

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judges:

Allan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

In the Matter of

PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE, et al.
(Seabrook Station, Units 1 and 2)

Docket Nos.
50-443-444-OL
(Off-site EP)
March 8, 1988

RESPONSE OF COMMONWEALTH OF MASSACHUSETTS
IN SUPPORT OF JOINT INTERVENOR
APPEAL BY MOTION FOR DIRECTED CERTIFICATION

The Commonwealth of Massachusetts files its response to Joint Intervenor Appeal by Motion for Directed Certification, filed on February 24, 1988, on behalf of the Intervenor Town of Hampton, Town of Amesbury, Seacoast Anti-Pollution League and New England Coalition on Nuclear Pollution. The Commonwealth supports the procedural summary and arguments set forth in the Joint Intervenor Motion, and asserts that the Licensing Board's schedule for the filing of contentions on the SPMC is so compressed as to deprive the Intervenor their right to procedural due process. For the reasons set forth in Joint-Intervenor Motion and the additional reasons set forth

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below, the Appeal Board should grant the Joint Intervenor Motion.

Applicants, in its opposition to Joint Intervenor's Motion, filed March 3, 1988, would have this Board believe that Intervenor's have had "over six months to draft contentions" and if they have not utilized that time drafting contentions on the SPMC it is only because they have chosen to "squander their time." Applicants' Response at 9. Any party involved closely with these proceedings would know that nothing could be further from the truth; that Intervenor's have been stretched to their limits over the past six months of litigation.

The Commonwealth has more resources available than the Intervenor's. Nonetheless, it too has been fully involved in the New Hampshire proceedings and has been hard pressed to meet its obligations. During this time period the Commonwealth has been engaged in a number of matters pertaining to Seabrook, including among others, briefing the siren notification issue; appealing to the First Circuit Court of Appeals the Commission's recent emergency planning rulemaking; filing comments on NUREG-0654, FEMA Rep. 1, Rev. 1, Supp. 1; preparing its proposed findings of fact and conclusions of law in the New Hampshire proceedings; and appearing in the PSNH bankruptcy proceedings.

Moreover, although the SPMC was served on the parties on September 22, 1987 (five and a half months ago), it was only on November 25, 1988, (a little over three months ago) that the

Commission issued its decision that the SPMC filed by Applicants was "a bona fide plan" intended for evaluation by NRC and FEMA. At that time, the Commission acknowledged that for full-power review and litigation of the plan the substantial information deleted from the plan would need to be supplied to the Staff, FEMA and the parties. CLI-87-13 at 6-7. That deleted information was not supplied to the parties until February 24, 1988.^{1/} In addition, on February 18, 22 and 23, the parties were served with substantial amendments to the SPMC, requiring the substitution of literally hundreds of pages. In short, any meaningful comprehensive review of the SPMC for the purpose of drafting contentions could not begin until after receipt of this material and any work done likely would have been useless.

The time allowed, until April 1, 1988, for the filing of contentions on the SPMC is far short of the time reasonably necessary to adequately accomplish the task. Consultations with experts will necessarily be curtailed. Of most important to the public, emergency planning is the one area of licensing litigation that is peculiarly within the public's area of expertise. Proper review of the plan for the purpose of framing contentions with sufficient specificity should include

^{1/} Although Applicants offered the Intervenor's this information in December, the offer was conditioned on Intervenor's assent to a protective order to which they could not, and still do not, agree and believe is unlawful. Moreover, even if the Attorney General had received the redacted material in December, his office would still not have been in a position to review the material at that time because of the on-going hearings over the NHRERP.

input and consultation with the people who live in the EPZ and their elected officials. These are the people who might be expected to help implement the plan; they are the ones who are in the best position, due to their familiarity with the area, to assess many aspects of the emergency plan's feasibility. The current schedule for drafting contentions barely allows enough time to physically read the recently amended plan and to write contentions. Given the breadth of that task, it does not allow enough time to do anything more than minimally consult with the people living in the EPZ, and it does not provide these local citizens -- the very ones who are in the best position to constructively critique the SPMC -- with the time necessary to closely scrutinize the details of the SPMC so that we may know if it can really work. The schedule would, thus, also work a severe hardship on the Commonwealth.

For all of the above reasons, the Motion for Directed Certification should be granted.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By: 

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Dated: March 8, 1988

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CERTIFICATE OF SERVICE

I, Frank W. Ostrander, hereby certify that on March 8, 1988, I made service of the within Response of Commonwealth of Massachusetts in Support of Joint Intervenor Appeal by Motion for Directed Certification, by mailing copies thereof, postage prepaid, by first class mail, or as indicated by an asterisk, by Federal Express mail, to:

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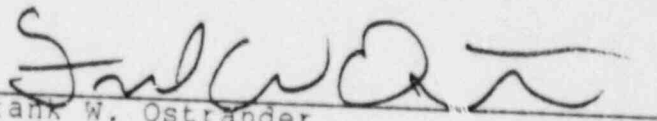
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