

782
FILED: April 10, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD APR 14 P4:24

In the matter of:

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, ET AL

DOCKET NOS. 50-444 OL
50-443 OL

(Seabrook Station, Unit 1)

OFFICE OF
DOCKETING
BSA

SEACOAST ANTI-POLLUTION LEAGUE'S MOTION TO AMEND
RECORD OF PREHEARING CONFERENCE OF MARCH 25, 1986

NOW COMES the Seacoast Anti-Pollution League (SAPL) and moves the Board to amend and correct the record of the Prehearing Conference in the above-captioned matter.

On Tuesday, March 25, 1986, during the course of the Prehearing Conference, an interchange occurred between Judge Hoyt and Attorney Robert A. Backus. (See transcript, p. 2098, line 15 to p. 2099, line 9.) This interchange began with Judge Hoyt requesting from Attorney Backus an additional legal citation for a SAPL contention to the RERP's for Seabrook Station.

A substantial portion of this interchange was either deleted from the record or altered by order of Judge Hoyt to the official reporter.

There is attached hereto and made a part hereof, a transcript of a tape-recording of the interchange in question, taken from the tape-recording made by a reporter from one of the radio stations present in the hearing room on the date, WOKQ.

Although this transcript does not purport to be definitive, since it is merely a transcription of a tape-recording taken from the back of the room, it clearly demonstrates that the official reporter's record of the

8604160128 860410
PDR ADOCK 05000443
G PDR

DS03

proceedings, at pages 2098 and 2099 is incomplete. In particular, it does not reflect the chairman's direction that the reporter "will strike that from the record" [referring to a prior statement by Attorney Backus] or the attempt made by Attorney Backus to preserve his rights on the record.

Attorney Backus is informed, and believes, that the reporter has available for transcription the original stenographic notes of all proceedings in the hearing room that day, and can, if and when requested by the Board, prepare a full and complete transcript of the proceedings of that date, with particular reference to the materials omitted at page 2098-2099.

The record should be corrected, so that there will be no doubt about the reporter's certification that the proceedings of the NRC on this date were held "as herein appears..."

Furthermore, since the record does not truly disclose what occurred, the record should be made to conform to the truth. Federal Rules of Appellate Procedure, Rule 10(e)., provides an appropriate basis for this action. It states:

"If any difference arises as to whether the record truly discloses what occurred in the District Court, the difference shall be submitted to and settled by that Court and the record made to conform to the truth. If anything material from either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, with the District Court either before or after the record is transmitted to the Court of Appeals, with the Court of Appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected...."

Although this Licensing Board is not a District Court, it of course has the duty of preparing an accurate record of the proceedings in order that the rights of the parties to argue claimed errors of law to the Appeal Board, the Commission, and ultimately the Courts, can be preserved.

WHEREFORE, SAPL moves that the Board direct the reporter to transcribe the original notes of the full hearing of March 25, 1986, and that the record be corrected to reflect a full transcription of all statements made in the Prehearing Conference on March 25, 1986.

Respectfully submitted,
SEACOAST ANTI-POLLUTION LEAGUE
By its attorney,
BACKUS, MEYER & SOLOMON

Robert A. Backus
P. O. Box 516
116 Lowell Street
Manchester, N.H. 03105
Tel: (603) 668-7272

DATE: April 10, 1986

I hereby certify that a copy of the within Seacoast Anti-Pollution League's Motion to Amend Record of Prehearing Conference of March 25, 1986 has been sent this date, first class, postage prepaid, to all counsel on the service list.

Robert A. Backus

TRANSCRIPT OF WOKQ TAPE

ROBERT A BACKUS

(Backus)

SAPL 13 states the plans are insufficient to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency as required by 10CFR 50.47(a)(1). Specifically the plans neither discuss nor account for behavioral variations among designated emergency personnel that would impair or extinguish the ability to implement the plans. I think, basically, the same points made in regard to 12 dealing with the general public's behavior would be applicable with regard to the behavioral characteristics of emergency workers. I would say that at Seabrook the evidence would be that a large number of the emergency workers to be counted on will be volunteers in the sense that the bus drivers and many of them will be volunteers, the police in many of the towns and firemen particularly are on a volunteer basis and so there is, I think a particular basis perhaps here for this contention as well, although I recognize it has been litigated elsewhere.

(J.Hoyt) Q. It has been litigated elsewhere? Can you tell me what cases you are referring to Mr. Backus?

(Backus) A. I thought there was litigation in this in the Shoreham case.

Q. The Shoreham case is still ongoing. I'm not sure.

A. I mean in the licensing board decision, the, I don't have the case number for it, but the April '85 licensing board decision is what I was referring to. I could certainly provide a citation for that...

Q. Mr. Backus, then are you including emergency workers in the impact of the meaning that you place on 0654? Behavioral aspects? Emergency workers? I thought in the first contention you dealt with the general public.

A. That's right.

Q. But you want to apply it to a special category as emergency workers?

A. That is correct. In the sense of whether or not the criteria requiring emergency workers to perform certain functions, whether that can be reasonably assured.

Q. Do you have any legal basis for that at all, Mr. Backus? Where do you find that's required?

** A. I think its required as a necessary subfinding to make the ultimate finding required at 50.47(a)(1).

Q. Mr. Backus, that wasn't my question. Mr. Backus, I said where do you find a legal requirement for it?

** A. That's where I find it, 50.47(a)(1).

Q. That's the only one you have now? You have no other basis, legal basis for it?

A. If I have any, I will further ...

** Q. No sir, you do it now or its waived. You were warned about that earlier.

A. Well... Madam chairman, if I just might...

Q. No sir, go ahead. Mr. Backus, you are not going to make any statements on the record. Let's get on with the ...

A. Well Madam Chairman, I would like to ... make one statement on the record with regard to that ruling.

* Q. Mr. Backus, please, we will continue, not on that basis, Mr. Backus.

* A. Madam reporter, will you please record that the chairman is refusing to permit me to make a statement about a ruling she made without giving me an opportunity to speak and I will go on.

** Q. No sir, Mr. Backus, you will not and that reporter will strike that from the record and you will continue or, Mr. Backus, we will consider you argumentative. Now, do you wish to continue or do you wish to cease at this point.

A. I wish to continue and I wish to...

(Hoyt) Very well then....

(Backus) ... preserve my rights on the record.

(Hoyt) No sir, Mr. Backus, you will continue the arguments only.

* Apparently deleted.

** Possibly altered in the official transcript.

6.0

1 your first contention dealt with the general public. You
2 want to apply it to a special category as emergency workers?

3 MR. BACKUS: That's correct. In the sense of
4 whether or not the criteria requiring emergency workers to
5 perform certain functions, whether that could be reasonably
6 assured.

7 JUDGE HOYT: Do you have any legal basis for that
8 at all, Mr. Backus? Where do you find that is required?

9 MR. BACKUS: I think it's necessary to make an
10 ultimate find --

11 JUDGE HOYT: Mr. Backus, that wasn't my question.
12 Where do you find a legal requirement for it?

13 MR. BACKUS: That's where I find it, 50.47
14 A-16789.

15 JUDGE HOYT: You have no other legal basis for
16 it?

17 MR. BACKUS: If I have any further I want to cite.
18 I will give them to you promptly.

19 JUDGE HOYT: That's right. You referred to that
20 earlier.

21 MR. BACKUS: Madam Chairman, if I just might, I
22 want to make a point on the record.

23 JUDGE HOYT: Mr. Backus, you are not going to make
24 any statements on the record. Let's get on.

25 MR. BACKUS: Madam Chairman, I would like to beg

1 your indulgence to make one statement on the record in regard
2 to that ruling.

3 JUDGE HOYT: No, sir, you will not. You will
4 continue on, Mr. Backus. We will consider your argument. Do
5 you wish to continue or do you wish to cease at this point?

6 MR. BACKUS: I wish to continue and I wish to
7 preserve my rights on the record.

8 JUDGE HOYT: Mr. Backus, you are to continue on
9 the arguments only.

10 MR. BACKUS: SAPL 14 provided as follows:
11 "Procedures to provide early notification and clear
12 instruction to the populace within the plume exposure pathway
13 EPC required by 10 CFR and plans do not provide for bilingual
14 messages for the large numbers of French-speaking individuals
15 who are often in the area in large numbers."

16 Now, the Applicant's objection to this went to
17 taking some official notice that French-speaking people
18 usually speak English and so forth, all of which we submit is
19 as a matter of proof. However, we are aware at this point
20 that we do have some draft messages from New Hampshire civil
21 defense that are printed bilingually, French and English, and
22 we will, I think, want to reassess the status of this
23 contention after we have a chance to review those to see to
24 what extent they provide information to those who may not be
25 fluent in English.

CERTIFICATE OF SERVICE AND SERVICE LIST

Joseph Flynn
Fed. Emerg. Mgmt. Agcy.
Region I
J.W. McCormack POCH
Boston, MA 02109

Office of Selectmen
Town of Hampton Falls
Hampton Falls, NH 03844

Sherwin E. Turk, Esq.
Office of Exec. Legl. Dr.
USNRC
Washington, DC 20555

Phillip Ahrens, Esq.
Asst. Atty. General
State House, Sta. #6
Augusta, ME 04333

Carol Sneider, Esq., Asst. AG
One Ashburton Place,
19th Floor
Boston, MA 02108

Richard A. Hampe, Esq.
New Hampshire Civil Defense
Agency
Hampe & McNicholas
35 Pleasant St.
Concord, NH 03301

Helen Hoyt, Chm.
Admn. Judge
Atomic Safety & Lic Brd.
USNRC
Washington, DC 20555

Dr. Jerry Harbour
Admin. Judge
Atomic Safety & Lic Brd.
USNRC
Washington, DC 20555

Dr. Emmeth A. Luebke
Admin Judge
Atomic Safety & Lic. Brd.
USNRC
Washington, DC 20555

Paul McEachern, Esq.
Matthew Brock, Esq.
25 Maplewood Ave.
P.O. Box 360
Portsmouth, NH 03801

Diane Curran, Esq.
Harmon, Weiss
20001 S Street NW Suite 430
Washington, DC 20009

Maynard Young, Chairman
Board of Selectmen
10 Central Road
Rye, NH 03870

Edward Thomas
FEMA
442 J.W. McCormack (POCH)
Boston, MA 02109

Roberta Pevear
State Rep.-Town of Hampt. Falls
Drinkwater Road
Hampton Falls, NH 03844

Thomas Dignan, Esq.
Ropes & Gray
225 Franklin St.
Boston, MA 02110

Docketing & Serv. Sec.
Office of the Secretary
USNRC
Washington, DC 20555

Jane Doughty
SAPL
5 Market Street
Portsmouth, NH 03801

George Dana Bisbee, Esq.
Attorney General's OFF.
State of New Hampshire
Concord, NH 03301


William S. Lord
Board of Selectmen
Town Hall-Friend St.
Amesbury, MA 01913

Sandra Gauvutis
Town of Kingston
Box 1154
East Kensington, NH 03827

Mr. Robert Harrison
Pres. & Chief Exec. Officer
PSCO
P.O. Box 330
Manchester, NH 03105

April 10, 1986

The above have been sent first-class, postage prepaid a copy of the enclosed.


Robert A. Backus