

11422

DOCKETED
USNRC

February 12, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'91 FEB 13 P3:27

before the

OFFICE OF SECRETARY
DOCKETING & SERVICE

ATOMIC SAFETY AND LICENSING APPEAL 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

(Offsite Emergency
Planning Issues)

LICENSEES' MOTION TO DISMISS
APPEAL OF LBP-89-38

Now come the Licensees and say as follows:

1. The Appeal Board currently has sub judice an appeal from the decision of the Licensing Board denominated LBP-89-38. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-38, 30 NRC 725 (1989).
2. This decision denied three motions filed by Intervenors herein which motions sought the acceptance for litigation of two contentions allegedly arising out of the onsite emergency plan exercise held at the Seabrook Nuclear Power Station (Seabrook) on September 27, 1989 ("the Exercise").
3. On January 25, 1991, the United States Court of Appeals for the District of Columbia Circuit decided the case of

MODIS38.SB

9102200162 910212
PDR ADDCK 05000443
G PDR

DS03

Commonwealth of Massachusetts v. NRC, ___ F.2d ___, Nos. 89-1306 et al., (D.C. Cir. Jan. 25, 1991). Therein, the court ruled, with respect to the Exercise:

"We do not believe that such an onsite exercise is intended to supersede the full participation drill, and thus we reject the NRC's contention that the onsite exercise becomes the 'legal underpinning' for approval of the full power license. [citation omitted]."

Slip Op. at 46.

4. This ruling by the court means that as a matter of law, the events which occurred at the Exercise, and the Exercise, itself are not material matters with respect to the issuance of Seabrook's operating license. See Commonwealth of Massachusetts v. NRC, supra, Slip op. at 36-37, 40-41; Union of Concerned Scientists v. NRC, 735 F.2d 1437, 1443-48 (D.C. Cir. 1984). This being the case, the Intervenors had no right to a hearing on the contentions which they proffered with respect to the Exercise.

5. In light of all of the foregoing, the appeal of LBP-89-38 should be dismissed either as moot or on the grounds that, as a matter of law, the Licensing Board was correct in denying a hearing with respect to the contentions at issue.

WHEREFORE, Licensees move that the appeal of LBP-89-38 be dismissed.

By their attorneys,



Thomas G. Dignan, Jr.
George H. Lewald
Kathryn Selleck Shea
Ropes & Gray
One International Place
Boston, MA 02110-2624
(617) 951-7000

CERTIFICATE OF SERVICE

DOCKETED
USNRC

I, Thomas G. Dignan, Jr., one of the attorneys for the Licensees herein, hereby certify that on February 12, 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):

FEB 13 1991 13 P3:27
SECRETARY
REGULATORY & SERVICE
BRANCH

Alan S. Rosenthal, Esquire
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Fifth Floor
4350 East-West Highway
Bethesda, MD 20814

Mr. Howard A. Wilber
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Fifth Floor
4350 East-West Highway
Bethesda, MD 20814

Thomas S. Moore, Esquire
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Fifth Floor
4350 East-West Highway
Bethesda, MD 20814

Mr. Richard R. Donovan
Federal Emergency Management
Agency
Federal Regional Center
130 228th Street, S.W.
Bothell, Washington 98021-9796

Administrative Judge Ivan W.
Smith, Chairman, Atomic Safety
and Licensing Board
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

H. Joseph Flynn, Esquire
Office of General Counsel
Federal Emergency Management
Agency
500 C Street, S.W.
Washington, DC 20472

Administrative Judge Richard F.
Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Gary W. Holmes, Esquire
Holmes & Ells
47 Winnacunnet Road
Hampton, NH 03842

Administrative Judge Kenneth A.
McCollom
1107 West Knapp Street
Stillwater, OK 74075

Judith H. Mizner, Esquire
79 State Street, 2nd Floor
Newburyport, MA 01950

John P. Arnold, Attorney General
George Dana Bisbee, Associate
Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301-6397

Robert R. Pierce, Esquire
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Mitzi A. Young, Esquire
Edwin J. Reis, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North, 15th Fl.
11555 Rockville Pike
Rockville, MD 20852

Diane Curran, Esquire
Andrea C. Ferster, Esquire
Harmon, Curran & Tousley
Suite 430
2001 S Street, N.W.
Washington, DC 20009

Adjudicatory File
Atomic Safety and Licensing
Board Panel Docket (2 copies)
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

*Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Mail Stop EWW-529
Washington, DC 20555

Suzanne P. Egan, City Solicitor
Lagoulis, Hill-Whilton &
Rotondi
79 State Street
Newburyport, MA 01950

Jeffrey Pidot, Esquire
Deputy Attorney General
Department of the Attorney
General
Augusta, ME 04333

Leslie Greer, Esquire
Matthew Brock, Esquire
Massachusetts Attorney General
One Ashburton Place
Boston, MA 02108

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

Barbara J. Saint Andre, Esquire
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110


R. Scott Hill-Whilton, Esquire
Lagoulis, Hill-Whilton &
Rotondi
79 State Street
Newburyport, MA 01950

Ashod N. Amirian, Esquire
145 South Main Street
P.O. Box 38
Bradford, MA 01835

G. Paul Bollwerk, III, Esquire
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory Commission
Fifth Floor
4350 East-West Highway
Bethesda, MD 20814

George Iverson, Director
N.H. Office of Emergency
Management
State House Office Park South
107 Pleasant Street
Concord, NH 03301

Mr. Jack Dolan
Federal Emergency Management Agency
Region I
J.W. McCormack Post Office &
Courthouse Building, Room 442
Boston, MA 02109



Thomas G. Dignan, Jr.

(*Ordinary U.S. First Class Mail.)