

2) Massachusetts made no attempt to justify its late admission, and
3) many of the issues were res judicata. Order (Rejecting Contention of Massachusetts)(August 5, 1983).

On August 11, 1983, the Massachusetts filed a motion for reconsideration, asserting that the Board erred in ruling on the Massachusetts contention without affording Massachusetts the opportunity to respond to the Applicants' and the Staff's opposing Answers. Motion of Attorney General Francis X. Bellotti for Reconsideration of Board Order Rejecting Contention on Beach Area Evacuation Time Estimates (August 11, 1983). Massachusetts also filed a response to Applicants' and Staff's Answers. Response of Attorney General Francis X. Bellotti to the Applicants' and Staff's Answers to His Contention Relative to Evacuation Time Estimates for Beach Areas (August 11, 1983).

In asserting that the Board erred, Massachusetts refers to "established Commission precedent," but offers no citation. Nevertheless, this Board is not unaware that, as a general matter, a proponent of a contention is given the opportunity to defend that contention. In Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979), the Appeal Board found a challenge to a contention analogous to a motion to dismiss, and based on consideration of fairness, stated that the proponent of the contention must be given some chance to be heard in response. Id. at 524-25. The Appeal Board noted that the Commission's Rules of Practice are silent on this matter. Id. at 524.

This Board concludes, however, that the facts before the Board and the facts in Allens Creek are distinguishable. In Allens Creek, the intervenors had filed timely contentions; in the case at hand, Massachusetts filed a late contention without justification. In this case, the proper analogy to the Staff's or Applicants' Answers is not a motion to dismiss, but is a motion for waiver of an established rule of practice. And pursuant to 10 CFR § 2.730(c), a moving party has no right to reply to answers to its motion, except as permitted by the presiding officer. This Board believes it is the duty of the party who proffers a late-filed contention to justify its admission at the time the contention is proffered. Moreover, when the late-filed contention alleges issues that have just been dismissed pursuant to summary disposition, a Board certainly does not offend any reasonable fairness standard by summarily rejecting the late-filed contention. Accordingly, the Board denies the Massachusetts motion for reconsideration.

As this Board has previously indicated, however, the Board will entertain a motion for reconsideration of its rejection of NECNP's averment that the evacuation time estimates should include notification/preparation time. Tr. 1471-76; see Memorandum and Order (Ruling on Motions for Summary Disposition) at 10-12 (June 30, 1983). More recently, the Appeal Board has advised such reconsideration. ALAB-737, 18 NRC ____ (1983)(slip. op. at 11, August 26, 1983). In order to resolve this controversy expeditiously, the Board directs that any party seeking reconsideration of the Board's ruling with respect to

notification/preparation time must file the motion for reconsideration no later than 10 days after service of this Order. Responsive pleadings shall be filed in accordance with 10 CFR § 2.730(c).

IT IS SO ORDERED

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Helen F. Hoyt".

Helen F. Hoyt, Chairperson
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 8th day of September, 1983.