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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

before the  
ATOMIC SAFETY AND LICENSING BOARD

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

September 30, 1983

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

Off-site Emergency  
Planning Issues

TOWN OF AMESBURY RESPONSE TO  
APPLICANTS' MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES AND  
PRODUCTION OF DOCUMENTS BY AMESBURY,  
HAVERHILL, AND MERRIMAC

NOW COMES the Town of Amesbury (TOA) and hereby responds to  
APPLICANTS' MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION  
OF DOCUMENTS BY AMESBURY, HAVERHILL, AND MERRIMAC (hereinafter  
"Motion") dated September 26, 1983 as follows:

BACKGROUND:

On its face, Applicants Motion purports to be a reasonable effort  
to resolve a discovery dispute with TOA. This is questionable. The  
answers provided by TOA to Applicants' generic interrogatories were  
virtually identical to those of other Intervenor Towns which, in  
substance, uniformly objected to Applicants' discovery requests as

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vague, overly broad, or otherwise improper.<sup>1</sup> Perhaps realizing the discovery disputes with Intervenor towns could best be resolved informally, Applicants' counsel contacted other Intervenor towns to request, in a more limited and specific manner, the discovery that Applicants seek. Apparently those negotiations are ongoing, and may obviate, or at least substantially limit, the need for the Board to referee any discovery dispute with these towns.<sup>2</sup>

By contrast, Applicants' counsel never approached TOA in an effort to clarify its discovery needs, and instead served TOA with a 23 page motion to compel.<sup>3</sup> By appearance, therefore, Applicants seek to target TOA, traditionally the most activist Massachusetts town in

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See TOWN OF NEWBURY'S (TON) ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES REGARDING THE CONTENTIONS ON THE SPMC dated September 14, 1988; TOWN OF WEST NEWBURY'S ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL PARTIES AND PARTICIPATING LOCAL GOVERNMENTS REGARDING CONTENTIONS ON THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES dated September 19, 1988; CITY OF NEWBURYPORT'S ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS dated September 20, 1988. See also, MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON'S ANSWERS AND RESPONSES TO THE APPLICANTS' FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR DOCUMENTS dated September 23, 1988.

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See Towns identified in Note 1, SUDIA.

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TOA was unaware of these overtures by Applicants to other Intervenor towns until after the subject Motion directed at TOA was filed.

this litigation, thereby compelling TOA to expend limited resources responding to Applicants' unwieldy motion.<sup>4</sup>

At best, Applicants use of the discovery process is both uneven and premature.<sup>5</sup>

**MERITS:**

In their Motion, Applicants labor through 23 pages of explanation, for 5 interrogatories, in an effort to provide content and specificity, lacking from Applicants' original discovery request. That effort comes too late. As drafted, many of Applicants' interrogatories are so vague and overly broad as to preclude any meaningful answer, a view shared by virtually all Intervenor counsel.<sup>6</sup> Applicants cannot now resurrect a deficient discovery request through

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Although other Intervenor towns joined in the substance of TOA's answers, Haverhill and Merrimac apparently are named in Applicants' Motion since those municipalities adopted the form, as well as substance, of TOA's responses to Applicants' discovery requests.

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Following receipt of the Motion, TOA initiated contact with Applicants' counsel, which has resulted in agreement on certain previously disputed issues. Those agreements are noted, where applicable, in this response.

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See Note 1, supra.

their "clarification" in the present Motion.<sup>7</sup>

**INTERROGATORY 2:**

2. Please identify and produce all documents, and describe in detail all conversations not otherwise reflected in such documents, which reflect or refer to what actions any Massachusetts state or local government entity or official would, could, might, would not, could not, or might not take in the event of an actual radiological emergency at Seabrook Station.

**ANSWER:**

This Interrogatory is objected to on grounds of attorney-client privilege and work product. This interrogatory is further objected to on grounds that it is so overly broad and vague as to be incomprehensible. Whatever actions a TOA official "might not take in the event of an actual radiological emergency at Seabrook Station" could include a decision to postpone a luncheon engagement. Obviously the interrogatory is defective for inquiring into wholly irrelevant matters. Without waiving any of the foregoing objections, to the extent this interrogatory presents an attempt to determine the response of TOA officials to an emergency at Seabrook Station, TOA has already identified numerous impediments to a planned and organized response. See TOA Contentions 2, 3, and 4, with bases. Among other issues, these contentions assert that the response by TOA officials to an emergency at Seabrook would be ad hoc, and would rely upon whatever personnel or other resources happen to be available at the particular day and time the emergency occurs. For example, since each of the five members of the Town of Amesbury Board of Selectmen hold full time jobs unrelated to their duties as elected town officials, and most are required to travel out of town on some regular basis, it is likely that many, if not all, Selectmen would not be available to provide leadership during an emergency. In addition, as referenced in TOA Contention 4(B), on weekdays during the summer, the TOA Police Department typically

7

Although unstated in its original request, however, Applicants have indicated their willingness to forego inspection at their offices of any original documents, and are content to receive copies by mail. Motion, p. 5 and N.5. This understanding has been agreed to with Applicants' counsel. Accordingly, TOA will provide Applicants with copies of any requested, and not objectionable, documents. The production of documents issue is resolved. See, Motion, pp. 3-5.

has only approximately 7 police officers on duty. In an actual emergency, these officers would be directed by the police chief to take whatever actions he deemed most appropriate and essential given the limited and inadequate resources of the Department to meet a Seabrook emergency. The duties could include traffic management, security, or rescue. This interrogatory is so vague, however, and wholly fails to specify the nature, scope, or extent of the particular "emergency" at Seabrook Station contemplated by the question, necessarily TOA cannot respond more specifically to this question.

In its objection, Applicants, for the first time, inform the parties and this Board of six contentions filed by TOA and other Intervenor which apparently formed the basis for the discovery requests set forth in Interrogatory 2. Motion, pp. 7-8.

Assuming the context and intent of Interrogatory 2 was to seek further, specific information on these six contentions, Applicants obviously should have so stated in the original request.<sup>8</sup> As drafted, however, the bald demand in Interrogatory 2 for any actions that a government official "would, could, might, would not, could not or might not take" in an emergency is, as originally asserted by TOA,

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Most of these "Intervenor Contentions" were not authored, or contributed to, by TOA. JI22, 44A, 61 and 65. The two remaining contentions cited by Applicants, JI24 and 62, in which TOA participated, at bottom assert that the response of TOA government officials to a Seabrook emergency will be ad hoc, and there will be substantial delays and impediments to a planned response, since "there is simply no plan for the governments to follow". JI62. This answer, in substance, has already been provided to Applicants in TOA's original answer.

"so overly broad and vague as to be incomprehensible." <sup>9</sup>

Even as clarified by Applicants' Motion, Interrogatory 2, to the extent possible, has been fully answered by TOA. That answer provides that TOA's response to an emergency at Seabrook Station will be "ad hoc, and would rely upon whatever personnel or other resources happen to be available at the particular day and time the emergency occurs". As answered, plainly TOA has no hidden plan, no hidden agenda, and no further information responsive to the question. <sup>10</sup>

INTERROGATORY 3:

3. Please identify and produce all documents, and describe in detail all conversations not otherwise reflected in such documents, which reflect, refer to, or relate in any way to any action by any Massachusetts state or local government official or entity to block, hinder or delay the licensing of Seabrook Station.

<sup>9</sup> Applicants correctly note that TOA cited as further objection the attorney-client privilege and work product. Given the unreasonably broad sweep of Applicants' Interrogatories, however, which could be fairly construed as including a request to peruse the files of TOA counsel, those objections were necessary to protect the Town.

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TOA therefore finds justifying Applicant's stated insistence to uncover some TOA personnel to determine what the Towns and other officials would or should make to a radiological emergency at Seabrook Station". Mot: p. 8. As stated, there is none.

ANSWER:

This interrogatory is objected to on grounds it is vague, overly broad, argumentative, and, even if more properly drafted, appears to seek communications and documents not subject to discovery by reason of the attorney-client privilege or work product. TOA has never undertaken any actions with the fundamental goal merely to "block, hinder or delay the licensing of Seabrook Station". At all times governing officials of TOA have taken whatever actions deemed appropriate and necessary to protect the health and safety of their citizens. The intimation in the interrogatory that TOA's motives or methods have been purely obstructionist is highly objectionable.

Even as "clarified" by Applicants, TOA's answer to Interrogatory 3 is both complete and accurate. As framed, the question seeks to identify any actions by TOA to "block, hinder or delay the licensing of Seabrook Station" and TOA has responded, in substance, there are none. More fundamentally, however, TOA reasserts that Interrogatory 3 is both argumentative and impugns the motives of TOA officials. The question does not merit further answer.

Applicants' efforts to strain an interpretation of 10 C.F.R. §50.47(c), as belated justification for Interrogatory 3, is unsupported. The pejorative language of Interrogatory 3 is simply outside the scope of the cited Regulation, which focuses upon "the decision of State or local governments not to participate further in emergency planning." 10 C.F.R. §50.47(c). If Applicants intend by this Interrogatory to refer, however improperly, to TOA's vote not to

participate in Seabrook planning, that vote is already a matter of record, and the question thereby answered.<sup>11</sup>

**INTERROGATORY 4:**

4. Please identify and produce all documents generated after January 1, 1980 that reflect or refer to any emergency planning (other than that engaged in by Applicants) conducted or contemplated for the Massachusetts EPZ or any portion thereof, including but not limited to emergency planning required pursuant to the Emergency Planning Act. Such documents should include, but not be limited to, documents that reflect or refer to whether the SPMC or any other plan for dealing with a radiological emergency at Seabrook Station has or has not been, or will or will not be, used in planning for emergency situations other than those involving Seabrook Station.

**ANSWER:**

This interrogatory is objectionable to the extent it seeks to invade the attorney-client privilege or to obtain work product prepared by or on behalf of counsel for TOA or TOA officials for purposes of litigation. TOA further objects to this interrogatory on grounds that, to the best of TOA's knowledge and belief, Applicants are already in possession of all planning documents for the Seabrook EPZ, and further that Applicants "engaged in", or were involved with, generating these documents prior to decisions by the Commonwealth and Massachusetts EPZ committees that emergency planning for Seabrook is not feasible. TOA is not in possession of any planning documents, within the scope of the request, generated since that date. TOA acknowledges, however, its responsibilities to the extent required under the Emergency Planning Act, although no such planning document has been approved by the Town.

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11

As further "clarification" for this Interrogatory, Applicants cite to MAG2, a contention TOA did not author, for the proposition that "Applicants' per force need evidence of the state and local activities and obstacles relevant to all the admitted contentions". Motion, p. 12. To the extent it can be discerned, the information requested has already been provided. See TOA Response re: Interrogatory 2, supra.



The dispute concerning [redacted] Interrogatory has been resolved by counsel for Applicants and [redacted] accordingly, TOA identifies the following: Amesbury, Commonwealth of Massachusetts Emergency Management Plan (6/13/85).<sup>12</sup>

**INTERROGATORY 5:**

5. Please list every admitted SPMC contention which you do not intend to participate in litigating, i.e., concerning which you will not take discovery, present evidence, make arguments, conduct cross-examination, or submit proposed findings.

**ANSWER:**

As Applicants should be aware, this interrogatory is premature. Presently, the Commonwealth, EPZ Towns in Massachusetts, and Applicants, are engaged in streamlining and consolidating the numerous admitted contentions for submission as "joint intervenor" contentions. As of the date of these answers, that process has not been completed. Identification of contentions that TOA may choose to litigate is wholly premature and speculative. In addition, any responses Applicants may make to TOA discovery requests may impact on TOA's decision whether to proceed with further litigation of particular contentions.

In filing its answers to Applicants' interrogatories on September 14, TOA declined to answer Interrogatory 5 on grounds it was premature, as the process of consolidating Joint Intervenor contentions had not yet been completed. Supra. By their motion, Applicants challenge as "questionable" the truth of this assertion. Motion, p. 16, Note 17. Applicants are in error.

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12

A copy of this document has been served upon Applicants and the NRC staff. Upon request, TOA will make available additional copies.

Although Applicants claim that the "final changes" in the process of consolidating Intervenor contentions occurred on September 13, Id., it is a matter of record that the scope and interpretation of Joint Intervenor contentions was still in dispute as of September 19, as referenced by the Staff in its letter to the Board of that date. Exhibit 1 attached.<sup>13</sup>

Since, however, that consolidation process has now been completed TOA is prepared to hereby supplement its prior answer to Interrogatory 5 as follows:

Presently, TOA does not intend to conduct discovery, present evidence, make arguments, conduct cross examination, or submit proposed findings except as to the following contentions: JI2, 4, 14, 23, 24, 27, 50, 55, 58, 60 and 62.

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13

As stated in that letter, which included a STIPULATION AS TO CONTENTIONS, Applicants and Intervenor still disagreed as to the scope of the redrafted contentions, and the effect of the bases originally submitted and admitted by the Board. TOA has been advised that these issues were not finally resolved until on or about September 27.

As with its answers to other interrogatories, TOA shall supplement this interrogatory if and when circumstances change, new facts are discovered, or issues raised, and/or TOA determines it is necessary to further exercise its rights afforded under 10 C.F.R. §2.715(c) to protect the interests of the Town.<sup>14</sup>

**INTERROGATORY 6:**

6. For every admitted SPMC contention that you submitted and do not hereby withdraw, and for every other admitted SPMC contention that you did not list in response to Interrogatory 5 above, individually for each such contention, please:

a. State in detail all the facts underlying each assertion contained in the contention;

b. State the source of each such fact. If the source is the personal knowledge of one or more persons, identify the person(s). If the source is one or more documents, identify and produce the document(s);

c. Identify any expert witness who is to testify concerning the contention, and state the substance of the facts, opinions, and grounds for opinions to which the expert is expected to testify;

d. Identify any non-expert witness who is to testify concerning the contention, and state the substance of the facts to which the witness is expected to testify; and

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14

Although TOA has not confirmed Applicants' agreement with this Answer in all respects, TOA believes it has now fully responded to Interrogatory 5.

e. Identify and produce any documents which reflect or refer to any type of study, calculation or analysis bearing upon the substance of the contentions.

ANSWER:

a. See Answer to Interrogatory 5. By way of further objection, this interrogatory is objected to as vague and unduly burdensome. TOA asserts that "the facts underlying each assertion contained in the contention" are stated with reasonable specificity in the basis for each contention proffered by TOA. Absent a reasonably specific request by Applicants for particular information, TOA objects to Applicants' fishing expedition for "all the facts" which may possibly pertain to any particular contention.

b. See answer to Interrogatory 5 and 6a.

c. See answer to Interrogatory 5 and 6a. By way of further answer, TOA has not yet identified any experts who will testify on behalf of TOA.

d. See answer to Interrogatory 5 and 6a. By way of further answer, this interrogatory is objected to as outside the scope of permissible discovery, as premature, and as constituting a fishing expedition intended to intrude into the litigation strategies, and mental impressions of TOA counsel and officials.

e. See answers to Interrogatories 5, 6a, and 6d. By way of further objection, this interrogatory, which seeks any document "bearing upon" a contention, is so broad and vague as to be incomprehensible.

Applicants argue generally that TOA should provide additional "facts," to support TOA's contentions, beyond those already provided in the bases to contentions. Whatever additional "facts" Applicants seek, however, are never disclosed. Indeed, although expounding for more than four pages on Interrogatory 6, Applicants' generic objection does not even discuss a single specific contention, save one, for which it claims additional "facts" should be provided. Even that single Joint Intervenor Contention, JI50, is cited only for the limited proposition that not all special needs facilities have been

identified. This issue, however, was never raised by TOA, See, TOA Contention 4(D)(2), incorporated into JI50, and Applicants' concerns should be directed elsewhere.

Applicants also make passing reference, without citation, that TOA claims there is inadequate equipment and personnel to follow the SPMC. While TOA agrees with this proposition, it remains mystified as to how a further "factual explanation of the inadequacy," beyond that contained in bases, may be provided. If Applicants want specific information, Applicants should pose a specific, and coherent, question.<sup>15</sup>

With reference to Applicants' request to identify TOA's non-expert witnesses, and the substance of their testimony, as TOA previously stated, this interrogatory is "premature", as TOA has not made this determination. Once obtained, however, TOA will provide Applicants with this information.

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Applicants' error in logic appears grounded upon its inability to accept, as Intervenors have, that no amount of emergency equipment and personnel can alter the fundamental fact that emergency planning for Seabrook cannot reasonably protect the health and safety of EPZ citizens. This position was cogently stated by FEMA in its September, 1987 testimony prefiled in this case, which TOA adopts, and to which Applicants should refer if additional explanation is desired. TOA therefore cannot identify any missing "facts" that will somehow solve or compensate for the inadequacy of the emergency plans.

With reference to Applicants' request for "any documents ... bearing upon the substance of the contention", TOA reasserts that such a request is simply too broad to warrant a meaningful response. Nowhere in Applicants' original interrogatory, or in the Motion, is there reference to any specific contention filed, or issue raised, by TOA, nor are any reasonable bounds placed upon the scope of the request. The request is overbroad, ill-defined, and objectionable.


For reasons stated, to the extent issues remain in dispute, TOA respectfully requests that Applicants' motion be DENIED.

Respectfully submitted,

TOWN OF AMESBURY  
By Its Attorneys,  
SHAINES & McEACHERN  
Professional Association

DATED: September 30, 1988

By:

  
Matthew T. Brock



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

SEP 19 1988

SEP 22 REC'D

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In the Matter of  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL.  
(Seabrook Station, Units 1 and 2)  
Docket Nos. 50-443, 50-444 Off-Site Emergency Planning

Dear Administrative Law Judges:

In the course of the August 3 and 4, 1988 prehearing conference counsel for the NRC Staff offered to coordinate the editing, grouping and consolidation of the SPMC contentions admitted by the Licensing Board. To that end representatives of the Applicants, Intervenors and NRC Staff have conferred and produced the attached "Stipulation as to Contentions" which, with the exception of JI7 and JI8, represents a consolidation and clarification of the contentions admitted by the Board in its July 22, 1988 and August 19, 1988 Memoranda and Orders.

For ease of litigation the contentions were divided into eight issue groups and renumbered. The etymology of each contention is enclosed in the brackets which follow the new contention number. Although the bases of the admitted contentions were deleted in order to condense the final document, the Staff's and Applicant's agreement to this stipulation is grounded on their understanding that the contentions remain limited to the bases originally submitted and admitted by the Board. The Joint Intervenors do not intend that their agreement to this stipulation limits the evidence adduced in support of the contentions.

Yours truly,

Elaine I. Chan  
Counsel for NRC Staff

Attachment as stated

cc w/attachment: Service list

EXHIBIT 1

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CERTIFICATE OF SERVICE

'88 OCT -3 P3:11

I, Matthew T. Brock, one of the attorneys for the Town of Amesbury herein, hereby certify that on September 30, 1988, I made service of the foregoing document, TOWN OF AMESBURY RESPONSE TO APPLICANTS' MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS BY AMESBURY, HAVERHILL, AND MERRIMAC and TOWN OF AMESBURY FIRST SUPPLEMENT TO APPLICANTS' FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL PARTIES AND PARTICIPATING LOCAL GOVERNMENTS REGARDING CONTENTIONS ON THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES, by depositing copies thereof in the United States Mail, first class postage prepaid for delivery (or, where indicated, by Express Mail, prepaid) addressed to:

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