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Dated: May 21, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
before the  
ATOMIC SAFETY AND LICENSING BOARD



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 Issues

APPLICANTS' RESPONSE TO SEACOAST  
ANTI-POLLUTION LEAGUE'S FOURTH  
SUPPLEMENTAL PETITION FOR LEAVE TO INTERVENE

Under date of May 15, 1986, Seacoast Anti-Pollution League (SAPL) filed a "Fourth Supplemental Petition for Leave to Intervene" (SAPL Petition). Therein SAPL seeks to have accepted for litigation a late-filed contention concerning the evacuation time estimate (ETE) done for the State of New Hampshire by KLD Associates, Inc. (KLD).

The applicants have previously filed a brief with the Board on the issue of whether the regulations require the litigation of any ETE adopted by a state which is not generated by the applicant for an operating license.  
Applicants' Brief with Respect to (1) The Mass. AG

Contention and (2) The So-called "Multiple ETEs" Issue at 6-8 (April 11, 1986). For the reasons set forth therein, it is the position of the applicants that this issue should be excluded.

In addition, we respectfully submit that the "five factors" test for late-filed contentions dictates exclusion of this contention. The applicants would concede that the first, second and fourth factors weigh in favor of SAPL.

With respect to the third factor the Commission has recently stated:

"Our case law establishes both the importance of this third factor in the evaluation of late-filed contentions and the necessity of the moving party to demonstrate that it has special expertise on the subjects which it seeks to raise. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). The Appeal Board has said: 'When a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.' Id." CLI-86-08, supra, Slip Op. at 5.

It is the evidentiary contribution which is important, not legal skills, including the ability to cross-examine.

Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982).

"A late petitioner can establish that its participation may reasonably be expected to assist in developing a sound

record by '(1) identify[ing] specifically at least one witness it intends to present; and (2) provid[ing] sufficient detail respecting that witness' proposed testimony to permit the Board to reach a reasoned conclusion on the likely worth of that testimony on one or more of [its] contentions.'."

Washington Public Power Supply System  
(WPPSS Nuclear Project No. 3), ALAB-767,  
19 NRC 984, 985 (1984) quoting id.,  
ALAB-747, 18 NRC 1167, 1181 (1983).

SAPL's showing on the third factor in its entirety is:

"SAPL contributed to the development of the record with respect to the Applicants' ETE back in 1983. SAPL expects at minimum to participate in like manner to examine the soundness of the assumptions upon which the ETE adopted by the State of New Hampshire is based. SAPL cannot yet assert with absolute certitude whether or not SAPL will sponsor any witnesses." SAPL Petition at 4.

This is a total "non-showing". No witness is named.

This factor should weigh heavily against SAPL.

As to the fifth factor, it is clear that admission of the contention will broaden or delay the resolution of the New Hampshire plan issues. SAPL argues that it will not broaden or delay the proceeding "beyond the point where it would be broadened or delayed by the exercise of the Board's duty to review these matters." SAPL Petition at 5. But this Board, sitting in an operating license proceeding has no duty to examine any issue not put into contention by a party. The "duty" arises only after the contention is admitted. Thus on the fifth factor SAPL has made no showing.

CONCLUSION

The first, second and fourth factors favor SAPL's position. On the critical third and fifth factors, SAPL has made no showing at all. On balance therefore, the ruling should be that the late-filed contentions are excluded.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on May 21, 1986, I made service of the within document by mailing copies thereof, postage prepaid, to:

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