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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

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

February 26, 1990
(ALAB-927)

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

Leslie B. Greer, Boston, Massachusetts, for the intervenor James M. Shannon, Attorney General of Massachusetts.

Thomas G. Dignan, Jr., George H. Lewald, Kathryn A. Selleck, and Jeffrey P. Trout, Boston, Massachusetts, for the applicants Public Service of New Hampshire, et al.

Lisa B. Clark for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

Before us is the February 1, 1990 motion of the intervenor Attorney General of Massachusetts to reopen a portion of the record in this operating license proceeding involving the Seabrook nuclear power facility. The motion is founded upon a development said to have affected the adequacy of a segment of the alert and notification system for the Massachusetts communities within the plume exposure pathway emergency planning zone (EPZ) for the Seabrook facility. That development was the decision of radio

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station WCGY to repudiate a previous letter of agreement calling for the station's participation in the alert and notification system. That decision was memorialized in an October 20, 1989 letter from a station official to the applicants, a copy of which was sent to counsel for the Attorney General.[1]

The Commission's Rules of Practice explicitly require the denial of an untimely motion to reopen a record unless the motion presents "an exceptionally grave issue."[2] In this instance, there can be little doubt that the motion is untimely. It is equally clear that the motion does not present an "exceptionally grave" issue. Accordingly, we agree with the applicants and the NRC staff that it must be denied.

A. Timeliness

1. Issues pertaining to the alert and notification system for Massachusetts communities were put before two separate Licensing Boards, one chaired by Judge Bloch and the other by Judge Smith. For its part, the Bloch Board was assigned the question of the efficacy of that portion of the system involving the applicants' proposal to

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[1] See letter from John F. Bassett to B. Boyd, Jr., (October 20, 1989), appended to the Attorney General's February 1 motion as Exhibit C to Attachment F of Exhibit 2.

[2] 10 CFR 2.734(a)(1).

use vehicles upon which sirens would be mounted (referred to as the VANS proposal). In a June 23, 1989 decision, that Board upheld the VANS proposal. In the course of doing so, the Bloch Board took note of the Emergency Broadcast System (EBS) component of the overall alert and notification system.[3]

The Smith Board's role in the alert and notification sphere was considerably broader than that of the Bloch Board. Its jurisdiction extended to all matters in that sphere other than the VANS issue specifically assigned to the Bloch Board. In this connection, on November 9 and 22, 1989, the Attorney General (in conjunction with other intervenors) filed reopening motions with the Smith Board. Those motions were based upon the WCGY repudiation action and requested the reopening of the record before the Smith Board to allow the introduction of a new contention addressed to the repudiation. According to the intervenors, the repudiation brought into question the adequacy of the overall emergency response plan for the Massachusetts portion of the EPZ. On January 8, 1990, the Smith Board denied the motions on a variety of grounds.[4] That denial is now on appeal.

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[3] LBP-89-17, 29 NRC 519, 532-34 (1989), appeal pending.

[4] LBP-90-1, 31 NRC ___ (1990), appeal pending.

2. The Attorney General's motion to us seeks to reopen the record before the Bloch Board. Its theory is that that Board's decision last June was vitiated by the WCGY repudiation because the decision took into account an EBS for the Massachusetts portion of the EPZ in concluding that the applicants' VANS proposal was acceptable.

Assuming the validity of that theory, the Attorney General should have raised it promptly upon learning of the WCGY action taken in October -- rather than more than three months thereafter. The Attorney General attempts to justify the delay on the ground of the pendency of the reopening motion filed with the Smith Board, which rested upon the same event. That explanation will not do. It overlooks the fact that the Smith Board obviously could not decide whether the WCGY action had any impact (let alone the dire effect now suggested by the Attorney General) upon the Bloch Board's conclusion respecting the adequacy of the VANS proposal. Only the Bloch Board, or this Board or the Commission on appellate review, is in a position to pass judgment on that matter.[5]

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[5] Cf. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-902, 28 NRC 423, 429 (licensing board can dismiss a party from only the part of the proceeding within that board's purview), review declined, CLI-88-11, 28 NRC 603 (1988). This being so, there was no potential here for "the dual litigation of the same issue with possibly

(Footnote Continued)

Indeed, the Attorney General himself appears implicitly to acknowledge the line of separation existing between the jurisdiction of the two Licensing Boards. But for that separation, there would have been no need for him to file the February 1 motion in light of his then (and still) pending appeal from the Smith Board's denial of the motion filed with that Board.

B. Exceptionally Grave Issue

The motion at hand fails to raise such an "exceptionally grave issue" that we would be free to ignore its manifest untimeliness. We are unpersuaded from a reading of the Bloch Board's June 1989 decision on the VANS proposal that its approval of that proposal hinged to any significant extent on the participation of WCGY. On this score, it is noteworthy that the principal EBS relied upon by the applicants for the Massachusetts communities does not include WCGY but, rather, employs two stations (WHAV and WLYT) with which the applicants have a contractual arrangement.[6]

(Footnote Continued)
inconsistent results." See ALAB-916, 29 NRC 434, 439 (1989).

[6] See Attachment A to Exhibit 1 of Exhibit 4 appended to the Attorney General's February 1 motion. In light of this consideration, it appears of no present moment whether there is an existing Commonwealth of Massachusetts (i.e., state) EBS for Seabrook. Thus, we need not concern
(Footnote Continued)

It may not necessarily follow that the WCGY repudiation is irrelevant to the issue of the overall adequacy of the emergency response plan for the Massachusetts EPZ. As earlier noted, the Attorney General is seeking our consideration of that matter on his appeal from the Smith Board's denial of the reopening motion filed with that Board. Such consideration is not foreclosed by our ruling here, which is simply that the section 2.734 requirements have not been met insofar as the Bloch Board's decision in LBP-89-17 is concerned.

(Footnote Continued)
ourselves here with the Attorney General's reliance on the fact that WCGY's repudiation of its letter of agreement calling for participation in the Seabrook alert and notification system rested (at least in part) on that station's conclusion that no such EBS is now in existence.

For all that appears, the Attorney General did not make a timely challenge before the Bloch Board to the ability of WHAV and WLYT, under their contractual arrangement with the applicants, to provide the necessary radio notification.

The Attorney General's February 1, 1990 reopening motion is denied.

It is so ORDERED.

FOR THE APPEAL BOARD

Barbara A. Tompkins
Secretary to the
Appeal Board

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing AB M&O (ALAB-927) DTD 02/26/90 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.

Administrative Judge
G. Paul Bollwerk, III
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Howard A. Wilber
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Law Judge
Ivan W. Smith, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Kenneth A. McCollom
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert R. Pierce, Esquire
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
James H. Carpenter
Alternate Technical Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Edwin J. Reis, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mitzi A. Young
Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docket No.(s)50-443/444-OL
AB M&O (ALAB-927) DTD 02/26/90

Diane Curran, Esq.
Harmon, Curran & Tousley
2001 S Street, N.W., Suite 430
Washington, DC 20009

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
One International Place
Boston, MA 02110

Robert A. Backus, Esq.
Backus, Meyer & Solomon
116 Lowell Street
Manchester, NH 03106

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

Gary W. Holmes, Esq.
Holmes & Ells
47 Winnacunnet Road
Hampton, NH 03842

Judith H. Mizner
Counsel for Newburyport
79 State Street
Newburyport, MA 01950

Suzanne P. Egan
City Solicitor
Lagoulis, Hill-Wilton and Rotondi
79 State Street
Newburyport, MA 01950

Jane Doherty
Seacoast Anti-Pollution League
5 Market Street
Portsmouth, NH 03801

Ashod N. Amirian, Esq.
145 South Main Street, P.O. Box 38
Bradford, MA 01830

George Iverson, Director
N. H. Office of Emergency Management
State House Office Park South
107 Pleasant Street
Concord,, NH 03301

George W. Watson, Esq.
Federal Emergency Management Agency
500 C Street, S.W.
Washington, DC 20472

Jack Dolan
Federal Emergency Management Agency
442 J.W. McCormack (POCH)
Boston, MA 02109

George D. Bisbee, Esq.
Assistant Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301

Paul A. Fritzsche, Esq.
Office of the Public Advocate
State House Station 112
Augusta, ME 04333

Docket No.(s)50-443/444-OL
AB M&O (ALAB-927) DTD 02/26/90

Suzanne Breiseth
Board of Selectmen
Town of Hampton Falls
Drinkwater Road
Hampton Falls, NH 03844

Peter J. Brann, Esq.
Assistant Attorney General
Office of the Attorney General
State House Station, #6
Augusta, ME 04333

William Armstrong
Civil Defense Director
Town of Exeter
10 Front Street
Exeter, NH 03833

Michael Santosuosso, Chairman
Board of Selectmen
South Hampton, NH 03827

Stanley W. Knowles, Chairman
Board of Selectmen
P.O. Box 710
North Hampton, NH 03862

Sandra F. Mitchell
Civil Defense Director
Town of Kensington
Box 10, RR1
East Kingston, NH 03827

The Honorable
Gordon J. Humphrey
ATTN: Janet Coit
United States Senate
Washington, DC 20510

John Traficonte, Esq.
Chief, Nuclear Safety Unit
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Allen Legault
Civil Defense Director
Town of Brentwood
20 Franklin Street
Exeter, NH 03833

Anne Goodman, Chairman
Board of Selectmen
13-15 Newmarket Road
Durham, NH 03824

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

Norman C. Kenner
Superintendent of Schools
School Administrative Unit No. 21
Alumni Drive
Hampton, NH 03842

Beverly Hollingworth
209 Winnacunnet Road
Hampton, NH 03842

The Honorable
Nicholas Harvoules
ATTN: Michael Greenstein
70 Washington Street
Salem, MA 01970

Docket No.(s)50-443/444-OL
AB M&O (ALAB-927) DTD 02/26/90

Dated at Rockville, Md. this
26 day of February 1990

Patty Henderson
Office of the Secretary of the Commission