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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Jerry Harbour

SERVED JAN 25 1988

In the Matter of	}	Docket Nos. 50-443-0L
PUBLIC SERVICE COMPANY		50-444-0L
OF NEW HAMPSHIRE, <u>et al.</u>		(ASLBP No. 82-471-02-0L)
(Seabrook Station, Units 1 and 2)		(Offsite Emergency Planning)
		January 22, 1988

MEMORANDUM FOLLOWING TELEPHONE CONFERENCE

The Licensing Board requested counsel for the Applicants, the Massachusetts Attorney General, and the NRC Staff, respectively, to join in an informal telephone conference call convened at 11:00 a.m. on January 21, 1988. The purpose of the conference was to discuss the implications to this proceeding of a Freedom of Information Act (FOIA) request by Rockingham County Newspapers, Inc. (FOIA-88-28). The conference was called without notice to the other parties and without verbatim reporting because the Board believed that prompt action on its part might be necessary for the proper management of the forthcoming evidentiary hearing on the emergency plans for the Massachusetts communities.

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By way of background, the Commission, in its Memorandum and Order of November 25, 1987 lifting the stay of low power operation,¹ required as a condition of low power operation, that Applicants provide to the Staff and FEMA information previously deleted from the proposed emergency plan for the Massachusetts communities. As we later learned, the deleted information included the names and addresses of entities who have agreed to provide Massachusetts-related services in the event of an emergency at the Seabrook Station. The Commission also directed that, prior to low power operation, Applicants must indicate their willingness to provide the deleted information to the other parties to the proceeding, leaving it to the Licensing Board to fashion any needed protective order. Order, Slip op. at 6-7.

The Applicants provided the information to the NRC Staff with a request that it be treated as proprietary information, apparently pursuant to 10 C.F.R. § 2.790(a)(4).

The matter surfaced at the evidentiary hearing when the Massachusetts Attorney General demanded the information and the Applicants agreed to provide it, but only under a protective order with disclosure to the parties only. The Massachusetts Attorney General and other intervenors object to a protective order, arguing that the public

¹ Memorandum and Order (Lifting the Order Staying the Director of Nuclear Reactor Regulation From Authorizing Low Power Operations Due to the Lack of an Emergency Plan for Massachusetts), November 25, 1987 (unpublished).

is entitled to the information. The Applicants, on the other hand, posit that, from a purely legal consideration, the information need not be made available at all until contentions on the Massachusetts plan are filed. Tr. 8398-8425, 8987-9004. No agreement was reached and the matter was deferred. Tr. 9004.

On January 21, 1988 the Chairman of the Licensing Board was routinely provided with a copy (attached) of the FOIA request by Rockingham County Newspapers. They request the information redacted from the public version of the Massachusetts plan -- the information that is the subject of the discovery dispute before the Board.


The Board was concerned that an early public release of the redacted information under FOIA would moot the issue before it to the detriment of its management of this proceeding. The telephone conference call was convened to determine whether the Applicants knew of the FOIA request and whether they would be informed before the information is released.

The Board indicated that it was sensitive to the arguments made by Applicants and that it believed that a temporary protective order might be appropriate until the issue could be briefed. Neither counsel for Applicants nor the Massachusetts Attorney General had known about the FOIA request. Counsel for the NRC Staff, after consulting with Mr. Edwin Reis, Office of the General Counsel, reported that the Applicants would be advised before any release of the information and that the NRC Staff had not yet determined whether the information should be exempted from FOIA release. It became evident that Applicants will be provided

an opportunity to seek appropriate relief in the event the NRC Staff decides to release the information under FOIA. No action by the Board is needed now.

The discussion then turned to when the request for the redacted information and the need for any order protecting it should be entertained by the Licensing Board. The Massachusetts Attorney General and Applicants agreed to brief the matter on the merits without delay. But when the conference participants reflected on the fact that other intervenors must be heard on the issue, the matter was deferred until a formal recorded telephone conference of the parties to be set for the following week.² Participants in the January 21 telephone conference call may offer any additions or corrections to this memorandum on the record during the forthcoming telephone conference.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

January 22, 1988

² Subsequently a formal telephone conference of the parties was set for Wednesday, January 27, 1988.