litigated was not previously in controversy, the "five factors" test must be satisfied.²⁰ We address the last of these requirements first.

I. THE BALANCING OF THE FIVE FACTORS WEIGHS AGAINST THE ALLOWANCE OF THE MOTION.

As is clear from the recitation in the introduction above, MAG was, or should have been, well aware over one year ago that SPMC did not contemplate the use of WCGY or the Merrimac Valley Network EBS Operational Area stations in order to meet the alerting requirements of 10 CFR § 50.47(b)(5).. There simply has been no showing of any good cause for filing this contention at this late date. That being the case, the

¹⁹ 10 CFR § 2.734(a).

²⁰ 10 CFR § 2.734(d) incorporating 10 CFR § 2.714(a)(1).

Movant must shoulder a heavier burden with respect to the other four factors.²¹

As usual it must be conceded that the second and fourth factors favor the Movants, but these are the less weighty factors.²² With respect to the third factor: Commission "case law establishes both the importance of the third factor in the evaluation of late-filed contentions and the necessity of the moving party to demonstrate that it has special expertise on the subjects which it seeks to raise. [Citation omitted.] The Appeal Board has said: 'When a petition addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony'."²³ On a cursory look, the Motion might be viewed as having complied with the requirements of the third criterion; but, on close inspection, it has not.

²¹ E.g., Virginia Electric & Power Co. (North Anna Station, Units 1 and 2), ALAB-289, 2 NRC 395, 398 (1975).

²² Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 245 (1986); South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

²³ Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986), citing with approval, Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). Accord, Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-918, 29 NRC ____, Slip Op. at 19-20 (June 20, 1989).

The affiant now offered has no special expertise in radio network design. Neither he nor the original affiant purports to be an expert on either coverage or the issue of whether the 15-minute criteria can be satisfied.²⁴ These are the issues which the hearing, if granted, would be about. It is these matters which must be addressed under the third criterion, and they are not.

As to delay, there is no doubt where the delay factor weighs. On balance, we submit, factors one three, and five weigh against admission of the contention, and, therefore, the Motion should fail under 10 CFR §§ 2.734(d), 2.714(a)(1).

II. THERE HAS BEEN NO SHOWING THAT THE FACTS ALLEGED GIVE RISE TO A SIGNIFICANT SAFETY QUESTION.

The claim in the Motion is that there are two significant safety questions raised which warrant reopening. The first is a coverage question. However, as the record extant as well as the affidavits filed herewith show, there is coverage of the EPZ by the WLYT-FM and WIAV-AM, the sister EBS stations under contract. With respect to the 15-minute notification, that has been exercised and fully litigated. Again, there is nothing in the materials filed which casts doubt on the concept that notification can be made in about

²⁴ Indeed, the second affiant is even less certain as to the alleged lack of a provision for ensuring notification is made to the public in the Seabrook EPZ within 15 minutes. Compare Boulay Affidavit ¶ 4 ("appear to exist") with Sawyer Affidavit ¶ 4 ("exist").

fifteen minutes through the contract EBS stations. Thus, there simply is no safety question raised, never mind a significant safety question.

In addition, it should be remembered that insofar as there is an unstated issue being raised to the effect that all EBS stations should be available, they, in fact, will be, assuming the Governor activates them. The realism doctrine dictates that any effort to base this motion on the concept that the Governor will not activate the entire EBS system, when requested, must be rejected.


III. THERE HAS BEEN NO SHOWING THAT A DIFFERENT RESULT WOULD BE LIKELY.

The facts are the facts. SPMC simply does not depend upon the Massachusetts EBS System in general or WCGY, in particular. The result will be the same even assuming everything that is stated in all of MAG's affidavits is true.

CONCLUSION

The Motion should be denied.

Respectfully submitted,


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November 14, 1989

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.)

(Seabrook Station, Units 1 and 2)
)
_____)

Docket Nos. 50-443-OL-1
50-444-OL-1
(Offsite Emergency
Planning and Safety
Issues)

AFFIDAVIT OF ANTHONY M. CALLENDRELLO

I, Anthony M. Callendrello, being on oath, depose and say as follows:

1. I am the Emergency Planning Licensing Manager for New Hampshire Yankee. A statement of my professional qualifications are a matter of record in this proceeding. In addition, I have testified before this Board regarding the use of the Emergency Broadcast System (EBS) by the New Hampshire Yankee Offsite Response Organization (ORO) in accordance with the Seabrook Plan for Massachusetts Communities (SPMC).

2. This affidavit addresses the Intervenor's allegations that NHY no longer has the ability to provide emergency information to the

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Exhibit I

public as a result of the withdrawal of the agreement between NHY and radio station WCGY.

3. The mechanism for providing emergency information to the public through EBS is in place and can be activated by NHY in accordance with the provisions in the SPMC and its supporting agreement or through the Commonwealth of Massachusetts in accordance with the Massachusetts EBS Operational Plan.

4. The concept of operations of the SPMC is that the public, upon hearing the sirens, will tune to the local radio stations listed in the public educational materials for emergency information. SPMC at pg. 3.2-15.

5. The SPMC relies on a radio station broadcasting on AM (WHAU 1490KHz) and FM (WLYT 92.5 MHz) frequencies to deliver emergency information to the public as part of the public alert and notification system. This arrangement is described in the Seabrook Station Public Alert and Notification FEMA REP-10 Design Report dated April 30, 1988 (Attached as "A"). Due to the fact that the radio station call letters had been inadvertently redacted in the original version of the REP-10 report, these two pages were sent (unredacted) as the sole subject of a letter to the service list (Attachment "A"). In addition, I have previously testified to the fact that the SPMC relies on a single radio station that provides complete coverage of the EPZ (Tr. 27894).

6. Those individuals with the responsibility for activating the public alert and notification system are directed, by SPMC Appendix G and IP 2.13, to contact the designated radio station via the dedicated ringdown circuit in the Offsite Response Organization (ORO) Emergency Operations Center (EOC). The dedicated ringdown circuit is in place at the EOC and is connected to WLYT/WHAV (See also Affidavit of Gary J. Catapano at paragraph 4.

7. New Hampshire Yankee has provided to WLYT/WHAV all of the equipment and other materials necessary to implement the SPMC.

8. A letter describing the current commitment of radio station WLYT/WHAV to provide public information, consistent with their commitment to the Emergency Broadcast System, in the event of an emergency at Seabrook Station is contained in the SPMC, Appendix C, at page C-64 (Attached as "B").

9. Contrary to the allegation of the Intervenor, NUREG-0654 does not require that EBS be part of the public alert and notification system. It is, however, one way to comply with that guidance. NUREG-0654, Supplement 1, Element II.E.3, states that: " The offsite response organization shall establish a system for disseminating to the public appropriate information contained in initial and followup messages received from the licensee (see Evaluation Criteria E.3 and E.4 in NUREG-0654/FEMA REP-1, Rev.1) including the appropriate notification to appropriate broadcast media, e.g. the Emergency Broadcast System (EBS)."

10. The FEMA Review and Evaluation of the Seabrook Plan for Massachusetts Communities, dated December, 1988, found the system for disseminating to the public appropriate information, including the appropriate notification to appropriate broadcast media e.g., the Emergency Broadcast System, to be adequate (Applicants' Exhibit 43C at page 24, attached as "C"). FEMA found the plan adequate based on the use of a single radio station, WLYT/WHAV.

11. Provision of emergency public information was demonstrated by ORO during the June 1988 FEMA Graded Exercise. During the exercise, ORO personnel contacted radio station WLYT/WHAV via the dedicated ringdown line and transmitted EBS messages to the station. WLYT/WHAV broadcast a standard EBS test message during the exercise.

12. The Final Exercise Report of the June, 1988 Graded Exercise, dated September 1, 1988, documented the demonstration of the public alert and notification system by ORO during the exercise (Applicants' Exhibit 43F at page 214, attached as "D"). The Final Exercise Report noted the use of a single radio station.

13. Through the arrangement with WLYT/WHAV the ORO has the capability to provide an instructional message to the public within 15 minutes. That capability was demonstrated during the 1988 Exercise (Attachment "D").

14. In addition, the Commonwealth has established the Massachusetts Emergency Broadcast System Operational Plan, dated May 1988 (Exhibit 1 to Attachment D of Intervenor Motion) which describes the EBS network and sets forth the procedures for providing emergency public information.

15. The Massachusetts EBS Plan, specifically the Merrimac Valley Operational Area, provides the capability for the Commonwealth to deliver emergency information to all six Seabrook Station EPZ communities. Massachusetts EBS Plan at page 1-1.


16. The Massachusetts EBS Plan lists both WLYT and WHAV as primary EBS stations in Merrimac Valley Operational Area, Massachusetts EBS Plan at page 1-6.


Anthony M. Callendrello

November 14, 1989

The above-subscribed Anthony M. Callendrello appeared before me and made oath that he had read the foregoing affidavit and that the statements set forth therein are true to the best of his knowledge.

Before me,


Notary Public
My Commission Expires:
MARILYN R. SULLIVAN, Notary Public
My Commission Expires April 29, 1992

"A"

T. Callendrello

IMS#V02.02.17

SEP#800550



Public Service of New Hampshire

New Hampshire Yankee Division

Mr. Henry J. Vickers, Director, Region I
Federal Emergency Management Agency
J. W. McCormack Post Office and Court House
Boston, Massachusetts 02109

Subject: FEMA-REP-10 Design Report Submittal

Reference: (1) PSNH letter, dated April 29, 1988, "FEMA-REP-10 Design
Report Submittal", G. R. Gram to H. J. Vickers

Dear Mr. Vickers:

New Hampshire Yankee (NHY) submitted the Seabrook Station Public Alert and Notification System FEMA-REP-10 Design Report for FEMA review on April 29, 1988 [Reference (1)]. As a result of an inadvertence, certain of the information on pages 1-3 and 1-4 had been redacted from the Design Report submitted by Reference (1). Enclosed please find pages 1-3 and 1-4 which contain the previously redacted information. These pages should be inserted in to the Design Report replacing the previously submitted pages.

If there are any questions, please contact Mr. Edward W. Desmarais at (603) 474-9521, extension 3244.

Very truly yours,

A handwritten signature in dark ink, appearing to read "G. R. Gram", is written over the typed name.

G. R. Gram

Enclosure

Subject: FEMA-REP-10 Design Report Submittal

cc: Atomic Safety and Licensing Board Service List

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for notifying, via the two-tone EBS signal, the other New Hampshire Seacoast EBS stations in the network. Although not a CPCS station, WMYF provides 24 hour AM EBS broadcast capability for New Hampshire. WMYF, a 5,000-watt AM station broadcasting at 1540 KHz from Exeter, NH, is operational from 5 AM to midnight, seven days a week and is equipped with a backup power supply. WMYF has been specially equipped to provide 24-hour, seven day per week EBS coverage by remote activation from WOKQ during off hours.

Activation of the EBS covering the New Hampshire portion of the Seabrook Station EPZ proceeds as follows:

1. The New Hampshire State Police Communications Center (NHSPCC) receives notice of an emergency from Seabrook Station.
2. The NHSPCC notifies the New Hampshire Office of Emergency Management (NHOEM) of the emergency.
3. If the emergency reaches the ALERT level, the Director of the NHOEM, or his designee, notifies the CPCS station, putting it on standby and preparing it for possible broadcast of public information or instructional messages.
4. The CPCS is monitored by the other New Hampshire EBS stations and broadcasts are simultaneously aired or recorded for subsequent broadcast.
5. If beach precautionary actions are recommended or if the emergency reaches SITE AREA EMERGENCY or GENERAL EMERGENCY, the Director of the NHOEM, or his designee, notifies the CPCS to activate the broadcast over the EBS of specific information or instructional messages.

Figure 1-1 depicts the activation communication sequence for the New Hampshire EBS network. The activation of the New Hampshire EBS network is discussed in Volume 1, Section 2.1 of the State of New Hampshire Radiological Emergency Response Plan.

Massachusetts EBS Network

In Massachusetts, the contract EBS radio station is WLYT, a 50,000-watt FM station broadcasting at 92.5 MHz from Haverhill, Massachusetts. WLYT is

operational 24 hours per day, seven days a week, and is equipped with a backup power supply. WLYT's sister station, WHAV, provides complementary AM coverage. WHAV is a 1,000-watt AM station broadcasting at 1490 KHz from Haverhill. WHAV is operational 24-hours per day, seven days per week and is equipped with a backup power supply.

Activation of the EBS covering the Massachusetts portion of the Seabrook Station EPZ proceeds as follows:

1. The NHY Offsite Response EOC Contact receives notice of an emergency from the Seabrook Station Short-Term Emergency Director (STED).
2. In an escalating emergency, after the NHY Offsite Response Organization is activated, the NHY Offsite Response Director (NHYORD) assumes responsibility for EBS activation from the Seabrook Station Emergency Response Organization (ERO).
3. If the emergency reaches the ALERT level, the STED or NHYORD (depending on #2 above) notifies WLYT, putting the station on standby and preparing it for possible broadcast of public information or instructional messages.
4. If the emergency reaches SITE AREA EMERGENCY or GENERAL EMERGENCY, the STED or NHYORD obtains authorization from officials of the Commonwealth of Massachusetts to activate the Public Alert and Notification System and notifies WLYT to activate the broadcast over the EBS of specific information or instructional messages.

Figure 1-1 depicts the activation communication sequence for the Massachusetts EBS network. The activation of the EBS network for the Massachusetts communities in the EPZ is described more fully in Section 3.2 of the Seabrook Plan for Massachusetts Communities.

Once the decision has been made by the Director of the NHOEM and the Massachusetts Civil Defense Agency Director to activate the EBS networks, the system provides the capability of broadcasting informational and instructional messages within 15 minutes.

"B"

REC-206 11 87

Northeast Broadcasting Company, Inc.
WHAU AM-15 • WLYT 92.5 FM

August 12, 1987

Mr. Edward A. Brown, President
New Hampshire Yankee Division
Public Service Company of
New Hampshire
Post Office Box 300
Seabrook, New Hampshire 03874

Dear Mr. Brown:

Northeast Broadcasting Company, Inc., as licensee of standard broadcast stations WHAV-AM and WLYT-FM affirms its commitment and obligation to its constituent communities of service to provide emergency information to the general public in the event of an emergency condition at the Seabrook Station.

Consistent with the provisions of the Communications Act of 1934, the responsibilities as public trustee of our designated frequencies, and our ongoing commitment to the Emergency Broadcast System, WHAV and WLYT shall provide such emergency information to the public to the best of its ability pursuant to implementing provisions developed by the stations and the New Hampshire Yankee Division.

This commitment is consistent with the request of the Honorable Michael S. Dukakis, Governor of the Commonwealth of Massachusetts on December 23, 1985.

Informational services provided to our constituent communities are in keeping with our ongoing responsibility to provide news and information of public interest and are subject to the stations' review and policies for content.

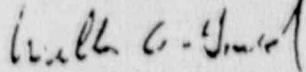
At the request of New Hampshire Yankee Division, we would be pleased to develop an emergency communication link so that in the event of any emergency WHAV and WLYT can confirm accuracy of information and minimize the time necessary to alert the public to the circumstances at issue. Our willingness to cooperate with you to prepare for emergency situations is not an endorsement of the Seabrook Station and does not necessarily imply approval or acceptance of plans proposed by the Yankee Division.

Mr. Edward A. Brown, President
August 12, 1987
Page 2

We respectfully request that we be given an opportunity to review any document or plan disclosed to the public in which the stations' call letters or frequencies are used, as well as the use of the stations' call letters and frequencies in public information promotions or signs.

We look forward to implementing this communication service in the coming weeks.

Very truly yours,



William A. Gould
Station Manager and
Treasurer

WAG:bm

Evaluation Criterion

- E.3. The offsite response organization shall establish a system for disseminating to the public appropriate information contained in initial and followup messages received from the licensee (see Evaluation Criteria E.3 and E.4 in NUREG-0654/FEMA REP-1, Rev. 1) including the appropriate notification to appropriate broadcast media, e.g., the Emergency Broadcast System (EBS).

Statement

- E.3. The Plan states that the primary system for disseminating information to the public is EBS. In event of an emergency, the NHY ORO Offsite Response Director will request authority from the Commonwealth of Massachusetts to utilize EBS to broadcast emergency information and instructions to the public. Each instructional message broadcast over EBS will also be released as a news release by the Media Center.

In February 1988, FEMA personnel visited the primary EBS station to determine its capabilities. The current capability of the identified EBS radio station includes the ability to record and broadcast emergency instructions and information to the public. The primary EBS station has a backup power supply.

The Public Notification Coordinator, once the NHY ORO is activated, begins preliminary planning with the Radiological Health Advisor and the Technical Advisor regarding the possible PARs. Upon the orders of the NHY Offsite Response Director, the Public Notification Coordinator selects the appropriate EBS message, completes the appropriate sections, reviews the message with the NHY Offsite Response Director, coordinates the message with the State of New Hampshire, and the appropriate Massachusetts official, obtains the NHY Offsite Response Director's approval for broadcasting the EBS message, faxes the EBS message to the EBS radio station, requests the EBS radio station to broadcast the message three times consecutively, and then every 15 minutes thereafter. The Public Notification Coordinator has the responsibility to direct the Communications Coordinator to activate the siren system and to advise the Special Population Coordinator on the need to initiate notification of hearing-impaired people. Actual broadcast of the message is monitored by the Public Notification Coordinator. The Public Notification Coordinator also supplies copies of the EBS message to the Public Information Advisor, the Support Services Coordinator, the School Coordinator, and the Special Population Coordinator.

In a fast breaking emergency, the Seabrook Station Short-Term Emergency Director can request authorization from the Governor of Massachusetts and perform the EBS functions ordinarily performed by the Public Notification Coordinator. (See discussion under element E.4.)

Objective #12: Demonstrate the ability to initially alert the public within the 10-mile EPZ and begin dissemination of an instructional message within 15 minutes of a decision by appropriate State and/or local official(s).

Evaluation: Met.

Narrative
Summary:

The New Hampshire Yankee Offsite Response Organization demonstrated the ability to alert the public within the 10-mile EPZ and broadcast an initial instructional message within 15 minutes of the authorization time from the Commonwealth of Massachusetts (FEMA Control Cell).

Following is a description of the sequence of events for the first Alert and Notification System Activation. Notification of the SAE and associated EOF (NHY) PARs was received at NHY ORO at 1152. At 1202 NHY ORO initiated a conference call to the Governor's Representative to brief him on the situation and request legal authorization to sound siren. An instructional message reflecting the emergency situation was drafted and faxed to the Governor's Representative (FEMA Control Cell) for concurrence at 1210. Meanwhile, the VANS, which had been deployed to their acoustic locations at the Alert stage, were informed of imminent siren activation. The siren system was armed at the NHY ORO EOC. At 1215 a signed concurrence of the EBS message was received from the Governor's Representative (FEMA Control Cell). At 1218 the EBS station, WLYT, was contacted via the hotline ring-down and the emergency message was simultaneously faxed to the station. The instructions to the EBS station were to broadcast the message three times with subsequent broadcasts every 15 minutes thereafter. The drivers of the VANS were advised to stand by for siren activation at 1222. Simulated siren activation was accomplished at 1222. The radio broadcast of the message was indicated by controller input at 1225. Actual broadcast of the EBS test message was aired on WLYT (FM 92.5) at 1237. It should be noted that the out-of-sequence broadcast was pre-arranged with the station to be at their programming convenience/discretion. At 1227 the VANS were polled by roll-call to ensure there had been no siren failures.

Supplemental alerting and notification of the hearing impaired, mobility impaired, special facilities, and schools within the six Massachusetts communities were provided by and coordinated by the NHY ORO Special Populations Liaison and School Liaison for each community. The Special Population Liaisons and School Liaisons had lists of individuals, special facilities, and schools with their telephone numbers and addresses. Individuals with hearing impairments who were not reached by telephone by the Special Population Liaisons were contacted by Route Guides at their residence. The purpose of the

contact was to determine if the individuals were aware of the emergency situation and if they required transportation assistance.

We note that NHY ORO plans to distribute tone alert radios to portions of the special population (schools, day care centers, nurseries, nursing homes, etc.). These radios should expedite the process of supplemental alerting.

Objective #13: Demonstrate the ability to coordinate the formulation and dissemination of accurate information and instructions to the public in a timely fashion after the initial alert and notification has occurred.

Evaluation: Met.

Narrative
Summary:

The New Hampshire Yankee Offsite Response Organization demonstrated the ability to develop appropriate instructions and information during all three phases of the exercise.

Instructions (EBS Messages) were formulated, approved and distributed according to the system described in the plan. For the most part, prescribed messages stored in the word processing system were used, with appropriate modifications to reflect the current Protective Action Decisions. On one occasion an EBS message was composed from scratch.

Message content was generally accurate, complete and clear, with one exception. One of the EBS messages was not consistent with actions and discussions of the staff; i.e., ORO EBS message #2, released for broadcast at 1420 (and the corresponding news release 6 and 7) advised that residents of Amesbury and Salisbury should evacuate, stated that schools in communities being evacuated would be evacuated, and stated that school children in those towns were being held at school for later dismissal; and stated that all schools in Newburyport were being sheltered whereas information existed that indicated only 3 schools were being sheltered and 4 schools were being dismissed in Newburyport.

It is FEMA's belief that both of the above referenced inconsistencies can be attributed to disconnects between the NHY ORO staff and the control cells. When the NHY ORO briefed, discussed, and reviewed the Massachusetts Governor's Representative concurrence in the PA and corresponding EBS message #2, it was their belief that the schools in Amesbury and Salisbury would commit their transportation resources to evacuate their students: i.e. the statement that schools in the communities being evacuated would be evacuated. It is noted that normal dismissal of schools is 1430 for Amesbury and Salisbury schools and, accordingly, the buses and drivers would be at the

November 13, 1989

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.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-OL-1

50-444-OL-1

(Offsite Emergency
Planning and Safety
Issues)

AFFIDAVIT OF GARY J. CATAPANO

I, Gary J. Catapano, being on oath, depose and say as follows:

1. I am the President of Allcomm Inc. which is contracted by the joint owners of Seabrook Station to evaluate and design communications systems and to specify communications equipment for emergency planning purposes in connection with Seabrook Station. In addition, I have testified before this board regarding the communications provisions of the Seabrook Plan for Massachusetts Communities (SPMC). A statement of my professional qualifications is a matter of record in this proceeding.

2. The purpose of this affidavit is to address the intervenors' allegation that NHY does not have the capability to provide prompt emergency instructions to the public in light of the withdrawal of certain agreements.

~~891244102~~

Exhibit II

3. The SPMC relies upon a single broadcasting entity which operates on both AM (WHAU 1490 KHz.) and FM (WLYT 92.5 KHz.) frequencies to deliver instructional messages to the public as part of the public alert and notification system. These stations both operate on a 24 hour basis, 365 days of the year.

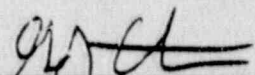
4. There currently exists both a primary (dedicated ring down circuit) and backup (commercial telephone) method for allowing rapid communications to occur between the NHY ORO Emergency Operations Center (EOC) and the WHAV/WLYT studios. In addition, there is a third method available for transmitting emergency information to the stations from the ORO EOC via the Remote Programming Unit (RPU) which has the capability for allowing direct on-air broadcast from the ORO EOC. Prerecorded messages have been provided to the station to allow for the rapid dissemination of information in a fast breaking emergency. Additionally, a telefax capability is operational at both locations to allow transmission of hard copy messages. These measures ensure the ability of the ORO to be able to communicate emergency information to WHAV/WLYT.

5. In the event EBS is activated at a statewide or local operational area level, stations classified as non-EBS stations are not required to go "off the air". The only required instance during which a non-EBS station would go "off the air" would be in the event of a national emergency requiring activation of EBS on a national level. Section 73.918 of FCC rules (attached as "A") defines a Non-EBS station and the conditions under which it goes "off the air". Further the provisions of the Massachusetts EBS Operational Plan do not require non-EBS stations to go "off the air" during a statewide or local operational activation of EBS. Of the 172 AM and FM radio stations listed in the Massachusetts EBS Operational Plan, fourteen are classified as non-EBS. Nine of the fourteen non-EBS stations are low power educational stations with very limited coverage.

6. Contrary to the Affidavit of John F. Bassett, paragraph 3, certain EBS equipment was provided by NHY to WCGY/WCCM. This equipment which monitors WROR (the states originating primary relay station) was provided to enhance the capability of WCGY/WCCM in accordance with the Massachusetts EBS Operational Plan. This equipment was delivered to WCGY/WCCM in November of 1988. A delivery receipt for the equipment signed by Mr. Joe Sousie, at the time station engineer for WCGY/WCCM, is attached as "B". Additionally, at this time, NHY offered installation assistance for this package to WCGY/WCCM which was turned down.

7. Relative to the commitments NHY made to WCGY/WCCM, I did provide assurances to Doug Rowe during several telephone calls he placed to me during 1988. The assurances I provided Mr. Rowe related solely to the equipment for WCGY/WCCM and not the remaining stations in the Merrimac Valley Operational Area.

8. The Allcomm Inc. letter, dated November 14, 1988, to Mr. Rowe was provided to him for his use in discussing the EBS equipment packages designed by me with broadcasters in other areas of the Commonwealth aside from the Merrimac Valley Operational Area. It was not provided for any purpose related to the SPMC or Seabrook Station.

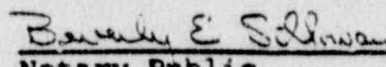


Gary J. Catapano

November 14, 1989

The above-subscribed Gary J. Catapano appeared before me and made oath that he had read the foregoing affidavit and that the statements set forth therein are true to the best of his knowledge.

Before me,



Notary Public
My Commission Expires: 3/6/90

posing a threat to the safety of life or property.

§ 73.912 NIAC order.

This is a service order previously filed with participating communications common carriers providing for program origination reconfiguration of the major Radio and Television Networks voluntarily participating in the National level EBS. Participating networks are:

- (a) American Broadcasting Company (ABC and ABC-TV).
- (b) Columbia Broadcasting System (CBS and CBS-TV).
- (c) Intermountain Network (IMN).
- (d) Mutual Broadcasting System (MBS).
- (e) National Broadcasting Company (NBC and NBC-TV).
- (f) National Public Radio (NPR).
- (g) Public Broadcasting Service (PBS).
- (h) United Press International Audio (UPI-Audio).

NIAC Orders must meet White House requirements and will be activated only in accordance with the FCC Rules and Regulations.

§ 73.913 Emergency Broadcast System Authorization.

(a) This authorization is issued by the FCC to licensees of broadcast stations to permit operation on a voluntary, organized basis during a National emergency consistent with the provisions of this subpart of the rules and regulations. This authorization will remain in effect during the period of the initial license and subsequent renewals unless returned by the holder or suspended, modified or withdrawn by the Commission.

(b) An EBS Authorization is not required in order to participate on a voluntary, organized basis in State and Operational (Local) Area Emergency Broadcast System operations as set forth in § 73.935.

(c) Any non-participating broadcast station may request an EBS authorization by making such request via informal letter to the FCC in Washington, D.C. 20554.

141 FR 57032, Nov. 30, 1970, as amended at 44 FR 30480, July 2, 1979

§ 73.914 Primary Station (Primary).

A Primary Station broadcasts or re-broadcasts a common emergency program for the duration of the activation of the EBS at the National, State, or Operational (Local) Area Level. The EBS transmissions of such stations are intended for direct public reception as well as inter-station programming.

§ 73.915 Primary Relay Station (Pri Relay).

A Primary Relay Station (an integral part of the State Relay Network) is a broadcast station responsible for the relay of National level and State level common emergency programming into the Operational (Local) Area levels.

§ 73.916 Common Program Control Station (CPCS).

This is a Primary Station in an Operational (Local) Area which preferably has special communication links with appropriate authorities (e.g., National Weather Service, Civil Defense, local or State government authorities, etc.) as specified in the State EBS Operational Plan. A Primary CPCS Station is responsible for coordinating the carriage of a common emergency program for its area. If it is unable to carry out this function, other Primary Stations in the Operational (Local) Area will be assigned the responsibility as indicated in the State EBS Operational Plan.

§ 73.917 Originating Primary Relay Station (Orig Pri Relay).

An Originating Primary Relay Station is a station as defined in § 73.915 that acts as the originating station source of a common program from the State, capital or State emergency operating center for the State Relay Network, and may be programmed directly by the Governor or a designated representative.

§ 73.918 Non-participating Station (Non-EBS).

This is a broadcast station which has elected not to participate in the National level EBS and does not hold an EBS authorization. Upon activation of the EBS at the National level such stations are required to remove their car-

riers from the air and monitor for the Emergency Action Termination in accordance with the instructions in the EBS Checklist for Non-Participating Stations.

§ 73.919 State Relay Network.

A State Relay Network is a relay network, composed of Primary Relay Stations and leased common carrier communications facilities and any other available communication facilities, for disseminating statewide emergency programming originated by the Governor or a designated representative.

§ 73.920 Operational (Local) Area.

This is a geographical area which encompasses a number of contiguous communities as shown in the State EBS Operational Plan.

§ 73.921 State Emergency Broadcast System Operational Plan.

This plan contains the necessary guidance for the voluntary coordination between appropriate authorities (e.g., National Weather Service, Civil Defense, local or State government, etc.) and the broadcast industry to communicate with the general public during a State or local emergency situation. Additional procedural guides, SOP's and other implementing instructions should be developed at the State and local levels to insure effective operation of the EBS at the State and Operational (Local) Area levels.

§ 73.922 Emergency Broadcast System programming priorities.

(a) Program priorities for EBS are as follows:

- Priority One—Presidential Messages
- Priority Two—Operational (Local) Area Programming
- Priority Three—State Programming
- Priority Four—National Programming and News

(b) Participating stations that remain on the air during a National emergency situation must carry Presidential Messages "live" at the time of transmission. Activation of the National level EBS will preempt operation of the Operational (Local) Area or State level EBS.

(c) During a National emergency the Radio and Television (aural) Broadcast Network program distribution facilities shall be reserved exclusively for distribution of Presidential Messages and National Programming and News. National Programming and News which is not broadcast at the time of original transmission shall be recorded locally by the CPCS for broadcast at the earliest opportunity consistent with Operational (Local) Area requirements.

PARTICIPATION

§ 73.923 Participation in the Emergency Broadcast System.

(a) The FCC will send to new licensees an EBS authorization and a letter requesting their voluntary participation in the EBS. Stations are requested to accept or decline this authorization within 30 days of receipt. Should the request be declined, the EBS Authorization should be returned to FCC. In either event, an appropriate EBS Checklist and EBS station designation will be forwarded to the station manager.

(b) Any existing licensee who is not already a participant and desires to participate voluntarily in the National level EBS must submit a written request to FCC. The FCC may then issue an EBS Authorization.

(c) Any station may withdraw from EBS participation by giving 30 days written notice and by returning its EBS Authorization to the FCC.

(d) Any station that is denied participation in the National level EBS for any reason may apply to the Commission for review of the staff denial in accordance with § 1.110 of this chapter.

(e) Any AM, FM, or TV broadcast station licensee may, at the discretion of management, voluntarily participate in the State level and Operational (Local) Area level EBS in accordance with the provisions of the State EBS Operational Plan. An EBS Authorization is not required.

§ 73.927 Participation by communications common carriers.

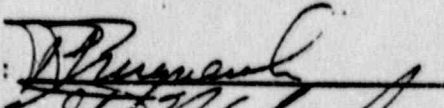
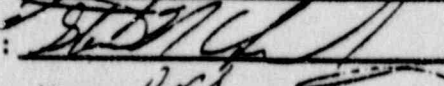
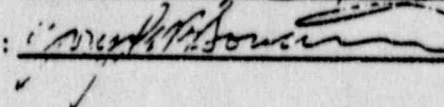
(a) Communications common carriers which have facilities available in

ALLCOMM Inc. Pickup/Delivery Receipt

Qty.	Description
1	Nakamichi Cassette deck Model # MR-2 S/N- 02067
1	TFT EBS Encoder/Decoder/Receiver. S/N- 1020372
1	Cataplunk EBS interface unit. S/N- 201
5	EBS Strobe

Instructions:

Deliver to WCGY/WCCM radio station.

Authorized by:  Date: 11/2/88
 Issued to :  Date: 11/2/88
 Delivered to :  Date: 11/2/88

November 14, 1989

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.)

(Seabrook Station, Units 1 and 2)
)

Docket Nos. 50-443-OL-1
50-444-OL-1
(Offsite Emergency
Planning and Safety
Issues)

AFFIDAVIT OF GEORGE R. GRAM

I, George R. Gram, being on oath, depose and say:

1. I am Executive Director, Emergency Preparedness and Community Relations, New Hampshire Yankee. As such, I am responsible for all emergency preparedness planning and implementation associated with Seabrook Station. A statement of my professional qualifications is a matter of record in this proceeding.

2. New Hampshire Yankee recently received correspondence from Douglas J. Rowe, Co-Chairman, Massachusetts Emergency Broadcast System, and John F. Bassett, Manager, WCGY-FM, Lawrence, Massachusetts, dated October 13, 1989, and October 20, 1989, respectively (attached as "A"). The correspondence references a

8912040122

Exhibit III

previous letter of agreement, dated September 14, 1987, between New Hampshire Yankee and the Massachusetts Emergency Broadcast System in which New Hampshire Yankee agreed to provide certain services and equipment for the planning and implementation of an alerting system in support of the New Hampshire Yankee Offsite Response Organization (ORO).

3. In the aforementioned correspondence, Messrs. Rowe and Bassett state that they are terminating their letters of agreement with New Hampshire Yankee because New Hampshire Yankee has not provided the equipment indicated in the September 14, 1987, letter of agreement with the Massachusetts Emergency Broadcast System.

4. In July, 1987, I was appointed Project Director of Massachusetts emergency planning for New Hampshire Yankee. The project entailed development and implementation of a utility sponsored emergency response organization and program for that portion of the Seabrook Station emergency planning zone situated in Massachusetts.

5. At that time, negotiations were underway with WLYT/WHAV, Haverhill, Massachusetts, to have them provide emergency information to the Massachusetts portion of the Seabrook Station EPZ. New Hampshire Yankee agreed to equip WLYT/WHAV for this purpose, and a commitment letter was signed by the management of WLYT/WHAV on August 12, 1987.

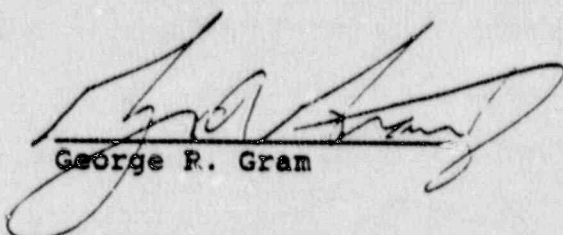
6. In developing the Seabrook Plan for Massachusetts Communities, New Hampshire Yankee pursued a "defense in depth" strategy to assure that backup mechanisms were available to implement the plan. Pursuant to this strategy, discussions were held in the summer of 1987 with Mr. Rowe, who represented the Massachusetts Emergency Broadcast System. Mr. Rowe expressed to New Hampshire Yankee his interest in upgrading the existing capability of the Massachusetts Emergency Broadcast System. WCGY, Lawrence, Massachusetts, was then, as it is now, the Common Program Control Station (CPCS-1) or gateway station in the Merrimack Valley Operational Area of the Massachusetts Emergency Broadcast System. Mr. Rowe informed New Hampshire Yankee that WCGY required additional equipment in order to allow activation directly by the ORO in a manner similar to that used with WLYT/WHAV.

7. At that time, New Hampshire Yankee agreed to further discuss upgrading all of the existing Massachusetts Emergency Broadcast System stations in the Merrimack Valley Operational Area. However, in order to establish a backup means for issuing emergency information to the Massachusetts communities within the Seabrook Station EPZ, New Hampshire Yankee agreed to evaluate and to upgrade the capability of only WCGY to serve as the backup station in support of the Seabrook Plan for Massachusetts Communities. New Hampshire Yankee made this agreement with Mr. Rowe in his role as Co-Chairman of the Massachusetts Emergency Broadcast System. In the letter of agreement with Mr. Rowe dated September 14, 1987, New Hampshire Yankee agreed to provide certain items of equipment to

upgrade the capability of WCGY, enabling WCGY to serve as a backup EBS station to WLYT/WHAV, and in fact some of the equipment was installed and has been maintained by NHY (See Affidavit of Gary J. Catapano at paragraph 6).

8. Prior to executing the letter of agreement with Mr. Rowe, New Hampshire Yankee advised him of the backup role contemplated for WCGY.

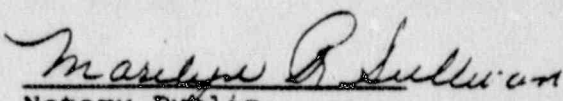
9. New Hampshire Yankee maintains its commitment to upgrade WCGY's equipment (consistent with its role in the Massachusetts EBS Operational Plan) to the level outlined in the September 14, 1987 letter of agreement with Mr. Rowe. On October 26, 1989, New Hampshire Yankee advised Mr. Bassett of its intention to honor this commitment (attached as "B").


George R. Gram

November 14, 1989

The above-subscribed George R. Gram appeared before me and made oath that he had read the foregoing affidavit and that the statements set forth therein are true to the best of his knowledge.

Before me,


Notary Public

My Commission Expires:

April 29, 1992

"Great Radio"

P.O. Box 566 • 48 Fitchburg St • Marlboro, Massachusetts 01752 • (508) 485-1470

October 13, 1989

Mr. R. Boyd, Jr.
Performance Services Manager
P. O. Box 300
Seabrook, NH 03874

Dear Mr. Boyd:

Your letter of September 29, 1989, is not accurate! It attempts to describe a meeting between us. If you will recall, at the end of that meeting there was no spirit of cooperation.

I said to you that as Co-Chairman of the EBS Systems in Massachusetts, I was going to withdraw my letter of September 14, 1987. In fact, a copy of the letter I intended to send you was FAX'D to you on September 20th giving you the further opportunity to review the commitment made by Mr. Thomas.

After telephone calls and a request by N.H.Y. to delay the withdrawal, I agreed. It was understood that the reason for the delay was N.H.Y. was to submit a revised commitment.

Your plan as submitted to NRC includes the EBS System. You now say, and I quote, "IF the Merrimac Valley E.B.S. Network is utilized."

I still remember the days of N.H.Y. asking Mr. Bassett of WCGY and myself to sign, "quick instant" drawn agreements with the intent of complying with FEMA requirements. My recollection was that the FEMA regulations require nuclear plants to cooperate with and be integrated with the E.B.S. System. As I tried to tell you at our meeting, there was an intent to put Massachusetts residents on equal footing with New Hampshire residents. Mr. Catapano assured me that he would install a system in the Merrimac Valley consistent with the system described later in the attached letter.

To my disappointment, the CPCS-1 station WCGY "the gateway" to Massachusetts, has not received the committed equipment or services, not to mention the other stations of the Merrimac Valley. Your selection of WLYT as a source to activate specific receivers is well intentioned and commendable, but does not activate the E.B.S. System.

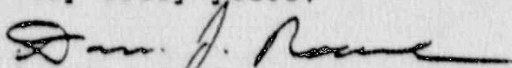
WSPD 1470

Your letter indicates a total lack of understanding of the E.B.S. System. WLYT does NOT trigger a notification to the general public. It triggers only YOUR system. The many radio stations serving the general public would receive NO notice. Your idea that the media would descend on your media center is perhaps accurate, but FEMA and the E.B.S. System do not work by press release. FEMA regulations involve agreements with CPCS-1 stations and coordination with state emergency E.B.S. chairmen. I suggest you review the regulations.

My most disappointing thought about your letter is that you say that N.H.Y.'s commitment concerning Public Notification was negotiated. Can you please tell me when, where and who negotiated away the rights of the general public ?

As you can read from the attached copy, which was previously FAX'D to you, I said that I had reviewed your plans and determined that N.H.Y. was a "recognized responsible" organization. In view of the apparent change in attitude of the operators of N.H.Y., I now formally submit withdrawal authorization, dated September 20, 1989, and I am sending a copy of this communication to the CPCS-1 station WCGY.

very truly yours,



Douglas J. Rowe
Co-Chairman
Massachusetts Emergency
Broadcast System

ATTACHMENTS;

- A. Letter of withdrawal 9/20/89
- B. Co-Chairmans EBS letter 9/14/87
- C. WCGY letter 9/14/87
- D. All CommSystem Plan & Letter dated 11/14/88
- E. N.H.Y. letter 9/29/89

cc: WCGY

"Great Radio"

P.O. Box 566 • 48 Fitchburg St • Marlboro, Massachusetts 01752 • (508) 485-1470

20 September 1989

Mr. Michael Lewis
Emergency Preparedness/Resource Supervisor
New Hampshire Yankee
Post Office Box 300
Seabrook, New Hampshire 03874


Dear Mr. Lewis:

Pursuant to our meeting today I, as Co-Chairman of the Massachusetts Emergency Broadcast System hereby revoke my letter of 14 September 1987.

New Hampshire Yankee has, regrettably, refused to honor the terms and conditions of that letter of agreement.

It has been two years since the letter was tendered and the E.B.S. stations of Merrimac Valley have not received the promised cooperation. The limited equipment installed has not fulfilled commitments made, oral or written.

Sincerely,


Douglas J. Rowe
Co-Chairman
Massachusetts Emergency
Broadcast System

Encl: Agreement 14 September 1987

WSBH 1470

The Massachusetts Emergency Broadcast System is Committed to responding to any emergency that may affect residents of Massachusetts. The Emergency Broadcast System is a voluntary organization authorized by and created by the Federal Communications Commission. Its primary function is to alert the public in the event of a Presidential Declaration of Emergency; most specifically nuclear attack. But the authority to use the EBS has been delegated down to the individual licensee which must use its "Independent discretion and responsibility".


The Massachusetts Emergency Broadcast System would recognize any responsible local business or organization that may be responsible for creating or reporting a local emergency.

After review of New Hampshire Yankee's Offsite Response Organization and determining that an incident at New Hampshire Yankee could affect Massachusetts residents and that activation of the EBS could mitigate the effects caused by an incident the New Hampshire Yankee Offsite Response Organization is recognized as a responsible local organization within the meaning of the Rules and Regulations governing the EBS.


With regard to the planning and implementation of the alerting system it is understood that NHY/OARO will provide certain services and equipment at its expense and that this process of planning and implementation will be an ongoing one.

The following equipment and services will be initially supplied:

1. Dedicated telephone line and answering device with compatible taping equipment.
2. Fax or similar device for receiving hard copy of any message.
3. RPU or similar transmit / receive equipment to enable messages to be sent / received without reliance on telephone. Also, to enable EBS station to transmit from incident area or from areas that the incident may cause an effect.


George S. Thomas
Vice President of Production
New Hampshire Yankee
Division of Public Service
Company of New Hampshire
Agent for the Seabrook
Joint Owners

July 14 1987
Date


Douglas J. Rowe
Co. Chairman
Massachusetts Emergency
Broadcast System

Sept 14 1987
Date

A LETTER OF AGREEMENT BETWEEN RADIO STATION WCGY AND
NEW HAMPSHIRE YANKEE'S OFFSITE RESPONSE ORGANIZATION

Purpose:

To activate Emergency Broadcast System as Provided Title 47 U.S.C. 151, 154 (i) and (o), and 303 (r); Chapter 1, Part 73, Subpart G, Federal Communications Commission Rules and Regulations, Radio Broadcast System (EBS) as pertains to day-to-day emergency operation and to provide for cooperation and coordination between New Hampshire Yankee's Offsite Response Organization (NHY/ORO) and the management of radio station WCGY 93.7 FM, Lawrence, Massachusetts, in the event of an accident/incident at the Seabrook Nuclear Power Station (SNPS) in Seabrook, New Hampshire.

Scope of Activity of WCGY:

The management of WCGY, Lawrence, Massachusetts, (when requested) agrees to activate the Emergency Broadcast System for the Emergency Planning Zone located within the Commonwealth of Massachusetts which consists of the following six (6) communities: Amesbury, Merrimac, Newbury, Newburyport, Salisbury, and West Newbury.

The management of WCGY further agrees to activate (when requested) the tone-activated radios supplied as part of the public notification system and broadcast emergency public information when notified to do so by the Offsite Response Director of the NHY/ORO, using a pre-arranged authentication system.

WCGY further agrees that they have and will maintain a recording capability to record the actual voice of the NHY/ORO Offsite Response Director, and they will broadcast the message, acceptance of/or participation in this plan shall not be deemed as a relinquishment of program control and shall not be deemed to prohibit the licensee from exercising its independent discretion and responsibility in any given situation.

WCGY further agrees that the NHY/ORO Offsite Response Director is authorized (through a pre-arranged authentication procedure) to activate the Emergency Broadcast System servicing the Seabrook Emergency Planning Zone area in the event that there is an accident and/or incident at the Seabrook Nuclear Power Station with off-site consequences.

The NHY/ORO Offsite Response Director will notify the management of WCGY when to activate the tone-alert radios and when to begin broadcasting Emergency Public Information messages. The context of these messages and the interval at which the messages will be repeated will be supplied by NHY/ORO.

This agreement becomes valid when signed by the signatures indicated below. Once valid, it can be terminated by either NHY/ORO or the management of WCGY by written notification ninety (90) days

AllComm

COMMUNICATIONS & TELECOMMUNICATIONS SYSTEMS

165 Martell Court, Keene, NH 03431 603/357-0009

November 14, 1988

Mr. Doug Rowe, Esq.
Morse, Morte and Rowe
P.O. Box 817
Marlboro, Massachusetts 01752

Dear Doug,

Per our discussions, attached is a description of the EBS equipment package AllComm, Inc. has developed for broadcast stations.

This package was developed based upon research relative to the EBS network's current configuration and its operational status. This research specifically examined these issues for the New England area, however, our research included discussions with Emergency Management Agencies in Florida, California, and Tennessee, broadcasters from around the country and officials from FEMA and the FCC.

The basic intent of these efforts was to determine the operational status of the EBS network. We needed to know what was broken and what could be done to fix it, if anything. These efforts were all encompassing and not limited to hardware issues. They included other important areas such as training of station personnel, development of EBS procedures for each station, and the need for ongoing preventative maintenance and surveillance programs for station EBS hardware packages.

At the same time we were conducting our review, there were several other efforts underway at a federal level which may have appeared at first to be headed towards the same goal. These efforts, however, were directed towards the further development of EBS as a communications link from the President to the public during a time of an emergency. This of course was the original purpose for which EBS was conceived.

In contrast to these efforts, the problems facing emergency management personnel and broadcasters on a daily basis are quite different. These problems often require the activation of EBS for rapidly developing technological incidents that effect several municipalities or a county-wide area. It is for these types of incidents and regional weather advisories for which EBS is most often utilized. Therefore, it is logical to conclude that EBS must be fine-tuned on a station-by-station basis in order to be responsive to these types of incidents. Our research and recommendations for creating a responsive functional EBS network are focused along these lines.

In order to achieve this goal, we have developed a basic generic equipment package to be installed at each station in the operational area. This equipment package is designed to "fix" all of the hardware items that we identified during our research as being inadequate. The package is also designed to facilitate the initial notification to station personnel and to assist personnel with EBS responsibilities once activated. This "generic" package is then tailored to fit a particular station's needs and management concerns.

Procedures for station personnel are reviewed, revised or developed, and a specially developed training program is initiated. Once installed, the EBS equipment itself is also placed under a preventative maintenance and surveillance program. A training review is conducted on an annual basis and training is provided for new station personnel as required.

Collectively, these efforts combined with the willing participation of the broadcasters, state, and local authorities create a viable and responsive EBS network.

This program and hardware equipment packages have been in place and operational in the State of New Hampshire for the Seacoast Operational Area since March of 1987. Several broadcast stations outside of New Hampshire also have installed these equipment packages. If you would like to visit one of these stations, or would prefer a demonstration of the hardware package at your location, please let me know.

Thank you again for your interest in our products and services.

Sincerely,

Gary J. Catapano,
President

GJC/cer
Attachments



COMMUNICATIONS & TELECOMMUNICATIONS SYSTEMS

165 Martell Court, Keene, NH 03431 603/357-0009

OPERATION OF THE CATAPLUNKT EBS NOTIFICATION SYSTEM

The system utilizes the CPCS-1 station as a "gateway" station allowing access and control of the operational area. The other stations in the operational area monitor the gateway station. These stations are termed satellite stations.

The equipment at the satellite stations monitors the CPCS-1 station continuously. The equipment package installed at each station consists of the following: the EBS Custom Control Unit, a TFT EBS Receiver, Encoder, Decoder Unit and a specially modified Nakamichi MR-2 Cassette Deck. High power strobe lights are utilized as visual and silent means of notification to personnel in the air studio(s).

When the gateway station transmits an EBS tone, the TFT Decoder decodes the signal and activates the EBS Control Unit which causes the following events to occur simultaneously:

1. The strobe light(s) in the air studio(s) begin to flash.
2. The receiver on the TFT "unmutes" and the emergency message being transmitted by the CPCS-1 becomes audible over the speaker. A "mute" switch is provided to override this feature if the equipment is installed in the air studio.
3. The cassette deck starts automatically and begins recording the emergency message being broadcast.
4. The broadcast audio from the CPCS-1 station comes up on the console on the channel utilized for EBS and the DJ can select it on "cue" channel in order to monitor it.

The strobe light remains "flashing" until reset by a remote reset button installed on the audio console. However, the remote reset button does not stop the tape recorder which continues to run for 10 minutes or until manually reset via a switch on the EBS Control Unit.

When alerted by the flashing strobe light(s), station personnel are trained to select the appropriate channel on the audio board and bring up the EBS audio on "cue" to determine if it is a test or an actual emergency EBS activation.

If it is an actual emergency, the station can rebroadcast the message recorded from the CPCS-1.

The encoder portion of the TFT Unit is wired to the EBS activation button installed on the audio board to allow activation from the air studio. Should an AM and FM station be co-located, the equipment can be remoted to both air studios. Special audio bridging can be added for simulcasting emergency information. Additional equipment wiring is performed at each station to allow operation of the features described above.

An outdoor antenna is normally provided with each package. Where necessary, a notch filter or "trap" is also provided to ensure proper operation in the presence of strong R.F. fields.

When complete and installed, the system is placed under a monthly preventative maintenance and surveillance program.

In order to allow integration of the Operational Area with the state-wide EBS Network, the EBS equipment package at the CPCS-1 station is tuned to monitor the State Operational Primary Relay Station.

New Hampshire
Yankee

September 29, 1989

Douglas Rowe
Mass. Emergency Broadcast System
P.O. Box 566
Marlboro, MA 01752

Dear Mr. Rowe,

Pursuant to our meeting of September 20, 1989, New Hampshire Yankee would like to outline its commitments with regard to Public Notification and future Emergency Planning participation by the State of Massachusetts.

NHY's commitment concerning Public Notification, as negotiated with federal officials, is to issue all residents, schools, businesses, public buildings, nursing homes, etc. public information material. This material outlines the responses the public should follow in the event emergency sirens are sounded within the six towns of the Seabrook Emergency Planning Zone. In addition, tone alert radios are being distributed to public & private schools, day care facilities, nursing homes, special needs facilities, hotels, motels, inns, hospitals and businesses. These radios will activate once an EBS tone is received from WLYT, and then monitor the station for emergency information.

The second issue is the future participation of Mass. in Emergency Planning for Seabrook Station. Once the State begins to plan with NHY, we will re-evaluate our broadcasting capabilities and requirements, will formulate cost effective alternatives and implement the selected alternative. If the Merrimack Valley EBS Network is utilized, due to prudence considerations, federal and State assistance must be requested, documented and denied prior to a re-evaluation by NHY.

We hope our position in this matter is clear and appreciate the support you continue to provide on our behalf. NHY wishes to continue our relationship with you and the Mass. EBS. If you have any questions or concerns please call me at (603) 474-9521 Ext. 2417. Thank you for your time and we look forward to your continued cooperation.

Sincerely,
R. Boyd, Jr.
R. Boyd, Jr.
Performance Services Manager

JJG9451

Curt Gowdy Broadcasting

October 20, 1989

Mr. B. Boyd, Jr.
Performance Services Manager
P.C. Box 300
Seabrook, New Hampshire 03874

COPY

Dear Mr. Boyd:

I have received a copy of the letter of October 13, 1989, to New Hampshire Yankee from Douglas Rowe.

I am in agreement with the facts as stated by Mr. Rowe. WCGY has not received the promised equipment or services as outlined in the letter of agreement between radio station WCGY and New Hampshire Yankee's offsite response organization.

There is NO pre-arranged authentication system, there is NO dedicated telephone line and answering device, there is NO RPU or similar transmit/receive equipment to the incident area.

The letter of September 14, 1987 was to become valid when signed and the equipment and services were rendered. Since you now say that the equipment and services are not forthcoming, I consider the CPCS-1/WCGY letter of September 14, 1987 void effective today. The management of WCGY does not intend to perpetuate an agreement that the public may rely on, when, in fact, there is no agreement, or more importantly NO E.B.S. system in place to notify the general public.

Very truly yours,

John F. Bassett

Attachment: WCGY-NHY/ORO Letter 9/14/87

cc: Douglas J. Rowe, Esq.
Leslie Greer, Esq.

New Hampshire Yankee

October 26, 1989

John Bassett
33 Franklin Street
Lawrence, MA 01840

Dear Mr. Bassett:

New Hampshire Yankee is in receipt of your letter dated October 20, 1989. It appears from your letter that you are not completely informed of New Hampshire Yankee's position regarding its commitment to WCGY/WCCM.

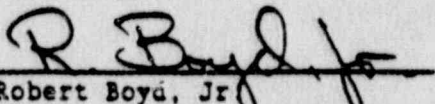
Our commitment, with regard to the Mass. Broadcasters Agreement, was to evaluate WCGY/WCCM's equipment, provide new or upgrade existing equipment to ensure the following exists:

- 1) Dedicated telephone line and answering device with compatible taping equipment.
- 2) Fax or similar device for receiving hard copy of any message.
- 3) RPU or similar transmit/receiver equipment to enable messages to be sent/received without reliance on telephone. Also, enable EBS stations to transmit from incident area or from areas that the incident may cause effect.

At a meeting on September 20th, Mr. Rowe of the Mass. Broadcasters Association took the position that NHY was to provide equipment to all of the EBS stations in the Merrimac Valley area. We reiterated our commitment to WCGY/WCCM and were under the impression Mr. Rowe understood this. It was, and still is, the position of NHY that we will evaluate your stations' equipment and supply the necessary components as outlined in the Mass. Broadcasters Agreement. (See attached.)

We would like the opportunity to provide you with further details of this unfortunate misunderstanding and conduct a review of your stations' equipment so that NHY can fulfill its commitment as outlined in the attached. Please call me at 1-603-474-9521 X 2417 at your convenience to set up a meeting to review and discuss these issues.

Sincerely,


Robert Boyd, Jr.
Manager Performance Services

RB/lmk

Attachment

LMK9557

" B "

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on November 15, 1989, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

Administrative Judge Ivan W. Smith
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Administrative Judge Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Administrative Judge Kenneth A.
McCullom
1107 West Knapp Street
Stillwater, OK 74075

John P. Arnold, Esquire
Attorney General
George Dana Bisbee, Esquire
Assistant Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301-6397

*Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Adjudicatory File
Atomic Safety and Licensing
Board Panel Docket (2 copies)
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Robert R. Pierce, Esquire
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Mitzi A. Young, Esquire
Edwin J. Reis, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory
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One White Flint North, 15th Fl.
11555 Rockville Pike
Rockville, MD 20852

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Andrea C. Ferster, Esquire
Harmon, Curran & Tousley
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Washington, DC 20009

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116 Lowell Street
P. O. Box 516
Manchester, NH 03105

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney
General
Augusta, ME 04333

Paul McEachern, Esquire
Shaines & McEachern
25 Maplewood Avenue
P.O. Box 360
Portsmouth, NH 03801

Chairman
Board of Selectmen
95 Amesbury Road
Kensington, NH 03833

*Senator Gordon J. Humphrey
U.S. Senate
Washington, DC 20510
(Attn: Tom Burack)

*Senator Gordon J. Humphrey
One Eagle Square, Suite 507
Concord, NH 03301
(Attn: Herb Boynton)

Mr. Thomas F. Powers, III
Town Manager
Town of Exeter
10 Front Street
Exeter, NH 03833

H. Joseph Flynn, Esquire
Office of General Counsel
Federal Emergency Management
Agency
500 C Street, S.W.
Washington, DC 20472

Gary W. Holmes, Esquire
Holmes & Ellis
47 Winnacunnet Road
Hampton, NH 03842

Mr. J. P. Nadeau
Selectmen's Office
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Rye, NH 03870

John Traficonte, Esquire
Assistant Attorney General
Department of the Attorney
General
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Boston, MA 02108

Mr. Calvin A. Canney
City Manager
City Hall
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Portsmouth, NH 03801

R. Scott Hill-Whilton, Esquire
Lagoulis, Hill-Whilton &
Rotondi
79 State Street
Newburyport, MA 01950

Barbara J. Saint Andre, Esquire
Kopelman and Paige, P.C.
77 Franklin Street
Boston, MA 02110

Mr. William S. Lord
Board of Selectmen
Town Hall - Friend Street
Amesbury, MA 01913

Judith H. Mizner, Esquire
79 State Street, 2nd Floor
Newburyport, MA 01950

Richard A. Hampe, Esquire
Hampe and McNicholas
35 Pleasant Street
Concord, NH 03301

Mr. Richard R. Donovan
Federal Emergency Management
Agency
Federal Regional Center
130 228th Street, S.W.
Bothell, Washington 98021-9796

Ashod N. Amirian, Esquire
145 South Main Street
P.O. Box 38
Bradford, MA 01835


Thomas G. Digman, Jr.

(* = Ordinary U.S. First Class Mail)

EXHIBIT 5

RECEIVED
December 2, 1989
DEC 02 1989
NUCLEAR REGULATORY COMMISSION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	
)	
PUBLIC SERVICE COMPANY OF)	Docket Nos. 50-443-OL
NEW HAMPSHIRE, et al.)	50-444-OL
)	Off-site Emergency
(Seabrook Station, Units 1 and 2))	Planning Issues
_____)	

**APPLICANTS' RESPONSE TO "INTERVENORS' MOTION
TO ADD AN ADDITIONAL BASIS TO THE LATE
FILED ATTACHED CONTENTION TO THE MOTION
OF NOVEMBER 9, 1989"**

Under date of November 22, 1989, the Attorney General for The Commonwealth of Massachusetts (MAG), on behalf of himself and two other intervenors, filed a pleading with the labyrinthine title of "Intervenors' Motion to Add an Additional Basis to the Late Filed Attached Contention to the Motion of November 9, 1989" (hereinafter the "Motion"). The thrust of the Motion is that WHAV-AM and WLYT-FM, the EBS radio stations upon whose reliance by Applicants MAG claims to be a newly-discovered fact,¹ have too small a normal

¹ See 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) [hereinafter "November 9 Motion"].

8912190158

listening audience to suffice for EBS notification of the public in a radiological emergency.² In light of the fact that this latest proffered assertion lacks any regulatory basis, is unexcusably late in being filed, fails to raise any safety issue (let alone a significant one), and fails to meet virtually all of the rest of the requirements for reopening the record, the Motion should be denied.³

ARGUMENT

As MAG implicitly concedes in his Motion,⁴ this attempt to reopen the record and litigate the proffered radio coverage issue must meet the requirements of 10 C.F.R. § 2.734. These are:

"(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 or environment issue.

"(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially."

² Motion at 2. In point of fact, the SPMC relies on high-powered sirens as the primary means of alerting and notifying the public of a radiological emergency. Plan at 3.2.5. EBS is thereafter employed to instruct the public as to protective action recommendations.

³ Moreover, the plain purpose of the Motion, in at least substantial part, is to attempt to rebut Applicants' response to MAG's November 9 motion. In this respect, the Motion contravenes 10 C.F.R. § 2.730(c).

⁴ See Motion at 3, 10.

10 C.F.R. § 2.734(a)

In addition,

"The motion must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Each of the criteria must be separately addressed, with a specific explanation of why it has been met"

10 C.F.R. § 2.734(b) (emphasis added).

Furthermore, a motion to reopen relating to a new issue must also meet the 10 C.F.R. § 2.714(a)(1) five-factors test. 10 C.F.R. § 2.734(d). Finally, any late-filed contention must also meet the requirements of basis and specificity applicable to all contentions.

As is discussed in detail below, the Motion does not meet the requirements of § 2.734(a), lacks the requisite affidavits, fails the five-factors test, and lacks any regulatory basis. For each of these four independently sufficient reasons, the Motion should be denied.

I. THE PROFFERED CONTENTION LACKS ANY REGULATORY BASIS.

Before turning to the other substantive and procedural deficiencies of the Motion, it should be noted that MAG is asking this Board to reopen the record, authorize further discovery, and then hold more hearings on an issue which has no bearing on Applicants' compliance with the regulations of this agency. As the NRC Staff has recently pointed out in

response to the MAG's related motion to reopen,⁵ ALAB-911 has made clear that Applicants can rely upon the existence of the state-sponsored, FCC-approved EBS system in the Commonwealth and the Seabrook EPZ to meet the notification requirements of 10 C.F.R. § 50.47(b)(5) and 10 C.F.R. Part 50, App. E. IV. D.⁶ As the Staff also pointed out, MAG's own affidavit and documents offered in support of his November 9 EBS contention demonstrate the existence, scope, and efficacy of the EBS system extent in the Seabrook EPZ -- e.g., within 8 minutes of authorization by the Governor or his designee, every EBS station in the Commonwealth could be broadcasting emergency messages.⁷ That Applicants have supplemented the capabilities of the EBS system with an additional direct link to two radio stations thus has no bearing on compliance with

⁵ See NRC Staff Response to Intervenors' Motion to Admit a Late Filed Contention and Reopen the Record on the SPMC Based Upon the Withdrawal of the Massachusetts EBS Network and WCGY, at 3-5, 7-8, 9-10 (November 20, 1989) [hereinafter "Staff Response"]. Given that the Staff's brief was served by Federal Express and thus would have been received by MAG a day prior to the filing of the Motion, MAG's failure to address ALAB-911 in his Motion is noteworthy.

⁶ Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-911, 29 NRC 247, 254-255 (1989).

⁷ See Staff Response at 4-6 and sources cited therein. Inasmuch as the present Motion piggy-backs on MAG's November 9 EBS motion, the Board can and should examine the documentation proffered in support of that earlier Motion to determine whether or not those documents demonstrate any basis for the contention whose admission is sought. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC ___, CCH Nuc. Reg. Rptr. par. 31,105 (July 26, 1989), at CCH page 32,725.

any regulatory requirement. MAG's proffered basis, that these radio stations generally have had only a small listening audience under everyday conditions, is thus likewise irrelevant to any question of regulatory compliance, and accordingly must fail for lack of basis.

II. THE MOTION FAILS TO MEET THE REQUIREMENTS FOR REOPENING THE RECORD.

The Motion is not timely, does not raise a significant safety issue, and does not demonstrate that a different result would have been likely. As to each of these three requirements, moreover, the Motion lacks the requisite affidavit support. Finally, the Motion fails the five-factor test, since factors (i), (iii), and (v) weigh against it.

A. The Motion is Not Timely.

A party seeking to reopen the record is required by 10 C.F.R. § 2.734(b) to provide affidavit support for the assertion that each of the criteria in 10 C.F.R. § 2.734(a) has been met. Despite this unambiguous regulatory requirement, MAG offers no affiant as to his assertion that

this Motion is timely filed.⁸ For that reason alone, the Motion should fail.⁹

Prescinding from this deficiency, the Motion simply is not timely. As Applicants discussed at length in their response to MAG's previous EBS motion,¹⁰ MAG has (or should have) known for quite some time that Applicants relied upon WHAV and WLYT. The FEMA-REP-10 Report of April 30, 1988, and the June 1988 correction to that report made that fact clear.¹¹ So did MAG's November 16, 1988 deposition of Gregory Howard.¹² So did MAG's cross-examination of Anthony Callendrello on June 28, 1989, in which Mr. Callendrello

⁸ The burden of showing timeliness is upon MAG. Given the actions by MAG, and the documents and testimony available to MAG, which are discussed *infra*, MAG's failure to offer any affidavit on the issue of timeliness is particularly suspicious.

⁹ MAG does not argue that the Motion raises "an exceptionally grave issue" which could excuse untimely filing. Nor could he credibly make such an argument, given the undisputed fact that the state-sponsored, FCC-approved EBS network covering the Seabrook EPZ could have an emergency message on the air within 8 minutes. Massachusetts Emergency Broadcast System Operational Plan at 2 (May 1988), Exhibit 1 to Affidavit of Robert Boulay Regarding the Voiding of the EBS Letters of Agreement (November 9, 1989) [hereinafter "Mass. EBS Plan"].

¹⁰ Applicants' Answer to Intervenors' Motion to Admit a Late-Filed Contention and Reopen the Record Based upon the Withdrawal of the Massachusetts E.B.S. Network and WCGY, at 3-8 (November 15, 1989) [hereinafter "Applicants' Answer"].

¹¹ *Id.* at 3-4.

¹² *Id.* at 4.

directed counsel for MAG to "[t]he EBS station that is identified in the SPMC."¹³

Thus MAG could have raised the listening-audience issue proffered in the Motion long before November 9, 1989. And, in fact, he did raise it (albeit not in reference to any admitted contention). On May 2, 1989, Assistant Attorney General Stephen Jonas cross-examined Applicants' witnesses as to what "percentage of the population of the EPZ, how many people would be listening to that station?", and counsel for Applicants stipulated with MAG that "it's unlikely that even a significant percentage of people will actually be listening to the stations that are the EBS stations at the time the balloon goes up."¹⁴ MAG then filed a proposed finding

¹³ Id. at 7 (emphasis added). MAG attempts to claim, Motion at 4 n.2, that confusion arose from Assistant Attorney General Jonas's reference, in his May 2, 1989 cross-examination, to WLYT and WCGY. See id. at 5. Of course, in the same examination the same counsel for MAG asserted that only WLYT was relied upon as an FM station, and the witness being examined stated that he needed to consult the unredacted documents to be sure what the actual stations were.

¹⁴ Id. at 4, 6. It is interesting that, although Applicants reproduced this entire exchange in their November 15 brief, MAG attaches to his Motion only a snippet of the exchange, specifically omitting the above-quoted stipulation. This omission by MAG is important, because the stipulation binds MAG as well as Applicants to the position that "it's unlikely that even a significant percentage of people" would be listening to the stations relied upon by Applicants. If MAG did indeed believe, at the time he agreed to this stipulation, that Applicants relied on WCGY as well as WLYT and WHAV, then MAG was agreeing that even the inclusion of WCGY did not give access to a significant listening public. Thus the loss of WCGY has no significance, and the present Motion must fail by virtue of MAG's prior stipulation. If, on the other hand, MAG believed that he

relying upon that cross-examination: "(limited number of EBS stations; Applicants stipulate that it is unlikely that significant number of people will be tuned into the EBS station when 'the balloon goes up.')." ¹⁵ Furthermore, on June 28, 1989 Assistant Attorney General Pamela Talbot cross-examined Applicants' witness as to listening public and Arbitron ratings:

"Q. Well, isn't it a fact that EBS is only carried on local Essex County stations?

"A. (Callendrello) The EBS station that is identified in the SPMC is located in Essex County. However, I wouldn't call it a local Essex County station, it's a 50,000 watt FM station. Mr. Catapano can address the range. But I know it has got a substantial range. I've picked it up probably 40 or 50 miles away, although he can talk about what the licensed range of that would be.

"Q. If he wants to, fine.

"A. (Catapano) It is an area that extends well beyond the emergency planning zone.

"Q. Isn't it a fact though that the news releases are carried by big Boston radio stations that have the largest listening public?

"A. (Callendrello) I don't know what the Arbitron ratings are for the various stations"

Tr. 27893-94.

was stipulating only to the audience of WLVT and WHAV, then he knew in May that WCGY was not relied upon. In either case, the Motion simply cannot stand in the face of the stipulation entered into by MAG on May 2, 1989.

¹⁵ Massachusetts Attorney General's Proposed Findings and Rulings of Law with Respect to Siren Issues, at 29 (June 12, 1989).

In light of the documents and testimony available to MAG, and particularly in light of the litigatory uses made by MAG of that information in May and June of 1989, it strains credulity past the breaking point for MAG to contend that he could not have offered this Motion until November 22.¹⁶

B. No Significant Safety Issue Exists.

The contention proffered by the Motion, which seeks to litigate the "proportion of the population in the EPZ [that] listen[s] to [WHAU and WLYT],"¹⁷ does not raise any safety issue, let alone a significant one. Any best efforts response to a Seabrook emergency would include activation by the Governor of the Massachusetts EBS network, which would have emergency messages on the air-waves within 8 minutes.¹⁸ WHAV and WLYT may be on the air even sooner, thanks to Applicants' direct link to them, but in either case there is no question but that the 15-minute notification requirement can and would be met. That being so, no safety issue exists.

¹⁶ Indeed, even if one accepts MAG's assertion that he could not have known of the issue until October 16 (see November 9 Motion at 7 n.3), MAG has not shown good cause for the over five week delay in filing the Motion. cf. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-4, 29 NRC 62, 70, aff'd, ALAB-918, 29 NRC 473 (1989).

¹⁷ Motion at Attachment A.

¹⁸ Mass. EBS Plan at 2. There can be no doubt that the Governor would authorize activation of the EBS system. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-8, 29 NRC 193 (1989).

Even if the state-sponsored, FCC-approved EBS network were somehow wished out of existence by MAG, moreover, the Motion would still fail to raise a significant safety issue with the required affidavit support. What the normal listenership of WHAV and WLYT may be -- the subject of paragraphs 1-4 of the Kelsey Affidavit relied upon by MAG -- is immaterial. The only possible safety issue would be (again, assuming the non-existence of the rest of the EBS network) how many persons would hear the messages on WHAV and WLYT during the emergency, with the sirens sounding, with reference to Applicants' pre-emergency information (which on literally every page instructs the public to tune to those two stations)¹⁹, and with televised and radio news releases instructing them to tune to the two EBS stations. Even a quick review of the curriculum vitae provided for attorney Kelsey reveals that he is in no way qualified as an expert in the emergency and human behavior fields central to that issue.²⁰

¹⁹ Joint Stipulation Regarding Pre-Emergency Information Issues, ff. Tr. 28285, at 2, 3, 4. Having successfully insisted that Applicants make these changes to the pre-emergency information, MAG should now be estopped, by his own stipulation, from claiming that the pre-emergency information would have no effect. E.g., Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 58 n.2 (1984), aff'd, ALAB-798, 21 NRC 357 (1985).

²⁰ Moreover, putting aside the fact that attorney Kelsey has no qualifications to render the opinions contained in paragraph 5 of the affidavit written for him by MAG (see Motion at 6), those opinions are hedged and speculative -- e.g., "it is

C. There Has Been No Showing That a Different Result Would Be Likely.

ALAB-911 makes clear beyond peradventure that a different result -- i.e., denial of a license -- could not result, even if all of MAG's unsupported assertions were true, and even if together they met the substantive and procedural requirements for admission. Moreover, MAG again offers no affidavit support for his assertions as to this requirement of 10 C.F.R. § 2.734(a).

D. The Five-Factor Test Weighs Against Admission of the New "Basis".

As MAG concedes,²¹ the Motion must meet the five-factor test of 10 C.F.R. § 2.714(a)(1). As discussed in Section II.A above, there is no good cause for the extreme lateness in filing the Motion; hence the first factor weighs against admission. Moreover, having "fail[ed] to demonstrate good cause for not filing the contention in a more timely fashion,

conceivable" -- and do not indicate that Kelsey was even aware of the existence of the pre-emergency information prepared by stipulation with MAG, or of the news releases.

Nor is MAG's argument saved by his citation out of context to, and mischaracterization of, the testimony of Dr. Mileti. Motion at 14. MAG again carefully failed to cite to Dr. Mileti's testimony which was on point, to the effect that Applicants' plan was designed to encourage persons to tune to those EBS stations, through use of news releases and other means. Tr. 27894-96.

²¹ Motion at 3. Although MAG has at least twice before raised questions concerning EBS radio listening audiences, see pages 7-8 supra, he has not done so in the context of a then-admitted contention, and thus the requirements of 10 C.F.R. § 2.734(d) and § 2.714(a)(1) apply.

[MAG] must make a compelling showing on the other four factors."²² This MAG has not done.

As usual it must be conceded that the second and fourth factors favor the Movants, but these are the less weighty factors.²³ With respect to the third factor: Commission "case law establishes both the importance of the third factor in the evaluation of late-filed contentions and the necessity of the moving party to demonstrate that it has special expertise on the subjects which it seeks to raise. [Citation omitted.] The Appeal Board has said: 'When a petition addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony'."²⁴ On a cursory look, the Motion might be viewed as having complied with the requirements of

²² Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-918, 29 NRC 473, 484 (1989) (emphasis in original); see also Virginia Electric & Power Co. (North Anna Station, Units 1 and 2), ALAB-289, 2 NRC 395, 398 (1975).

²³ Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 245 (1986); South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

²⁴ Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986), citing with approval, Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). Accord, Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-918, 29 NRC 473, 483-84 (1989).

the third criterion; but, on close inspection, it has not. The sole affiant offered by MAG has no expertise in the areas of human behavior and radio listenership during emergencies, the issues on which the Motion seeks a hearing. Thus the Motion provides no demonstration that MAG would assist in the development of a sound record.

As to the fifth factor, there can be no doubt that granting the Motion would produce substantial delay in the final conclusion of these proceedings. Hence, factors one, three, and five weigh against admission of the new "basis",²⁵ and the Motion should fall on those grounds as well.

CONCLUSION

For each of the reasons stated above, the Motion should be denied.

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²⁵ Moreover, even if the Motion were timely filed, MAG's failure to carry the third and fifth factors should, in this case, be fatal. 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).

CERTIFICATE OF SERVICE

I, Jeffrey P. Trout, one of the attorneys for the Applicants herein, hereby certify that on December 2, 1989, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

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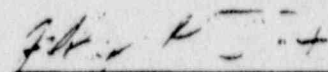
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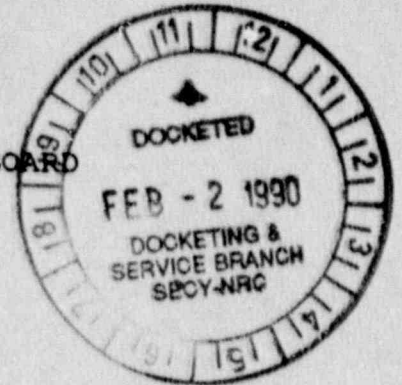
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Before Administrative Judges:

G. Paul Bollwerk III, Chairman
Alan S. Rosenthal
Howard A. Wilber



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

) February 1, 1990

CERTIFICATE OF SERVICE

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