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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'88 JUL 18 P3:27

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
PUBLIC SERVICE COMPANY OF	)	Docket Nos. 50-443 OL
NEW HAMPSHIRE, <u>et al.</u>	)	50-444 OL
(Seabrook Station, Units 1 and 2)	)	Off-site Emergency Planning

NRC STAFF'S RESPONSE TO "CITY OF  
HAVERHILL'S DETAILED CONTENTIONS"

On June 16, 1988, the City of Haverhill filed the "City of Haverhill's Detailed Contentions", in which it set forth 14 late-filed contentions concerning the Seabrook Plan for Massachusetts Communities ("SPMC") that it now seeks to litigate in this proceeding. For the reasons set forth below, the NRC Staff opposes the admission of these contentions and recommends that they be rejected.

DISCUSSION

A. The City Has Failed to Satisfy the Standards for Late-Filed Contentions.

It is well established that the admission of late-filed contentions is to be evaluated in light of the factors delineated in 10 CFR § 2.714(a)(1). That regulation requires a balancing of the following factors in determining whether to admit a late-filed contention:

(i) Good cause, if any, for failure to file on time;

(ii) The availability of other means whereby the petitioner's interest will be protected;

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(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(iv) The extent to which the petitioner's interest will be represented by existing parties;

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Nowhere in its filing does the City of Haverhill address these factors, nor has it demonstrated that a balancing of these factors weighs in favor of the admission of its late-filed contentions. As set forth below, however, a balancing of these five factors indicates that the City of Haverhill's late-filed contentions should be rejected.

1. Good Cause for Failure to File on Time.

The City does not state any reason whatsoever for its lateness in filing these 14 contentions, nor does it provide any information which might support a finding of good cause for its failure to file on time. The City has previously filed a set of SPMC contentions,<sup>1/</sup> and no reason appears why it should now be permitted to make a second, untimely filing. Accordingly, this factor weighs heavily against the admission of the contentions.

2. Other Means to Protect Petitioner's Interest.

The City has failed to address this issue, and it is therefore difficult to determine whether other means exist by which the City's interests may be protected. In this regard, however, it should be noted that the Massachusetts Attorney General has been and is expected to be an

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<sup>1/</sup> "Contentions by the City of Haverhill for the Massachusetts Emergency Response Plan," dated April 4, 1988. The Staff responded to these contentions in its filing of May 27, 1988; see Staff Response, at 76.

active party in the SPMC litigation, and the City of Haverhill may well be able to coordinate its efforts with those of the Attorney General. While the City's interests may diverge from those of the Attorney General and may not be represented by that litigant, nonetheless the City has failed to provide any information which would indicate that this factor weighs in favor of admitting the contentions.

3. Contribution to the Development of a Sound Record.

Commission case law establishes that persons seeking to litigate a late-filed contention must identify their prospective witnesses and summarize their testimony, and that they bear the burden of affirmatively demonstrating that their witnesses may reasonably be expected to assist in the development of a sound record. See, e.g., Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177-78 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399-400 (1983).

The City does not address this requirement, and has failed to provide any indication that it intends to call witnesses, how those witnesses may be expected to testify, or how any such witnesses may be expected to contribute to the development of a sound record. Accordingly, this factor weighs against admission of the contentions.

4. Extent to Which Petitioner's Interest Will Be Represented by Existing Parties.

The City has failed to address this issue, and it is therefore difficult to determine whether its interests will be represented by other parties. As noted above with respect to the second factor, the Massachusetts Attorney General has been and is expected to be an active party in the SPMC litigation, and the City of Haverhill may be able to

coordinate its efforts with those of the Attorney General. While the Attorney General may not necessarily represent the City's interests to the same extent or in the same manner that the City itself would, nonetheless no basis has been provided which would permit a determination that this factor weighs in favor of the admission of these late-filed contentions.

5. Broadening the Issues or Delay to the Proceeding.

Admission of these contentions would undoubtedly broaden the numerous issues already proposed for litigation in this proceeding and may result in substantial delay, as well. Accordingly, this factor weighs against the admission of the contentions.

B. The Supplemental Contentions Do Not Meet the Basis and Specificity Requirements of 10 C.F.R. § 2.714 (b).

The principles governing the admission of contentions were discussed at length in the Staff's May 27, 1988 response to contentions,<sup>2/</sup> and will not be repeated here. Suffice it to say that, pursuant to 10 C.F.R. § 2.714(b), a petitioner must set forth the "basis" for its contentions with "reasonable specificity". This requirement has not been satisfied here by the City.

In its previous set of contentions, filed on April 4, 1988, the City essentially asserted that the SPMC was deficient for failing to include the City within the plume exposure pathway EPZ, because "no provisions have been made for evacuation of schools, nursing homes, hospitals and day care centers or for any other related facility. Said facilities are

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<sup>2/</sup> "NRC Staff's Response to Contentions Filed by Towns of Amesbury, Newbury, Salisbury and West Newbury, The Cities of Haverhill and Newburyport, and by the Massachusetts Attorney General, NECNP and SAPL" ("Staff Response"), dated May 27, 1988.

located in close proximity to the ten (10) miles." In its response to the City's original contentions, the Staff indicated that they should be rejected as lacking specificity and basis. In particular, the Staff indicated that an insufficient showing had been made to support the inclusion of the City within the plume EPZ; that the contention, itself, indicated that the described facilities were located beyond 10 miles from the plant; and that no reason had been provided why the entire City should be included within the EPZ -- which would greatly enlarge the EPZ beyond the radius contemplated by the regulations -- when only a small portion of the City actually lies within 10 miles of the plant.

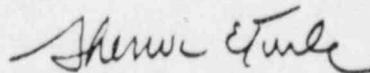
It is unclear whether the City's current "detailed contentions" were filed in an untimely attempt to reply to the responses to its original contentions, or were intended to be (as, in fact, they are) a substantial enlargement of those earlier contentions. In any event, the "detailed contentions" provide little reason to include the City within the plume EPZ, apart from indicating that some individuals who will be evacuating from areas closer to the plant will pass through the City, rendering the City's own evacuation more difficult. This factor, however, is true for any area located outside the emergency planning zone for Seabrook or any plant, and hardly constitutes sufficient reason to expand the EPZ. Further, the "detailed contentions", themselves, indicate that a very small number of homes in the City (considerably less than 100) are located within 10 miles of the plant, and that the 10-mile radius includes only one day care center and no hospitals, nursing homes, or other facilities in the City. These facts can hardly be said to provide sufficient basis to require an expansion of the EPZ to include the entire

City of Haverhill -- a city which, by its own estimate, has a population of 50,000 persons. Absent a sufficient showing of reason to support the City's assertion that it should be included in the plume exposure pathway EPZ, its "detailed contentions" should be rejected.

CONCLUSION

As set forth above, a balancing of the five factors in 10 C.F.R. § 2.714(a)(1) weighs against the admission of the City of Haverhill's late-filed contentions. Further, the City has failed to satisfy the basis and specificity requirements of 10 C.F.R. § 2.714(b). Accordingly, the City of Haverhill's late-filed contentions should be rejected.

Respectfully submitted,



Sherwin E. Turk  
Senior Supervisory  
Trial Attorney

Dated at Rockville, Maryland  
this 6th day of July, 1988

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NUCLEAR REGULATORY COMMISSION

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) Off-site Emergency Planning  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO CITY OF HAVERHILL'S DETAILED CONTENTIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 6th day of July 1988.

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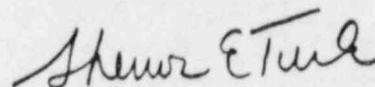
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