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OFFICE OF THE
SECRETARY
July 25, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' NOTICE REGARDING
EXERCISE-RELATED DOCUMENTS

In their Joint Motion for Discovery and to Permit Entry Upon Land in Control of Applicants and Interested Governments, June 2, 1988, intervenors New England Coalition on Nuclear Pollution, Seacoast Anti-Pollution League, Towns of Hampton and Amesbury, and the Attorney General for the Commonwealth of Massachusetts jointly moved that this Board order that intervenors be provided with documents used during the Graded Exercise conducted on June 28 and 29, 1988. Joint Motion at 5. Their motion was denied. Tr. 13,348. During the parties' negotiations of rules for intervenor exercise observers, Applicants stated that, when

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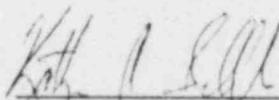
discovery commenced, Applicants would produce the exercise-related documents they retained after the exercise.

Since the exercise, the attached correspondence has been exchanged among the parties with regard to intervenors' access to Applicants' exercise-related documents. In addition to their complaints in the attached correspondence, intervenors have specifically requested certain documents for the purpose of drafting contentions, namely, "controller messages, participant logs, and the FEMA report." Joint Response to Applicants' Motion for Schedule, July 13, 1988, at 2.

Applicants do not concede that any intervenor has any entitlement to the production of documents prior to filing their contentions, particularly here where broad discovery in the form of wide-scale first hand observations of the exercise has already been permitted. In the interest of shortening the time allotted for discovery, however, Applicants hereby notify the Board and parties that, as of July 27, 1988, all player-generated materials and the scenario package, including controller messages, are available for inspection by any party. These documents may be inspected between the hours of 9:00 a.m. and 4:00 p.m. at Seabrook Station, as arranged with undersigned counsel. As some of these documents contain confidential, protected information,

Applicants request that any non-attorneys who have not already signed an Affidavit of Non-Disclosure please do so.

By their attorneys,



Thomas G. Dignan, Jr.
George H. Lewald
Kathryn A. Selleck
Ropes & Gray
225 Franklin Street
Boston, MA 02110
(617) 423-6100

SEACOAST ANTI-POLLUTION LEAGUE
5 MARKET STREET
PORTSMOUTH, NEW HAMPSHIRE 03801

July 6, 1988

Kathryn A. Selleck, Esquire
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Geoffrey M. Huntington, Esquire
Assistant Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301

Dear Ms. Selleck and Mr. Huntington:

This is to record SAPL's concerns as regards the treatment accorded to intervenor observers on the date of the graded exercise of the radiological emergency response plans for Seabrook Station. SAPL does not believe that there was a full and fair opportunity to observe the exercise and notes the following:

1. Shortly before the exercise, it was stated that no intervenor observer was to be given access to the EOF portion of the emergency response facility at Newington Station, blocking a key area of the emergency response effort from any review.
2. On the day of the exercise, intervenor observers who reported to the Omne Mall Staging Area were barred from being in the Mobil Unit from which the response at that location was directed. This made it impossible for them both to see the status boards and to hear the conversations of the emergency response workers in the unit.
3. The intervenor observer who reported to E... Hospital to observe the response there was told to ... in a hallway where nothing could be seen or heard. That situation was never corrected and the observer left.

Kathryn A. Selleck, Esquire
Geoffrey M. Huntington, Esquire
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July 6, 1988

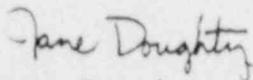
4. The intervenor observers who reported to the Dover High School Reception/Decontamination Center were barred entry to the rooms where things could be observed for a period of time and were able only to see a portion of the Reception center from the hallway where they were told to stand during that time. That situation did ultimately get corrected, though it took some time.

SAPL believes that these problems of access were detrimental to the overall intervenor effort to track the progress of the exercise and to evaluate the performance of personnel in important areas.

SAPL would ask that all documents from the graded exercise be made available within two weeks for review by intervenors. SAPL understands and appreciates that the State of New Hampshire has already expressed a willingness to provide all documents in that time frame.

SAPL holds that Applicants should do likewise, especially in view of the "Applicants Motion for Schedule" filed in this proceeding on July 1 which requests a very constricted schedule for litigation of graded exercise issues.

Sincerely,



Jane Doughty
Field Director
SAPL

JT:jsr

cc: Allan Fierce
Diane Curran
Matt Brock



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. McCORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698

JAMES M. SHANNON
ATTORNEY GENERAL

July 8, 1988

Kathryn A. Selleck, Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Re: Joint Exercise of Seabrook Emergency Plans

Dear Ms. Selleck:

Now that the Joint Exercise of June 28 and 29, 1988, has concluded and we have had an opportunity to assess the restrictions your clients imposed on our observers, we want to record our protest that (1) we were not permitted any opportunity to see and hear much of the crucial activity that apparently occurred during the Exercise and (2) much of what we were permitted to observe was not meaningful because either we could not hear what the players were saying or, in the absence of the Controller Messages, it was not possible to understand what the players were trying to accomplish.

Stephen Jonas has already written to you about the serious obstacles he, Maureen Mangan, and Pamela Talbot encountered in trying to observe activity at the Staging Area. We consider the limitations placed on their observations there to be a reprehensible violation of your commitment to treat our observers fairly and to permit meaningful observation of the Exercise events. The following documents some of the serious obstacles Paul Beaulieu and I faced at the Newington facility where the ORO Emergency Operations Center ("EOC"), Seabrook Station Emergency Operations Facility, and the New Hampshire Incident Field Office are located.

As you know, your clients limited us to one observer at the ORO end of the building; so Paul and I took turns observing inside while the other was forced to stay outside beyond the security fence. While inside, we were restricted to the hallways at the ORO end of the building. These limitations hampered our observations in the following ways:

1. We could not see or hear into the Executive Conference Room. This restriction was especially frustrating because it was in the Executive Conference Room, just off the ORO Operations Room, where ORO's Director and Assistant Directors would go when they wanted to call the FEMA Control Cell stand-ins for the Governor of Massachusetts and other key state officials. These calls occurred periodically during both days of the Exercise, and they were of crucial interest to us for obvious reasons. Yet from our position in the hallway outside the Operations Room, we were able to hear only snippets of what was said by the ORO participants on each call. It appeared that ORO members made these calls whenever ORO was seeking legal authority to take some action. The ORO players placed great importance on the calls, and indeed the communication (or lack thereof) which occurred during these calls may have been the single most important activity which occurred at the ORO EOC. Because of where our observer was positioned, however, we were unable to hear 95% of what was said on the phone to the "Governor's Representative A" (located at the FEMA Control Cell), not to mention what Representative A said in response. We could hear none of that, even though it was typically on a speaker phone and audible to all those within earshot. FEMA evaluators, NHY controllers, and others obviously thought these calls were extremely important. Two, three, or more of them would always gather close to the doorway of the Executive Conference Room whenever these calls occurred. Other observers and visitors also showed great interest in these calls, and they were not prohibited from looking into and listening through the doorway of the Conference Room when the calls were being made. Your colleague, Tom Dignan, did so on occasion; so did the staff attorneys for the NRC who were present. As far as I could tell, Paul and I were the only people at the ORO end of the building who were prohibited from hearing these crucial phone calls. Yet at no time was the number of people gathered outside the Conference Room door so great as to create a blockage to movement. One more person -- our observer -- would not have done so either. As you know, throughout the Exercise, I repeatedly protested and complained to you about this situation, hoping that you would reconsider the restrictions you placed on my movement and allow me to approach the Conference Room during these calls just as the other observers were doing. No accommodation was made, however, and the result is that you and your clients prohibited us from observing and hearing this critical part of the Exercise. We consider this treatment of our observer to be a major breach of your commitment to allow our observers a meaningful opportunity to see and hear the important aspects of exercise play that took place in this facility.

I should also add that another problem related to the restriction of our observer to the hallways in the ORO EOC was that certain status boards on the walls in some rooms were impossible to see. For example, as I looked over the partition into the Operations Room, I was unable to see the "Facilities" status board or the one which reported on the status of monitoring and decontamination activities.

2. Your refusal to provide us with the Controller Messages prohibited us from understanding and assessing much of what we saw going on. There can be no doubt that having the dozens, if not hundreds, of NHY Controller Messages handed out to the players during the Exercise is a prerequisite for any full and complete assessment of the emergency response capability of ORO. FEMA obviously had to have a copy of these controller messages in order to begin its assessment. We deserve to have them too. However sound your reasons may have been for refusing our pre-Exercise request to provide us with copies of these messages at or shortly after the time they were handed out to the players during the Exercise, there is simply no valid reason whatsoever why we should not be provided with these messages now, and we demand that you do so. Your repeated refusal will be viewed as a continuing effort to frustrate our right to litigate the results of the exercise by preventing us from placing the minimal observations we do have in any meaningful context. Just as we cannot draft contentions about the SPMC without seeing a copy of it, we cannot draft contentions about the Exercise without seeing the Controller Messages. These messages, coupled with the actions of the players, are what constitute "the exercise." We cannot assess how well the players played the game until we are informed what the game was and what the ground rules were. This information can come only from Controller Messages. Our position is that the clock on Exercise contentions should not begin to run until we have these messages in hand. Until we see them, we have not seen "the Exercise" and cannot fairly be expected to thoughtfully critique it fully.

3. By restricting us to one observer, you necessarily prohibited us from observing much of the simultaneous activity going on in all of the rooms at the ORO's EOC. The ORO EOC consisted of five (5) rooms (not counting the above-mentioned Conference Room) on one floor in the main building and 6-7 additional rooms on two floors in the "stack-shacks" behind the main building. Continuous activity appeared to be occurring in almost all of these rooms throughout both days of the Exercise. Our single observer, therefore, who could observe only a single room at a time, was unable to watch more than a small fraction of what went on at any given point in the Exercise. FEMA obviously recognized the necessity of having

multiple observers at ORO's EOC -- at least half a dozen were there. As you know, we requested to have two observers at the ORO EOC and you specifically refused this request on the grounds that there was room for only one of our observers in the EOC hallway. In fact, only for a brief period during the "shift change" on Day 1 of the Exercise was the main EOC hallway crowded. At all other times there is no valid reason why we should not have been permitted to have two observers present. They would have been located at different places, observing into different rooms, and would not have caused the EOC hallways to be noticeably more crowded. The State of New Hampshire allowed two intervenor observers to be present at all times at its IFO at the other end of the Newington building. Even though the IFO occupied a smaller space than ORO's EOC, there was no problem accommodating the two intervenor observers. We now view the restriction which limited us to a single observer at the ORO EOC as nothing less than a tactic to minimize the amount of exercise activity our observers could witness at ORO's end of the building.

Summary

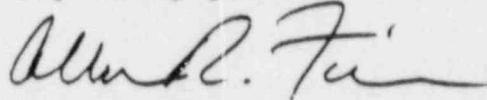
There are other problems I will forego describing in more detail, such as the unnecessary restriction prohibiting us from using a cellular telephone inside the EOC, a restriction which appears to have been imposed just to force us to leave the building and miss crucial exercise play whenever we sought to call other members of our observation team. There was also the nearly debilitating physical hardship you needlessly imposed on Paul and I by forcing us to stand on our feet throughout the entire 11 or 12 hours of the Exercise each day while every other player, observer, and evaluator had the opportunity to sit down on something while carrying out at least some portion of their tasks. The key problems I have described above, however, were clearly the most serious. Together, the restrictions you and your clients imposed on our observers at the Staging Area and at the ORO EOC effectively prevented our observers from fully engaging in a meaningful observation of the Exercise. This is more than unfortunate: we consider it to be a serious violation of our right, established by the UCS case, to litigate the results of this emergency preparedness exercise. That decision is substantially gutted if license applicants can constructively prohibit intervenors from seeing, hearing, or understanding as much of what happens during an exercise as you and your clients did on June 28 and 29.

We do not consider the above-described problems to be substantially mitigated by the fact that we will receive the FEMA final report on the Exercise within 60 days or by the fact

that we will be entitled to obtain discovery about the Exercise from the Applicants after the admission of Exercise contentions. You will undoubtedly press for the filing of contentions prior to the issuance of FEMA's final report, will oppose nearly every contention we submit, and will object to much of what we seek in discovery. That process offers us no reasonable assurance that the gaps in our knowledge about CRO's performance during the Exercise -- gaps you and your clients have caused -- will ever be closed through the provision of factual information. You know full well that we cannot obtain the information during discovery unless we have an admitted contention on the topic, and we cannot write contentions without having some basis in fact. So your efforts, and those of your clients, to frustrate our fact-gathering efforts during the Exercise clearly display your motive -- to keep us ignorant of as much of what transpired during the Exercise as possible.

We are still assessing what appropriate actions need to be taken to redress the violation of our right to observe the Exercise in a meaningful way. At the very least, we will be insisting on (1) a meaningful time to prepare contentions after having received both your clients' Controller Messages and the final FEMA Exercise report, and (2) ample time to conduct the extensive discovery that has now become necessitated by your clients' efforts to block our view of the Exercise.

Very truly yours,



Allan R. Fierce
Assistant Attorney General
Nuclear Safety Unit
(617) 727-2200

ARF/BT

cc: H. Joseph Flynn
Steven Bergquist
Robert Backus
Diane Curran
Matthew Brock
Sandra Mitchell

ROPES & GRAY
225 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110
(617) 423-6100

IN PROVIDENCE
30 KENNEDY PLAZA
PROVIDENCE R. 02903
401-521-6400
TELECOPIER 401-521-0910

TELEX NUMBER 951973 ROPES GRAY BSN
TELECOPIER 617-423-6111 617-423-1841
617-423-6905

WASHINGTON
1001 PENNSYLVANIA AVENUE
SUITE 1211
WASHINGTON D.C. 20004
202-626-3901
TELECOPIER 202-626-3961

July 22, 1988

Allan R. Fierce, Esq.
Assistant Attorney General
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Re: Public Service Co. of New Hampshire
(Seabrook Station, Units 1 and 2),
Docket Nos. 50-443-OL, 50-444-OL

Dear Allan:

I have your minatory letter of July 8 depreciating our efforts to afford you an opportunity to observe the Joint Exercise of June 28th and 29th and purporting to document "some of the serious obstacles" you faced at the Newington EOC. In that your letter is of five pages, it would seem fair to conclude that you have covered all of what you term "obstacles" rather than just some. Your letter also purports to put us on notice of possible reprisals or, at the very least, of reparations that will be "insisted on" for "the violation of your right[s]."

Your commination, as I read your letter, results from what you deem to be our failure to afford you some sort of advocate or investigatory participant status in the exercise. You claim that your observation vantage points were unreasonably restricted to the Mass EOC hallways from which you could but look over a shoulder-high partition into the Mass EOC ORO operations room; that you could not hear all of the speaker phone messages; that you were not permitted entry into the operation room to listen, close to the EOC Executive Conference Room door for the contents of telephone calls made there; that you were limited to one observer at a time within the security area; that you were not provided copies of controller messages and that you were not provided with

Allan R. Fierce, Esq.

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July 22, 1988

telephone access inside the building. You point out that none of these restrictions were placed on FEMA, NRC, NHY or applicant personnel and at no time were the number of people gathered so great as to block movement. You also complain of the lack of creature comforts in that you were forced to stand on your feet throughout the 11- or 12-hour exercise on each day. All of these you charge were motive driven to deprive you of a meaningful observation which you severally characterize as a major breach and a serious and reprehensible violation of my commitment.

As you will recall, we observed the exercise together on both days at the Newington, Mass EOC. My recollection of conditions and events differ.

For example, the EOC area as I recall was often crowded. I was frequently in the way of players, controllers, and FEMA evaluators when I stood, as you did, at or near the shoulder-high partition looking into the EOC. Part of the time I could not stand, as you did, at the partition because there wasn't any more room. Incidentally, you and your colleague Paul Beaulieu did not stand for the entire 11 or 12 hours of each day. You took periodic 10- to 20-minute breaks in your van and were occasionally spelled by Mr. Beaulieu. As you must know, the facility was designed for emergencies and not comfortable observations and a chair, if there were room, would have left you staring at the partition and not over it. I am sorry to learn now that you found inadequate the special telephone our client arranged to have run out to your car. This was done, as you know, in response to your representation that you did not know if you could afford to rent a car cellular phone.

More significant, however, in terms of a response to your complaints, is that no representations were made to you concerning what any observers would or would not be able to see and hear. It was made clear to you that the Applicants could not allow intervenor observers to roam at will through all the exercise facilities, talking to players and evaluators, and suiting themselves as to their numbers. Constraints were required to allow for the undisrupted conduct of the exercise.

In the future, do refrain from assigning wrongful motives to our actions to make your points. You were informed during lengthy negotiations that the Applicants placed the highest importance on the undisrupted conduct of the exercise, and the rules of your observation were made and negotiated with that object in mind. There is no warrant for

Allan R. Fierce, Esq.

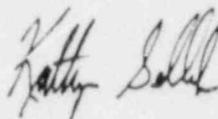
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July 22, 1988

your intemperate, pejorative accusations. We do not take kindly to your unfounded charges.

As to your access to the Applicants' exercise-related documents, as I explained to Diane Curran before the exercise, this decision would be made after the exercise, as it did not need to be made in advance. You will see from the notice filed in the off-site proceeding that Applicants are making certain exercise-related documents available for inspection at Seabrook Station in advance of the time for discovery.

Very truly yours,



Kathryn A. Selleck

KAS/lme

cc: Diane Curran, Esq.
Geoffrey M. Huntington, Esq.

'88 JUL 27 P4:14

CERTIFICATE OF SERVICE

I, Kathryn A. Selleck, one of the attorneys for the Applicants herein, hereby certify that on July 25, 1988, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

OFFICE OF SECRETARY
MARKETING & SERVICE
BRANCH

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

Robert Carrigg, Chairman
Board of Selectmen
Town Office
Atlantic Avenue
North Hampton, NH 03862

Judge Gustave A. Linenberger
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Diane Curran, Esquire
Andrea C. Ferster, Esquire
Harmon & Weiss
Suite 430
2001 S Street, N.W.
Washington, DC 20009

Dr. Jerry Harbour
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Stephen E. Merrill
Attorney General
George Dana Bisbee
Assistant Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301-6397

Adjudicatory File
Atomic Safety and Licensing
Board Panel Docket (2 copies)
U.S. Nuclear Regulatory Commission
East West Towers Building
4350 East West Highway
Bethesda, MD 20814

Sherwin E. Turk, Esquire
Office of General Counsel
U.S. Nuclear Regulatory
Commission
One White Flint North, 15th Fl.
11555 Rockville Pike
Rockville, MD 20852

*Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Robert A. Backus, Esquire
116 Lowell Street
P. O. Box 516
Manchester, NH 03105

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney
General
Augusta, ME 04333

Paul McEachern, Esquire
Matthew T. Brock, Esquire
Shaines & McEachern
25 Maplewood Avenue
P.O. Box 360
Portsmouth, NH 03801

Mrs. Sandra Gavutis
Chairman, Board of Selectmen
RFD 1 - Box 1154
Route 107
Kensington, NH 03827

*Senator Gordon J. Humphrey
U.S. Senate
Washington, DC 20510
(Attn: Tom Burack)

*Senator Gordon J. Humphrey
One Eagle Square, Suite 507
Concord, NH 03301
(Attn: Herb Boynton)

Mr. Thomas F. Powers, III
Town Manager
Town of Exeter
10 Front Street
Exeter, NH 03833

H. Joseph Flynn, Esquire
Office of General Counsel
Federal Emergency Management
Agency
500 C Street, S.W.
Washington, DC 20472

Gary W. Holmes, Esquire
Holmes & Ells
47 Winnacunnet Road
Hampton, NH 03841

Mr. J. P. Nadeau
Selectmen's Office
10 Central Road
Rye, NH 03870

Carol S. Sneider, Esquire
Assistant Attorney General
Department of the Attorney
General
One Ashburton Place, 19th Fl.
Boston, MA 02108

Mr. Calvin A. Canney
City Manager
City Hall
126 Daniel Street
Portsmouth, NH 03801

R. Scott Hill-Whilton, Esquire
Lagoulis, Clark, Hill-
Whilton & McGuire
79 State Street
Newburyport, MA 01950

Mr. Peter J. Matthews
Mayor
City Hall
Newburyport, MA 01950

Mr. William S. Lord
Board of Selectmen
Town Hall - Friend Street
Amesbury, MA 01913

Brentwood Board of Selectmen
RFD Dalton Road
Brentwood, NH 03833

Richard A. Hampe, Esquire
Hampe and McNicholas
35 Pleasant Street
Concord, NH 03301

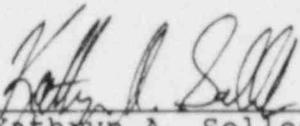
Mr. Ed Thomas
FEMA, Region I
442 John W. McCormack Post
Office and Court House
Post Office Square
Boston, MA 02109

Charles P. Graham, Esquire
Murphy and Graham
33 Low Street
Newburyport, MA 01950

Ashod N. Amirian, Esquire
376 Main Street
Haverhill, MA 01830

Judith H. Mizner, Esquire
79 State Street, 2nd Floor
Newburyport, MA 01950

Leonard Kopelman, Esquire
Kopelman & Paige, P.C.
77 Franklin Street
Boston, MA 02110



Kathryn A. Selleck

(* = Ordinary U.S. First Class Mail)