

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

LB 10/18/88

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Ivan W. Smith, Chairman  
Gustave A. Linenberger, Jr.  
Dr. Jerry Harbour

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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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-OL  
50-444-OL  
(ASLBP No. 82-471-02-OL)  
(Offsite Emergency  
Planning)

October 18, 1988

MEMORANDUM AND ORDER  
(Directing SAPL to Respond  
to Discovery Requests)

On August 31, 1988 Applicants served their first set of interrogatories and first request for documents in the SPMC phase of the proceeding upon all parties including the Seacoast Anti-Pollution League. SAPL responded on September 12. Applicants, dissatisfied with SAPL's response, moved on September 27 for an order compelling responses to its discovery requests pursuant to 10 CFR 2.740(f). SAPL has not formally responded to the motion to compel.

In an effort to resolve some confusion in the pleadings, counsel to the Licensing Board conducted several

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telephone conversations with counsel for Applicants, counsel for SAPL, and Ms. Doughty, SAPL's field director. Legal counsel for SAPL has requested the Board to communicate directly with Ms. Doughty on the discovery dispute.

Ms. Doughty and counsel for Applicants report that some progress is being made toward settling the matter, but SAPL and Applicants cannot agree on Interrogatory 2. The respective interrogatory and SAPL's response to it are as follows:

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.

Response:

2) SAPL is in possession of no documents responsive to this interrogatory. The conversations SAPL has had relative to the subject matters described in this interrogatory have been with counsel to the various parties to this proceeding and are, therefore, deemed privileged. Conversations with town officials have been in the presence of their counsel and are also deemed privileged. The only other conversations outside of the above-described have been with Bill Lord, Chairman of the Board of Selectmen of the Town of Amesbury. Those conversations have generally been in the nature of poking fun at the idea that utility workers could adequately perform functions required in a local community emergency response and have revolved around the basic theme that the SPMC is not going to work to adequately protect the Town of Amesbury's citizens.

With respect to Applicants' request for the production of documents in the category covered by Interrogatory 2, SAPL's response, submitted under oath by Ms. Doughty, is unambiguous: SAPL has no such documents. This is an appropriate response to the interrogatory if true. Therefore, insofar as Applicants' motion may be read to cover document requests, it is denied.

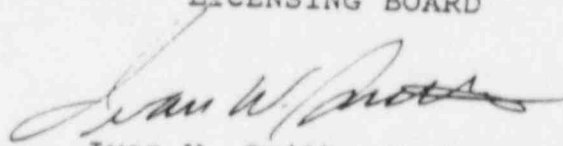
SAPL's claim of attorney/client privilege seems to be grounded on the simple proposition that the mere presence of an attorney during a conversation cloaks it with the privilege. This is not the case however. SAPL has not provided any other ground for protecting its claim of attorney/client privilege.

Applicants also infer a claim of work-product privilege from SAPL's response. While the Board can readily envision that some conversations covered by the interrogatory might be in the nature of work product, this is only speculation. SAPL has not made a case for the work-product privilege and we decline to supply one for it.

Accordingly Seacoast Anti-Pollution League is directed to respond to Interrogatory 2 of Applicants' August 31, 1988 discovery requests to the extent that the interrogatory

seeks the details of conversations on or before October 28, 1988. A copy of this order is being sent to Ms. Doughty today by express mail.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD



Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

October 18, 1988