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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
REGULATING A SERVICE
BRANCH

In the Matter of)	
)	Docket Nos. 50-443 OL
PUBLIC SERVICE COMPANY OF)	50-444 OL
NEW HAMPSHIRE, <u>et al.</u>)	Off-site Emergency Planning
(Seabrook Station, Units 1 and 2))	

NRC STAFF'S RESPONSE TO SUPPLEMENTAL CONTENTIONS OF
ATTORNEY GENERAL JAMES M. SHANNON TO AMENDMENT 4
OF THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES

INTRODUCTION

On May 13, 1988, the Attorney General for the Commonwealth of Massachusetts ("Mass AG") submitted its "Supplemental Contentions" ("Contentions") to Amendment 4 of the Seabrook Plan for Massachusetts Communities ("SPMC"). The Mass AG's submission contained a recitation of proposed additional bases for Mass AG Contentions 47 and 56 previously filed on the SPMC. These proposed additional bases concern (a) allegedly inadequate procedures for implementing dismissal or cancellation of schools and early evacuation of schools for Contention 47, and (b) allegedly conflicting PARs for beach transients and non-transient populations and allegedly inappropriate PARs for the sheltering of transient beach populations in Massachusetts beach areas for Contention 56. In support of its submission of proposed bases, Mass AG stated that its filing was "in response to Amendment 4."

For the reasons set forth below, the Staff opposes the admission of these additional bases.

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DISCUSSION

A. The Petition Fails to Satisfy the Standards for Late-Filed Contentions

Motions to admit late-filed contentions are to be evaluated in light of the five factors delineated in 10 CFR 2.714 (a)(1). That regulation requires a balancing of the following in determining whether to grant an untimely filing:

(i) Good cause, if any, for failure to file on time;

(ii) The availability of other means whereby the petitioner's interest will be protected;

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(iv) The extent to which the petitioner's interest will be represented by existing parties;

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Although the Mass AG does not address any of the standards of 10 C.F.R. § 2.714 (a)(1) for late-filed contentions in its filing, in the discussion which follows, the Staff presents its analysis of the instant filing. The Staff's analyses of the five factors of 10 C.F.R. § 2.714 (a)(1) indicates that Mass AG has not satisfied its burden and the contention should be rejected.

1. Good Cause for Failure to File on Time

The Mass AG does not state any good cause for its late filing of additional bases except to state in its submission that these bases are submitted "in response to Amendment 4." There is no acknowledgement that the submission of the new contention bases is untimely or any explanation

offered for the late filing. Accordingly, the Mass AG has failed to demonstrate good cause for failing to file in a timely fashion.

2. Other Means to Protect Intervenor's Interest

The Mass AG's submission does not address this issue; however the Staff does not contend that other means are available to protect the Mass AG's interest. Accordingly, this factor may be found to weigh in favor of the Mass AG.

3. Contribution to the Development of a Sound Record

Commission case law establishes that the movants must identify their prospective witnesses and summarize their testimony, and that they bear the burden of affirmatively demonstrating that their witnesses may reasonably be expected to assist in the development of a sound record. See, e.g., Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177-78 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399-400 (1983).

Since the Mass AG's submission does not address this standard, it cannot be assumed that the Mass AG will call any witnesses to testify or how these witnesses might be expected to contribute to the record. Accordingly, this factor weighs against admission of the contention bases.

4. Extent to Which Intervenor's Interest Will Be Represented by Existing Parties

No other party has raised these issues for litigation in the proceeding, and absent the admission of these contention bases, Mass AG's

interest will not be represented by any other party to the proceeding. Accordingly, this factor might be found to favor Mass AG.

5. Broadening the Issues or Delay to the Proceeding

Admission of the proposed bases would broaden, somewhat, the numerous issues already proposed for litigation. Since the Staff has opposed the admission of Contention 56 and those parts of Contention 47 concerning the subject of the proposed bases, the admission of these additional bases could tend to delay the proceeding.

B. The Supplemental Contentions Do Not Meet the Basis and Specificity Requirements of 10 C.F.R. § 2.714 (b)

The principles governing the admission of contentions are discussed at length in the Staff's May 27, 1988 response to Intervenors' contentions and will not be repeated here.

Mass AG's additional bases Contention 47 "U" do not add anything new or different to the bases already set forth by Mass AG in its original filing and the proposed bases could be rejected for this reason alone. Additionally, parts (1) and (3) lack the requisite specificity to constitute an admissible contention. The Mass AG does not indicate what "necessary resources" are unavailable for early dismissal, or what decision criteria are missing or necessary to make a decision, much less "the best possible" decision.

Parts (2) and (4) of proposed bases "U." constitute a challenge to the Commission regulations, in that there is no regulatory requirement or NUREG-0654 guidance that school officials inform parents about the location of their children or that school officials understand and


implement the PARs. To the extent that the cooperation of teachers involves role conflict, this issue was litigated in an earlier phase of this proceeding and need not be relitigated.

The new bases G and H for Contention 56 should be rejected for lack of regulatory basis and because they fail to lend any additional support for the contention as earlier proposed. For the same reasons noted in the Staff's May 27, 1988 response to the original Contention 56 (Staff Response at 50.) neither basis G nor H provide any additional support for the contention and should be rejected.

CONCLUSION

For the reasons discussed above, factors 1, 3 and 5 weigh against admission of these proposed late-filed contention bases, while factors 2 and 4 weigh in favor of admission of the bases. In sum, a balancing of the late-filed contention factors weighs against the admission. In addition, the proposed late-filed contention bases fail to meet the specificity and basis requirements of 10 C.F.R. § 2.714 (b) and for this reason should not be admitted.

Respectfully submitted,



Elaine I. Chan
Counsel for NRC Staff

Dated at Rockville, Maryland
this 2nd day of June, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO SUPPLEMENTAL CONTENTIONS OF ATTORNEY GENERAL JAMES M. SHANNON TO AMENDMENT 4 OF THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 2nd day of June 1988.

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