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UNITED STATES OF AMERICA '88 SEP 30 11:36  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
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Before Administrative Judges:  
Ivan W. Smith, Chairman  
Gustave A. Linenberger, Jr.  
Dr. Jerry Harbour

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In the Matter of	)	Docket Nos. 50-443-OL
	)	50-444-OL
PUBLIC SERVICE COMPANY OF	)	(ASLBP No. 82-471-02-OL)
NEW HAMPSHIRE, <u>et al.</u>	)	(Offsite Emergency
	)	Planning)
(Seabrook Station,	)	
Units 1 and 2)	)	
	)	September 30, 1988

MEMORANDUM AND ORDER  
(Approving Stipulation as to Contentions  
Among Joint Intervenors, Applicants and NRC Staff  
for the Seabrook Plan for Massachusetts Communities)

The parties met with the Board in prehearing conference on August 3 and 4, 1988 to plan for the adjudication of the contentions on the Seabrook Plan for Massachusetts Communities (SPMC). At that conference, the Board discussed the overlapping and duplicitous nature of many of the contentions submitted by the Intervenors in their respective filings. The Board requested all parties, and all parties agreed, to participate in a process to remove contentions no longer in genuine dispute and to consolidate numerous

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contentions which addressed the same disputed issue. Tr. 14299-301. Redrafted and consolidated contentions were to be submitted to the Board by stipulation among all parties if possible. Tr. 14303.

The Stipulation as to Contentions document was submitted to the Board on September 19, 1988. It contained 63 contentions, and bases for some individual contentions. Two contentions, Joint Intervenors numbers 7 and 8, were identified as still in dispute; Board resolution was requested.

With respect to Joint Intervenors Contentions numbers 7 and 8, it has been the practice of this Board during the litigation of the SPMC to narrow the scope of contentions to cover only those locales particularized in Intervenor contentions and bases. E.g., Tr. 14563 and 14589; Memorandum and Order - Part II, at 23-25. In the case of Contentions JI-7 and JI-8, the Joint Intervenors would now have us accept issues formerly particularized to specific locales as being applicable to the whole of the EPZ. The Applicants and the NRC Staff would narrow the scope of these contentions to the specific locales. We agree with the position of the Applicants and the NRC Staff. We have reviewed the etymology of the contentions and find in favor

of specificity. We therefore rule that Contentions JI-7 and JI-8 shall be worded as follows:

- JI-7: No adequate planning has been done for the transit-dependent population because the bus routes proposed for Newbury, Newburyport, West Newbury and Salisbury will not expedite the evacuation of this population.
- JI-8: No adequate planning has been done for the transit-dependent population in West Newbury and Salisbury because the plans call for the transit dependent to wait undetermined lengths of time outdoors thereby running the risk of increasing radiation dose and exposure to the elements.

After its initial review of the Stipulation document, the Board held a telephone conference on September 22 with Counsel for the Massachusetts Attorney General, the Applicant, and the NRC Staff to clarify the scope of their stipulation regarding bases both included and not included in the document. The Board's major concern was whether the bases included within the document superseded older versions of the bases not included, and whether the original bases not included were either withdrawn or incorporated by reference. After discussion, the Board requested the Attorney General to consult with the other Intervenors and to have them reaffirm their support of the stipulation in light of the Board's concerns.

A second telephone conference was held on September 27 and it began with the Massachusetts Attorney General's

notification to the parties of his recently telefaxed letter restating the position of the Joint Intervenors regarding the Stipulation document. Letter of Assistant Attorney General Traficonte to Judges Smith, Linenberger and Harbour dated September 27, 1988, attached. The Attorney General summarized the substance of his letter and outlined four categories of contentions found in the September 19 Stipulation document:

- A. Original contentions with original bases;
- B. Original contentions with original bases incorporated by reference;
- C. Reworded contentions with original bases incorporated by reference;
- D. Reworded contentions with reworded bases.

There was short discussion among the parties regarding their understanding of the contention categories presented by the Attorney General and it is the Board's opinion that they all agreed that his summation was clear. Furthermore, it is the Board's understanding, on the basis of statements made by the Applicant and the Attorney General at the end of the second conference, that the Applicants and the Intervenors have agreed to the following proposition -- where bases supporting a contention are actually written into the Stipulation agreement, those bases control in any material

dispute(s) between the parties regarding the stipulated bases accepted by the Board for the purposes of litigating the contentions.

The Board has taken into consideration the Stipulation document as it is worded, the Attorney General's letter of September 27, and the conversations held during the two telephone conferences regarding contentions and the bases for those contentions both included and not included in the document. We accept the Stipulation as to Contentions document filed on September 19, 1988 as the final agreement between the parties regarding contentions that will be appropriate for litigation of the Seabrook Plan for Massachusetts Communities with the following caveats:

1. We accept the Attorney General's letter of September 27 as a clarification of the Stipulation document, accepted by all parties, and hereby incorporate by reference paragraphs 2.A, 2.B, 2.C, 2.D, 2.E, 3.A, 3.B, and 3.C of the letter into the Stipulation document.

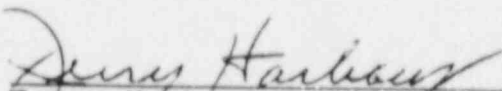
2. We do not accept paragraph 1. of the Attorney General's letter --- which states, "Intervenors remain convinced that after contentions are admitted, bases offered (or not offered) in support of their admission

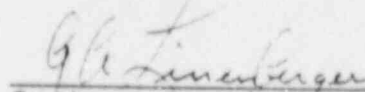
do not limit the admissible evidence as to those contentions" -- as anything more than an expression of the Attorney General's position regarding admissible evidence. We therefore rule that paragraph 1. of the letter is not incorporated as part of the Stipulation document.

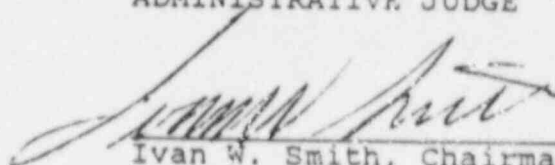
3. In the Attorney General's letter of September 27, we have found minor, non-substantive changes in the wording of the contentions and bases listed in paragraph 2.A -- the category in which he states "Joint Intervenors Contentions are essentially unchanged . . ." from older versions. Furthermore, the Attorney General states that he has "rewritten [()]both the contention statement[s] and bases[()]" listed in paragraph 2.D, and that they supersede older versions. To clear the air of any confusion that may remain regarding the status of the contentions and bases in this litigation, we rule as follows: When any material dispute arises among the parties regarding the scope of the contentions and bases listed under paragraphs 2.A and 2.D, and JI Legal Contentions 44A and 44B listed under paragraph 2.E, the Board will look no further than the wording of the contentions and bases actually

included in the Stipulation document to support its rulings unless extraordinary factors require further inquiry.

ATOMIC SAFETY AND LICENSING BOARD

  
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Jerry Harbour  
ADMINISTRATIVE JUDGE

  
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Gustave A. Linenberger, Jr.  
ADMINISTRATIVE JUDGE

  
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Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

September 30, 1988

Attachment:  
Traficonte to Board, 9/27/88