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THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

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JAMES M. SHANNON
ATTORNEY GENERAL

July 7, 1988
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TELEFAX

SERVED JUL 11 1988

Ivan W. Smith, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Dear Judge Smith:

I received yesterday a copy of the Applicants' Motion for Schedule dated July 1, 1988. Because the first proposed scheduling objective is July 15, 1988, I wanted to immediately respond at least as to that proposed date. Intervenors will shortly file a joint response to the Applicants' motion and this letter is not intended as and should not be taken for such response.

The Applicants' proposal that this Board rule on the admissibility of SPMC contentions on or by July 15, 1988, ignores several realities:

1. The Intervenors have a right to a special pre-hearing conference to deal with the issue, inter alia, of the admissibility of contentions. 10 CFR 2.751a.
2. The Intervenors have a right to be heard and to respond to any suggestion that a contention is not admissible. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 524-525. In this case, provision was made for written replies by the Intervenors to the Staff's and the Applicants' responses to the various contentions. At the time this Board set June 17, 1988, as the date for filing such written replies (during a conference call on June 2 or June 3), attorney for the Applicants' suggested that these written replies could or should be seen as sufficient opportunity for the Intervenors to be heard. I objected and stated that I believed oral argument should be had

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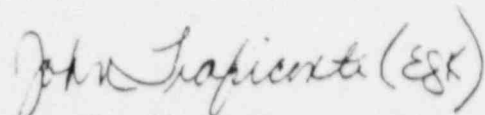
Ivan W. Smith, Chairman
July 7, 1988
Page 2

in addition to an opportunity to file a written reply. At that point, this Board indicated that it, too, contemplated a fairly lengthy pre-hearing conference in mid-July to address the admissibility of SPMC contentions. It was in this posture -- i.e., in reliance on the expectation of an opportunity to present oral argument in further support of our position -- that I drafted the two-fold written replies of the Mass AG to the Staff's and Applicants' responses. Moreover, I instructed Ellen Keough to notify counsel representing other Intervenor of the Board's order concerning a deadline for a written response and its intimation concerning a pre-hearing conference. She sent the letter attached hereto on June 3, 1988 to all Intervenor not participating in the conference call.

3. There are sound policy reasons for scheduling a special pre-hearing conference and permitting oral argument. First, the legal issues raised are complex and oral argument would not be duplicative. Second, there are several additional parties whose contentions are at issue and these parties and their counsel represent the public in the Massachusetts EPZ. The Applicants proposal would have this Board dispose of these various petitions to intervene without giving counsel representing these parties the opportunity to appear publicly before this Board. Third, there exists the real possibility that one outcome of a special pre-hearing conference will be a certain political economy of contentions, with parties consolidating and otherwise streamlining the issues so that the subsequent discovery might be rationally conducted.

For these reasons, I suggest that this Board schedule a pre-hearing conference and entertain oral argument before acting on any suggestion that contentions filed by the Intervenor be rejected.

Sincerely yours,



John Traficonte
Assistant Attorney General
Nuclear Safety Unit
(617) 727-2200

JT/ds

Enclosure



JAMES M. SHANNON
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. McCCORMACK STATE OFFICE BUILDING
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June 3, 1988

Dear :

This letter is to confirm my June 3, 1988 telephone conversation with you. The deadline for replying to the Applicants' and NRC Staff's responses to contentions is Friday, June 17, 1988. Also there will not be a pre-hearing conference scheduled before mid-July.

Very truly yours,

Ellen J. Keough
Senior Paralegal
Nuclear Safety Unit

EJK/BT

cc: Bob Backus
Jane Doughty
Bill Lord