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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 FEB -4 A10:16

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
February 4, 1988
(ALAB-884)

In the Matter of)
)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, ET AL.)
)
(Seabrook Station, Units 1)
and 2))
_____)

SERVED FEB 04 1988

Docket Nos. 50-443-OL
50-444-OL

(Offsite Emergency Planning)

John Traficonte, Boston, Massachusetts, for
intervenor James M. Shannon, Attorney General of
Massachusetts.

Thomas G. Dignan, Jr., George H. Lewald, Kathryn A.
Selleck, and Deborah S. Steenland, Boston,
Massachusetts, for the applicants Public Service
Company of New Hampshire, et al.

Sherwin E. Turk for the Nuclear Regulatory Commission
staff.

MEMORANDUM AND ORDER

Since early last October, the Licensing Board has been
conducting evidentiary hearings on the emergency response
plans developed for the New Hampshire portion of the plume
exposure pathway emergency planning zone for the Seabrook
nuclear facility. In the course of those hearings, the
Board issued oral rulings on November 16 and 18, declining
(in response to the applicants' motion) to admit into
evidence certain prepared testimony proffered by the

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intervenor Attorney General of Massachusetts.¹ In addition, on November 18, the Board denied the Attorney General's motion to refer the rulings to us under 10 CFR 2.730(f).²

Seven weeks later, on January 7, 1988, the Attorney General filed a motion with us seeking interlocutory review of the rulings by way of directed certification.³ The applicants and the NRC staff oppose the requested relief on a variety of grounds. We deny the motion on a single ground: it manifestly comes too late.⁴

As we had recent occasion to observe:

Although the Rules of Practice do not specify any time limit for motions requesting the exercise of our discretionary authority under 10 C.F.R. § 2.718(i) to direct certification of an interlocutory ruling, we have indicated that parties should act with dispatch in seeking such relief. That suggestion is in accord with the analogous referral provision of 10 C.F.R. § 2.730(f) specifying that referrals of interlocutory rulings by the licensing boards must be made "promptly." Even though the Commission's regulations generally prohibit interlocutory

¹ See Tr. 5594-616; 5959-61.

² See Tr. 6004-07.

³ See 10 CFR 2.718(i); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 482-83 (1975).

⁴ Given this determination, we neither need nor do intimate any view respecting either (1) whether the standards for directed certification have been satisfied (see Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977)); or (2) whether the challenged Licensing Board rulings are correct on the merits.

appeals, each exception to that proscription, such as that for referrals, requires that the interlocutory appeals be taken expeditiously in order to prevent undue delay and to avoid diverting attention from the progress of the licensing hearing. Thus, like a referral, a petition requesting the invocation of our discretionary directed certification authority must also be filed promptly after the interlocutory ruling at issue is handed down. To hold otherwise would sanction the possibility of needless delay in licensing proceedings in contravention of the Commission's policy "that the process move[] along at an expeditious pace, consistent with the demands of fairness." It also would create the unnecessary incongruity in the Rules of Practice of requiring licensing boards to act immediately in requesting our review of interlocutory rulings while not imposing a similar requirement on the parties themselves.

The Attorney General's filing does not explain why directed certification was not sought much more expeditiously. Nor is a possible justification for the seven-week delay readily apparent. The Attorney General has committed sufficient resources to this proceeding to have allowed a considerably earlier endeavor to obtain our intercession.⁶ Moreover, in

⁵ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-870, 26 NRC _____, _____ (August 27, 1987) (footnotes omitted) (slip opinion at 9-10). The cited Commission policy is found in the Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 453 (1981).

⁶ In actuality, the directed certification motion would have required relatively little additional expenditure of resources. For, in large measure, the arguments presented in the motion were also contained in the Attorney General's filing below in opposition to the applicants' motion to exclude the prepared testimony in question. Compare

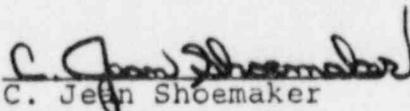
(Footnote Continued)

mid-November, all of the participants had substantial cause to believe that the hearings might well be concluded before the end of January.⁷ In the circumstances, whatever else might be said of the motion, it scarcely could be regarded as "prompt."

Motion for directed certification denied.⁸

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

(Footnote Continued)

Attorney General James M. Shannon's Motion for Directed Certification of the November 16 and 18, 1987 Atomic Safety and Licensing Board Rulings Concerning the Admissibility of Certain Evidence (January 7, 1988) with Attorney General James M. Shannon's Response to the Applicants' Objection in the Nature of a Motion In Limine to the Admission into Evidence of the Testimony of Sholly, Beyea, Thompson and Leaning (October 15, 1987).

⁷ It is our understanding that the need for the additional evidentiary sessions to be held later in the year did not surface until sometime in January.

⁸ Should he be dissatisfied with the result reached by the Licensing Board in its initial decision, the Attorney General will be free to appeal the decision under 10 CFR 2.762 and to renew on that appeal his challenge to the evidentiary rulings in question.