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

OFFICE OF THE SECRETARY
DOCKETING AND RECORDS
MANAGEMENT

Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Emmeth A. Luebke
Dr. Jerry Harbour

In the Matter of)
)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, ET AL.)
(Seabrook Station, Units 1 and 2))
_____)

Docket No.(s)
50-443/444-OL-1
On-site EP
September 21, 1988

REQUEST TO FILE REPLY OF MASSACHUSETTS ATTORNEY
GENERAL TO "APPLICANTS' ANSWER TO MOTION TO
AMEND BASIS FILED BY MASSACHUSETTS ATTORNEY
GENERAL WITH RESPECT TO SIREN CONTENTIONS"

Pursuant to 10 C.F.R. § 2.730(c), the Massachusetts
Attorney General ("Mass AG") requests that the Board permit it
to file the following reply to the Applicants' Answer to Motion
to Amend Basis.^{1/} The reply is necessary because since the
Applicants' Answer the Commission has adopted an amendment to
10 C.F.R. § 50.47(d) which bears directly on the Applicants'
arguments.

1/ The Mass AG filed his Motion to Amend Bases on September 8,
1988. The Applicants answered on September 12, 1988.

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ARGUMENT

The Mass AG does not believe that his motion seeks the admission of new contentions, but rather seeks only to amend two bases because of newly discovered facts. The contention itself reads:

Applicants have failed to comply with the provisions of 10 C.F.R. § 50.47(b)(5) and Part 50, Appendix E, IV, D(3). The means they claim to have established to provide early notification and clear instruction to the populace of the Towns of Amesbury, Merrimac, Newbury, Newburyport, Salisbury and West Newbury, Massachusetts and Salisbury State Beach Reservation in Salisbury, Massachusetts are inadequate.

The language of the contention was suggested by the Appeal Board precisely to litigate any issues arising from the adequacy of the Applicants' alternative notification system. ALAB-883 at 19-20 n.30. The amended bases are just that and fall squarely within the scope of the contention.

1. The Motion Was Timely Filed.

Even if the Mass AG must meet the late filed contention standards, he does so in this case. With respect to timeliness, the earliest Basis 10a could have been brought was after the Applicants submitted Amendment No. 6 to the SPMC, in early August. Basis 2a could not have been brought before the Mass AG performed title searches on the acoustic locations, after Mr. Desmarais revealed in his July 28, 1988 deposition that the Applicants did not own the property they intended to

use. See Desmarais Transcript at 135-139, attached hereto as Exhibit A.

On September 16, 1988, the Commission adopted a rule making the public notification requirement a full-power rather than a low-power issue. In anticipation of the new rule the Mass AG suggested to counsel to the Applicants that its summary disposition motion be put off indefinitely and rescheduled after the Commission vote. Counsel to the Applicants elected to go forward with the filing on September 19, 1988. Particularly in light of the fact that a low-power license no longer hinges on resolution of the siren contention and the SPMC litigation is still in the discovery stages, the Applicants should not now be heard to claim that the Motion to Amend Bases was not timely because it was filed "almost [on] the eve of the Summary Disposition deadline for filing." See Applicants' Answer at 4.^{2/}

2. The Mass AG's Participation Will Assist In Developing A Sound Record.

Under the Protective Order entered by this Board on July 27, 1988, the information necessary to develop Basis 2a is available in the first instance only to the Mass AG and the Applicants. The Applicants have chosen not to raise this

^{2/} Of course, the Applicants' Summary Disposition motion has not been mooted. Rather, if granted, it will only resolve a portion of the Mass AG's siren contention.

important issue to the Board and without the Mass AG's participation it will go unreviewed. The Mass AG will present evidence, in the form of title documents and testimony of the Applicants' employees that the Applicants do not own and have not sought permission to use the property which they intend to use for VANS purposes.

With respect to Basis 10a, this issue has not been litigated in the New Hampshire portion of the case and unless admitted here will go unaddressed. The Mass AG will offer the testimony of a behavioral/human response expert that the voice mode is absolutely necessary for instructing the transient beach population in an emergency.

In short, if he need do so the Mass AG has satisfied 10 C.F.R. § 2.714(a)(1)(iii).

3. The Motion To Amend Bases Will Not Unduly Broaden The Issues Or Delay The Proceedings.

Bases 2a and 10a arise directly from existing bases and are well within the scope of the siren contention. Moreover, now that siren issues are full-power rather than low-power issues the relevant inquiry is whether the full-power proceedings will be delayed. Given the preliminary stage of the SPMC litigation, the answer is plainly "no." The Mass AG has met 10 C.F.R. § 2.714(a)(1)(v) as well.^{3/}

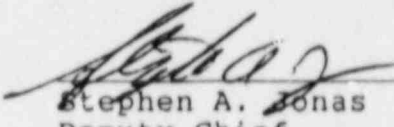
^{3/} Applicants concede that the Mass AG has satisfied 10 C.F.R. § 2.714(a)(1)(ii) and (iv). Applicants' Answer at 4-5.

CONCLUSION

For all the foregoing reasons, the Motion to Amend Bases should be allowed.

Respectfully submitted,

JAMES M. SHANNON
ATTORNEY GENERAL


Stephen A. Jonas
Deputy Chief
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
617-727-2200

Date: September 21, 1988

1 may not know other owners.

2 Q. Actually, we could skip some things here
3 and if you could concentrate on the acoustic
4 locations, to the extent you know any of the owners
5 of the acoustic locations?

6 MS. SELLECK: I might as well note on the
7 record that we will be providing the information as
8 to owners for acoustic locations and staging area
9 locations in response to a second round of
10 interrogatories.

11 A. Staging Area 4 as indicated on Crow Lane,
12 and I don't know the owner or the agent for that
13 staging area. Staging Area 3, I believe that
14 property is owned by Public Service Company of New
15 Hampshire. Staging Area 1, I believe, is owned by
16 the Seabrook Firemen's Association. Staging Area 2
17 is Massachusetts Electric Company facility, and I
18 believe they own that property. That is also the
19 location, that's acoustical location VL-04.

20 Q. You don't know who owns any of the other 15
21 acoustic locations?

22 A. I will go through it one more time.

23 MR. JONAS: Let's go off the record for a
24 second.

1 (Discussion off the record)

2 A. VL-3 is the Storey farm, and I believe that
3 Mr. Storey owns that farm. That is the extent of my
4 knowledge of the owners of the property.

5 Q. You mentioned earlier before lunch that 14
6 of the acoustic locations are not under agreement?

7 A. Agreement in the sense that we have signed
8 documents?

9 Q. Well, I'm using your words.

10 A. Okay.

11 Q. And you also said that you didn't believe
12 that an agreement needed to be reached, again, your
13 words, to use those acoustic locations for the
14 purpose indicated in your design report?

15 A. I think I also indicated one other thing,
16 and that was we did have discussions with one of the
17 acoustic location areas, we had discussions with one
18 of the owners. So it would actually be 13 and not
19 14 areas that we don't have agreements with, in that
20 sense that you've described.

21 Q. Have you had discussions with those owners
22 of the 13 locations?

23 A. No, we have not.

24 Q. Those owners are not New Hampshire Yankee

1 or PSNH, correct?

2 A. I don't know the owners for those areas, so
3 I don't know whether or not they are or are not held
4 by public service or --

5 Q. Is it your understanding --

6 A. It is my understanding that they are not.

7 Q. Do you have any understanding why it is
8 your position that you can use the properties for
9 the purposes indicated here without having prior
10 discussions with those owners?

11 A. Can you repeat that question again.

12 Q. Your understanding is that New Hampshire
13 Yankee and PSNH don't own the properties?

14 A. That's right.

15 Q. Yet you plan on using those properties?

16 A. That's right.

17 Q. And you haven't had any discussions with
18 those owners concerning the use of those properties?

19 A. That's right.

20 Q. Is there a reason that you know of why you
21 assume you can use the properties without having
22 discussions with the owners?

23 A. Based on two considerations.

24 Q. Okay. Go ahead.

1 A. One being realism, and the other being some
2 of the properties are in the public domain.

3 Q. I know you are not a lawyer. Putting that
4 aside, can you tell me what your understanding of
5 the concept of realism is?

6 A. That in the event of any real emergency
7 that any government official from either state,
8 county or municipal level who governs in the
9 Commonwealth of Massachusetts would exercise their
10 sworn duty to protect the citizens of the
11 Commonwealth.

12 Q. You also mentioned some of the properties
13 are in the public domain as you put it?

14 A. Yes.

15 Q. Do you have an understanding of whether
16 that public domain is a state or local or federal
17 government property?

18 A. Can you rephrase that, please.

19 Q. Okay. Some of the properties are in the
20 public domain? Those were your words.

21 A. Right.

22 Q. Some of them are owned by a government?

23 A. That's right.

24 Q. Do you have any understanding about which

1 government owns those properties?

2 A. I believe that it is the Commonwealth of
3 Massachusetts and the municipalities of the EPZ.

4 Q. Is it your understanding that all 13 of the
5 acoustic locations not under agreement or at least
6 discussion are owned by public entities; are all 13
7 of these owned by public entities?

8 A. I believe that they are.

9 Q. All 13?

10 A. Yes. I also add that the State of New
11 Hampshire has responsibility for some of the
12 roadways that are acoustic locations.

13 In response to the prior question in order
14 to make it complete, there are acoustic locations
15 that are in New Hampshire that are in the public
16 domain.

17 Q. Are any of these 13 acoustic locations on
18 private property, as far as you know?

19 A. To the best of my knowledge, those 13 are
20 not on private land.

21 Q. The VANS system or the design concept as
22 you've referred to it during the course of the
23 deposition, does it include back-up VANS vehicles?

24 A. Yes, it does.

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CERTIFICATE OF SERVICE

I, Stephen A. Jonas, hereby certify that on September 21, 1988, I made service of the within Request to File Reply of Massachusetts Attorney General to "Applicants' Answer to Motion to Amend Basis Filed By Massachusetts Attorney General With Respect to Siren Contentions," by first class mail, or by Federal Express as indicated by [*], or by hand delivery as indicated by [**].

*Sheldon J. Wolfe, Chairperson
1110 Wimbledon Drive
McLean, VA 22101

Dr. Emmeth A. Luebke
5500 Friendship Boulevard
Apartment 1923N
Chevy Chase, MD 20815

Dr. Jerry Harbour
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Sherwin E. Turk, Esq.
U.S. Nuclear Regulatory Commission
Office of General Counsel
Washington, DC 20555

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

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

*Docketing and Service
U.S. Nuclear Regulatory
Commission
Washington, DC. 20555

Roberta C. Pevear
State Representative
Town of Hampton Falls
Drinkwater Road
Hampton Falls, NH 03844

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

Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

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

Ms. Sandra Gavutis, Chairperson
Board of Selectmen
RFD 1, Box 1154
Rte. 107
Kensington, NH 03827

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

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

Mr. Donald E. Chick
Town Manager
Town of Exeter
10 Front Street
Exeter, NH 03833

Paul A. Fritzsche, Esq.
Office of the Public Advocate
State House Station 112
Augusta, ME 04333

Ms. Diana P. Randall
70 Collins Street
Seabrook, NH 03874

Robert A. Backus, Esq.
Backus, Meyer & Solomon
116 Lowell Street
P.O. Box 516
Manchester, NH 03106

Jane Doughty
Seacoast Anti-Pollution League
5 Market Street
Portsmouth, NH 03801

Mr. J. P. Nadeau
Board of Selectmen
10 Central Road
Rye, NH 03870

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

Mr. Angelo Machiros, Chairman
Board of Selectmen
25 High Road
Newbury, MA 10950

Edward Molin
Mayor
City Hall
Newburyport, MA 01950

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

Brentwood Board of Selectmen
RFD Dalton Road
Brentwood, NH 03833

Gary W. Holmes, Esq.
Holmes & Ellis
47 Winnacunnet Road
Hampton, NH 03841

Philip Ahrens, Esq.
Assistant Attorney General
Department of the Attorney
General
State House Station #6
Augusta, ME 04333

Ellyn Weiss, Esq.
Harmon & Weiss
Suite 430
2001 S Street, N.W.
Washington, DC 20009

**Kathryn Selleck, Esq.
Thomas G. Dignan, Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Richard A. Hampe, Esq.
Hampe & McNicholas
35 Pleasant Street
Concord, NH 03301

Beverly Hollingworth
209 Winnacunnet Road
Hampton, NH 03842

Ashad A. Ashod, Esq.
376 Main Street
Haverhill, MA 01830

William Armstrong
Civil Defense Director
Town of Exeter
10 Front Street
Exeter, NH 03833

Michael Santosuosso, Chairman
Board of Selectmen
Jewell Street, RFD 2
South Hampton, NH 03827

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

Anne E. Goodman, Chairperson
Board of Selectmen
13-15 Newmarket Road
Durham, NH 03824

Allen Lampert
Civil Defense Director
Town of Brentwood
20 Franklin Street
Exeter, NH 03833

Ivan W. Smith, Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555


Charles P. Graham, Esq.
Murphy & Graham
33 Low Street
Newburyport, MA 01950

Judith H. Mizner, Esq.
Lagoulis, Clark, Hill-Whilton
& McGuire
79 State Street
Newburyport, MA 01950

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

Barbara A. St. Andre, Esq.
Kopelman & Paige, P.C.
77 Franklin Street
Boston, MA 02110

Sheldon J. Wolfe, Chairperson
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Stephen A. Jonas
Assistant Attorney General
Deputy Bureau Chief
Public Protection Bureau
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Dated: September 21, 1988