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SHERWIN SHANNON

REGISTRATION NO. 50-443/444-02  
THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

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15 NRC

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RELATED CORRESPONDENCE

OFF  
DOC

September 28, 1988

Sherwin Turk  
U.S Nuclear Regulatory Commission  
Office of General Counsel  
15th Floor  
11555 Rockville Pike  
Rockville Maryland, MD 20852

RE: August 22, 1988 Communication from NRC Staff to  
Offsite Licensing Board

Dear Sherwin:

I want to express my frustration with your response to my inquiry today concerning the August 22, 1988 communication from you to the Licensing Board by means of which you supplied the Board with copies of two technical studies recently published by Dr. Thomas Urbanik, ("NUREG documents"). I note the following:

1. As I explained to you, I only yesterday saw a copy of your August 22nd letter (attached hereto). From it I learned that in addition to providing the parties with copies of the NUREG documents, you supplied these to the Board. You failed, however, to move to reopen the record so that these documents might be considered by the Board.

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2. In response, you informed me that you had not intended that these documents be read or examined by the Board. Instead, in your words, you used a letter to the Board with a carbon copy to the service list as a "vehicle" for distributing the NUREG documents to the parties.

3. You further stated that such communications from the Staff to the Licensing Board are generally permitted in keeping with the Staff's affirmative obligation to keep the NRC's adjudicatory boards abreast of technical developments.

4. I reiterate my position:

a. Your letter specifically states that during the hearings you had "agreed to distribute copies of the reports when available". You stated this in a letter to the Licensing Board Judges. Thus, a fair reading of your letter would lead one to assume that you intended these documents at the very least to be examined by the Board. In fact, as the attached transcript pages which you referenced in your letter make clear, you had agreed, in response to a direct request from Mr. Fierce, to provide copies only to the parties.

b. The record is closed on these issues. In such a situation it is simply inappropriate to forward substantive technical studies to the Board making misleading references to prior agreements to provide such documents. It is even more troubling that you state that you had no formed

intention that the Board read or examine these documents. Why did you send them then? Why did you reference specific transcript pages (inaccurately in any event) in support of your submission?

c. I have found no NRC law holding that the Staff's obligation to keep the adjudicatory boards updated on technical studies overrides the Staff's obligation to seek to reopen the record when it wishes to put additional material before these boards. Moreover, it is difficult to grasp how you meet your obligation to keep the offsite Board informed of technical studies by submitting material to them which you claim you did not intend that they read or examine. Either you intended that they read it and you believe Staff obligations to submit material like this overrides the difficulties presented by a closed record, or you had no such intention in which case Staff obligations to keep the boards informed were irrelevant to your actions.

5. I requested that you either move to reopen the record or otherwise clarify your August 22nd submittal. You refused to do either. I do not know whether the Board has "read or examined" the NUREG documents. I do know that your letter of August 22nd (particularly in the absence of any timely response by Intervenor) might be interpreted as intending to fill a gap in the record left open when Dr.

Urbanik was actually cross-examined. Of course, no such gap existed and the only appropriate and recognized way to seek consideration of these NUREG documents was to move to reopen the record.

Again, I ask that you take the appropriate actions.

Very truly yours,

  
John Traficonte  
Assistant Attorney General

CC: Service List



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

AUG 22 1988

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

Gustave A. Linenberger, Jr.  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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

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 Judges:

Enclosed please find the following documents related to the I-DYNEV evacuation time estimate computer code:

1. NUREG/CR-4873, PNL-6171, "Benchmark Study of the I-DYNEV Evacuation Time Estimate Computer Code," by Dr. Thomas Urbanik, et al., Pacific Northwest Laboratory (June 1988); and

2. NUREG/CR-4874, PNL-6172, "The Sensitivity of Evacuation Time Estimates to Changes in Input Parameters for the I-DYNEV Computer Code," by Dr. Thomas Urbanik, et al., Pacific Northwest Laboratory (June 1988).

Some reference to these studies was made by Dr. Urbanik in his testimony on December 4, 1987, at which time I agreed to distribute copies of the reports when available. See Tr. 7443-44.

Sincerely,

Sherwin E. Turk  
Senior Supervisory  
Trial Attorney

Enclosures

cc w/Encl.: Service List

Enclosures  
New Mrs

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1           A       (Urbanik) Certainly you had to know the answers to  
2 those kinds of questions to be a credible Witness, yes.

3                    You had to do the research. What we proposed was a  
4 research study, answer the questions.

5           Q       What was the study that the NRC funded you to do?

6           A       (Urbanik) Well, it has two aspects. One aspect of  
7 the study was a small validation of the model against real  
8 traffic data, where what we were wanting to confirm or deny was  
9 whether or not the model could replicate real life traffic  
10 under heavily congested conditions.

11                   The other part of the study was a sensitivity study  
12 to look at how transportation networks, at generic nuclear  
13 power plants affects -- how ETE's at these generic nuclear  
14 power plants are affected by different assumptions so that you  
15 could have an idea of how the model -- you get two things out  
16 of it -- how the model works and also how sensitive the  
17 estimates are to the various assumptions, because clearly, it  
18 has been unfortunate in this process, that we spent a lot of  
19 time arguing over the model when the model really shouldn't be  
20 the issue.

21                   The issue really should be the numbers going into the  
22 model.

23           Q       This study was completed when, Dr. Urbanik?

24           A       (Urbanik) Well, it is not complete. We just ran out  
25 of money.

1 Q You mentioned a report.

2 A (Urbanik) Well, we are in the process of drafting  
3 the report. The report is not yet in draft form. My  
4 colleague, Matt Moeller at Battelle, and I, have both been  
5 extremely busy with other matters in recent months and have not  
6 been able to get the final draft of the report complete.

7 MR. FIERCE: Can I request, Mr. Turk, that we be  
8 provided with a copy of this report, as soon as it is even in  
9 draft form?

10 MR. TURK: Yes, as I had previously committed to the  
11 Massachusetts AG, as soon as that draft is in final publishable  
12 form, it will be distributed to all parties in the proceeding.

13 MR. FIERCE: I am asking for a copy of the first  
14 draft, Mr. Turk?

15 MR. TURK: No, I cannot and will not send out  
16 incomplete drafts which have not yet reached approval stage.

17 BY MR. FIERCE:

18 Q So, Dr. Urbanik, you have not evaluated specifically,  
19 this site-specific input assumptions that were made in the KLD  
20 ETE study for Seabrook, have you?

21 A (Urbanik) Yes, I have.

22 Q But you haven't evaluated the sensitivity of those  
23 input assumptions in I-DYNEV, for Seabrook, have you?

24 A (Urbanik) I think that the Applicant has done the  
25 more than adequate job of doing sensitivity studies.