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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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SERVED NOV -7 1990

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

(Seabrook Station,  
Units 1 and 2)

Docket Nos. 50-443-OLR3  
50-444-OLR3

(Offsite Emergency  
Planning)  
ASLBP No. 90-619-03-OLR3

November 7, 1990

MEMORANDUM AND ORDER  
(Denying Licensee's Motion For Summary Disposition  
Of Issues Remanded in ALAB-937)

In ALAB-937, September 18, 1990, 32 NRC \_\_\_\_, the Appeal Board reversed the Licensing Board's rejection of Massachusetts Attorney General's Contention 47, Basis R, relating to the evacuation and care of children in schools and day-care centers within the Massachusetts portion of the Seabrook EPZ in the event of a radiological emergency. The proceeding was remanded to the Licensing Board to explore two related subissues: (1) Whether there is reasonable assurance that a sufficient number of teachers and day-care center personnel would be available to escort the children

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to the designated School Host Facility at Holy Cross College and remain with them until relieved of that assignment; and (2) If such reasonable assurance does not exist, have the applicants made satisfactory alternative arrangements for the care and supervision of the children both on the bus trip to Holy Cross College (located in Worcester, Massachusetts) and during their stay at the college. Id., Slip op. at 32-33. The Licensing Board is authorized to suspend the Seabrook operating license pendente lite should the Massachusetts Attorney General challenge Applicants' affidavits respecting alternative arrangements. We are directed to act upon such a challenge with "all possible expedition." Id. at 2, 33.

Licensees now move the Board for judgment on all issues remanded by ALAB-937 by seeking summary disposition of three material facts as to which, Licensees assert, there is no genuine issue to be heard.<sup>1</sup> Intervenor's oppose the motion.<sup>2</sup>

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<sup>1</sup>Licensees' Motion for Summary Disposition of Issues Remanded in ALAB-937, October 22, 1990. The Board entertains the motion pursuant to the provisions of 10 C.F.R. § 2.749. Licensees' statement that the motion is brought pursuant to 10 C.F.R. § 2.734 is, we believe, a mistake.

<sup>2</sup>Intervenor's Opposition to Licensees' Motion for Summary Disposition of Issues Remanded in ALAB-937, November 2, 1990. See also Amendment to Intervenor's Opposition to Licensees' Motion for Summary Disposition of Issues Remanded in ALAB-937, November 5, 1990. In the latter pleading, Intervenor's submitted a list of material facts correlative to Licensees' list. Id. at 3.

The NRC Staff is not participating in the resolution of the summary disposition motion.<sup>3</sup>

Licensees support their motion with the affidavits of Dr. Dennis S. Mileti and Anthony M. Callendrello. Each has been found by the Board to be qualified to speak to the subject matter of their affidavits. Similarly the affiants supporting Intervenors, Dr. Steven Cole and Michael C. Sinclair, are qualified to address the matters set out in their affidavits.

First, supported by the affidavit of Dr. Mileti, Licensees assert, as a general proposition, that:

1. Persons in roles of responsibility for others before an emergency begins have role certainty about being responsible for their charges during an emergency independent of planning and training.

Motion at 4, citing Mileti Affidavit, ¶¶ 7-8.

Intervenors do not directly address Licensees' first statement of material fact, despite their clear obligation to do so. See 10 C.F.R. § 2.749(b). Rather, Intervenors refer to that portion of Dr. Cole's Affidavit which

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<sup>3</sup>In a scheduling telephone call to Edwin J. Reis, Esq., Office of General Counsel, on November 5, 1990, the Licensing Board Chairman observed that ALAB-937 requires the Licensing Board to act with all possible expedition in the event of a challenge to Licensees' position on the remanded issues. Mr. Reis stated that, although the NRC Staff intends to consult with FEMA and to participate in the resolution of the remanded issues, the Staff does not object to the Board's ruling without delay on the pleadings submitted by the Licensees and Intervenors. He stated that the NRC Staff will present its position in connection with any further proceedings required by this order.

discusses role conflict. In effect, Dr. Cole challenges the inferences one might draw from Licensees' first statement.<sup>4</sup> The Board passes over the first statement because we are denying the motion with respect to the second and third statements of material fact. Standing alone, unquantified and general as it is, the first statement leads nowhere. It is better that the first statement be examined against a relevant factual background if Licensees remain inclined to prove that assertion.

Licensees' second statement of material fact states:

2. There is reasonable assurance that sufficient school personnel will respond to care for and supervise school children and day-care center children being evacuated as a result of a radiological emergency at Seabrook Station.

Motion at 4, citing Mileti Affidavit, passim.

Intervenors' affiant, Dr. Cole, challenges the second statement directly and in detail. Cole Affidavit, passim. Since Intervenors need show only that a genuine issue of fact remains in dispute, the motion with respect to the second statement is denied.

The third statement addresses the second subissue remanded in ALAB-937. Licensees' state that:

3. There are sufficient ORO personnel assigned to care for the children at the School Host Facility, even if teachers should abandon their charges and refuse to

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<sup>4</sup>See Intervenors' Amendment at 3, citing Cole Affidavit at ¶¶ 12, 15-23.

accompany or care for them in a radiological emergency at Seabrook Station.

Motion at 4, citing Callendrello Affidavit, passim.

Intervenors counter the third statement with Mr. Sinclair's affidavit which clearly establishes a genuine issue of material fact.

#### ORDER

Accordingly, Licensees' motion for summary disposition and judgment is denied.

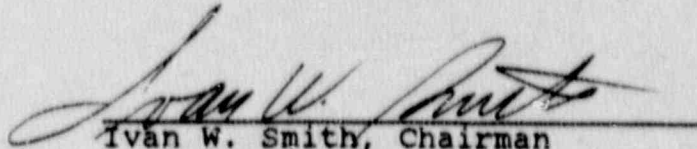
All eligible parties intending to participate in the resolution of the issues remanded in ALAB-937 are directed to attend a prehearing conference for the further identification and simplification of the subissues and to provide for a schedule for the disposition of the remanded matter.

The prehearing conference will be conducted at the NRC Hearing room, Fifth Floor, East West/West Towers Building, 4350 East West Highway, Bethesda, Maryland, beginning at 10:00 AM, December 13, 1990.

Since the basic factual positions of the Licensees and Intervenors have been revealed by the affidavits supporting their respective pleadings, the Board believes that very little discovery will be required. However, the Board

authorizes any needed discovery to begin immediately in accordance with Part 2 discovery rules, 10 C.F.R. §§ 2.740-42.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

  
Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

November 7, 1990

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-DLR3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO, AND ORDER DATED 11/7 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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Docket No. (s) 50-443/444-DL  
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Docket No. (s) 50-443/444-OL  
LB MEMO. AND ORDER DATED 11/7

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Dated at Rockville, Md. this  
7 day of November 1990

*Carlene H. Wright*  
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Office of the Secretary of the Commission