

11276

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD '91 JAN -8 AID:19

Administrative Judges:

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

January 7, 1991
(ALAB-943)

OFFICE OF SECRETARY
DOCKETING & SERVICE
ANL-14

SERVED JAN -8 1991

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
(Offsite Emergency
Planning Issues)

MEMORANDUM AND ORDER

In ALAB-924,¹ on review of LBP-88-32,² we remanded four issues to the Licensing Board in this operating license proceeding involving the Seabrook nuclear facility: need for letters of agreement (LOAs) with school personnel; sufficiency of the special needs survey for the New Hampshire portion of the Seabrook plume exposure pathway emergency planning zone (EPZ); effect of advanced life support (ALS) patient preparation on evacuation time estimates (ETEs); and the adequacy of beach sheltering implementation. Thereafter, in LBP-90-12,³ the Licensing Board both undertook to resolve the LOA and special needs

¹ 30 NRC 331 (1989), petitions for review pending.

² 28 NRC 667 (1988).

³ 31 NRC 427 (1990).

DSO2

survey issues and addressed (without resolving) the ALS patient and beach sheltering issues.

In ALAB-933,⁴ on the motions of the applicants and the NRC staff we dismissed appeals taken by various intervenors from LBP-90-12. This action was founded on an application of the standard of appealability set forth many years ago in the Davis-Besse proceeding:

The test of "finality" for appeal purposes before this agency (as in the courts) is essentially a practical one. As a general matter, a licensing board's action is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate; rulings which do neither are interlocutory.⁵

As we saw it, LBP-90-12 did not dispose of a "major segment" of this proceeding.

We now have before us a new notice of appeal filed jointly by intervenors Massachusetts Attorney General (MassAG) and the New England Coalition on Nuclear Pollution (NECNP). This notice addresses the Licensing Board's December 18, 1990, memorandum and order (LBP-90-44),⁶ in which the Board granted the applicants' motion for summary disposition on the ALS patient issue. In addition, the

⁴ 31 NRC 491 (1990).

⁵ Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975) (footnotes omitted).

⁶ 32 NRC ____ (1990).

notice references those portions of LBP-90-12 that relate to the ALS patient and special needs survey issues.

Although the issuance of LBP-90-44 was apparently the genesis of intervenors' new appeal, the requisite finality was not achieved with the rendition of that decision.⁷ Of the issues remanded in ALAB-924, there still remains for Licensing Board disposition the beach sheltering matter.⁸ As suggested in ALAB-933,⁹ there is no good reason why that sheltering issue should receive appellate review apart from the three other matters that ALAB-924 returned to the Licensing Board.

⁷ The Licensing Board that issued LBP-90-44 was constituted separately from the "offsite" Board that issued LBP-88-32. See 55 Fed. Reg. 47,411 (1990). In this instance, we find this administrative action of no consequence in analyzing whether the Board's determination on the ALS patient issue is "final" so as to be reviewable now.

⁸ In ALAB-939, 32 NRC 165, 179-80 (1990), in response to questions referred by the Licensing Board we directed that the Board take any necessary steps to ensure that the record is clear with regard to several matters concerning sheltering for the beach population under the New Hampshire emergency plan. By orders dated November 14 and 26, 1990, the Licensing Board requested that the parties provide their views relative to these matters and indicated that the subject will be taken up at a prehearing conference now scheduled for January 23, 1991.

⁹ 31 NRC at 498. In ALAB-933, *id.* at 496-97, we also were confronted with the question of whether the Licensing Board's dismissal of one intervenor from further participation regarding the remanded issues fulfilled the Davis-Besse criterion of termination of a party's right to participate, and found that the Board's action was then reviewable. That finality yardstick is not implicated in this instance.

In this connection, it is significant that, as above noted, each of the four issues subject to remand was initially ruled upon in LBP-88-32, the Licensing Board decision concerned generally with the adequacy of the emergency plan for the New Hampshire portion of the EPZ. In other words, all of them are New Hampshire emergency planning issues and, as such, appropriate for appellate consideration as part of an entity comprising a "major segment" of the case.¹⁰ Accordingly, any intervenor appeal concerning the Licensing Board's resolution in LBP-90-44 and LBP-90-12 of certain remanded issues must await a final determination of all the remanded matters associated with that major segment.¹¹

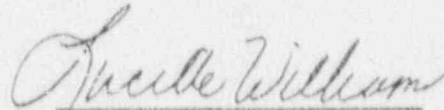
¹⁰ In reviewing LBP-88-32, in addition to the four issues returned to the Licensing Board in ALAB-924, in ALAB-932, 31 NRC 371, 418-20 (1988), we also remanded an issue concerning the calculation of the ETES utilized for the New Hampshire portion of the EPZ. It is our understanding, however, that in response to this remand the calculations have been revised and incorporated in the New Hampshire emergency plan. See Letter from T. Feigenbaum to NRC Document Control Desk (Aug. 15, 1990) (forwarding revised ETES).

¹¹ The same analysis would apply with respect to the various issues that may be subject to remand in the course of our consideration (as yet uncompleted) of another major case segment, the Massachusetts emergency planning and June 1988 full participation exercise matters on review relative to the Licensing Board's determinations in LBP-89-32, 30 NRC 375 (1989), and related orders.

For the foregoing reasons, the joint appeal by the MassAG and NECNP from the Licensing Board's December 18, 1990 memorandum and order, LBP-90-44, 32 NRC ____, and its May 3, 1990 memorandum and order, LBP-90-12, 31 NRC 427, is dismissed as premature.

It is so ORDERED.

FOR THE APPEAL BOARD



Lucille Williams
Secretary to the
Appeal Board

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-DL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing AB M&D (ALAB-943) DTD 1/7/91 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
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

Robert R. Pierce, Esquire
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

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

Administrative Judge
Alan S. Rosenthal
Atomic Safety and Licensing Appeal
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
1107 West Knapp Street
Stillwater, OK 74075

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-943) DTD 1/7/91

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

Thomas B. Dionan, Jr., Esq.
Ropes & Gray
One International Place
Boston, MA 02110

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

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

Garv W. Holmes, Esq.
Holmes & Ellis
47 Winnacunnet Road
Hampton, NH 03842

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

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

Barbara J. Saint Andre, Esq.
Counsel for Amesbury, Newburyport
& Salisbury
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Jane Doughty, Director
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

Docket No. (s)50-443/444-OL
AB M&O (ALAB-943) DTD 1/7/91

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

Leslie Greer, Esq.
Nuclear Safety Unit
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Allen Lampert
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, Esq.
Lacoulis, Hill-Whilton & Rotondi
79 State Street
Newburyport, MA 01950

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

Beverly Hollindworth
209 Winnacunnet Road
Hampton, NH 03842

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

Docket No. (s) 50-443/444-OL
AB M&O (ALAB-943) DTD 1/7/91

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

Michael C. Sinclair
Graystone Emergency Management
Associates
13 Summer Street
Hillsboro, NH 03244

Dated at Rockville, Md. this
8 day of January 1991

Patty Henderson

Office of the Secretary of the Commission