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OFFICE OF SECRETARY  
REGULATORY & SERVICE  
BRAND

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 & 2) )  
\_\_\_\_\_ )

Docket Nos. 50-443  
50-444

APPLICANTS' ANSWER TO "MOTION OF  
ATTORNEY GENERAL BELLOTTI FOR CLARIFICATION  
OF BOARD ORDER DATED JANUARY 17, 1983  
AND FOR IMMEDIATE STAY OF FILING DEADLINE  
FOR CONTENTIONS ON EMERGENCY PLANNING  
FOR THE CITY OF NEWBURYPORT"

Introduction

On December 22, 1982 this Board issued an order,  
subsequently memorialized in a written memorandum and order  
under date of January 17, 1983, which provided, inter alia:

"The Board was informed that the projected date  
for the submission of Massachusetts draft  
emergency plans is the end of January, and the  
projected date for the bulk of the New  
Hampshire draft emergency plans is sometime in  
February. FEMA interim findings are now  
scheduled for April. The appropriate times  
for resubmitting off-site emergency planning  
contentions was then discussed. The Board  
ruled that contentions addressing emergency

plans must be filed after the draft emergency plans (or relevant part thereof) have been submitted to FEMA and within 30 days of the plans being made available to the parties."

No party objected to this provision of the Board's order.

On February 28, 1983, the NRC staff provided to this Board and the parties a multipage document entitled "Radiological Emergency Response Plan-City of Newburyport, Massachusetts-January 10, 1983" ("RERP-Newburyport"), together with a copy of a letter dated January 23, 1983 from FEMA Regional Counsel to NRC Staff Counsel transmitting RERP-Newburyport to NRC Staff Counsel. The FEMA transmittal letter stated that "This plan was received from the State of Massachusetts by FEMA Region I on February 23, 1983."

We are unadvised as to when the Office of the Attorney General of Massachusetts ("MassAG") received its copy of the Staff's letter with enclosures,-

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-The Motion states only that the "-Attorney General's-office just became aware of the possible problems associated with -RERP-Newburyport- during the week of March 7." Motion at 3 n.l.

but presuming the normal course of mail delivery, it was received sometime during the week beginning Monday, February 28, 1983.

On March 18, 1983 the Attorney General's Office filed the pleading at bar, in which, for the first time, the MassAG: (a) informs the Board and the parties that RERP-Newburyport is not properly to be considered a Newburyport plan because officials of the City of Newburyport have not yet reviewed it, (b) requests a "stay" of its currently-in-force obligation to file any contentions it may wish to raise based upon RERP-Newburyport until the Board can rule on its motion for clarification, (c) requests 14 days from the time of any adverse ruling on its motion for clarification to file contentions, and (d) advises the Board that, if the Board should require the MassAG to file contentions based upon the RERP-Newburyport, that office "will be forced to file a contention stating, in essence, that the document does not constitute Newburyport's emergency plan and raising every conceivable objection to -RERP-Newburyport- that the City might have."

Motion at 4.

For the reasons set forth herein, the Applicants urge that the motion should be denied.

ARGUMENT

At the outset, the Applicants concede- that the question of whether or not to grant the relief sought by the pleading at bar- is clearly a matter addressed to the sound discretion of the Board. However, for the reasons set forth below, we believe that discretion should not be exercised in favor of the Attorney General's Office.

1. The motion's timing is not the best. The movant admits it became aware of the "problem" it perceives during the week of March 7, 1983; the original plan, apparently, was to spring this issue on the Board and all the parties on March 17, 1983 at the then-scheduled prehearing conference. It does seem that, having received the RERP-Newburyport at least two

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-As must all of the other parties.

-The document, insofar as it is labelled a "motion for immediate stay," is not a proper pleading. The proper motion is a motion to enlarge time. Unfortunately, NECNP has initiated a practice of labelling motions to enlarge time as motions for "immediate stay" of an obligation to file. While this has a certain "ring" to it, possibly conjuring up an image of a pressing need to give immediate protection to life, liberty, property, etc., the fact is that these are just garden-variety motions to enlarge time.

weeks before March 18, 1983, some hint of the alleged problem ought to have been given before now.

2. If it was the MassAG's position that contentions should only be stated after emergency plans have become finalized by the municipalities involved, it should have made that clear by objecting to the Board order of December 22, 1982, as memorialized on January 17, 1983, which made clear that contentions would be required to be filed 30 days after any "draft" was made available to the parties. Whatever RERP-Newburyport is, it is a "draft" at least.- The MassAG made no attempt to advise the Board of its objections to filing contentions to draft plans -- or to plans

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-The document provided to the Board and the parties was prepared by the consulting firm retained to assist state and local authorities in the preparation of emergency plans. It was prepared "with the assistance of the Massachusetts Civil Defense Agency" (Motion at 1). While the document may not be final, it was not represented as being a final plan. On the other hand, it is not the product of a total stranger, either, and to imply that the document may not serve even as the focal point of comment, criticism, and revision, as the Motion implicitly does, is to denigrate unduly the work product of state officials for whom the movant is itself officially responsible.

prior to any particularized but as yet undefined state of finalization -- until now.

3. It is likely that the Attorney General's Office will file "every conceivable objection" to the plan. That is fine; it will assure that the planners will have before them in succinct form and at the earliest possible time all possible objections as they work to formalize the plan. Indeed, the result may be the accommodation of all the Attorney General's problems; at a minimum, the result will be the resolution of disagreements regarding the plans in the most expeditious fashion.-

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-There is nothing untoward or even unusual in a process that requires the early identification of contentions that may later become obviated. Such, indeed, is often the course in NRC construction permit and operating license proceedings, as it has in fact been even to date in this one. Whatever incremental effort is involved in filing such contentions (which is minimal if the effort to pursue informal resolution of the same concerns is genuine) is more than offset by the elimination of unwarranted and unproductive delay.

CONCLUSION

The motion, in all respects, should be denied.

Respectfully submitted,

*Thomas G. Dignan, Jr.*  
*R. K. Gad III*

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CERTIFICATE OF SERVICE

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

I, Robert K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on March 22, 1983, I made service of the within Applicants' Answer to "Motion of Attorney General Bellotti for Clarification of Board Order Dated January 17, 1983 and for Immediate Stay of Filing Deadline for Contentions on Emergency Planning for the City of Newburyport" by mailing copies thereof (or, where indicated by asterisk, having copies thereof delivered by hand), postage prepaid, to:

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