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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Helen F. Hoyt, Chairperson
Emmeth A. Luebke
Jerry Harbour

OFFICE OF SECRETARY
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In the Matter of)	Docket Nos. 50-443-OL
)	50-444-OL
PUBLIC SERVICE COMPANY)	(ASLBP No. 82-471-02-OL)
OF NEW HAMPSHIRE, <u>et al.</u>)	(Offsite Emergency Planning)
)	
(Seabrook Station, Units 1 and 2))	May 2, 1986

SERVED MAY 5 1986

ORDER

(Seacoast Anti-Pollution League Supplemental Petition
for Leave to Intervene Fails to Address
Requirements for Late-Filed Contentions in 10 CFR § 2.714)

Intervenor Seacoast Ani-Pollution League (SAPL) filed its petition for leave to intervene with seven (7) contentions¹ on April 8, 1986. Applicants submitted Applicants' Response to SAPL's Third Supplemental Petition for Leave to Intervene on April 18, 1986 and Staff submitted NRC STAFF'S Response to SAPL's Third Supplemental Petition for Leave to Intervene on April 28, 1986.

Applicants and Staff in their responses maintain that although some of the contentions arise from recently filed documents, SAPL did not make a showing of any kind as required by 10 CFR § 2.714(a)(1).

¹ Contentions 8A; Redrafted SAPL Contentions Nos. 15, 23, 26, 27, 28 and 29.

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SAPL has the burden of satisfying the standards for late intervention and those standards are applicable even where the late-filed contentions arise out of new documents. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), reversing in part ALAB-687, 16 NRC 460 (1982). This Board has indeed indicated to the parties that we would apply the tests for late contentions with a very liberal hand (Tr. 2339) based on documents which were filed by New Hampshire after submission of the main body of the New Hampshire Radiological Emergency Response Plan. Simple common-sense fairness requires nothing less. But we do expect and require that an intervenor perform the necessary exercise of addressing the late-filing criteria and the other parties to this proceeding be permitted responses to SAPL's submission. Accordingly, SAPL discussion of the late-filed criteria only will be submitted for in hand delivery to the Board and the parties no later than the close of business on May 9, 1986. Simultaneous responses will be submitted by the Applicants and Staff for in hand delivery to the Board and parties no later than May 16, 1986.

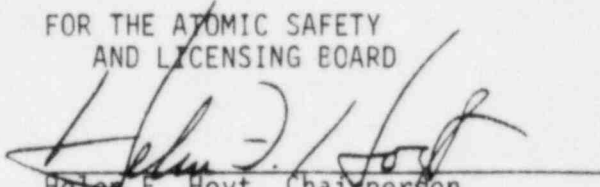
One additional matter requires attention of the Board. SAPL in its introduction maintains that "all of the contentions filed previously by SAPL with regard to the New Hampshire State, local and host community Radiological Emergency Response Plans apply to the adequacy of the overall emergency planning effort, including the New Hampshire Compensatory Plan."

SAPL's attempt to boot strap contentions from one plan to another albeit late-filed plan simply by a short cut method of requiring this Board and the parties to construct a roster for SAPL contentions is summarily rejected. If SAPL wishes to litigate an issue it must clearly state the issue and provide the basis. If late filed, then the late-filed criteria must be addressed.

What will be litigated before this Board are each of those contentions admitted by this Board. We do not intend to relinquish our conduct of this proceeding by advocating our responsibilities for an orderly proceeding. All intervenors will be expected to clearly state their contention(s) and provide sufficient basis to place the Board and parties on notice as to the issue(s) they wish to litigate. Late-filed criteria must be addressed. The Commission recently in Commonwealth Edison Co. (Braidwood Station, Units 1 and 2), CLI-86-08, 23 NRC ____ (April 24, 1986), Slip Opinion at 12, clearly provided that ". . . a Licensing Board must find that the five-factor test is satisfied in order to 'entertain' a late-filed contention." There are no exceptions including stipulated contentions. Even a waiver of objections by all parties would not serve to render an otherwise untimely contention admissible.

The Board's ruling on admissibility of the seven (7) late-filed contentions submitted by SAPL on April 8, 1986 will be withheld pending receipt of the showing required above and the responses.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

A handwritten signature in dark ink, appearing to read 'Helen F. Hoyt', is written over a horizontal line. The signature is stylized and cursive.

Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland,
the 2nd day of May, 1986.