

November 17, 1989

STATEMENT OF ROYCE N. SAWYER

RE: NEW HAMPSHIRE YANKEE

During the latter part of October , 1989, I was contacted by Ms. Leslie Greer of the Massachusetts Attorney General's (AG) office. Ms. Greer forwarded to me a copy of an affidavit relative to New Hampshire Yankee (NHY) and NHY's commitment to the Massachusetts Emergency Broadcast System (EBS).

During the period from October 22, 1989 to November 3, 1989, I was absent from the Civil Defense Agency due to surgery and subsequent recuperation. During that period of recuperation, I was contacted by the AG's office and requested to sign the aforementioned affidavit and return it to the AG's office.

On November 3, 1989, I met with Leslie Greer at the Civil Defense Agency and requested that the State Director, Mr. Robert J. Boulay, be present. Ms. Greer insisted that the document be signed that day by myself as I was considered to be the most knowledgeable person in the Civil Defense Agency on the Massachusetts EBS. I indicated to Ms. Greer that if the document was to be correct there were several changes to be made in the wording, however, I was informed that the changes would not affect the original intent of the document. Two hand corrections were made on the affidavit at that time but there were other changes brought to Ms. Greer's attention and not included.

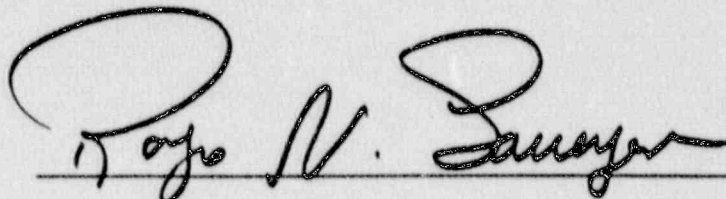
Although I was shown documents on November 3, 1989, that indicated certain equipment had not been supplied to the radio station WCGY by NHY and that as a result WCGY was removing itself from the EBS system, I had not been involved for a period of more than two years with any planning objectives by NHY. Instructions to this agency and passed down by the State Director to all employees informed us to refrain from participating

or communicating with NHY in regard to the Seabrook Nuclear Power Plant. Under pressure from Ms. Greer that a deadline had to be met, I signed the affidavit on November 3, 1989.

During the weekend of November 4 and 5, 1989, I had time to review the affidavit and to assimilate the information contained in letters concerning WCGY and NHY. For the most part, the information contained in the affidavit is correct according to my knowledge, that is, how the EBS system operates in Massachusetts. Information unknown to this agency due to the "hands off" policy may alter or significantly affect plans and equipment in support of notification procedures. Furthermore, the existing dedicated communications systems now in place between the NHY, Civil Defense and WROR does provide a path into the EBS system in the Merrimac Valley area.

My concerns with the affidavit of November 3, 1989 were outlined in detail in a memorandum to the State Director on November 6, 1989 (copy attached) and I requested in that memorandum that the document be recalled. After careful review on November 7, 1989, I outlined changes that I wished to have made in the affidavit, and, should they be accepted, I would then feel comfortable with the document. However, the AG's office would not consider the changes and my name was removed from the document and the name of the State Director was substituted. I was informed by telephone on November 7, 1989, by Mr. John Traficonto of the AG's office, that my signed document would not be submitted.

The foregoing is true and correct to the best of my knowledge and belief.

A handwritten signature in cursive script, reading "Royce N. Sawyer", written over a horizontal line.

Royce N. Sawyer





MICHAEL S. DUKAKIS  
GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
CIVIL DEFENSE AGENCY AND OFFICE OF EMERGENCY PREPAREDNESS  
600 WORCESTER ROAD  
P.O. BOX 1499  
FRAMINGHAM, MASS. 01701-0317



ROBERT J. BOULAY  
DIRECTOR

DATE: November 6, 1989  
TO: Robert J. Boulay  
FROM: Royce N. Sawyer *RNS*  
SUBJECT: Affidavit for Seabrook

On November 3, 1989, I signed an affidavit in the matter of Public Service Company of New Hampshire. As you may recall, Director, at that meeting I stated that the document should have been signed by management or the Director of the planning group. I further stated that I have not been involved in the planning process for New Hampshire Yankee. Furthermore, in that regard, this agency has not been authorized to participate in planning for public safety with New Hampshire Yankee.

I am particularly concerned with the statement in paragraph 3 of that affidavit which states "The import of WCGY voiding its prior letter of agreement with NHY and withdrawing from participating in the emergency planning means that the EBS for the Merrimac Valley operational area cannot be activated by NHY as called for in the SPMC." I am also concerned with the wording in paragraph 4 that states "there does not exist any provision for insuring that notification is made to the public in the Massachusetts emergency planning zone for Seabrook Station within the 15 minutes required by NUREG 0654, FEMA-REP-1, Revision 1 Appendix 3."

Because I (and the agency) have not been authorized to plan with New Hampshire Yankee, this agency does not have information relative to emergency communications from New Hampshire Yankee to radio stations in Massachusetts.

Due to recent surgery and my absence from the agency, I have not had ample time to review the affidavit at length with either yourself or the planning group.

After careful deliberation, I must state that I am not in complete agreement with the referenced statements in paragraphs 3 and 4 and that there may be equipment in place to activate an EBS radio station in the Merrimac Valley operational area by New Hampshire Yankee. Furthermore, Massachusetts Civil Defense, if notified by New Hampshire Yankee of an incident affecting public safety, could activate the Emergency Broadcast System from this agency's headquarters.

I request that this agency recall the affidavit and that legal counsel be retained prior to the execution of this document. In summary, I believe that I was pressured into signing of the affidavit without that legal advice and to meet a deadline imposed by the Attorney General's office.





MICHAEL S. DUKAKIS  
GOVERNOR

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ROBERT J. BOULAY  
DIRECTOR

10

DATE: November 7, 1989  
TO: Robert J. Boulay  
FROM: Royce N. Sawyer  
SUBJECT: Affidavit for Seabrook

If I am to sign the affidavit presented by Leslie Greer, November 7, 1989, through the Attorney General's office, I request the following changes:

1. Page 2 line 17 and 18 should read:  
"local operational area basis may be made by directly contacting the operational area's primary" ✓
2. Page 3 line 2 should read:  
"signal followed by the informational message to the adjacent operational" +
3. Page 3 line 5 should read:  
"in the adjacent local operational areas and are tuned to WROR. There are" +
4. Page 3 line 14. No exhibit 1 included with documents. ?
5. Page 4 line 18 should read:  
"Letter of agreement with WLYT (F.M.)/WHAU (A.M.). WLYT/WHAU cannot activate the" ✓
6. Page 4 line 24 and 25 should read:  
"of the public who do not happen to be listening to radio stations WHAV or WLYT." ✓
7. Page 5 paragraph 4 should be eliminated in its entirety.
8. Page 5 line 11 should read:  
"other than through commercial phone. Commercial telephone may" ✓

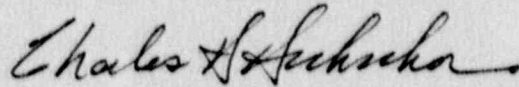
State of New Hampshire

Rockingham, ss

February 13, 1990

Then appeared before me the above-subscribed Royce N. Sawyer, and made oath that the statements set forth in the foregoing memoranda dated November 6, 1989; November 7, 1989; and November 17, 1989, are true to the best of his knowledge.

Before me,



Charlie H. Heckscher  
Notary Public

My Commission Expires: February 28, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before the Administrative Judges:

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

In the Matter of

PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE, ET AL.

(Seabrook Station, Units 1 and 2)

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

)  
)  
)  
)  
) November 8, 1989  
)

WITHDRAWAL OF MOTION

The Intervenors hereby withdraw the 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 WGCY that was filed on October 30, 1989.

RESPECTFULLY SUBMITTED:

JAMES M. SHANNON  
ATTORNEY GENERAL

*Leslie B. Greer*

John Traficonte,  
Chief, Nuclear Safety Unit  
Leslie Greer  
Assistant Attorney General  
Nuclear Safety Unit  
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~~8911160099~~



In any event, it is quite obvious that as a result of its licensing action the Board has effectively denied all pending motions for further hearings prior to licensing. Not deciding, in these circumstances, is a form of decision. Therefore, the only possible justification for this procedure is that all pending motions were subject as a matter of law to the motion to reopen standard of § 2.734 and that none of these motions met that standard.<sup>59/</sup> As discussed below, the EBS contention did meet that standard and nothing the Board says in its "explanation" contradicts this. Further, the contentions challenging the scope of the 1989 onsite exercise as a matter of law could not be subject to that additional standard and by applying that standard, the Board's actions further support a judicial presumption of bad faith.

1. The EBS Contention

The Applicants lost the capacity for utility-initiated operation of the Emergency Broadcast System ("EBS") in the relevant operational area of Massachusetts on October 20, 1989

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<sup>59/</sup> Intervenors believe that by not providing its reasons and findings in this regard on either November 9 or November 20 the Board has violated the Administrative Procedure Act. The point in the text, however, is that, analytically, whenever the Board says whatever its going to say, as a matter of law on November 9 it denied all pending motions on the grounds that the motion to reopen standard had not been met. (There is no serious challenge on the facts to "timeliness.") Intervenors' rights to a prelicensing hearing under the AEA entitle them at the very least to some decision (in this instance one without findings or reasons) on all pending timely requests for such a prelicensing hearing.



when the EBS "gateway" station with whom Applicants had had a contract declared that contract void because of Applicants failure to provide necessary equipment. At or near that time, the non-public entity called "Massachusetts EBS" notified Applicants that EBS no longer recognizes the utility response organization as a "recognized responsible" organization under EBS regulations. These events were made known to the Smith Board directly upon their occurrence by the NRC Staff.

On October 30 the Intervenors submitted a late-filed contention and sought to reopen the record in this regard. However, because Intervenors' affiant (Sawyer) informed the Mass AG on the morning of November 8 that he did not wish to testify in this proceeding, the Intervenors withdrew the October 30 motion by fax at approximately 11:30 A.M. on November 8. At that same time, Attorney Traficonte telephoned Robert Pierce, Esq. and explained why and under what circumstances the October 30 motion was being withdrawn. Attorney Traficonte stated that the Mass AG had verbal agreement from Robert Boulay, Director of the Massachusetts Civil Defense Agency and Sawyer's superior, that he, Boulay, would testify to matters set forth in the Sawyer Affidavit.<sup>60/</sup> Traficonte further stated to Pierce that because it was unclear whether Boulay would be able to sign the

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<sup>60/</sup> The Affidavit sets out the working of the EBS in Massachusetts. Boulay is conversant with these matters and had reviewed earlier the Sawyer Affidavit before it was filed on October 30.

affidavit that day (November 8) or the next day (November 9), the Intervenor felt it necessary to withdraw the October 30 filing and refile it either that day or the next. Traficonte stated that there was no question that it would be immediately refiled. Pierce stated that he would communicate these facts and circumstances to the Licensing Board. Traficonte Aff't at ¶ 4. On November 9 it was refiled by Express Mail. Attached as Exhibit 4 is a copy of the Certificate of Service.

Notwithstanding these facts, the Smith Board stated:

This [EBS] motion dated November 9, 1989 and served by first class mail that date was received by the Board after LBP-89-32 was rendered (November 9) and served (November 13). An apparently identical earlier motion with the same title was dated October 30, 1989. The October 30 motion was withdrawn by a faxed "Withdrawal of Motion" dated November 8, 1989. Thus, it is not literally true that the EBS motion was pending before this Board when LBP-89-32 issued. However, since no appeal had been taken from LBP-89-32 when the second EBS motion finally arrived, this Board continued to have jurisdiction over it. The fact remains that the Board did not know about the November 9 EBS Motion when it rendered the partial initial decision, LBP-89-32.

These statements are simply false. The Board's assistant had been told precisely what was occurring. The November 9 Motion was filed by Federal Express and pursuant to ¶ 2.701 filing is complete upon mailing. Moreover, the important issue presented by the November 9 Motion was already described in detail in the virtually identical October 30 Motion, and the underlying facts were known to the Board even before that.

When the PID issued, obviously, there had been no response filed to the November 9 filing and no response had been filed by November 8 when the October 30 motion had been withdrawn.



Even by November 20, when it issued its "explanation," the Board had not received the Staff response.<sup>61/</sup>

Nonetheless, the Board states:

the fact that it [the EBS motion] was submitted, withdrawn, and resubmitted, and that the matter is not yet fully briefed indicates that its potential effect of [sic] the outcome of the proceeding is too speculative to have warranted deferring or recalling our decision authorizing a full power operating license. We have nevertheless examined those papers and find nothing sufficiently grave to justify any delay.

Supp. at 40-41. Obviously, if the November 9 motion filed even before the PID was docketed meets the applicable standards then intervenors have a right to litigate this issue prior to licensing. Of course, that right has now been denied. The only basis for this denial set forth in anything the Board has written is the last sentence in the portion of the Supplement quoted above, which indeed is the last sentence of the Supplement. This is hardly "reasoned decisionmaking" (5 U.S.C. § 557(c)), particularly when the Board's significant safety "judgment" is made before the responses are even filed and in direct contradiction of governing law as cited to the Board in both the October 30 and November 9 motions:

Extended discussion should not be necessary with regard to the obvious safety significance that attends upon compliance with the Commission's regulation designed to provide the members of the public located inside the EPZ with "early notification and clear instructions" in the event of a radiological emergency.

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<sup>61/</sup> The Staff response was filed on November 20.

Seabrook, ALAB-883, 27 NRC 43, 50 (1988) (footnote omitted).<sup>62/</sup>

2. The Scope Contentions

No extended analysis of the disposition of Intervenor's scope contentions is necessary.<sup>63/</sup> The September 1989 exercise was material to any Seabrook licensing action. App. E.IV.F.1. CLI-89-19. Intervenor had a right to litigate it. NRC law is clear that contentions that challenge the scope of an exercise are admissible. Finally, it is not permissible for the agency to apply the motion to reopen standard to such exercise contentions. To do so supports a judicial presumption of bad faith. San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1312, 1316-1317 (D.C. Cir. 1984); UCS v. NRC, 735 F.2d 1437. See also Seabrook, ALAB-918, slip opinion at 13 n. 21.

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<sup>62/</sup> It is obvious that the Smith Board can not now reach any reasoned judgment on any of these pending matters because, inter alia, to admit any contention at this point would be an acknowledgement by the Board that it denied Intervenor's hearing rights on November 9. For this reason, the Intervenor sought in their November 15 Motion to the Appeal Board to have that Board take jurisdiction over these still pending matters. In its November 16 Order transferring jurisdiction back to the Licensing Board thereby denying Intervenor the relief sought, the Appeal Board noted, no doubt ironically, that we think it appropriate for that Board to consider the contentions in the first instance. November 16 Order at 1. (emphasis supplied).

<sup>63/</sup> The Supplement at 34 n.19 identifies the pleadings. In any event, Intervenor are simply unable to comprehend the Board's "analysis" set forth at 37-40. Little hinges on this, since the Board clearly applied the motion to reopen standard to these contentions and found them of no safety significance. Supp. at 39.



impartial consideration of the merits of that contention occurs, no operating license should issue.

COMMENTS ON THE EBS CONTENTION

The SPMC contemplates the use of the Emergency Broadcast System ("EBS") as the primary means for notifying the public in the event of a radiological emergency at Seabrook Station. In a letter dated October 20, 1989 John F. Bassett, manager of WCCM(AM)/WCGY(FM) ("WCGY"), repudiated WCGY's prior agreement to participate with New Hampshire Yankee ("NHY") in emergency planning and to activate the EBS in the event of an emergency at Seabrook Station. Without the cooperation of WCGY, the Applicants will not be able to activate the EBS servicing the Seabrook Emergency Planning Zone ("EPZ") in Massachusetts. Without the activation of the EBS, the Applicants will not be able to provide notification to the public in the event of an emergency in accordance with the SPMC and as required by applicable law and regulations.

In response to the withdrawal of the EBS and WCGY, the Intervenor filed a late-filed contention challenging the adequacy of the SPMC's provisions for notification of the public in the event of a radiological emergency. In support of their motion for the admission of the late-filed contention and to reopen the record, the Intervenor submitted affidavits of Robert Boulay, Director of the Massachusetts Civil Defense Agency, and A. Anthony Kelsey, Vice President and General Counsel of the Arbitron Company.

Mr. Boulay's affidavit demonstrated that the import of WCGY's non-cooperation is that NHY will not be able to contact and activate the EBS as called for in the SPMC, nor is there any assurance that an EBS activation can be accomplished by the government of Massachusetts within the 15 minute requirement of NUREG 0654.<sup>1/</sup> Mr. Kelsey's affidavit demonstrates that the one radio station that has a current LOA with New Hampshire Yankee is listened to by a very small percentage of the population over age 12 in the county containing the Massachusetts EPZ.<sup>2/</sup> Based upon this he concluded that relatively few people would hear an emergency message transmitted only over that station.

The lack of a mechanism by which to provide notification of a radiological emergency to the populace of the EPZ poses a significant safety issue that should be resolved prior to the issuance of any operating license.

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<sup>1/</sup> The NRC Staff are apparently under the false impression that since statewide downstream EBS activation can be accomplished within eight minutes from a transmission by WROR, the Massachusetts primary relay station, that activation would meet the NUREG-0654 criterion. The NRC Staff overlooks the fact that that eight minute downstream activation of the EBS would take place after the EBS message is provided to WROR. According to Mr. Boulay there is no assurance that WROR or WCGY could be provided the EBS message within 15 minutes. The eight minute downstream activation of the EBS would take place after the elapse of time that would be required to put out a message over WROR.

<sup>2/</sup> At any given time between 6am and midnight less than one-half of one percent of the 123 population listens to the station.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission:

Kenneth M. Carr, Chairman  
Thomas M. Roberts, Commissioner  
Kenneth C. Rogers, Commissioner  
James R. Curtiss, Commissioner

<hr/>		
In the Matter of	)	Docket Nos. 50-443-OL
	)	50-444-OL
PUBLIC SERVICE COMPANY	)	(Emergency Planning Issues)
OF NEW HAMPSHIRE, <u>ET AL.</u>	)	
	)	
(Seabrook Station, Units 1 and 2)	)	December 1, 1989
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AFFIDAVIT OF JOHN TRAFICONTE

I, John Traficonte, do make oath and state:

1. I am an Assistant Attorney General in the Commonwealth of Massachusetts and Chief of the Nuclear Safety Unit in the Department of the Attorney General.
2. On occasion counsel in the Seabrook proceeding have communicated with the Licensing Board on various matters through Robert Pierce, Esq., a legal assistant to that Board. This process has the approval of the Board.
3. On November 8 at or around 11:30 a.m., I telephoned Mr. Pierce in Washington from my office in Boston to discuss two distinct matters: 1) I wanted to explain the circumstances of a "Notice of Withdrawal" of an earlier filed October 30

Intervenor Motion to Reopen the Record ("EBS Motion") which I was having faxed to the Licensing Board at the time of my call; and 2) I wanted to state Intervenor's desire and need for the scheduling of a pre-hearing conference with the Board and parties to address the impact of ALAB-924 which I had received the previous day.

4. With regard to the first matter, I explained the circumstances surrounding Intervenor's witness Royce Sawyer's decision (finally confirmed by me by telephone at around 10:00 a.m. that day) not to participate further in the Seabrook proceeding by testifying at any subsequent hearing. During this discussion, Pierce used the accurate expression that Sawyer had simply "gotten cold feet" about getting involved in the Seabrook case. After explaining that Sawyer's superior, Robert Boulay, had agreed to sign a virtually identical affidavit, I stated to Pierce that I was unsure whether Boulay would be in my office later that day or early the next to sign it. In these circumstances, I stated that Intervenor believed it technically appropriate to withdraw their October 30 EBS Motion, since their earlier affiant was no longer available, and simply file another EBS Motion immediately upon obtaining the Boulay signature. I told Pierce that Intervenor proceeded in this way because they anticipated that if Intervenor offered a substitute, although virtually identical, affidavit on November 8 or November 9 without the accompanying legal



paraphernalia now required -- full discussion of the motion to reopen and late-filed contention standards has been required of every document or pleading amendment filed, pursuant to the Licensing Board's September 26 "Unauthorized Pleadings" Order -- they anticipated that the Staff, Applicants and the Board would characterize it as an "Unauthorized Pleading" and summarily disregard it. I stated that the simplest solution appeared to be a withdrawal and a new filing of the identical motion, although I indicated that I was aware that the timeliness of this new filing could then be challenged. I told Pierce that I would file the new pleading that day or at the latest the next day. Pierce told me he would communicate the substance of our conversation to the Licensing Board.

5. With regard to the second matter, I stated that Intervenor's believed it was appropriate as soon as practicable to have a pre-hearing conference to discuss the impact of ALAB-924 on the course of the proceeding. In this regard, I told Pierce that I had heard a rumor that morning from a third party that the NRC Staff intended to request that the Board issue a Seabrook license authorization notwithstanding ALAB-924. I asked Pierce directly whether the Staff had made such a request. He laughed, indicated surprise concerning such a request and stated that no such request had been made to the Board. I then told Pierce that Intervenor's obviously would wish to be heard prior to any licensing action regarding

ALAB-924's impact on the Board's capacity to issue a license. Pierce again laughed and stated that that seemed obvious to him. Then, Pierce told me again that he would communicate my requests to the Board.

6. The following day, November 9, I prepared and faxed to the Board a formal request for hearing in light of ALAB-924. In this document, I repeated some of the statements I had made to Pierce the day before. I indicated that Intervenors believed that ALAB-924 required further hearings on the adequacy of the NHRERP and also affected any decision that might issue on the adequacy of the SPMC. I did not make any express reference or otherwise repeat my oral request to Pierce concerning Intervenors' desire to be heard on the issue of the Board's capacity to issue a license notwithstanding ALAB-924, because I inferred from the responses Pierce made to my questions concerning the Staff's purported request, that the Board did not have any intent at that time to issue a license.

Signed under the pains and penalties of perjury this 1st day of December, 1989.

  
John Traficante



'90 FEB 14 P3:47

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on February 13, 1990, 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):

OFFICE OF SECRETARY  
DOCKETING & SERVICE

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Thomas G. Dignan, Jr.

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