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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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Before the Nuclear Regulatory Commission

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In the Matter of)
)
PUBLIC SERVICE COMPANY)
OF NEW HAMPSHIRE)
(Seabrook Station, Units I and II)
_____)

Docket Nos. 50-443-OL
50-444-OL

March 19, 1986

PETITION OF THE STATE OF NEW HAMPSHIRE AND
ATTORNEY GENERAL STEPHEN E. MERRILL TO PARTICIPATE
AS AN INTERESTED STATE ON CONTENTIONS RELATING TO
THE NEW HAMPSHIRE RADIOLOGICAL EMERGENCY RESPONSE PLAN

The State of New Hampshire and its Attorney General, Stephen E. Merrill (hereinafter referred to collectively as the "State"), by and through the Office of the Attorney General, hereby petitions the Atomic Safety and Licensing Board (hereinafter referred to as the Board) to grant it leave to participate in this proceeding as an interested State pursuant to 10 CFR Section 2.715(c) with regard to contentions on the New Hampshire Radiological Emergency Response Plan (hereinafter referred to as the "State Plan" or "NHRERP").

The State has been accorded full party status in this proceeding in view of the Board's acceptance of several contentions filed initially by the State in April of 1982. Two of these contentions, NH-10 on the Control Room Design and Contention NH-20 on on-site emergency planning issues, are still in litigation. The State has not, however, filed contentions on the NHRERP. Rather,

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the State wishes to participate on issues relating to the State Plan as an interested State, with the full privileges accorded such States under 10 CFR Section 2.715(c).¹

In its November 17, 1981 Petition for Leave to Intervene, the State asserted that its interest in this proceeding is derived from effect of the licensing of Seabrook Station on the health, safety and welfare of the citizens of the State. One of the specifically enumerated issues of interest in that petition was the emergency response capabilities of the involved States and the Applicant. See State's November 17, 1981 Petition at 4.

The State retains a vital interest in all emergency planning issues. In furtherance of this interest, the State wishes to participate in this proceeding with regard to all issues raised concerning the NHRERP and to reserve the right to take a position on all issues relating to the question of whether the NHRERP provides "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" at Seabrook Station. 10 CFR Section 50.47(a)(1).

¹A State's intervening as a full party on certain issues while participating as an interested state on others has been sanctioned in Atomic Safety and Licensing Board proceedings. See Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station) LBP-79-22, 10 NRC 213, 216 (1979); Project Management Corp. (Clinch River Breeder Reactor Plant) ALAB-354, 4 NRC 383, 392-393 (1976).

In recognition of the State's interest in and responsibility for proper planning for radiological emergencies, the New Hampshire Legislature has required that emergency planning for all nuclear electric generating plants in the State of New Hampshire is to be initiated and carried out by the New Hampshire Civil Defense Agency. RSA 107-B:1 (Supp. 1985). (A copy of RSA Ch. 107-B is attached hereto as Appendix A.) RSA Ch. 107 also imposes on the Civil Defense Agency and the Governor broad duties and responsibilities for civil defense planning generally, including radiological emergency planning. Consequently, the State's interest in this proceeding extends to those issues raised by the parties relating to the initiation and implementation of radiological emergency plans by the Civil Defense Agency in accordance with RSA Chs. 107 and 107-B.

For the above reasons, the State of New Hampshire and Attorney General Stephen E. Merrill respectfully request that, pursuant to 10 CFR Section 2.715(c), this Board permit the State to participate as an interested State on contentions relating to the NHRERP.

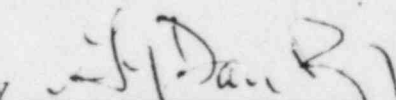
Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

STEPHEN E. MERRILL
ATTORNEY GENERAL

Dated: March 19, 1986

By



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TITLE VIII

PUBLIC DEFENSE AND VETERANS' AFFAIRS

NEW CHAPTERS

- 107-B NUCLEAR PLANNING AND RESPONSE PROGRAM
 110-B THE MILITIA
 115-A AID FOR VETERANS' PROGRAMS

CHAPTER 107-B

NUCLEAR PLANNING AND RESPONSE PROGRAM

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| 107-B: 1 Nuclear Emergency Response Plan. | 107-B: 4 Collection of Assessment |
| 107-B: 2 Annual Emergency Response Budget. | 107-B: 5 Fund Established. |
| 107-B: 3 Assessment. | 107-B: 6 Authority in Radiological Emergency. |

ANNOTATIONS

1. Authority delegated

The delegation of legislative authority to the chairman of the public utilities commission in this chapter is extremely narrow and almost ministerial in nature. Appeal of Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

2. Appeal

Nothing in this chapter specifically authorizes an appeal from an assessment made by the chairman of the public utilities commission for the cost of preparing a nuclear response program. Appeal of

Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

An appeal from the assessment of costs by the chairman of the public utilities commission in connection with the preparation of a nuclear emergency evacuation plan could not be brought pursuant to RSA 365:21, governing rehearings and appeals of complaints to, and proceedings before the public utilities commission since that section governs appeals from decisions of the full commission, not those of the commission's chairman alone. Appeal of Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

107-B: 1 Nuclear Emergency Response Plan.

I. The civil defense agency shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in the licensing regulations of each nuclear electrical generating plant. The chairman of the public utilities commission shall assess a fee from the utility, as necessary, to pay for the cost of preparing the plan and providing equipment and materials to implement it.

II. The director of civil defense shall conduct an annual review of the nuclear emergency response plans for those municipalities located in the emergency planning zone, as defined in Nuclear Regulatory Commission regulation Title 10, Code of Federal Regulations, Part 50.

Source. 1981, 549: 2, eff. June 30, 1981.

Statement of purpose. 1981, 549: 1, eff. June 30, 1981, provided: "The legislature finds that in order to protect the health and welfare of the citizens of this state, particularly those in close proximity to nuclear electric generating facilities, it is essential to initiate a program to provide for the formulation of radiological emergency preparedness plans and procedures

and for the implementation of those plans in conformance with Nuclear Regulatory Commission regulation Title 10, Code of Federal Regulations, Part 50. The legislature further finds it appropriate that the utilities operating these facilities bear the costs associated with preparing and implementing plans to deal with the effect of nuclear incidents or accidents. The legislature, therefore, hereby establishes a

procedure for the initiation, formulation, and implementation of a nuclear planning and response program and for the assessment of the costs of the program against each utility operating a nuclear electric generating facility."

ANNOTATIONS

1. Independent investigation

This section could not be read to permit the chairman of the public utilities commission to independently investigate the basis for any assessment of the cost of preparing a nuclear response program requested by the civil defense agency. Appeal of Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

There was no indication in this section or its legislative history that the authority granted to the full public utilities commission to conduct investigations under RSA 365:19, governing independent investigations, vested authority in the chairman of the public utilities commission to investigate independently the basis for assessments of costs of preparing a nuclear response program that were requested by the civil defense agency. Appeal of Hol-

lingworth (1982) 122 NH 1028, 453 A2d 1288.

2. Preparation of plan

Under paragraph I of this section, the only independent evaluation of requested assessments that the chairman of the public utilities commission is authorized to make is whether the cost is one of "preparing the plan and providing equipment and materials necessary to implement it." Appeal of Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

Chairman of public utilities commission did not act improperly in not approving certain personnel expenses incurred by civil defense agencies for overseeing the formulation of a nuclear emergency evacuation plan, where the chairman determined that personnel expenses were not properly considered a cost of preparing an evacuation plan, since paragraph I of this section authorized the chairman to withhold approval of requested assessments for costs not related to preparation of the plan. Appeal of Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

107-B: 2 Annual Emergency Response Budget. The municipalities shall submit annually their emergency response budget to the director of civil defense who shall provide a reasonable opportunity for public comment and consideration. The director shall also receive and review the appropriateness of any budget request from any other state agency necessary for radiological emergency preparedness as outlined in the plan. The director shall then submit an approved total annual budget to the chairman of the public utilities commission for assessment against the utility or utilities.

Source. 1981, 549: 2, eff. June 30, 1981.

ANNOTATIONS

1. Cited

Cited in Appeal of Hollingworth (1982) 122 NH 1028, 453 A2d 1288.

107-B: 3 Assessment.

I. The cost of preparing, maintaining, and operating the nuclear planning and response program shall be assessed against each utility which has applied for a license to operate or is licensed to operate a nuclear generating facility which affects municipalities under RSA 107-B: 1, II, in such proportions as the chairman of the public utilities commission determines to be fair and equitable.

II. Assessments under this section shall not be charged to the normal operating costs of any company before the issuance of an operating license.

Source. 1981, 549: 2, eff. June 30, 1981.

CROSS REFERENCES

Organization of executive branch of government generally, see RSA 21-G.

ANNOTATIONS

I. Cited

Cited in Appeal of Hollingworth (1982)
122 NH 1028, 453 A2d 1288.

107-B: 4 Collection of Assessment. The chairman of the public utilities commission shall certify to the state treasurer the amount to be assessed against each utility, and the state treasurer shall bill each utility for the amount assessed against it. The bill shall be sent by registered mail, and shall constitute notice of assessment and demand for payment. Payment shall be made to the state treasurer within 30 days after the receipt of the bill. If any utility shall fail or refuse to pay the assessed fee within 30 days, the chairman shall add to the fee a late penalty fee and certify the amount of the delinquent fee and penalty to the attorney general for collection.

Source. 1981, 549: 2, eff. June 30, 1981.

107-B: 5 Fund Established. All funds collected under this chapter shall be deposited in the state treasury as "restricted revenues." The full amount shall be credited to the New Hampshire nuclear planning and response fund and shall be used exclusively for the New Hampshire nuclear planning and response program.

Source. 1981, 549: 2, eff. June 30, 1981.

107-B: 6 Authority in Radiological Emergency. In the event of a radiological emergency at a nuclear electric generating facility where the responsible utility is unable to control the situation as necessary to protect public health and safety, the governor shall regulate the utility under RSA 107: 6.

Source. 1981, 549: 2, eff. June 30, 1981.

CERTIFICATE OF SERVICE

I, George Dana Bisbee, hereby certify that on the 19th day of March, 1986, I made service of the within document by mailing copies thereof, postage prepaid, to:

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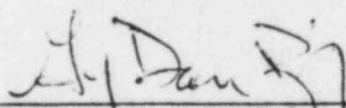
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