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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD '88 MAY -3 P2:39

Administrative Judges:

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
May 3, 1988
BRANCH

SERVED MAY - 3 1988

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)	(Offsite Emergency Planning)
and 2))	
)	

MEMORANDUM AND ORDER

We deny the intervenors' April 22, 1988 motion for directed certification of certain oral rulings of the Licensing Board that assertedly curtailed their endeavor to obtain discovery against the Federal Emergency Management Agency (FEMA). Upon full consideration of the motion and the several responses thereto,¹ we conclude that there has been an insufficient showing that the established standard for obtaining interlocutory review of Licensing Board action is satisfied. More specifically, intervenors have not established that, even if incorrect (a question we do not reach), the challenged rulings have "affected the basic

¹ In addition to the applicants and the NRC staff, FEMA submitted an opposition to the motion. Because it is not a party to the proceeding, FEMA necessarily requested leave to file that opposition. That request is granted.

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structure of the proceeding in a pervasive or unusual manner."²

Given the denial of the directed certification motion, the partial suspension of the evidentiary hearings on the so-called beach sheltering issue is lifted effective immediately.³

It is so ORDERED.⁴

² Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977). There is no assertion that the alternative prong of the Marble Hill test is satisfied; i.e., intervenors do not maintain that the rulings below threaten them "with immediate and serious irreparable impact which, as a practical matter, [cannot] be alleviated by a later appeal." Ibid.

³ See this Board's April 27 and April 29, 1988 memoranda.

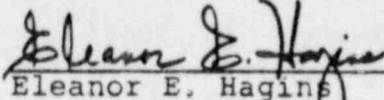
⁴ The intervenors appended a considerable amount of documentary material to the directed certification motion. According to the applicants, the copy of the motion served upon their counsel did not include this material. And, we are now advised, the same is true with respect to the copies that were supplied to the Office of the Secretary of the Commission.

As intervenors' counsel should have appreciated, the Secretary is responsible for the maintenance of the official record in NRC adjudicatory proceedings. See 10 CFR 1.25(e), (g). This being so, the Secretary obviously must be furnished with an identical copy of any pleading or other material that is submitted to an adjudicatory board.

Insofar as the applicants are concerned, presumably the intervenors reasoned that, because all of the material attached to their motion was already in the applicants' possession, it was not necessary to incur the expense of providing them with an additional copy. For present

(Footnote Continued)

FOR THE APPEAL BOARD


Eleanor E. Hagins
Secretary to the
Appeal Board

(Footnote Continued)

purposes, we will assume that such a consideration might justify the election of a party to serve a document upon other parties that does not exactly conform to what was filed with us. But, at the very least, the applicants (and the staff as well) were entitled to be told precisely what was being furnished to this Board by way of an appendix. This information was not supplied either in the body of the motion or, insofar as we are aware, in any other fashion.