

11014

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'90 NOV -5 A11:21

ATOMIC SAFETY AND LICENSING BOARD

Before the Administrative Judges:

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

In the Matter of)	Docket Nos. 50-443-OL
)	50-444-OL
PUBLIC SERVICE COMPANY)	
OF NEW HAMPSHIRE, <u>ET AL.</u>)	
(Seabrook Station, Units 1 and 2))	November 2, 1990

INTERVENORS OPPOSITION TO LICENSEES MOTION FOR
SUMMARY DISPOSITION OF ISSUES REMANDED IN
ALAB-937

In ALAB-937, Public Service Company of New Hampshire
(Seabrook Station, Units 1 and 2), ALAB-937, 32 NRC ____
(September 18, 1990), the Appeal Board remanded to the
Licensing Board two issues concerning the care and supervision
of school and day-care children in the event of a radiological
emergency at Seabrook Station. In remanding the issues, the
Appeal Board reversed the Licensing Board's rejection of the
Massachusetts Attorney General's ("Mass AG") contention No. 47,
Basis R. The Appeal Board identified the two remanded issues
as follows:

9011270049 901102
PDR ADOCK 05000443
Q PDR

D503

"1. Is there reasonable assurance that, in the event of a radiological emergency at Seabrook necessitating an evacuation of children in schools and day-care centers within the Massachusetts EPZ, a sufficient number of teachers and day-care center personnel will escort the children to the School Host Facility at Holy Cross College and remain with those children until relieved of that assignment?

2. If such reasonable assurance does not exist, have the [licensees] made satisfactory alternative arrangements for the care and supervision of the children both on the bus trip to Worcester and during their stay at the School Host Facility?"

The Licensees filed with this Board a motion for summary disposition accompanied by supporting affidavits on the remanded issues. The Mass AG opposes that motion and for the reasons set forth below requests that the Licensing Board deny the motion.

The standard under which to evaluate a motion for summary disposition is set forth in 10 CFR §2.749(d). Under that provision a moving party is entitled to summary disposition only if it can establish that there is no genuine issue as to any material fact, and it is otherwise entitled to judgment as a matter of law. In the present instance the Licensees are not entitled to summary disposition on the remanded issues because there are genuine issues as to material facts in dispute. Specifically, there is an issue as to whether a sufficient number of teachers and day-care personnel will accompany children to and remain with children at the School Host Facility in Worcester to insure their care. Furthermore, there is an issue as to whether any alternative arrangements for the care of children are adequate.

In their motion the Licensees rely on the Affidavit of Dennis Mileti to establish that there is reasonable assurance that sufficient school personnel will accompany children to Holy Cross College. As the attached Affidavit of Dr. Stephen Cole makes abundantly clear, the conclusions reached by Dr. Mileti are seriously flawed. Dr. Cole explains in detail why teachers and day-care personnel in the Massachusetts EPZ are likely to experience "role conflict" that will result in them refusing to assume the emergency roles that the SPMC contemplates for them. Dr. Cole goes on to explain why the analogies relied upon by Dr. Mileti as the basis for his conclusion that teachers and day-care personnel will remain with the children are inapposite. Dr. Cole concludes that a significant portion of the teachers and day-care personnel will refuse to accompany children on busses and that would make it impossible to provide for the safety of children during a radiological emergency at Seabrook Station. Dr. Cole has been previously recognized by the Board as an expert on the subject of human response, and his opinion standing in direct contradiction to that of Dr. Mileti shows that there is a genuine issue as to whether a sufficient number of teachers and day-care personnel will accompany children and remain with them at Holy Cross College.

As a fall back position, the Licensees assert that the Affidavit of Anthony Callendrello establishes that there will be sufficient ORO personnel to care for children at Holy Cross

even if teachers do not accompany them. The attached Affidavit of Michael Sinclair shows that there is a genuine issue as to whether the compensatory arrangements cited by Mr. Callendrello are sufficient to provide reasonable assurance. Mr. Sinclair notes that the ORO personnel that are to be assigned to Holy Cross are to provide evacuee registration and other internal functions at the facility, not supervision of children. Sinclair Affidavit ¶12. Mr. Sinclair also observes that the provisions for reassigning route guides to care for the children at the facility are deficient. Sinclair Affidavit ¶14. He goes on to note that reliance on the school bus drivers or other volunteer organizations is not adequate because appropriate letters of agreement that could be looked to for assurance of their response do not exist. Sinclair Affidavit ¶14, 16. Mr. Sinclair concludes that because under the rulings in ALAB-937 the "realism rule" cannot be relied upon as a basis for assurance that teachers will accompany children to Holy Cross, there is no assurance that adequate supervision will be provided to those children under the current planning encompassed by the compensatory arrangements described in the Callendrello Affidavit. Mr. Sinclair has been previously recognized by this Board as an expert in this area. His opinion that under present circumstances there is no reasonable assurance as to the adequacy of the provisions for children shows that there exists a genuine issue as to material facts on the remanded issues.

Therefore, since there are material facts in dispute on the issues remanded by the Appeal Board, the Licensees Motion for Summary Disposition should be denied.

COMMONWEALTH OF MASSACHUSETTS

JAMES M. SHANNON
ATTORNEY GENERAL

Leslie B. Greer

Leslie Greer
Assistant Attorney General
Department of the Attorney General
One Ashburton Place
Boston, MA 02108-1698
(617) 727-2200

DATED: November 2, 1990
1954n