

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission
Before the Licensing Board

Title: Public Service Company of New Hampshire,
et al., Seabrook Station Units 1 and 2
Offsite Emergency Planning

Docket No. 50-443-OL
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LOCATION: Bethesda, Maryland

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE LICENSING BOARD

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In the Matter of: :
PUBLIC SERVICE COMPANY OF : Docket Nos. 50-443-0L
NEW HAMPSHIRE, et al., : 50-444-0L
SEABROOK STATION :
UNITS 1 and 2 :
OFFSITE EMERGENCY PLANNING :
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Nuclear Regulatory Commission
4350 East-West Highway
Bethesda, Maryland

The above entitled matter came on for hearing via
telephone conference at 10:00 a.m., Wednesday, January 23,
1991, when were present:

- JUDGE IVAN W. SMITH
- JUDGE RICHARD F. COLE
- JUDGE KENNETH A. McCOLLOM

1 APPEARANCES:

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P R O C E E D I N G S

[10:00 a.m.]

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3 JUDGE SMITH: Present here are Judge Cole and
4 Judge McCollom. Our agenda today will be to, the first
5 thing we will do is bind into the transcript the stipulation
6 of the parties on ALAB-937 and ALAB-942 at this point. I had
7 informed Mr. Flynn last week that during this conference I
8 would ask him what FEMA's position is with respect to ALAB-
9 937 and the respective stipulation.

10 MR. FLYNN: Yes, Your Honor, and I am prepared to
11 do that. As a preliminary matter, can I put my speaker
12 phone on? I don't want to do that without checking first
13 because I know it affects the quality of the phone call, but
14 I have some program people in my office.

15 JUDGE SMITH: We will see what happens.

16 MR. FLYNN: Okay. We will try it, and if it
17 doesn't work we will go back to the handset. The question
18 is FEMA's position on the stipulation with respect to the
19 ALAB-937 issues and ALAB-942 issues. The ALAB-937 issues
20 deal with the reception center at Holy Cross and the
21 proposal to use personnel from Holy Cross to man the
22 reception center.

23 FEMA was informed of the stipulation. FEMA has no
24 objections. We would simply note that when the plan is
25 revised to reflect the stipulation we expect to review the

1 changes to the plan. The plan in its existing form was
2 approved by FEMA. We view this as an enhancement to the
3 plan, and we don't foresee any difficulties with the changes
4 that are proposed.

5 With respect to ALAB-942, the protective accident
6 recommendation that is generated through the on-site plan, I
7 think all we need to say is that we really don't need to
8 take a position because the contention has been withdrawn.
9 Not that we have any objection, but if the status of the
10 contention doesn't seem to call for a position from FEMA.

11 JUDGE SMITH: I am somewhat surprised that FEMA
12 believes that it has an interest in that particular
13 contention, the on-site contention. However, it doesn't
14 matter. That is why I did not ask you with respect to 942.
15 The fact that it has been withdrawn is a legal
16 consideration. If you believe that you have an interest, a
17 functional interest in the subject matter, I guess we would
18 want your views on the appropriateness of withdrawing the
19 contention.

20 MR. FLYNN: Yes, Your Honor. You are quite
21 correct that the issue being one dealing with the on-site
22 plan that it is not within FEMA's purview. We do not have a
23 direct interest, and we certainly have no objections to the
24 withdrawal of the contention.

25 JUDGE SMITH: Mr. Flynn, while I have you on the

1 line here, would you please make a note again that Judge
2 McCollom has to be served in Stillwater, Oklahoma. It
3 causes a considerable delay when he is not served there. He
4 constantly gets his papers here, and FEMA seems to be
5 unaware of our previous requests that he be served in
6 Stillwater.

7 MR. FLYNN: Yes, Your Honor, I will make a note of
8 that and change our practice in that regard.

9 JUDGE SMITH: Ms. Curran, may we hear from you now
10 with respect to the stipulation?

11 MS. CURRAN: I am going to follow the lead of the
12 Massachusetts Attorney General.

13 JUDGE SMITH: Then I would take it that if you
14 follow the leader, the Massachusetts Attorney General, you
15 support the stipulation?

16 MS. CURRAN: Right.

17 JUDGE SMITH: At this point the Board believes
18 that the stipulation is appropriate. The stipulation with
19 respect to the teachers in ALAB-937 speaks for itself. With
20 respect to ALAB-942, we have looked over the sub-issues in
21 Basis A of that contention and Basis A itself, and although
22 we have not reviewed the record specifically to determine
23 that all those matters have been exhaustively covered we
24 certainly recognize that the subject matter in general has
25 been covered, and we believe that when the Attorney General

1 says that the issues raised in his own contention have been
2 resolved we certainly can accept that.

3 The reason that I am making these statements is
4 that there is a responsibility, although somewhat vague and
5 it may be minor, there is some responsibility on the part of
6 the Licensing Board to look at stipulations of this nature
7 and to make our own determination that they are appropriate.
8 We now at this time do rule that the stipulation is
9 appropriate, and we accept it.

10 However, that sort of leaves it dangling.
11 Something has to be done. Actually, we shouldn't have
12 accepted it without a motion, but we believe the motion to
13 accept it is implicit in the stipulation. The parties
14 should tell us now what to do; close the remand, report to
15 the Appeal Board that the matter is resolved, or what? We
16 do need a motion.

17 MS. GREER: Judge, this is Leslie Greer from
18 Massachusetts.

19 JUDGE SMITH: We can't hear you at all, Ms. Greer.

20 MS. GREER: If I may, I don't know whether anybody
21 else received a fax transmission from the Appeal Board
22 yesterday on this subject, but I did. The Appeal Board --
23 not on the 942 but really with inquiries on the -- not on
24 the 937 stipulation but on the 942, has directed me to file
25 a response order, and they will be apprised of the

1 background for that order.

2 In the order they expressed some concern that we
3 had not come forward and advised them that these issues have
4 been resolved. I think that my forthcoming response then
5 will let them know how this resolution developed. I suppose
6 that at some point you are going to have to report back to
7 them upon resolution of all remanded issues, including the
8 children one which I think it is also on the agenda to be
9 discussed today.

10 They have essentially indicated in an order
11 dismissing our appeal that they don't want to hear back from
12 us, at least from us, on any of the remanded issues until
13 they are all resolved down below.

14 JUDGE SMITH: Ms. Greer, I don't read the Appeal
15 Board order of January 22nd to go to the merits of the
16 stipulation, and I don't think there is anything that we
17 have to accept as guidance or interferes with us disposing
18 of that contention.

19 MS. GREER: I don't think it is anything that
20 interferes with your ability to dispose of the contention
21 either.

22 JUDGE SMITH: That's right. They simply are
23 asking as we had during a hearing, to be informed when a
24 matter was no longer in dispute so that we wouldn't decide
25 things that did not have to be decided. In any event, this

1 morning I think we should entertain a motion as to how the
2 remands before us should be handled.

3 MR. DIGNAN: Your Honor, if I may try a motion. I
4 move that the Board accept the stipulation entitled Joint
5 Stipulation regarding contentions remanded in ALAB-937 and
6 ALAB-942, and enter an order of accepting the stipulation
7 declaring the matters remanded in ALAB-942 to be resolved
8 and declaring the matters in ALAB-937 to be resolved, and
9 instructing the staff in conformity with the stipulation to
10 oversee that the commitments made in the stipulation by the
11 licensee's are carried out.

12 JUDGE SMITH: That's fine. Is there any comment
13 on that motion or any response to it?

14 [No response.]

15 JUDGE SMITH: The Board grants the motion. We
16 will issue a written order to that effect, but that is our
17 order.

18 Judge Cole just pointed out that in a telephone
19 conference call silence should not be necessarily regarded
20 as ascent. So, let's hear specifically from Ms. Greer. Do
21 you support the motion?

22 MS. GREER: I have no objection on this motion.

23 JUDGE SMITH: Mr. Reis?

24 MR. REIS: I have no objection.

25 JUDGE SMITH: Mr. Flynn, since you have

1 responsibilities, I would ask you to comment on the motion.

2 MR. FLYNN: Yes, Your Honor. We have no
3 objection, and we support the motion. As I mentioned
4 earlier, we would expect to review any changes to the plan
5 which result from implementation of the stipulation.

6 JUDGE SMITH: Ms. Curran?

7 MS. CURRAN: We concur on the motion.

8 JUDGE SMITH: All right, the motion is granted, as
9 I stated before. Mr. Bisbee, do you wish to be heard on
10 this subject matter?

11 MR. BISBEE: No, Your Honor. Thank you.

12 JUDGE SMITH: Now we move to the sheltering
13 aspects of this telephone conference call. There seems to
14 have been an evolution in the positions of the State of New
15 Hampshire, FEMA, and the Nuclear Regulatory Staff on the so-
16 called shelter in-place issue. Before ALAB-939 and before
17 our memorandum and order of LBP 9012, the debate was focused
18 on whether there was actual sheltering; that is, people
19 actually going to shelters, or whether the concept of
20 shelter in-place which we all understand was the issue for
21 the summer time beach population.

22 The non-intervenors argued that shelter in-place
23 was in the New Hampshire Radiological Emergency Response
24 plan; further, that even in the rare puff release scenario
25 or the Condition 1 scenario, shelter in-place would not be

1 excluded. New Hampshire, FEMA, and the Staff say that not
2 even shelter in-place will be called for in ERPA-A, that's
3 the two mile radius of the plant.

4 The Appeal Board in ALAB-937, that's 32 NRC at
5 page 179, directed the Licensing Board to "ensure that, as a
6 consequence of evidence previously submitted by applicants
7 in the course of the hearing, several related matters are
8 clarified." We then know what the three very familiar
9 questions put to us by the Appeal Board are.

10 As I read the pleadings before us the State of New
11 Hampshire, the staff and FEMA regard those issues or sub-
12 issues as moot, and the licensee regards the first two as
13 irrelevant and the last one as moot based upon the expected
14 response of New Hampshire. It now appears that the Board
15 cannot provide the assurances sought by the Appeal Board
16 that, as a consequence of the evidentiary record previously
17 made in the hearing, that these questions are answered.

18 The issue is the sheltering of the New Hampshire
19 beach population, of course, and it does not depend entirely
20 upon the cooperation of the Commonwealth of Massachusetts.
21 There, I am alluding to the Appeal Board's directive to the
22 Massachusetts Attorney General to report as to the
23 Commonwealth's potential on cooperation of emergency
24 planning. Even if Massachusetts changes its position these
25 contentions had been advanced by three other intervenors,

1 NECNP, SAPL, and the town of Hampton.

2 The question is, what should the Board do? Mr.
3 Dignan, since you have always the unrelieved burden, we will
4 call upon you first.

5 MR. DIGNAN: Your Honor, I think that the report
6 of the Board should be, subject to hearing from other
7 parties, that -- as you know, incidentally, your description
8 of our pleading is accurate. But I do wish to say that with
9 respect to the first two questions we set out there why we
10 do think the evidence is in the record, although we do think
11 that it is now irrelevant in light of the reply that we
12 anticipated and was forthcoming from the State of New
13 Hampshire.

14 JUDGE SMITH: On that point, let's explore that
15 point a little bit. The evidence in the record arguably is
16 there. We appreciate your position and perhaps we could
17 find that is the case. I am not even commenting on it now.

18 However, why allude to evidence in the record when
19 the evidence no longer is relevant.

20 MR. DIGNAN: I concur. I was simply making an
21 observation on your description of the position the
22 applicants had taken. I was just reminding the Board and
23 apparently unnecessarily so, that our position was not
24 simply that it was irrelevant but that if it was relevant we
25 found it was answered.

1 It seems to me this is the state of affairs. Your
2 Honor has correctly described the overall positions of the
3 parties with the exception of the paper filed by the
4 Attorney General on behalf of himself and NECNP. Inasmuch
5 as in ALAB-939, the Appeal Board itself said it was not the
6 intent of our remand in ALAB-924 to direct planning
7 officials to adopt sheltering of the general beach
8 population as a protective action, and we do not do so now.

9 Since that is the position of the Appeal Board,
10 and since it is now fairly clear that the planning officials
11 have not adopted sheltering of the general beach population,
12 I think that the Licensing Board should rule that the matter
13 has become moot and so advise the Appeals Board for whatever
14 action it wishes to take after that.

15 I think it is a moot question now, and the
16 questions have all been mooted.

17 JUDGE SMITH: It may very well be that if there
18 were an evidentiary record to the effect that which you
19 allude it may be mooted. But as of right now we have
20 nothing except statements of counsel.

21 MR. DIGNAN: I think you have more than statements
22 of counsel. In the case of New Hampshire you have the
23 stated position of the State which is responsible for the
24 plan, and that is made by a responsible attorney for the
25 State on behalf of the State.

1 MR. BISBEE: Your Honor, if I could add on that
2 point. In our February 20 submission --

3 JUDGE COLE: In 1990?

4 MR. BISBEE: Right, 1990 to the Appeal Board. Two
5 affidavits, one from the Director of the Office of Emergency
6 Management, George Iverson, one from the then Director of
7 the Division of Public Health Services, William Wallace were
8 submitted along with the comments of counsel. There's a
9 little more than statements of attorneys from the Attorney
10 General's Office.

11 JUDGE SMITH: That is correct. But looking at
12 these statements, Mr. Bisbee, we cannot follow them through
13 with a certainty that you seem to suggest that Mr. Iverson
14 and Dr. Wallace are saying clearly, unequivocally, that
15 shelter in-place is not a planned protective action for
16 ERPA-A. We can find comments that do lend itself to
17 questions, and we thought that it had been resolved. We are
18 aware now that we were focusing on a different issue, and
19 that is shelter in-place versus actual shelter.

20 MR. FLYNN: Your Honor, I think I can add
21 something to this discussion. In the filing of New
22 Hampshire of May 28, 1990, the statement was that it is New
23 Hampshire's position that the NHR ARP not preclude
24 implementation of this option, that is to say the shelter
25 in-place option so long as appropriate pre-conditions cannot

1 be categorically ruled out.

2 I think what is new in this discussion is the
3 position that FEMA has taken, that indeed Condition 1,
4 General Emergency, ERPA-A is categorically ruled out.

5 JUDGE SMITH: That is what I infer from the filing
6 of everybody, and I think you have characterized it
7 correctly, that is new.

8 MR. FLYNN: I think that was the position, but it
9 wasn't as clear as it needed to be. What I am suggesting is
10 that with that information and with that new factor, I think
11 it follows -- and I will ask New Hampshire to concur if that
12 is the case -- that since we have said that it is
13 categorically ruled out it follows that they will not use
14 that option in ERPA-A as general emergency.

15 JUDGE SMITH: Mr. Bisbee.

16 MR. BISBEE: Here we are, getting into statements
17 of counsel again, Your Honor. We, as you know in our
18 memorandum to you of January 10, 1991, did not get into the
19 technical issues that FEMA addressed in its advice of the
20 following day. We focused as we did in our February, 1990
21 submission and again in the May 28, 1990 submission on this
22 issue, we focused on what the plan provides for, what is the
23 planned response for general emergency in ERPA-A. That is,
24 evacuation.

25 We said in the February and May submittals that

1 shelter-in-place is not precluded, and I think as a
2 practical matter that a response that would otherwise be
3 appropriate if circumstances that we can't foresee arise, if
4 shelter-in-place is appropriate under such conditions then
5 they are not going to be precluded now, even though the only
6 planned response -- and this is what the plan addresses --
7 is evacuation only. That is why we took the position that it
8 would be unnecessary to consider either of the three issues
9 that the Appeal Board addressed to you.

10 JUDGE SMITH: We have two questions along that
11 line. One is, does ALAB-939 raise the issue of the
12 protective action response for site area emergency as well
13 as general emergency. This was a distinction pointed out to
14 me right now by Judge McCollom. Second, Mr. Bisbee, do you
15 see anything new in your January 10th memorandum?

16 MR. BISBEE: As to what ALAB-939 provides, Your
17 Honor, I would leave it to others who have exhaustively
18 reviewed it to respond to that, if I could. My
19 understanding is that it only pertains to general
20 emergencies. As to your second question, I really don't
21 believe that our January 10th submittal changes in any
22 significant way what our position is, which is that
23 evacuation is the planned response. Should circumstances
24 that are unforeseen now arise, we are not ever going to
25 preclude any response, even if it's not in the plan.

1 The planned response and only planned response for
2 ERPA-A is a general emergency evacuation. What you have new
3 before you was what FEMA has provided. That is new to the
4 record. It is not addressed in our January submitted.

5 MR. FLYNN: Your Honor, it is our position that
6 ALAB-939 does address only general emergency, and I say that
7 because the focus was on dose minimization implying that
8 there is a significant dose, and by definition general
9 emergency is a situation where the EFA protective action
10 guide will be exceeded.

11 That is the context of the discussion, is the
12 potential for exceeding the protective action guide.

13 JUDGE SMITH: As I read your response, Mr. Flynn,
14 the new focus that FEMA has made now is that in the previous
15 papers filed we observed that New Hampshire officials have
16 stated that so long as a potential remains for later
17 evacuation, New Hampshire will not recommend shelter-in-
18 place; and that, you are now focusing for the first time on
19 the impossibility of the potential for later evacuation
20 being ruled out.

21 MR. FLYNN: Yes, that is correct.

22 JUDGE SMITH: Citing Mr. Keller's testimony.

23 MR. FLYNN: Yes.

24 JUDGE SMITH: This is a question of focus and not
25 of substance.

1 MR. FLYNN: Yes. As I reported a little earlier,
2 we don't believe our position has changed b this is a more
3 narrow focus on a particular issue.

4 JUDGE SMITH: Mr. Reis, do you wish to be heard?

5 MS. YOUNG: This is Ms. Young, from the NRC Staff.
6 I think that the Board made findings in its initial decision
7 in 1988 that was consistent with the positions reflected by
8 the parties today. You look at paragraph 8.71 which the
9 Board had cited in Mr. Keller's testimony, you find that the
10 Board there concluded that the condition necessary were
11 uncertain and could not be predicted with a certainly
12 relying on Mr. Keller's testimony.

13 In addition to the sense that New Hampshire or
14 FEMA, the NRC staff deemed to be clearly unsupported
15 unattested statements of counsel, it would seem that those
16 statements if needed for the Board's resolution of this
17 issue could be summarized in affidavit form to provide the
18 necessary evidentiary weight to reflect that the issue of
19 shelter-in-place is now moot.

20 JUDGE SMITH: Ms. Young, I don't have that
21 citation from our decision before me. Would you give it to
22 me again, please?

23 MS. YOUNG: Paragraph 8. -- I cited paragraph 8.71
24 but it's paragraph 8.68 through 8.71. It's on page 768 of
25 the Board's decision.

1 JUDGE SMITH: I don't have that decision before
2 me. You have identified what I believe is a problem here.
3 This does seem to me like deja vu. We did hear these
4 arguments during the hearing, we did make findings, we did
5 determine that the likelihood of sheltering and predicting
6 the puff release before it happens and with a certainty that
7 conditions will remain as they are was very, very remote,
8 all which was rejected by the Appeal Board.

9 Here we are, we come right back to the same
10 situation. It is hard to sort out what is new and what
11 isn't, except I think it is very clear now that the formal
12 document known as NHR ARP does not contain a provision for
13 sheltering in ERPA-A. I think that can be stated with more
14 certainty than ever before.

15 MR. BISBEE: If I could just add a caveat, in a
16 general emergency, Your Honor.

17 JUDGE SMITH: In a general emergency.

18 MR. BISBEE: Right. You are correct. I am reading
19 paragraph 8.71, NRC 28, page 768. We did spend a lot of
20 time on that. Mr. Keller was cross-examined at length, and
21 we were impressed by his testimony that the uncertainties
22 would outweigh the potential benefits. Nevertheless, here
23 we are.

24 MR. FLYNN: If I may suggest something, I would
25 like to reinforce what Mr. Dignan said earlier. That is,

1 the Appeal Board has made it clear that sheltering-in-place
2 is not required for ERPA-A as general emergency

3 JUDGE SMITH: I think that is very clear now in
4 the law in this case. We didn't require it --

5 MR. FLYNN: The questions that they have raised
6 are only pertinent if it is in the range of possibility.
7 So, there are two ways to approach the question. One is to
8 attempt to provide citations to the record, and the other is
9 to establish if it can be established that the shelter-in-
10 place option is not within the range of possibilities. I
11 think that is where this discussion is going.

12 JUDGE SMITH: The Appeal Board, I am sure,
13 thoroughly read our decision in 88-32. They have
14 demonstrated that they have read again and again, the
15 testimony of the New Hampshire officials testifying with
16 Applicant's people. As of now, they are convinced that at
17 one time the State of New Hampshire had planned an
18 evacuation -- had allowed for the choice of sheltering of
19 the beach population. Whether there is merit to that or
20 not, they are convinced.

21 The posture of the case before us is that is what
22 they believe the record to be, and the only thing they
23 backed off from them in ALAB-939 was their perceived plan
24 for sheltering the entire beach population. They now seem
25 to recognize that the beach population with transportation

1 not inside shelters will evacuate. They recognize that.

2 What they don't recognize is and have not found in
3 the record that they have read is that people in shelters
4 will not be asked to shelter-in-place in a general emergency
5 in ERPA-A, they do not recognize that. They are thoroughly
6 informed of the record.

7 MR. FLYNN: Then I would suggest the question is,
8 how can the record be completed, so to speak, so that what
9 we have represented can be demonstrated to the satisfaction
10 of the Appeal Board.

11 JUDGE SMITH: Let's hear -- we have ideas on it.
12 Before we wrap it up in a new little solution, Ms. Greer, on
13 behalf of the Attorney General and the Intervenor's has a
14 position that is entirely different. Let's hear from Ms.
15 Greer.

16 MS. GREER: That is correct, Your Honor, we do
17 have a position that is different. At the end of what I
18 say, I would like to have Ms. Curran to also have the
19 opportunity to also address whatever she thinks I leave out
20 on this.

21 One, I think that contrary to the positions
22 asserted by the Applicant's and by other parties here today,
23 I don't think that the issue that has been remanded to the
24 Board is right. I think that for a couple of reasons.

25 JUDGE SMITH: May I interrupt, Ms. Greer. Are you

1 using a speaker phone?

2 MS. GREER: No, I am not.

3 JUDGE SMITH: Your voice is breaking up at the end
4 of sentences.

5 MS. GREER: I will try to speak more directly into
6 my speaker. Does that help any?

7 JUDGE SMITH: That is very good.

8 MS. GREER: First of all, I would just like to
9 make a couple of observations which are from our
10 perspective. The record that the Intervenor's have had an
11 opportunity to inquire into with respect to the sheltering
12 issues that we put forward in our contention, was the record
13 that was developed during the New Hampshire proceedings.

14 Since that time, it appears that the State of New
15 Hampshire has made a significant change in what they view to
16 be a shelter-in-place concept. I think that originally
17 because obvious this past winter when they started making
18 their filings which clarified that at least with respect to
19 the non-transportation dependent beach population, shelter-
20 in-place meant evacuation.

21 The Intervenor's obviously, given the nature of
22 the change -- I think the Appeal Board demonstrated that
23 they agreed with them on that point, that there has been
24 significant change in what shelter-in-place means under the
25 NHR ARP beach population.

1 JUDGE SMITH: You are breaking up again, Ms.
2 Greer.

3 MS. GREER: If anybody has a hard time hearing me,
4 I will try to speak up.

5 JUDGE SMITH: Just speak directly into your
6 transmitter, that seems to work fine.

7 MS. GREER: We have not had an opportunity to make
8 any inquire into either how this will be accomplished -- the
9 procedures for accomplishing this change, or into any basis
10 for why the evacuation will be a dose savings protective
11 action decision for that evacuated beach population as I see
12 it. The record shows that for the people who are going to
13 be told to evacuate, despite the fact that a shelter-in-
14 place recommendation is the dose savings recommendations,
15 those people are essentially going to be receiving no dose
16 savings in that eventuality.

17 It seems to me that is in conflict with the stated
18 goal of the decision making that New Hampshire has put
19 forth. They have said that our goal in making PAR's is to
20 afford those savings. For that portion of the population
21 that is evacuating as the record now stands, there is no
22 indication that they will receive any dose savings by that
23 evacuation which they are not going to engage in.

24 I would also say that although other parties here
25 seem to believe that the record is very clear that

1 evacuation for ERPA-A is what is going to take place when
2 there is a shelter-in-place recommendation, I don't think
3 that is in any way clear from the record that has been
4 developed even up through and prior to the January 10th
5 filing of the State of New Hampshire.

6 JUDGE SMITH: Prior to, but not including.

7 MS. GREER: Prior to, but not including. It
8 appeared as though at least for portions of ERPA-A, those
9 portions of the population who had immediate access to
10 shelter or who were present in shelters that they wouldn't
11 still continue to shelter-in-place, and that it was only
12 going to be a portion of the ERPA-A beach population who had
13 transportation and did not have immediate access who were at
14 that point going to be evacuated. I think that the record
15 on this point is very unclear.

16 Even looking back at the February affidavits --
17 the February 16 affidavits of Mr. Iverson, he seems to
18 indicate will still be a possibility in shelter-in-place --
19 not evacuation, but shelter-in-place in the usual use of that
20 word, at least with respect to the people who are in
21 shelter. Now it appears that all of ERPA-A, including
22 everybody who is already in the beach motels and the beach
23 housing, is going to be evacuated out. I think that is yet
24 another change in the presentation that has been made on the
25 issue of sheltering.

1 The Intervenor's have had no opportunity to
2 inquire into whether in fact any of evaluation of shelter-
3 in-place meaning evacuation and increasingly meaning
4 evacuation of large segments of the population will afford
5 them any dose savings which is, after all, the whole purpose
6 of doing any kind of protective action.

7 Since the record does not show that evacuating
8 when a shelter-in-place recommendation is made will afford
9 any dose savings at all, I think that there is an apparent
10 conflict in the record between what the State of New
11 Hampshire is seeking to accomplish, i.e., dose savings and
12 what they will actually be accomplishing which is for that
13 large portion of the population.

14 The numbers, as I recollect for the beaches, are
15 roughly in the range of 50,000. Even if one takes the non-
16 transient dependent portion of the population that is
17 evacuating, you have roughly 25,000 people sitting on the
18 beach without receiving any dose savings by the now evolved
19 concept of shelter-in-place being evacuation.

20 I believe that even the nature of the record that
21 exists and also given the fact that the Intervenor's have
22 not had the opportunity to make any presentation on this or
23 inquire into how the State of New Hampshire will be
24 implementing this and why they view this as being dose
25 savings. I believe that this issue cannot be resolved

1 merely by looking at the record as it presently stands.

2 I think that the only thing that this Board can
3 really do at this time is to allow a further development of
4 the record, and I would suggest that the best way to do it
5 is to permit the Intervenor's to engage in discovery
6 including depositions of the New Hampshire officials who
7 actually would be in the position of implementing the NHR
8 ARP, since regardless of whether FEMA and the NRC and
9 applicants believe that this will be a shelter-in-place is
10 so low that it is something this Board doesn't have to worry
11 about.

12 Further, it also establishes that that has not
13 changed. Ever since the New Hampshire proceedings
14 commenced, it has always been part of the record that
15 sheltering will be a low option. As we have been told many
16 times by the Applicant's the whole possibility of an
17 accident ever occurring is a low possibility. That does not
18 obviate responsibility to engage in emergency planning or to
19 afford protection that will give dose savings in the
20 eventuality of an accident.

21 I think that simply saying that the likelihood of
22 it not happening allows us to step out of it really doesn't
23 hit the issue at all, because reality is however low the
24 probability, as long as the State of New Hampshire says we
25 do not deny the possibility that in some eventualities we

1 may elect the option of shelter-in-place and they are the
2 people who are going to have to implement the plan, I think
3 that whether dose savings will be accomplished by that PAR,
4 I think is something that requires further inquiry.

5 I think that we should reopen the record,
6 discovery should be permitted, and a hearing should be
7 scheduled.

8 JUDGE SMITH: All this flows from ALAB-939?

9 MS. GREER: I believe it does.

10 JUDGE SMITH: You are not even discussing the fact
11 that the Licensing Board denied Intervenor's motion to
12 reopen the record. Apparently, that was appealed and the
13 Appeal Board at least implicitly affirmed the Licensing
14 Board's ruling on that. The Appeal Board is saying that the
15 only issue we have before us now is given shelter-in-place
16 and given the very narrow aspects of it, and that is people
17 only actually within shelter what is the rationale. They
18 clearly indicated that they are not forcing sheltering
19 beyond the judgment of the New Hampshire officials into the
20 plan.

21 They have accepted right now totally a concept of
22 limited shelter in place, and that is when I say limited, I
23 mean limited on the sheltering aspect of it. That has been
24 accepted. You are raising issues that have already been
25 litigated, ruled upon, appealed, and I think we have lost.

1 I think you are reading too much into the specific questions
2 that they are asking.

3 I don't read them to say we should reopen the
4 entire litigation on dose savings at all. They simply want
5 what the record says about the rationale for it, even to the
6 point where it was left to us to decide whether the present
7 record provides the answer or not. Nevertheless, we hear
8 your argument and have read your brief. Do you want to
9 continue?

10 MS. GREER: Only to respond to the Court's
11 observation that, 939 appears to be more limited than the
12 interpretation that we seem to be taking. I believe that
13 what the Board is saying there, is that we are not saying
14 that we are not going to require the State of New Hampshire
15 to have sheltering. I think that they are only saying we are
16 not going to -- for the State of New Hampshire, that is
17 their plan.

18 However, I believe that they then go on to say
19 that if you are not going to have sheltering you are going
20 to have to show where, in the record, there are present
21 plans to evacuate the non-transient dependent portion of the
22 population who actually afford dose savings. As I read
23 939, the Appeal Board is saying that there is an apparent
24 conflict between the stated purpose of protective actions
25 for recommendations, i.e., dose savings and the fact that

1 that portion of the population who are going to be in cars
2 and evacuating will have no dose savings since there is no
3 sheltering afforded by cars.

4 I think that the Board has expressed a broader
5 inquiry than -- the Appeal Board has expressed a broader
6 inquiry than this Licensing Board believes that is
7 presently.

8 JUDGE SMITH: Ms. Curran.

9 MS. CURRAN: I fully support Ms. Greer.

10 JUDGE SMITH: Is that it?

11 MS. CURRAN: Yes.

12 JUDGE SMITH: Mr. Dignan, do you wish to be heard?

13 MR. DIGNAN: No, Your Honor, except to state that
14 I concur with the view of the Appeal Board decision
15 expressed by the Board or by the Chairman, I should say.

16 JUDGE SMITH: Well, now we have a problem here.
17 We read ALAB-939 to require evidence in response to their
18 questions, and not statements of counsel. I will leave it
19 to you, Mr. Dignan, on how you proceed, you have the burden.
20 You might consider a summary disposition or whatever.

21 I don't believe that we can just accept statements
22 of counsel interpreting the plan, given the previous
23 comments that we have received without something tantamount
24 to evidence.

25 MR. DIGNAN: Your Honor, I will say yes, we will

1 file summary disposition motion. The problem is that
2 obviously I need Mr. Bisbee's concurrence in that approach
3 before I represent to you that that can go forward. The
4 affidavit will have to come from his people.

5 JUDGE SMITH: We don't want to have to go back to
6 the Appeal Board again on this issue and have them perceive
7 that we have not complied with their remand. If you will
8 read ALAB-939, the Appeal Board has implied that the
9 Licensing Board has adopted an after-the-fact rationale for
10 its conclusions in this case which is a very, very unusual
11 observation to be made concerning judicial officers.

12 I think that you have to take ALAB-939 as a very
13 serious opinion, and we have to resolve it thoroughly and
14 finally.

15 MR. DIGNAN: As I say, Your Honor, I concur. The
16 problem I am having is this. I am having no problem in
17 committing to properly file a summary disposition motion.
18 In light of the reading we are giving ALAB-939, the only
19 person who can tell me whether I can do that is Mr. Bisbee.
20 It is Mr. Bisbee's people who are going to have to supply
21 the affidavits stating the position of the State of New
22 Hampshire to be what was represented by Mr. Bisbee in his
23 pleading.

24 My people can't do that. I have no control over a
25 witness who can speak for the State of New Hampshire. I

1 guess I am asking Mr. Bisbee, should I make the commitment
2 to file this motion or not?

3 MR. BISBEE: May I answer that, Mr. Chairman?

4 MR. DIGNAN: At least I was inviting you.

5 JUDGE SMITH: Mr. Bisbee, our problem is simply
6 this. We have read everything that we can find that is on
7 point. We have read the various versions of the New
8 Hampshire plan, we have read New Hampshire's filing of
9 February 16, both Mr. Iverson's affidavit and Mr. Wallace's
10 affidavit which were virtually identical, we have read the
11 May 28, 1990 comments, and we have read your memorandum of
12 January 10.

13 I recognize that you are a high ranking State of
14 New Hampshire official and you probably have -- I am sure
15 you have the authority to obligate the State of New
16 Hampshire to positions. But you are appearing here as
17 counsel. Your statements that you make are not
18 unequivocally consistent with the previous filings. We are
19 told by the Appeal Board that they want evidence.

20 For example, let's go back to ALAB-937. They
21 alluded to non-evidentiary affidavits of Mr. Callandrello,
22 and they would not accept that. They want evidence
23 apparently in accordance with the Commission's rules of
24 practice and the Administrative Procedure Act, and your
25 statement which I would be personally willing to wager on as

1 being reliable and accurate; however, does not constitute
2 evidence.

3 New Hampshire has always responded to the Board's
4 needs, and we have appreciated it very much. Furthermore,
5 we are as we indicated in LBP 90-12, we are not insensitive
6 to the position New Hampshire finds itself in being buffeted
7 about by the United States Government in an area where they
8 don't believe that they should be and they don't believe is
9 necessary.

10 Of course as you know from our decisions, we
11 didn't believe it was necessary from the outset. We have a
12 certain amount of sympathy which we stated. Nevertheless,
13 we are a subservient Board in this proceeding, and we have a
14 mandate from a duly constituted Appeal Board in this case to
15 resolve the issue with evidence. You possess all of the
16 evidence.

17 I guess what I am saying is, you see what the
18 confusion is. We will write some more if you wish on what
19 we perceive to be confusion from the filings that you have
20 made, some of the possible areas of confusion, and see if
21 you can address it. Furthermore, if there is indeed a
22 change in the interpretation of the plan or the plan itself,
23 that has been anticipated from the very beginning. As a
24 matter of fact if you recall, the Commission in CLI 90-3
25 affirming the authorization of the license cautioned the

1 adjudicatory boards and the parties that we should be
2 sensitive to changes.

3 Moreover, if there is anything that the hearing
4 process should do in addition to resolving disputes between
5 parties, it is to provide a perspective for needed changes
6 in policy, position or the plan itself. I think that there
7 has been a change in New Hampshire's interpretation. I
8 think that the change is that before New Hampshire believed
9 that the shelter-in-place option in general emergency for
10 ERPA-A could not be categorically ruled out, and now it is
11 the view of your people expressed by you that it can be
12 categorically ruled out. We have no evidence of that other
13 than your statement.

14 MR. BISBEE: Your Honor, if I could.

15 JUDGE SMITH: Yes, please.

16 MR. BISBEE: I appreciate and fully understand
17 your comments on the posture that you find yourself in now
18 as a Board, and I am sorry that you felt compelled by
19 something that I may have said or not said that made you
20 believe that I would hesitate in assisting you in a process
21 to resolve these issues. I don't think there is any
22 hesitation. We have been willing and assuming we remain
23 willing, to provide evidentiary material whether in the form
24 of live testimony or in the form of affidavit from the
25 appropriate state officials to deal with these issues.

1 I think as the matter was being discussed before
2 you addressed me with your comments just now, I assume that
3 a summary disposition process might well be the practical
4 way to begin that process.

5 JUDGE SMITH: Looking at our responsibility of
6 organizing the proceeding, it does seem to me that these are
7 issues which are amenable to disposition summarily. It's
8 Mr. Dignan's call on how he wishes to go. It does seem to
9 me that it is an appropriate approach.

10 MS. CURRAN: Judge Smith, this is Diane Curran. I
11 guess I can make a comment on that, if I might.

12 JUDGE SMITH: Certainly.

13 MS. CURRAN: I think you have been talking today
14 about the state of confusion and the various amounts of
15 information that have come into you over the last year or
16 so, and I seriously question whether summary judgement is
17 the appropriate way to go, being that there is so much
18 confusion. There have been so many changes in what the
19 State of New Hampshire has said, I can't see how we would
20 find it acceptable to make a ruling based on affidavits
21 given the vacillations and the State's position here.

22 We really want to get a chance to explore the
23 reasoning behind this, and to really probe what the State is
24 doing, which was something that was very useful in the
25 hearings in 1987 and 1988. I think it would be here too. I

1 just want to let you know that we are going to have a real
2 problem with summary judgment.

3 JUDGE SMITH: Well, the difficulty that you might
4 face is that assuming for argument that New Hampshire
5 officials have provided a great deal of confusion; and for
6 whatever reasons they have now decided to adjust their plan
7 and their interpretation of the plan to meet present
8 conditions; that is their option, and that is the whole idea
9 of emergency planning.

10 Emergency planning has to not only take into
11 account the laws of nature, the nature of the accidents,
12 plan for accidents, the population but emergency planning
13 has to also take into account and New Hampshire has to take
14 into account the political environment, and it's their right
15 to do so.

16 MR. BISBEE: Your Honor, I feel compelled just to
17 comment on a couple of your thoughts as expressed this
18 morning on how New Hampshire's position has changed on this
19 issue. I would just like to remind you of my view of the
20 three submittals we have made since the plan was amended in
21 October of 1988 dealing with the shelter-in-place option for
22 ERPA-A and general emergency.

23 I think as I told you earlier when you asked the
24 question pointedly, that our January 10th submittal of this
25 year does not differ from the two submittals of last year in

1 February and May. The planned response is evacuation for
2 ERPA-A general emergency. The other two submittals said
3 explicitly that shelter-in-place does not preclude it. The
4 January submittal did not say that directly, but as I
5 responded to you as a practical emergency planning
6 consideration, we are not going to preclude anything that
7 may arise as an appropriate response when the conditions do
8 arise.

9 JUDGE SMITH: Furthermore, if I can interrupt at
10 this point, we put to the Appeal Board whether we should
11 press you to do something that you didn't want to do and the
12 Appeal Board declined to do that.

13 MR. BISBEE: I appreciate that. The starting
14 point of this whole issue is the October, 1988 plan
15 amendment. From that point on, there have not been changes.
16

17 MR. DIGNAN: Your Honor, this is Tom Dignan.
18 Stepping aside for a moment from the concept of using a
19 summary disposition motion here -- which we stand ready to
20 do in light of Mr. Bisbee's assurances we have the
21 necessary evidence -- another possibility here which I would
22 respectfully submit for consideration for the Board is this.

23 The Board attaching New Hampshire's response to
24 the Board, certified to the Appeal Board the question of
25 whether the Board may accept representation of the first

1 Assistant Attorney General of New Hampshire on behalf of the
2 State as to what the planned protective actions under the
3 plan are, and if that question be answered in the
4 affirmative that you may accept them as a matter of official
5 notice or otherwise, is that a resolution of the matter as
6 the Appeal Board wished it resolved.

7 The advantage of doing it this way is two-fold.
8 One is, it will obviate the need possibly for further
9 proceedings for summary disposition. Secondly, I for one --
10 without asking anybody to join in this interpretation --
11 would like a clarification if the Appeal Board means more
12 than what I at least think they mean which is, once it be
13 established that New Hampshire is not utilizing shelter-in-
14 place for this population, that's the end of the issue.

15 If they mean more than that, we might as well find
16 it out from them now before we go through the exercise of a
17 summary disposition, responses thereto, and the Board
18 writing a decision with respect thereto, and getting it back
19 again because we haven't gone far enough.

20 I sincerely suggest for the Board's consideration
21 the certification of this question. It seems to me that the
22 Appeal Board can then tell us whether or not under the rules
23 of the Commission and its judgment this representation by
24 the state cannot be enough of an evidentiary basis and will
25 undoubtedly clarify what exact evidentiary basis they need

1 to deal with this problem.

2 I think any other course of action is probably
3 going to send us off -- possibly going to send us off on
4 another unnecessary round. I just urge the consideration by
5 the Board.

6 MS. GREER: Your Honor.

7 JUDGE SMITH: Just a moment please, Ms. Greer. I
8 will come back to you in just a moment. The Board wants to
9 confer for just a moment.

10 [Board conference.]

11 JUDGE SMITH: Ms. Greer, would you proceed,
12 please.

13 MS. GREER: Yes, Your Honor. I would just defer
14 to the Board that I think that if the Board accepts Mr.
15 Dignan's suggestion that this Board should certify the
16 question back to the Appeal Board attaching the most recent
17 filing by the State of New Hampshire will probably not
18 accomplish any clarification on the issues. I say that for
19 a couple of reasons.

20 One, because I don't believe it would initially be
21 responsive to the direction given by the Appeal Board in a
22 ALAB-939 which is that this Licensing Board insure that
23 there is adequate support in the record for distinguishing
24 between the portion of the population that is going to be
25 evacuating and those who are going to be shelter-in-place.

1 I also don't think it really touches on the other two issues
2 raise in ALAB-939 in remand to that.

3 Two, I think that simply attaching the statement
4 that evacuation is the directive for ERPA-A does not really
5 clarify the situation, but that the Board -- the May 28th
6 filing by the State of New Hampshire --

7 JUDGE SMITH: You are breaking up, Ms. Greer. You
8 are going to find that your remarks are not as faithfully
9 recorded if you like if you don't speak directly into your
10 transmitter.

11 MS. GREER: If the Board will refer to -- I don't
12 know if the Board has access to this -- the May 28th filing
13 by the State of New Hampshire which, again, was only
14 addressing the issuing of sheltering the beach population.
15 We are not talking generally about in any of these remanded
16 issues about general sheltering of the general population.
17 We are only talking about sheltering of the beach
18 population.

19 In that May 28th filing, the New Hampshire
20 Attorney General states that shelter-in-place envisions
21 people who already are in buildings or who have access to
22 buildings without delay or direction for emergency
23 management on direction -- I think they said on direction of
24 emergency management officials who utilize those buildings
25 as shelters, and others will be expected to evacuate.

1 It seems to me that at that point it appears that
2 the New Hampshire Attorney General's office is representing
3 that shelter-in-place, at least for the portion of the
4 population in ERPA-A who have access to residences or to
5 motels or restaurants and are inside, immediate access, that
6 they are at that point expected to use shelter. We are now
7 having a representation that -- they are not even meant to
8 be sheltering, but all of ERPA-A were to be evacuating.

9 I think that given that apparent conflict, I think
10 that simply attaching to a certification -- most recent
11 filing by the State of New Hampshire is going to get this
12 Board where it wants to go which is, I assume, a resolution
13 of this issue. I think that we are only likely to have yet
14 another remand down from the Appeal Board and this process
15 is going to continue on.

16 I may be wrong in seeing what the Appeal Board
17 wants on this, but they appear to want more than merely
18 another inquiry back from this Board.

19 JUDGE SMITH: That is the whole idea of the
20 motion, to find out. Mr. Bisbee, I am looking at your
21 letter of January 10th -- your memorandum of January 10th,
22 and I mentioned to you earlier that you are essentially here
23 as counsel for the State, notwithstanding the fact that you
24 are also a Senior official of that state.

25 You have indicated that your emergency planning

1 and emergency action officials are present with you today in
2 this conference.

3 MR. BISBEE: Yes, they are here.

4 JUDGE SMITH: Is Mr. Iverson there?

5 MR. BISBEE: Yes.

6 JUDGE SMITH: Would you mind if we inquired of Mr.
7 Iverson whether he has read your memorandum and can adopt
8 it.

9 MR. BISBEE: I will put him on.

10 JUDGE SMITH: Mr. Iverson, have you read Mr.
11 Bisbee's memorandum of January 10th to the Board?

12 MR. IVERSON: Yes, I have.

13 JUDGE SMITH: Did you provide the information in
14 it?

15 MR. IVERSON: Yes, I did, sir.

16 JUDGE SMITH: Is it correct?

17 MR. IVERSON: Yes, it is, sir.

18 JUDGE SMITH: You swear that your answers that you
19 have given me are true?

20 MR. IVERSON: I do, sir.

21 JUDGE SMITH: Thank you.

22 MR. IVERSON: You are welcome, Your Honor.

23 JUDGE SMITH: We are going to have a conference.

24 [Board Conference.]

25 JUDGE SMITH: Go ahead and put your question.

1 JUDGE COLE: This is Judge Cole. In looking at
2 some of the responses of the State of New Hampshire with
3 respect to protective actions, I think it is fairly clear
4 that at the general emergency level evacuation is the only
5 planned action for ERPA-A.

6 Are we concerned with any planned actions under
7 any other level of emergency, or should we concern ourselves
8 only with the general emergency? Mr. Dignan, could you
9 respond to that?

10 MR. DIGNAN: It seems to me, as I read the remand,
11 the only thing we are concerned with is general emergency. I
12 am also advised that we are below the PAG level at the site
13 area emergency level as a technical matter.

14 JUDGE COLE: So that, we need not concern
15 ourselves with anything but the general emergency level and
16 the protective actions at that level?

17 MR. DIGNAN: My view, as I understand the
18 technical side of it, yes.

19 JUDGE COLE: All right, sir. Does anybody else
20 have any comments on that?

21 MR. FLYNN: Yes, I support that argument.

22 JUDGE COLE: Thank you.

23 JUDGE SMITH: The Board will certify an
24 appropriate question to the Appeal Board. We will ask Mr.
25 Dignan to propose the question he wishes to certify, and all

1 other parties can simultaneously response to it. Mr.
2 Dignan, what schedule would you prefer?

3 MR. DIGNAN: Your Honor, I would imagine we could
4 have that proposed question out of here no later than
5 Monday, if that is agreeable to everybody.

6 JUDGE SMITH: All other parties, that is
7 satisfactory? All other parties can respond to the proposal
8 within ten days. I might say that the Board will feel no
9 need to discuss the relative merits of the proposals for
10 certification. We will simply look at the proposals and
11 select what we believe is the appropriate question to
12 certify.

13 Is there anything further?

14 MS. GREER: Yes, Your Honor. One thing further.
15 I am a little unclear whether the Board now regards the
16 statement of Mr. Iverson in response to the Board's question
17 today as part of the record that they are planning to
18 present to the Appeal Board. If that is the intention of
19 the Licensing Board, I would like to at this point voice an
20 objection to that proceeding for the following reasons.

21 It seems to me that when one has an adjudicatory
22 proceeding like this, the parties are -- at least when a
23 person says their motion for summary judgement --

24 JUDGE SMITH: Please speak up.

25 JUDGE SMITH: At least when there is a motion for

1 summary judgement a party opposing such a judgment is in a
2 position to present opposing affidavits, or at least present
3 a reason why they are not in a position to present such an
4 affidavit which would typically be a need to gather further
5 information.

6 In this case, as Mr. Dignan has previously
7 observed and has been observed by the Board as well, the
8 State of New Hampshire is the party that controls the
9 information. We are not in a position, having been
10 precluded from taking discovery on this point, to come in
11 with a separate factual statement that would show that the
12 record that has been developed so far is accurate.

13 For that reason, since we have not had an
14 opportunity to question Mr. Iverson or other New Hampshire
15 officials either in interrogatories or through depositions
16 or under oath at a hearing as to the nature of their
17 response if they elect the sheltering option, I think that
18 it is inappropriate to simply take a stated yes I will adopt
19 the statement of counsel as my own as an adequate
20 development of the record that gives us an opportunity to
21 put in countervailing information.

22 For that reason, I think if the Board is planning
23 to adopt Mr. Iverson's statements as being part of the
24 official record in this case, I would oppose that and voice
25 an objection to it.

1 JUDGE SMITH: We will regard it as if it had been
2 an affidavit attached to New Hampshire's comments of January
3 10th.

4 MS. GREER: If one takes it simply as an affidavit
5 attached to that, I believe that we still haven't been given
6 an opportunity to present countervailing affidavits. As I
7 read the November 14th direction from this Board, it was
8 simply asking for comments on proceeding. It was not asking
9 for a further development of the record at that time.

10 JUDGE SMITH: Those are points that you can make
11 in your response.

12 MS. GREER: Yes.

13 JUDGE SMITH: Is there anything further?

14 MS. GREER: I would like clarification from the
15 Board whether -- I want to be clear on this. My
16 understanding at this point is that this Board, yourself,
17 Judge Cole and Judge McCollom, do regard Mr. Iverson's
18 statements as being part of the record; correct?

19 JUDGE SMITH: Would you, again, exercise
20 discipline in using your telephone correctly and restate
21 your question.

22 MS. GREER: I am very sorry, Your Honor. I simply
23 said I just want to be clear that it is the view of Your
24 Honor, Judge Cole and Judge McCollom that Mr. Iverson's
25 statements today are part of the record in this case;

1 correct?

2 JUDGE SMITH: Yes, they are part of the record.
3 The answer to what the record is, is an entirely a different
4 matter. Now, is it a part of the evidentiary record, that is
5 another matter. Anything further?

6 [No response.]

7 MS. YOUNG: This is, Ms. Young. Would that be an
8 in-hand date, Your Honor?

9 MS. YOUNG: That would be an in-hand date.

10 MR. DIGNAN: What I was planning to do was Federal
11 Express out of here no later than Monday; is that
12 satisfactory?

13 JUDGE SMITH: That's fine.

14 MR. DIGNAN: You will have it in hand on Tuesday,
15 no later than Tuesday or Monday night.

16 JUDGE SMITH: And then, ten days.

17 MR. DIGNAN: Respondent's date might fall on --

18 MS. YOUNG: February 8?

19 JUDGE SMITH: February 8th, in hand. You can call
20 Mr. Greer, and if you want more time you can ask for it.

21 MS. GREER: Your Honor, actually, I am going to
22 be out of town for the entire week of February 4 though
23 February 8th, so I would have to get my response off to you
24 next week.

25 JUDGE SMITH: Okay.

1 MS. GREER: That's all I can do.

2 JUDGE SMITH: Do you intend to comment, Ms.

3 Curran?

4 MS. CURRAN: Yes, I will probably join in the
5 Massachusetts Attorney General's comments.

6 JUDGE SMITH: That is all parties, all parties
7 other than Applicant, who are going to comment. We will
8 have their answer in-hand or response in-hand on February
9 8th. We will bind into the transcript the stipulation at
10 the beginning of the discussion. We already did that.

11 If there is nothing further, we will adjourn.

12 [Whereupon, at 11:33 a.m., the telephone
13 conference concluded.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

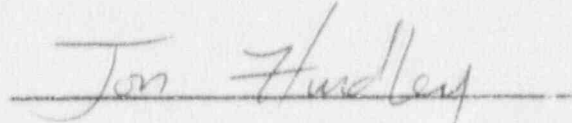
in the matter of:

NAME OF PROCEEDING: Seabrook Station Units 1 and 2

DOCKET NUMBER:

PLACE OF PROCEEDING: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Official Reporter
Ann Riley & Associates, Ltd.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

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
Off-site Emergency
Planning Issues

JOINT STIPULATION REGARDING CONTENTIONS
REMANDED IN ALAB-937 AND ALAB-942

The NRC Staff, the Attorney General for The Commonwealth of Massachusetts ("Mass AG") and the Licensees hereby submit the following Joint Stipulation, which is intended to resolve the issues raised in certain of Mass AG's contentions which were remanded for admission in ALAB-937 and ALAB-942.

I. ALAB-937: MASS AG CONTENTION 47 BASIS B

Licensees have agreed to make the following changes with respect to procedures for ensuring adequate supervision of children evacuated to the School Host Facility at the College of the Holy Cross, Worcester, Massachusetts ("Holy Cross"):

1. The implementing procedures for the Seabrook Plan for Massachusetts Communities ("SPMC") will be modified to expressly allow for the retention of those Route Guides who accompany vehicles arriving at Holy Cross and to allow for

the reassignment to Holy Cross of Route Guides who accompanied other vehicles. The modified procedures will expressly address the use of Route Guides for student supervision.

2. The Support Plan for Holy Cross Host Facility Activation and Operation ("Support Plan") will be modified to allow the Host Facility Supervisor to hold the 60 Route Guides arriving with school vehicles and to assign them to child supervision.
3. The Support Plan will be modified to allow the Host Facility Supervisor to request up to 14⁵ additional Route Guides who had accompanied other vehicles to report to Holy Cross to support child supervision.
4. The Support Plan will be modified to add a Volunteer Coordinator to the ORO Host Facility Staff, whose task will be to accommodate and coordinate the use of arriving parents, Holy Cross students, and other volunteers.
5. The Support Plan will be modified to provide for the transfer, to the American Red Cross at congregate care centers, of all children not picked up from Holy Cross by their parents by 8:00 p.m.
6. The Support Plan will be modified to provide that records will be kept of which children are transferred to which congregate care center, so as to facilitate the children's retrieval by their parents. Prior to the assignment of

children to congregate care, the School Host Facility will coordinate with the Reception Centers and, in the event that transit-dependent parents have already been assigned to a congregate care facility, their children will be assigned to the same facility.

7. The Support Plan will be modified to add that the ORO Host Facility Staff (including Route Guides) will be assigned to support the transfer of remaining children to the congregate care centers.
8. Training material for Route Guides will be added that explains their student supervision duties.

The above changes will be subject to the oversight of the NRC and FEMA Staff. The changes to the SPMC implementing procedures will be included in the revisions to the SPMC which will be issued in February 1991. Licensees will submit the Support Plan and training changes to the Staff by March 15, 1991, and will simultaneously provide a copy of all changes to Mass AG.

In light of these additional measures by Licensees, Mass AG agrees that the issues raised in Mass AG Contention 47 Basis R, as remanded in ALAB-937, have been resolved. Mass AG accordingly withdraws his Contention 47 Basis R.¹ Also, in light of this stipulation, Licensees agree that their motion to compel filed on

¹ In withdrawing Basis R of Contention 47, Mass AG does not intend to waive or prejudice his position with respect to any issue raised by any other basis or contention.

January 7, 1991, has been mooted and Licensees accordingly withdraw that motion.

II. ALAB-9421 MASS AG CONTENTION 56 BASIS A

In the light of the changes made to the SPKC subsequent to Mass AG's filings of his contentions in April, 1988, as reflected in the provisions of the SPKC as it was admitted into evidence and litigated, Mass AG agrees that the issues raised in Mass AG Contention 56 Basis A, as remanded in ALAB-942, have been resolved. Mass AG accordingly withdraws his Contention 56 Basis A.²

Respectfully submitted,

STAFF OF THE NUCLEAR
REGULATORY COMMISSION

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² In withdrawing Basis A of Contention 56, Mass AG does not intend to waive or prejudice his position with respect to any issue raised by any other basis or contention.