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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
DOCKETING & SERVICE
BRANCH

In the Matter of

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

}
Docket Nos. 50-443 OL
50-444 OL
Off-site Emergency Planning
}

NRC STAFF'S RESPONSE TO SEACOAST ANTI-POLLUTION LEAGUE'S
LATE-FILED CONTENTION ON THE
SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES

INTRODUCTION

On May 13, 1988, the Seacoast Anti-Pollution League ("SAPL") filed "Seacoast Anti-Pollution League's Late-Filed Contention on the Seabrook Plan for Massachusetts Communities." ("Motion") In its Motion SAPL presents a late-filed contention asserting that the SPMC Amendment 4 fails to provide assurance that there will be adequate means of relocation for special facility populations in the six Massachusetts communities in compliance with NRC regulations and NUREG-0654 guidance. (Motion at 3) In support of this contention, SAPL contends that the numbers of buses and wheelchair vans were reduced in Amendment 4 to the SPMC with no apparent reason, rationale or compensating measures. In support of its Motion, SAPL addresses the late-filing criteria of 10 CFR 2.714(a)(1).

For the reasons set forth below, the Staff does not oppose the admission of this late-filed contention.

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DISCUSSION

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.

As set forth below, an analysis of the instant contention in light of these factors indicates that SAPL has satisfied its burden and the contention should be admitted.

1. Good Cause for Failure to File on Time.

In its Motion, SAPL asserts that it did not receive SPMC amendment 4 until on or around April 15, 1988 after the April 13, 1988 deadline for the filing of contentions. (Id. at 1) SAPL further asserts that subsequent to that time, it was involved with preparation of extensive proposed findings and attending the hearings on the beach population issue. (Id.) Lastly, SAPL asserts that its filing is within the customary 30-day time frame for filing contentions on newly received plan amendments in this

case. (Id at 2) The Staff does not dispute SAPL's assertion that the contention was timely filed.

2. Availability of Other Means to Protect the Intervenor's Interest.

Except for litigation of this contention in this proceeding, there does not appear to be any other means available by which the Intervenor may protect its interest. Accordingly, this factor favors admission of the contention.

3. Extent to Which Intervenor's Participation May Reasonably Be Expected to Assist in Developing A Sound Record

SAPL states that it intends to bring in unidentified fact witnesses to testify and to crossexamine applicant witnesses as to the deficiencies alleged in the contention.

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). In this regard, SAPL merely states that it will produce fact witnesses, however, no witnesses have been identified nor has the testimony of these prospective witnesses been summarized. Accordingly, this factor weighs somewhat against admission of the contention.

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

No other party has raised this issue for litigation in the proceeding, and absent the admission of this contention, Intervenor's interest will not be represented by any other party to the proceeding. Accordingly, this factor favors admission of this contention.

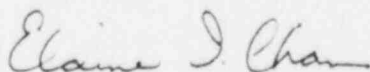
5. Broadening the Issues or Delay to the Proceeding.

SAPL believes that since litigation has not yet commenced on the SPMC other than contention filing, that the admission of this contention to be litigated in the context of and along with other issues will not appreciably delay or broaden the proceeding. The Staff does not disagree with SAPL's characterization that the admission of the contention at this time would not appreciably delay or broaden the proceeding. Accordingly, this factor weighs in favor of the admission of this contention.

CONCLUSION

As set forth above, factors 1, 2, 4 and 5 favor the admission of SAPL's late-filed contention, while factor 3 weighs against its admission to some extent. In sum, a balancing of these factors supports the admission of the contention.

Respectfully submitted,



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Dated at Rockville, Maryland
this 31st day of May, 1988

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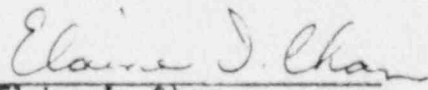
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