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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

NRC STAFF RESPONSE TO PETITION
TO INTERVENE OF THE TOWN OF WEST NEWBURY

On May 23, 1986, the Town of West Newbury filed a Petition to Intervene in the Seabrook proceeding. The Town pointed out in its Petition that it is interested in participating in the litigation of Massachusetts emergency planning issues; the Town requested that it be granted intervention status as a full party pursuant to 10 CFR §2.714 or, if that petition is denied, that it be permitted to participate as an interested governmental body pursuant to 10 CFR §2.715(c). For the reasons presented below, the Staff submits that the Town has not met the standards for late intervention under §2.714(a), but should be granted permission to participate as an interested municipality pursuant to §2.715(c).

SECTION 2.714 PETITION

In order to be granted admission under Section 2.714, a party must establish a cognizable interest that may be affected by the outcome of the proceeding, and it must tender at least one admissible contention. If its

petition to intervene is out of time, a party seeking admission must also demonstrate that it meets the late-filing requirements set forth in 10 CFR §2.714(a).*

The Town states in its Petition that it is one of the communities in the Commonwealth of Massachusetts located within the Emergency Planning Zone for Seabrook, that it wishes to participate in the consideration of emergency planning issues concerning any Massachusetts emergency response plan that may be submitted for the plant, and that it has not yet filed contentions because no such plan has yet been tendered to the NRC. The Staff believes the Town has established standing to intervene in the proceeding, and agrees that the time for filing contentions related to emergency planning in the Commonwealth of Massachusetts has not yet been reached. If the Town's Petition were timely, the Staff would thus not have opposed a conditional grant of the Petition (a final ruling on the Petition would necessarily have to await the submittal of at least one admissible contention).

Unhappily, the Town's Petition is not timely. Petitions to intervene in this case were due by November 18, 1981. See 46 Fed. Reg. 51330, 51331 (October 19, 1981). The Town's Petition was not filed until May 23, 1986, more than four and one-half years later. Section 2.714(a) expressly states:

Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a

balancing of the following factors in addition to those set out in paragraph (d) of this section ^{1/}:

- (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.

There are a few well-settled principles of law that must be applied to untimely intervention petitions. The burden is upon the untimely petitioner to demonstrate that a balancing of the above-enumerated factors favors late admission into the proceeding. Duke Power Company (Perkins Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980). In balancing the factors, the good cause for failing to file on time is especially important; failure to show good cause leaves a petitioner with a heavier burden on the other four factors. See, e.g., Puget Sound Power and Light Company (Skagit Project, Units 1 and 2), ALAB-552, 10 NRC 1, 5 (1979). And it is also well to keep in mind that the Commission has recently made plain its view that the Commission's procedural regulations must be complied with. Commonwealth Edison Company (Braidwood Station, Units 1 and 2) CLI-86-08, 23 NRC ____ (April 24, 1986).

Applying the above principles to the Town's Petition, it is clear that the Town has not met its burden under §2.714(a). The Town makes no mention in its filing of the balancing test identified in that Section. While

^{1/} The factors set forth in paragraph (d) principally relate to a party's standing to participate in a proceeding. As noted, the Staff believes that the Town has established its standing to participate.

there is a little information in the filing that can be related to some of the factors, other factors are not addressed at all. Application of the information contained in the pleading to the five factors yields the following:

(1) The Town provides no justification for its failure to request party status in 1981. Based on the Petition, it must be concluded that good cause does not exist for the late filing.

(2) The Town does not address whether other means exist whereby their interests could be protected. Considering that the Town is (presumably) involved to some extent in the preparation of emergency response plans, it is not at all clear that any concerns the Town may have with regard to emergency planning could not be resolved outside the NRC hearing process.

(3) The Town does indicate that it has particular knowledge with of the adequacy and viability of any plan concerning the Town and whether such a plan could be implemented.

(4) The Town notes that the Attorney General of Massachusetts has intervened, but asserts that his interests may not be the same as those of the Town. In addition, the Town states that the Attorney General may lack "the particular knowledge and perspective as [has] the Town insofar as any plan would affect the Town." Without knowing the exact interests the Town wishes to advance in the proceeding, it is impossible at this time to assess the extent to which the Attorney General would protect the Town's interests.

(5) The Town notes that, inasmuch as no emergency plans have been filed for Massachusetts, its participation should not result in any delay in the proceeding.

The Town has made an adequate showing on Factors 3 and 5. Not enough information is provided to allow for a determination on Factor 4. And no information is given for Factors 1 and 2. Given the importance of the good cause factor and the failure of the Town to carry its burden on that factor (as well as two other factors), the Staff submits that the Town has not met its burden in demonstrating that it meets the late-filing requirements of Section 2.714(a). Under the circumstances, its petition for admission as a party pursuant to 10 CFR §2.714 must be denied.

II. PARTICIPATION AS AN INTERESTED MUNICIPALITY

As noted above, the Town requested that, in the event its Petition to Intervene pursuant to Section 2.714 is denied, it be granted leave to participate as an interested municipality pursuant to 10 CFR §2.715(c). The Staff has no objection to the admission of the town to this proceeding pursuant to that Section. The Staff does note that the Town must take the proceeding as it finds it.^{2/} The Staff would also note that a §2.715(c) participant can play as active a role in a proceeding as that entity chooses; many such participants have elected to file contentions in

^{2/} See, e.g., Long Island Lighting Company (Shoreham Station, Unit I), LBP-83-13, 17 NRC 469,471 (1983). This may not affect the Town, inasmuch as the Town appears to be interested only in the litigation of Massachusetts emergency planning documents. These documents have not yet been submitted to the NRC; all of this proceedings dealings with emergency planning in Massachusetts lie in the future.

the emergency planning portion of this proceeding involving planning in the State of New Hampshire. The Town should be aware that if it intends to file contentions on planning in Massachusetts, its contentions may be required to meet the same timeliness and specificity standards as those submitted by §2.714 parties. Gulf States Utilities Company (River Bend Station, Units 1 and 2), LBP-76-32, 4 NRC 293, 294 (1976).

III. CONCLUSION

For the reasons presented above, the Staff submits that the Town of West Newbury has not met the requirements set forth in 10 CFR §2.714 for intervention as a party to this proceeding, but the Staff does not oppose the Town's admission as an interested municipality pursuant to 10 CFR §2.715(c).

Respectfully submitted,



Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of June, 1986

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITION TO INTERVENE OF THE TOWN OF WEST NEWBURY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 12th day of June, 1986.

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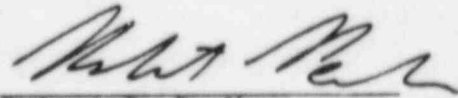
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