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February 8, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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)

LICENSEES' RESPONSE TO APPEAL BOARD ORDER OF FEBRUARY 4, 1991

Under date of February 4, 1991, this Appeal Board issued an order directing the Licensees to provide it with a list of eight issues currently in appellate litigation which Licensees believe may have been resolved by planning changes or other events as well as a full explanation of the basis for Licensees' view, and also to "address the Mass AG's observation that [Licensees] did not inform us during briefing (or at oral argument) that the rejection on jurisdictional grounds of Basis A of his contention No. 56 had become moot by reason of changes in the Seabrook Plan for Massachusetts Communities (SPMC)."

Turning to the second direction first. It is said that there are three acceptable answers in the military: "Yes Sir!",

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"No Sir!", and "No excuse Sir!". The answer here has to be "No excuse Sir!". At no time have counsel attempted systematically to run the myriad appellate points made in this case against plan changes, or, in the case of contention exclusion, against subsequent record development. The reason for this is fairly straightforward. Until recently, there has been essentially no indication from any Seabrook intervenor of any desire to settle, without litigation, any appellate issue which has been preserved As to the particular issue involved here, the argument made in our brief was made on the basis of the record as we saw it, which was an argument that the contention being asserted had, in fact, been addressed by the "Onsite Board."[1] As so joined, the issue was not "mooted" by subsequent record development. Obviously, the Appeal Board did not agree that the contention was one as to EALs alone, as we characterized it in the brief, but we had no way of knowing that would be the resolution until ALAB-942 issued. Prescinding from the foregoing, however, the fact is that, even had we joined issue in a different manner, the mootness point would not have been made in the absence of a periodic and systematic checking procedure, which, concededly, was not engaged in in light of the fact that "settlement" has not been a hallmark of the Seabrook litigation until recently.

Turning to the second direction, the eight issues are discussed below in the following eight numbered paragraphs.

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[1] Applicants' Brief at 38 citing Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177, 190-94 (1987).

1. The former Attorney General of The Commonwealth (MAG) complained of the fact that the Licensing Board had not required that a revised ETE be published prior to the authorizing of an operating license.[2] The updated ETE was published in December, 1989, and included all of the Licensing Board conditions and commitments made in the Licensees testimony.

2. MAG complained of the fact that the Licensing Board had found that State and Local Police could be relied upon to identify road impediments and to assist traffic guides.[3] We believe that recent evidences of State and local participation in planning assures that the cooperation assumed by the Licensing Board (correctly as a matter of law) will, in fact, take place.

3. MAG complained that the Licensing Board did not require that certain changes be made in the SPMC prior to authorizing the license, which changes would enhance notification to special facilities.[4] The modifications were made and submitted in December, 1989.

4. MAG argued that it was error to find that the Westborough facility was a suitable facility for special needs persons because FEMA had never reviewed that facility for use for that purpose. FEMA has conducted a further survey and found the facility to be adequate.

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[2] MAG Br. at 55.

[3] MAG Br. at 59.

[4] MAG Br. at 66.

5. MAG argues that the Holy Cross facility is inadequate for the reasons, inter alia, that there is inadequate staffing to care for the children and there is no guaranty that the facility will only be used for a short time.[5] The recent stipulation resolving the remand in ALAB-937 has settled these issues.

6. MAG complains of the lack of a FEMA review of the use of Haverhill as a staging area and that there is no showing that it can be used in a drill or exercise.[6] The 1990 drill program exclusively used the Haverhill staging area for three major combined functional drills as well as numerous smaller drills. It was also used during the 1990 graded exercise and evaluated by FEMA.

7. MAG argues that there were not sufficient ambulances available under the SPMC.[7] The most recent update to the SPMC shows a supply of 107 ambulances against a need for 87.[8]

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[5]MAG Br. at 70.

[6]MAG Br. at 70.

[7]MAG Br. at 72.

[8]Licensees intend to reduce the number under contract to 95.

8. MAG argues that there is no record support for the fact that 31 bedbuses will, in fact, be available.[9] Licensees have placed in the field 35 bus conversion kits and have, under contract, over 70 buses that report for conversion under the SPMC.

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[9] MAG Br. at 74.

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Licensees herein, hereby certify that on February 8, 1991, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

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