

circumstances.¹ One of those instances, which we denoted as condition (1), was when sheltering would be the most effective option for achieving maximum dose reduction.² We further explained that applicants' emergency planners and New Hampshire emergency planning officials could conceive of one limited situation in which beach population sheltering under condition (1) would be appropriate: a short duration, nonparticulate (gaseous) release that would arrive at the beach within a relatively short time period when, because of a substantial beach population, evacuation time would be significantly longer than the exposure duration.³

As the basis for their motion to reopen, intervenors assert that in a February 1, 1990 filing with the Licensing Board applicants have declared "for the first time" that the technical basis upon which these Licensing and Appeal Board rulings were founded no longer is valid.⁴ According to intervenors, applicants now assert that an October 1988 revision to the NHRERP established evacuation as the only protective action option for

¹ Emergency Motion of the Intervenors: (1) To Clarify the Status of the Appeal of LBP-89-33 and (2) To Reopen the Record on the NHRERP As To the Need for Sheltering in Certain Circumstances (Feb. 6, 1990) at 9-10 (citing ALAB-924, 30 NRC ____, slip op. at 50-58) (Nov. 7, 1989) [hereinafter cited as Intervenors' Motion to Reopen].

² ALAB-924, 30 NRC ____, slip op. at 50.

³ Id. at 50-51.

⁴ Intervenors' Motion to Reopen at 12 (citing Applicants' Response to Licensing Board Order of January 11, 1990 (Feb. 1, 1990) at 8-12).

the entire beach population, thereby eliminated condition (1) sheltering.⁵

Intervenors further contend that we may entertain their motion to reopen because we have appellate jurisdiction over LBP-88-32 concerning the NHRERP.⁶ They are correct that certain aspects of the NHRERP are before us for resolution;⁷ nonetheless, it also is apparent that NHRERP-related issues are before the Commission by way of the petitions for review filed by both applicants and intervenors,⁸ and are before the Licensing Board by reason of our action in ALAB-924 remanding certain matters to the Board.⁹ As we see it, this proceeding's complex procedural posture at this juncture creates considerable uncertainty about whether the intervenors' motion properly resides with the Commission, with the Licensing Board, or with us.

In providing their responses to intervenors' motion to reopen, applicants and the NRC staff should address the matter of the proper forum for intervenors' motion. This should include a

⁵ Id. at 11-12. In this regard, we note that the document that allegedly sets forth this change, see Applicants' Response to Licensing Board Order of January 11, 1990 (Feb. 1, 1990) at 10 n.32, was not provided to this Board or, it is our understanding, to the Office of the Secretary for inclusion in the docket and service.

⁶ Intervenors' Motion to Reopen at 19 n.12.

⁷ See ALAB-924, slip op. at 3 n.4.

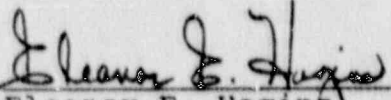
⁸ See Applicants' Petition for Review of ALAB-924 (Nov. 10, 1989); Intervenors' Petition for Review of ALAB-924 (Nov. 21, 1989).

⁹ See Memorandum and Order of Jan. 11, 1990 (Regarding Issues Remanded in ALAB-924) (unpublished).

discussion of the applicability of our decision in ALAB-823,¹⁰ and the Commission's subsequent decision in CLI-86-6.¹¹ Further, by way of clarification, we note that intervenors' service of their motion by rapifax should in this instance be treated the same as service by overnight delivery. As a result, applicants' response will be due by February 20, 1990, and the NRC staff should provide its response by February 23.

It is so ORDERED.

FOR THE APPEAL BOARD


Eleanor E. Hagins
Secretary to the
Appeal Board

¹⁰ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773 (1985).

¹¹ CLI-86-6, 23 NRC 130 (1986).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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

Docket No. (s) 50-443/444-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing AB ORDER DATED 2/14/90 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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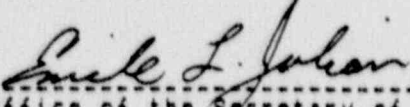
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The Honorable
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ATTN: Janet Coit
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Dated at Rockville, Md. this
14 day of February 1990



Office of the Secretary of the Commission