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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 SEP 29 P3:07

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
DOCKETING CLERK
BRATTLEBORO

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

}
Docket Nos. 50-443 OL
50-444 OL
Off-site Emergency Planning
}

NRC STAFF'S RESPONSE TO MOTION OF EDWARD A. THOMAS
FOR LEAVE TO FILE A RESPONSE TO CERTAIN PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 15, 1988, Counsel for Mr. Edward A. Thomas filed a motion on behalf of his client for leave to respond to certain of the NRC Staff's proposed findings of fact and to the Applicants' reply to Intervenor's proposed findings of fact. ^{1/} Attached to that Motion was Mr. Thomas' "Response", together with two exhibits setting forth the proposed findings proffered on Mr. Thomas' behalf.

The NRC Staff opposes Mr. Thomas' request for leave to file proposed findings of fact in this proceeding. Commission regulations specify unequivocally that only parties to Commission proceedings may be permitted to participate in those proceedings, and only parties to the proceeding may file proposed findings of fact and conclusions of law. See 10 C.F.R. §§ 2.715(a) and 2.754(a). Mr. Thomas is not a party to this proceeding, nor has he ever filed a motion for leave to intervene. His sole

^{1/} "Motion of Edward A. Thomas for Leave to File A Response to the Applicant's Reply to Proposed Findings of Fact and Conclusions of Law and the NRC Staff's Proposed Findings of Fact and Conclusions of Law" ("Motion"), dated September 15, 1988.

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involvement in the proceeding has been as a witness, appearing first for FEMA on non-beach issues and then subpoenaed by the Massachusetts Attorney General on beach issues. ^{2/} If the Licensing Board were to permit Mr. Thomas to file proposed findings of fact, it would have to ignore the express terms of Commission regulations as well as fundamental precepts of legal standing, and it would open the door to a flood of impermissible proposed findings of fact and appeals which might be filed by any other witness in a Commission proceeding who may not care for the manner in which his testimony has been characterized by a lawfully admitted party to the proceeding in that party's proposed findings of fact. ^{3/} Such a result is simply untenable.

^{2/} The Licensing Board has previously commented on Mr. Thomas' status, in responding to various requests made by Mr. Thomas' attorney, including a request for leave to file proposed findings of fact (Tr. 13368):

As you observed Mr. Thomas is not a party to the proceeding, and in effect -- in fact, he cannot be affected by the outcome of the proceeding as such. Everyone should understand that he is not now and never has been on trial for anything or being sued for anything.

* * * *

Counsel for the utility has objected to your participation here, and with a great deal of justification. Because as we state, Mr. Thomas has no stake in this hearing, and others have a very large stake.

The Board then indicated that it would entertain consideration of any needs expressed by Mr. Thomas, but declined "in advance to give [him] a blank check or it". (Tr. 13369).

^{3/} As stated in his Response, Mr. Thomas "vehemently disagrees with the characterization of his testimony presented by the Applicant and the NRC Staff" (Response, at 4), and objects to those proposed findings which he believes tend to impugn his "credibility", "integrity" and "professionalism" (Id., at 1, 2).

Moreover, the issues raised by Mr. Thomas, relating to his personal character, are largely immaterial to this proceeding, and as such may properly be rejected pursuant to 10 C.F.R. § 2.754(c). The sole issue for resolution here is the adequacy of provisions in the New Hampshire Radiological Emergency Response Plan for Seabrook area beach populations. In this regard, the Licensing Board has already explained to Mr. Thomas and his attorney that matters relating to Mr. Thomas' character are not its concern:

[T]he better thing to do is for you to understand that we will not be going into matters extraneous to the hearing and to the issues for which Mr. Thomas is called. We will not be going into -- an excursion into character or other matters at all; we see no need for that.

(Tr. 13369). Mr. Thomas has failed to explain why his proposed findings of fact should be considered at all, in light of this explanation.

Finally, in seeking leave to file a reply to the Staff's proposed findings of fact and to the Applicants' reply to Intervenor's proposed findings, Mr. Thomas seeks permission to file a reply which even a party to the proceeding is not normally entitled to file. See 10 C.F.P. § 2.754(a). For this reason, too, the Motion should be denied. ^{4/}

^{4/} In any event, Mr. Thomas has had another avenue of relief here. As a witness subpoenaed on beach issues by the Massachusetts Attorney General -- with whom he and his attorneys consulted, shared documents and strategized prior to his appearance (see, e.g., Tr. 13366, 13474-85) -- Mr. Thomas could have sought to include a characterization of his testimony more to his liking in the proposed findings of fact filed by the Attorney General or some other intervenor in the proceeding. No further opportunity to submit proposed findings of fact should be provided to him.

CONCLUSION

For the reasons set forth above, the Licensing Board should deny the Motion filed by Mr. Thomas.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sherwin E. Turk".

Sherwin E. Turk
Senior Supervisory
Trial Attorney

Dated at Rockville, Maryland
this 28th day of September, 1988