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January 23, 1988

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-1 50-444-OL-1
(Seabrook Station, Units 1 and 2)	(Onsite Emergency Planning and Safety Issues)

APPLICANTS' ANSWER TO "CONTENTION OF ATTORNEY GENERAL JAMES M. SHANNON ON NOTIFICATION SYSTEM FOR MASSACHUSETTS AND MOTION TO ADMIT LATE-FILED CONTENTION AND REOPEN THE RECORD"

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STATEMENT OF PRIOR PROCEEDINGS AND FACTS

Under date of January 7, 1988, the Attorney General for The Commonwealth of Massachusetts (Mass AG) filed a nine page document (with attachments) entitled: "Contention of Attorney General James M. Shannon on Notification System for Massachusetts and Motion to Admit Late-Filed Contention and Reopen the Record" ("The Motion"). The thrust of The Motion is to have the previously closed evidentiary record with respect to the so-called "on-site emergency planning and safety issues" reopened[1] in order to litigate a contention to

[1]In point of fact the evidentiary record in the "onsite" phase of the case is now reopened for the limited purpose of resolving two other discrete safety issues (steam generator tube inspection program; biofouling). However, this reopening is not general in nature and does not confer upon

the effect that there is now no means, in the event of an emergency, to provide early notification and clear instruction to the municipalities located within that portion of the "10-mile radius" plume emergency planning zone (EPZ) for Seabrook Nuclear Power Station (Seabrook) located within The Commonwealth of Massachusetts.[2] In addition, The Motion, without specifically asking for a ruling to that effect, suggests (at p. 9) ". . . an operating license for operation not in excess of 5% of rated power should not issue until the Applicants have demonstrated the means to provide early notification and clear instruction to the populace of [the Massachusetts portion of the EPZ] in the event of a radiological emergency." Mass AG correctly fails to ask for such a ruling at this time because such a ruling would be premature. Only if, as, and when the record reopens on the issue of early notification of the Massachusetts population would it be in order for the cognizant adjudicatory tribunal[3] to address whether the pendency of such a proceeding

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any adjudicatory board the jurisdiction to hold evidentiary hearings on the issues sought to be put to litigation by The Motion. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1 - 4), ALAB-526, 9 NRC 122, 124 (1979); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979). Thus, Mass AG must independently establish his right to a reopening with respect to the issues at bar.

[2]The actual words of the contention are set forth in The Motion at page 7 thereof.

[3]Presumably the Licensing Board unless this Appeal Board should elect to conduct the evidentiary proceeding itself.

precludes low power operation of Seabrook.[4]

In order to put the issue facing this Appeal Board in proper perspective, a fuller than usual exposition of history is appropriate. As of the time the evidentiary record in the onsite phase of this proceeding closed, October 3, 1986, Tr. 1026, there was neither admitted, nor pressed,[5] any contention with respect to the early notification system for Seabrook. This is not surprising because there had been designed, and was being implemented, a perfectly adequate system. After the evidentiary record was closed, two late-filed contentions were brought by Mass AG and Seacoast Anti-Pollution League (SAPL), respectively, concerning certain discrete portions of the early notification system; both contentions were rejected and that rejection has been

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[4]It is by no means a foregone conclusion that ongoing litigation of the issue of prompt notification of the Massachusetts portion of the EPZ would foreclose low power operation. The regulations themselves, 10 CFR § 50.47(c)(2), as well as certain regulatory history, see 47 Fed. Reg. 30232, 30233 (July 13, 1982), recognize that prompt notification capability to a full 10-mile radius may not be necessary during low power operation. In any event, this is an issue to be decided at a later date after full briefing and argument thereon.

[5]On April 20, 1982 Mass AG filed a contention which mentioned "prompt notification" in its statement of basis; it was rejected with leave to file at a later date. On June 23, 1983, Mass AG filed another siren contention; it was admitted in reworded form in 1983; it was mooted by the filing of the New Hampshire RERP in 1985 and the subsequent order of the Board requiring the refiling of all contentions and any new contentions regarding emergency planning. Thereafter, Mass AG never filed any early notification system contention.

affirmed by this Appeal Board.[6]

During the time that the efforts to reopen with respect to the discrete portions of the early warning system were ongoing, and since their rejection, The Commonwealth of Massachusetts (see Attachments 1, 1A & 1B to this Brief), its agencies (see Attachment 2 to this brief) and its political subdivisions (see Attachment 3 to this Brief), aided by Mass AG (see Attachments 4 & 4A to this brief), have systematically set out to destroy the in-place fully adequate early notification system. These efforts have met with complete success and have been undertaken by The Commonwealth, its political subdivisions, its agencies and its chief law enforcement officer despite the existence of the following law of The Commonwealth:

> "There is hereby created within the executive branch of the commonwealth a division of civil defense to be known as the 'civil defense agency,' which shall be under the direction of a director of civil defense hereinafter called the 'director'. . . ."
>
> * * *
>
> "The director shall designate certain areas of the commonwealth as 'nuclear power plant areas'. For purposes of this section, said areas shall consist of all communities located within a ten mile radius of a nuclear power plant, whether or not said power plant is located within the commonwealth.
>
> "The director shall annually publish and release to local officials of each

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[6]ALAB-879, passim.

> political subdivision within areas preparedness and response plans which will permit the residents of such areas to evacuate or take other protective actions in the event of a nuclear accident. Copies of such plans shall be made available to the public upon request for a fee which is not to exceed the cost of reproduction.
>
> "The director shall also annually publish and release through local officials to the residents of the said areas emergency public information. Such information shall include warning and alerting provision, evacuation routes, reception areas, and other recommended actions for each area. . . ." (emphases supplied).[7]

Having successfully destroyed the siren system (which was in place and operable), The Commonwealth now comes to this Board seeking to employ its self-created state of affairs to gain a further hearing and consequent delay in the licensing proceeding now pending.

ARGUMENT

A. The Commonwealth Should be Precluded From Seeking the Relief It Does by the Doctrines of Estoppel and/or Waiver

The argument immediately hereinafter set forth is, admittedly, a novel one in NRC jurisprudence. The essential issue being put before this Appeal Board is whether, when a party to an NRC proceeding purposefully disables a nuclear

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[7] Massachusetts Civil Defense Act, Mass Acts 1950, c. 639, as amended by Mass. Acts 1979, c. 796, Ann. L. Mass., Spec. L. c. 31, §§2, 2B. This same statute also provides that: "No organization for civil defense established under the authority of this act shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes." Id., §17.

power plant system, should that party then be afforded further discretionary hearing rights (to which it has no absolute entitlement) because its own acts against the facility have created a regulatory deficiency. What the Commonwealth, its agencies, and political subdivisions have done to Seabrook is indistinguishable from the action of a private individual who somehow gains access to a nuclear power plant and deliberately renders a safety system inoperative. Should such an individual then have the benefit of a reopened hearing bestowed upon him to reward him for his acts? Indeed, if one accepts the argument that the language of the Massachusetts Civil Defense Act places an affirmative duty upon The Commonwealth to engage in productive emergency planning for Seabrook, which, we respectfully submit, it does, the issue then becomes: "Should a State Government which disables a warning system in violation of its own State laws, (as well as in contravention of the reasonable expectations of this Commission),[8] be rewarded with further hearing opportunities before this federal agency?"

The principle upon which this argument is made, is, in the words of Mr. Justice Cardozo, writing for a unanimous Supreme Court:

> ". . . fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the

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[8]See, e.g., **Emergency Plans**, 45 Fed. Reg. 55402, 55404 (Aug. 19, 1980).

> law says to him in effect "this is your own act, and therefore you are not damnified."' [citations]. Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. [citation]. A suit may not be built on an omission induced by him who sues. [citations]."[9]

The doctrine of estoppel is hardly foreign to NRC practice.[10] And, we submit, what is presented at bar is a

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[9] R. H. Stearns Co. v. United States, 291 U.S. 54, 61-62 (1934). Also of note are the words of the Supreme Court in a per curiam opinion refusing the exercise of its original jurisdiction in an interstate tax dispute:

> "In neither of the suits at bar has the defendant State inflicted any injury upon the plaintiff States through the imposition of the taxes held . . . to be unconstitutional. The injuries to the plaintiffs' fiscs were self-inflicted, resulting from decisions by their respective state legislatures. . . . No State can be heard to complain about damage inflicted by its own hand."

Pennsylvania v. New Jersey, 426 U.S. 660, 664 (1976).

[10] See Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), LBP-82-24, 15 NRC 652, 658, reversed on other grounds, ALAB-682, 16 NRC 150 (1982) (estoppel held to preclude finding of untimeliness when putative intervenor was relying on Staff advice as to deadline for filing petition); The Toledo Edison Company (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 766-68 (1975) (having accepted benefits of stipulation, one is estopped from challenging it); Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53 (1984) (same). See also Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 196 (1978).

case that cries for its application.

In considering this argument, it is important to note what is not involved here. First of all, if the Appeal Board denies the reopening, this does not mean that there will be no appropriate early warning system in place. The Staff will have to pass upon the appropriateness of any early warning system which Applicants devise to replace the lost sirens. And it has been recognized that since notification systems can be objectively judged under objective criteria, there is no bar to leaving the issue of whether an early warning system satisfies the Regulations to Staff oversight.[11]

Second, The Commonwealth is not here seeking a run of the mill hearing to which it is entitled as of right. It is seeking to reopen a closed evidentiary record to raise an issue never therein adjudicated. The Commission itself has characterized the action of reopening a closed record as "extraordinary."[12] Is it good law or policy to grant extraordinary relief, to the detriment of another, to one whose own deliberate actions created the necessity even to consider the question?

Third, this is not a case where the Applicants were seeking to go forward with some aspect of the plant in the face of opposition and failed. This is a situation where the

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[11] Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1104-05 (1983).

[12] **Criteria for Reopening Records in Formal Licensing Proceedings**, 51 Fed. Reg. 19535, 19538 (May 30, 1986).

siren system was in place, serving a public function, and was deliberately disabled by The Commonwealth. Is the reward for such action to be further hearings before an adjudicatory tribunal of this agency?

Finally, as noted above, we are not arguing at this time for the proposition that The Commonwealth's action should be deemed to result in Seabrook operating without an adequate early warning system in place for the Massachusetts portion of the EPZ. Rather, the proposition being advanced is simply that the Commonwealth, and those in league with it in the effort to destroy the siren system, should not be afforded the reward of an adjudicatory hearing on the system finally devised. "A suit may not be built on an omission induced by him who sues."[13]

B. The Criteria for Reopening Are Not Met

The criteria for granting a motion to reopen a closed evidentiary record are set forth in 10 CFR § 2.734. The required showing is that the motion be timely, address a significant safety issue, and "demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially." 10 CFR § 2.734(a). In addition, where, as here, the reopening is for the purpose of raising a late filed contention, the motion "must also satisfy the requirements for nontimely contentions in § 2.714(a)(1)(i) through (v)." 10 CFR §

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[13] R. H. Stearns Co. v. United States, supra, at 62.

2.734(d). The burden of satisfying each of the criteria is upon the moving party, and it is, indeed, a heavy one.[14]

Assuming, arguendo, that The Motion should be deemed timely filed, this still leaves the question of whether a significant safety issue is involved and whether a different result is likely. Turning to the last point first:

When the Commission codified the rule with respect to reopening closed evidentiary records, 10 CFR § 2.734, it paid particular attention to the "materially different result" criterion codified in subparagraph (3) of subsection (a) of the rule. The Commission noted that theretofore there had been articulated in the case law two differently worded standards: the so-called "might have been reached" standard and the "would have been reached" standard.[15] The Commission went on to say:

> "The actual inquiry to be performed falls between the two standards. The 'would' standard may be read to imply that an ultimate conclusion must be reached before all evidence is considered. The 'might' standard implies that reopening could be ordered even where a board is uncertain whether or not the new evidence is important. The inquiry should be, and has been, the likelihood that a different result will be reached if the information

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[14] E.g., Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1090 (1984); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983).

[15] Criteria for Reopening Records in Formal Licensing Proceedings, supra, at 19536-37.

> is considered. See e.g., Union Electric Company (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1209 (1983). Accordingly, the Commission is modifying the standard of § 2.734(a)(3) to require that a materially different result would be or would have been likely had the newly proffered evidence been considered initially."[16]

Because this is an operating license case, there is, in a sense, a logical disconnection between the regulation and the procedure involved. Like all Operating License Licensing Boards, the Board which issued the initial decision below was confined in its jurisdiction to the contentions before it. Thus, even if the information which forms the gravamen of The Motion were available to the Licensing Board, the "result" (i.e., the rulings on the contentions before it) would not have changed. Therefore, the question now becomes one of deciding how the "materially different result" criteria is to be handled in operating license cases where the new information does not affect the resolution of any contention heard by the Licensing Board, but rather allegedly gives rise to a wholly new and disparate contention never litigated.

In this particular case, the seemingly sensible course is to withhold ruling on the motion to reopen until a new warning system has been proposed and late filed contentions are made. Then a logical assessment can be made as to whether it is likely that a materially different result, i.e., nonlicensure, "would be likely." It was for this

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[16] Id. at 19537.

reason that the Applicants sought to await the design of the new system before responding to the motion at bar. Similarly, awaiting such a course of events permits a realistic assessment of the significance of the safety issue involved.[17] Mass AG, in The Motion, seeks to satisfy the "materially different result" criterion in a two sentence footnote.[18] The footnote wholly ignores the "logical disconnection" referred to above and makes no attempt at this juncture to argue that no satisfactory substitute is possible. Similarly, the brief "significance" discussion in The Motion is predicated solely on lack of information. In short, very little has been done by Mass AG to satisfy his heavy burden.

CONCLUSION

The motion to reopen should be denied on the basis of estoppel for the reasons set forth in part A of the argument above. If the Appeal Board rejects this argument, it should withhold any ruling as to the reopening of the record until such time as a substitute early warning system has been

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[17]Early warning systems are hardly exercises in esoteric or unknown technologies. At present, Applicants are at work on a system for the Massachusetts portion of the EPZ which would employ proven siren technology and helicopters to cover areas which could not be reached by the sirens, which helicopters would be backed up by mobil ground-based sirens. None of this involves cutting edge technology, and, as noted earlier, the standards by which it will be judged are entirely objective. Such matters hardly ever give rise to "significant" safety issues.

[18]The Motion at 7 n.8.

devised and submitted, and contentions, if any, are late-filed with respect to it.[19]

Respectfully submitted,

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[19]As noted earlier, the present state of affairs, as it affects low power operation, is a subject for later resolution by the cognizant tribunal. In the event the Licensing Board should authorize low power operation prior to resolution of the various issues now pending before it, the Commonwealth will have at least ten days to bring to the attention of this Board the question of whether low power operation must be forbidden pending design and implementation of a substitute early warning system.

Michael S. Dukakis
Governor

Charles V. Barry
Secretary

The Commonwealth of Massachusetts

Executive Office of Public Safety

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MEMORANDUM

TO: ROBERT BOULAY, DIRECTOR OF CIVIL DEFENSE

FROM: PETER X. AGNES, JR., ASSISTANT SECRETARY

DATE: JANUARY 4, 1988

RE: SIRENS IN THE SEABROOK EPZ TOWNS

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1. In accordance with our earlier conversation, you should contact the Civil Defense Directors of each of the Seabrook EPZ communities and advise them as follows:

(a) The Commonwealth of Massachusetts continues to oppose any emergency planning activities relating to the Seabrook plant and is not enagaged in any such activities, and as local directors they should conform their community's policy to the state's policy;

(b) There is no requirement in the SARA Title III law for sirens or any such devices to be used for alert and notification and that existing radio and telephone systems are sufficient to comply with SARA Title III;

(c) Under no circumstances should a local civil defense director or staffer advocate that sirens that were erected or installed as part of the earlier planning for Seabrook be retained, kept in place, or erected for any purpose.

2. You also should advise the local directors that if they or any town officials have any questions about these matters they should contact me directly.

cc: Frank Ostranger, Assistant Attorney General

ATTACHMENT 1

Board says 'no' to gift of n-plant sirens

The emergency sirens will come down. The only question is who will pay?

Selectmen Monday night reaffirmed their position on the emergency sirens installed by New Hampshire Yankee for use in its Seabrook evacuaton plans, noting that the deadline for removal of the sirens had passed last Wednesday. New Hampshire Yankee, in a New Year's letter to the five Massachusetts communties surrounding Seabrook station, had offered to give the sirens to the towns as a gift. The sirens will no longer be included in the plant's evacuaton plans. New Hampshire Yankee will still have to identify a means to warn residents of a plant emergency, under federal law.

The rejection of the offer by selectmen is congruent with the official position of the state.

Selectman William Lord read a letter from Peter Agnes, Assistant Secretary of Public Safety to Robert Boulay, Director of Civil Defense. The letter stated that the position of the Commonwealth in regard to emergency planning for Seabrook remains unchanged. Local civil defense directors are instructed to conform to state policy.

The letter states further that "under no circumstances should a local civil defense director or staffer advocate that sirens that were erected or installed as part of the earlier planning for Seabrook be retained, kept in place or erected for any purpose."

Selectmen directed Town Manager Michael Basque to authorize immediate disconnection of the sirens by Massachusetts Electric. According to Lord there are AC and DC hook-ups involved. The AC connections are to be disconnected by Massachusetts Electric. The town's DPW crew will disconnect the DC back-up and return the packs to the plant operators. There is no charge from Massachusetts Electric for the disconnection.

The town is working at the state level, according to Lord, to determine if there will be financial assistance forthcoming for the cost of removal of the poles. Selectmen also may need to get authorization from the Finance Committee.

ATTACHMENT 1A

Memo: Stay out of siren issue

By ANNE MARIE REIDY
Daily News staff

AMESBURY — Amesbury selectmen received a copy of a state memo yesterday that seemed to reinforce the decision by them and selectmen from four other towns — Newbury, West Newbury, Merrimac and Salisbury — to order owners of the Seabrook nuclear power plant to take down their emergency sirens and poles.

The memo orders state Civil Defense Director Robert Boulay and his local lieutenants — many of whom have supported keeping the siren system in place for other emergencies — not to take that position any longer.

"Under no circumstances should a local civil defense director or staffer advocate that sirens that were erected or installed as part of the earlier plans for Seabrook be returned, kept in place, or erected for any purpose," reads the memo, signed by Peter Agnes, assistant secretary of the state office of public safety.

The memo declares that no provisions in the federal Superfund law require communities to have siren warning systems in place, to warn residents in case of a chemical disaster locally or on nearby highways — a case made in some communities to retain the warning systems.

"Existing radio and telephone systems are sufficient to comply," with the Superfund regulations, Agnes' memo stated.

The memo also reiterates the state's official position that it will not take part in any emergency evacuation planning or drills related to the Seabrook plant.

State officials and some officials from each of the six Massachusetts communities within 10 miles of the Seabrook plant have said they do not believe the area could be safely evacuated, if an accident were to occur at the Seabrook plant.

Gov. Michael Dukakis has refused to approve emergency plans developed by Seabrook owners for submission to the federal Nuclear Regulatory Commission (NRC). Under federal regulations, such plans must be submitted for each community within 10 miles of a nuclear plant before an operating license can be granted.

Amesbury Selectmen Chairman Robert Gaudet read Agnes' memo last night, and suggested the board file it and take no other action. He had been the lone dissenter in the board's 3-1 vote, several weeks ago, to have the poles and sirens removed.

But Selectman William Lord said the midnight, Dec. 30, deadline the board set for Public Service Co. of New Hampshire to remove the poles and sirens has passed. He asked what steps the town has taken toward removing the sirens.

Town Manager Michael Basque said he is waiting for Massachusetts Electric Co. to give him a date when they will disconnect power to the 10 Amesbury sirens.

Lord suggested that town employees could then remove backup battery packs from each siren, dismantle the sirens, "and if (Seabrook owners) want, drive them up to the plant gate and unload the truck."

"The board's vote to dismantle the sirens was clear," said Gaudet. "The only question that remains is funding." If Seabrook owners refuse to remove their equipment.

Lord said he is exploring ways to get some state funding for the removal costs, which has been estimated at between $500 and $900 per pole.

If state funding is not available, Gaudet said, the board will have to go the the Finance Committee, for a transfer of money, or to town meeting, to create a budget for the project.

Board members asked Basque to continue his research on removal costs.

ATTACHMENT 1B

Seabrook votes to remove siren poles

By KARL MUENCH
Daily News staff

SALISBURY — One Seabrook nuclear power plant emergency siren in this town has been taken down and eight more are due to be dismantled early next month.

The selectmen last night voted to send Public Service Co. of New Hampshire, the company owning the largest share of the plant, a letter demanding removal by Jan. 2 of the eight pole-mounted sirens standing along town roads.

"The state attorney general's office has urged that all the towns move immediately to remove the poles," said Town Counsel Charles P. Graham.

Without some form of warning system, the plant cannot win approval of emergency plans for towns within 10 miles. Approval of an emergency plan is the last obstacle to the completed $5.1 billion plant's operating license.

Newburyport has removed six of eight sirens owned by the city.

But the first utility-owned siren to be forced down by opponents of the plant was dismantled last week at the Salisbury Beach State Reservation.

Wendy Kaszeski, spokeswoman for the state Department of Environmental Management, said the agency removed and stored the pole after the utility failed to do so.

DEM, which manages the reservation, refused to renew a permit for the pole in October. After the agency asked that the pole be removed, PSNH disconnected the siren in November.

But a day later, the siren was reconnected and the plant requested an administrative hearing on the matter. The request was denied on Dec. 1.

Plant spokesman David Scanzoni said attorneys filed for a temporary restraining order in U.S. First District Court in Boston on Dec. 17 against removing the pole.

Kaszeski said DEM consulted with Shannon's office before removing the siren.

West Newbury sought to do the same with five utility-owned sirens last spring, but was challenged in the First District Court, then the First District Court of Appeals, by Public Service.

Last week, the appeals court denied an injunction sought by Public Service that would have blocked West Newbury from dismantling the pole-mounted sirens until the suit is settled in the lower court.

Salisbury, Amesbury, Newbury and Merrimac were seeking to join West Newbury in defense of the towns' position against the poles.

The towns claim the state statute under which the selectmen issued permits for the poles does not apply to sirens, making the permits invalid.

In its challenge, PSNH claimed due process had not been followed in West Newbury and that the company's constitutional rights had been violated. The utility also said the selectmen had the authority to issue the permits.

Graham said that with the appeals court's decision, each of the towns will probably send letters similar to Salisbury's.

He said Attorney General James Shannon may help the towns remove the sirens, if the utility does not. But Graham refused to elaborate on the state's plans.

Scanzoni said the plant has not yet decided how to deal with the removal of the Salisbury Beach pole and threatened removal of sirens in other towns.

The plant has tested a helicopter-carried warning system and proposed using it to replace Newburyport's sirens. The plant also has proposed using sirens mounted on "cherry picker" utility trucks to cover Newburyport in severe weather that would ground the helicopter.

ATTACHMENT 2

Newburyport Daily News Monday December 21 1987

Board to review siren decision

By ANNE MARIE REIDY
Daily News staff

AMESBURY — What was to be a routine meeting to finish up end-of-the-year license renewals and handle pressing business may turn out to be a little more tonight, thanks to a recent court decision involving the owners of the Seabrook nuclear power plant.

The selectmen are scheduled to discuss the recent decision by the U.S. First Circuit Court of Appeals, allowing West Newbury to remove poles and warning sirens installed by the owners of the plant.

The selectmen had joined West Newbury's court battle to remove the poles and sirens last year.

That action came after the board decided that Seabrook plant owners had not applied for the proper permits before installing 10 poles and sirens in Amesbury.

Town Counsel Barbara St. Andre of the firm of Kopelman & Paige, advised the board at that time not to remove anything until court disputes in the West Newbury case were settled.

The recent West Newbury decision came in federal court, not in the state court case Amesbury had joined, said Selectman William Lord.

Lord, the town's liaison on Seabrook matters, said last night he plans to update his colleagues on what the decision in the West Newbury case means to Amesbury.

The siren system in dispute was installed as part of the nuclear plant's proposed emergency evacuation plan.

Federal law requires all nuclear plant operators to develop such plans for communities within a 10-mile radius of their site. Six of the 17 communities that lie within 10 miles of Seabrook are in Massachusetts: Amesbury, West Newbury, Newbury, Salisbury, Merrimac and Newburyport.

All six communities, in varying degrees, have questioned the presence of the poles and sirens, saying they should be rejected Gov. Michael Dukakis' decision not to approve Seabrook evacuation plans.

The selectmen are also scheduled to hold hearings on electric- and phone-service poles at 7:10, vote one-day extensions of service hours for local restaurants and clubs holding New Year's Eve parties, and renew food service licenses for Jackson's and McDonald's.

The selectmen meet at 7 p.m. in their second-floor Town Hall office.

ATTACHMENT 3

Selectmen put time limit on siren removal

By ANNE MARIE REIDY
Daily News staff

AMESBURY — Amesbury selectmen said last night they will give owners of the Seabrook nuclear power plant eight more days to remove 10 emergency warning sirens from town.

After midnight on Dec. 30, though, the town will begin to disconnect and dismantle the sirens and poles — with removal costs and storage to be paid for by Seabrook plant owners.

"I think this is generous," said Selectman William Lord as he sealed a letter detailing the town's position. "They've had six months to remove them."

Board members voted 3-1 to send the letter to Ropes & Gray, the Boston law firm that represents Public Service Co. of New Hampshire (PSNH), prime owner of the plant.

Chairman Robert Gaudet opposed the move, saying he still believes the warning sirens could be useful to the town in emergencies not related to the Seabrook plant.

The other selectmen — Lord, James Thivierge, and Neil Morrissey — said they were merely going forward with a decision the board first made on June 29, when they decided that permits issued in 1984 — by an earlier board — for the erection of the 10 sirens and poles were not valid.

The board had ordered the poles and sirens removed by July 13.

But on the advice of town counsel, selectmen delayed any action to enforce that order until a court battle between West Newbury and PSNH — in which PSNH sought to block removal of five West Newbury sirens — was settled.

On Dec. 16, the federal Appeals Court denied an injunction sought by PSNH to keep West Newbury from taking down the sirens, until a related lawsuit is settled in federal district court.

Amesbury, Salisbury, Newbury and Merrimac have joined West Newbury's argument in the district court that the towns can remove the poles and sirens.

The towns argue that the permits under which the poles and sirens were put up lists a series of specific uses — like radio, television, telegraph, and cable service — but make no mention of sirens. That makes the permits used in erecting the poles and sirens invalid, the towns say.

Representatives of the state Attorney General's office met Saturday with own counsels and city solicitors from Amesbury, Salisbury, Merrimac, Haverhill, Newbury and West Newbury, and told them to go ahead and remove the sirens, Lord said.

Lord said the Attorney General's office and Citizens Within the 10-Mile Radius (C-10), an anti-Seabrook group, are researching removal alternatives, in case PSNH decides not to remove the sirens.

Thomas Moughan of C-10 said his calls to contractors have not been conclusive, but several have expressed interest in a removal contract. He said cost estimates have ranged from $500 to $900 for each pole removal.

One pole and siren owned by the Seabrook power plant was removed on Saturday from the state reservation in Salisbury, Lord said. The state had a contractor already working at the reservation do the work.

Plant opponents say the sirens are crucial to Seabrook plant owners obtaining an operating license for the $5.1 billion nuclear generator.

Without some form of warning system, the plant cannot win approval of emergency plans for towns within 10 miles. Federal laws require such emergency plans be approved before an operating license is granted.

If Amesbury has to remove and store the Seabrook sirens, selectmen said, they will not give them back until Seabrook pays for those costs.

Lord said a private individual with "a secure and major-size building" that is empty offered to store the poles and sirens, and bill PSNH.

Seabrook Roundup

By Debra Sparks

Bank files suit against PSNH

On Seabrook's financial front, a New Jersey bank filed suit last week to attach property of Seabrook's main owner, Public Service Company of New Hampshire (PSNH). Acting on behalf of its bondholders, the Midlantic National Bank of Edison, N.J., said it filed the suit because Public Service failed to pay principal and interest due in October. The bank is trustee for holders of $425 million in bonds.

John Cavanagh, spokesman for PSNH said he believes Midlantic is working against the interest of bondholders. "We plan to vigorously oppose it in court," he said last week.

But Burt Kramer, a security analyst for Paine Webber in New York, says the New Jersey bank had a legal duty to file the suit.

"Let's say the bank never did that and PSNH goes belly up. What are the the bondholders going to do? They'd sue the bank because they were supposed to be the watching out for the bonds."

But if Midlantic's suit with PSNH does end up in court, says Kramer, PSNH is the likely winner since it has a financial restructuring plan on the table.

That's why Kramer predicts few banks, if any, will follow Midlantic's lead, which could push the financially strapped company to bankruptcy.

"To me, Midlantic is history. Restructuring is PSNH's last shot. There's a deal on the table that has to be worked out."

The PSNH plan offers the company's preferred stockholders and bondholders new common stock. Also, provided the utility receives the 15 percent requested rate increase, it would freeze rates for three years, after which there would be no increases, except for annual adjustments tied to changes in the cost of living.

Kramer says the restructuring plan PSNH submitted to the Securities and Exchange Commission last week is the best thing the company has going for it right now. A spokesman for Consolidated Utilities, the New York firm trying to develop their own restructuring plan for PSNH, says there are no new developments on that horizon.

West Newbury wins siren pole suit

The town of West Newbury won a major Seabrook battle last week.

The First District Court of Appeals in Boston denied an injunction sought by PSNH that would have blocked West Newbury from dismantling Seabrook's pole-mounted sirens until a related suit is settled in a lower court.

"It's not so much a question about taking them down anymore, but a question of when we take them down," said town counsel R. Scott Hill-Whilton.

Hill-Whilton added that he expects the other five Massachusetts towns within Seabrook's evacuation zone to follow West Newbury's lead in removing the poles.

PSNH erected 144 poles in the six Mass. towns within 10 miles of the plant as part of their emergency notification system. Acceptance of an emergency plan is the last major obstacle to licensing the completed $5.1 billion plant.

Frank Ostrander, head of the Nuclear Safety Unit at Attorney General James Shannon's office, says he was pleased by the court decision. "It paves the way for the Massachusetts communities that have decided the siren systems should be removed to do so."

Ostrander also sees the decision as a potential snag for the plant getting its low-power license. "A low-power license requires a system be in place that would notify the public within 15 minutes of an accident, and PSNH relied on those sirens to meet that regulation. Now they have to come up with something else."

Seabrook spokesman David Scanzoni said Seabrook attorneys will be meeting to discuss future actions regarding the poles.

Hundreds speak at Seabrook hearing

In a show of democracy, hearings on New Hampshire's evacuation plans were open to the public one day last week. Residents of New Hampshire and Mass. communities near Seabrook were invited to speak before the Atomic Safety and Licensing Board, a three-man panel that will decide whether to accept the emergency plan.

Originally the panel only permitted written public testimony, sparking several disruptions at the hearings' outset in October. Since that time the panel had received several hundred letters from people requesting to speak. Chairman Ivan Smith said the panel changed its mind because they thought it was "the right thing to do."

Over 100 people were invited to speak for a five-minute period.

NH Yankee runs evacuation drill

New Hampshire Yankee, Seabrook's managing company, conducted an annual emergency drill last week at the plant that simulated a slight radiation release and included a mock evacuation of people from the plant and surrounding area.

According to Scanzoni, the drill went smoothly, and a written report submited by the Nuclear Regulatory Commission (NRC), which supervised the drill, is expected shortly.

In an oral report given the following day by NRC officials, they claimed plant employees "took the necessary steps to protect the public's health and safety."

Scanzoni added there was a problem when one phone didn't function properly, and there were a few other minor problems with internal communication, but overall the drill went well.

ATTACHMENT 4A

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on January 25, 1988, I made service of the within document by mailing copies thereof, postage prepaid to:

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