

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 NOV 14 P3:50

ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCHIn the Matter of)
)
)PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, ET AL.)
(Seabrook Station, Units 1 and 2))
)
)Docket No.(s)
50-443/444-OL-1
On-site EP
November 8, 1988MASSACHUSETTS ATTORNEY GENERAL'S
RESPONSE TO OCTOBER 25, 1988 APPEAL BOARD ORDER

On October 21, 1988, the Massachusetts Attorney General [hereinafter "Mass AG"] filed a Notice of Appeal from the on-site Licensing Board's October 12, 1988 Memorandum and Order denying his Motion to Amend Bases. The motion sought to allow the Mass AG to add two bases to its previously admitted contention on the adequacy of the Applicants' alternative notification system.^{1/} Along with his Notice of Appeal, the Mass AG wrote a letter to the Chairman of the Appeal Board

1/ The two bases would have permitted consideration of the following issues: (a) whether the sirens meet the regulatory standards if the sirens are not used in the voice mode for instructing the transient beach population in an emergency, and (b) whether the Applicants' VANS system was acceptable even though it required the use of property which the Applicants do not own.

requesting clarification on the proper timing of the appeal. On October 25, 1988, the Appeal Board ordered further briefing on that issue.

On October 31, 1988, the Applicants and the Staff, respectively, submitted their briefs. Both argue that the underlying Licensing Board decision did not (a) dispose of a significant portion of the proceeding or (b) result in the dismissal of the Mass AG from the proceedings. Therefore, they conclude the Licensing Board Order is not appealable as of right at this time. Presumably, both would accept the proposition that the underlying order is appealable upon the issuance of a final order in the full-power proceedings.

The Mass AG accepts this view. In Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975), the Appeal Board explained:

The test of "finality" for appeal purposes before this agency (as in the courts) is essentially a practical one. As a general matter, a licensing board's action is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate; rulings which do neither are interlocutory.

The Appeal Board recently applied the Davis Besse test of finality in this case . ALAB-894, 27 NRC 632, 637 (1988). The Board concluded that the Licensing Board's dismissal of two remanded contentions met the "major segment" portion of the Davis Besse test. The Board observed that the contentions were not related in any way to other matters still pending before the Licensing Board and that the protracted nature of the Licensing Board's proceeding supports an immediate appeal.

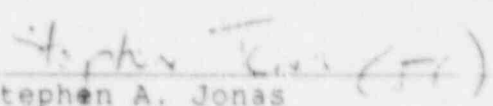
Applying that reasoning here, the Licensing Board's October 12, 1988 decision does not dispose of a "major segment" of the proceeding. The siren contention remains in litigation, even though all appropriate bases are not included. Moreover, the contention now raises a full-power issue rather than a low-power issue. In that regard, it should be noted that the off-site Licensing Board has made several rulings on the admissibility of contentions and bases in the SPMC litigation. The present issue surrounding the amendment of the siren contention with additional bases would be appropriately reviewed at the point at which review is had of the off-site Board's similar decisions regarding the admissibility of bases.

Although the Mass AG views the issues raised by the Motion to Amend Bases as important, under this Board's reasoning, those issues are not "major segments" of the case.

In addition, the October 12, 1988 decision does not terminate the Mass AG's right to participate in the proceedings generally or even with respect to the siren issues.

Respectfully submitted,

JAMES M. SHANNON
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS


Stephen A. Jonas
Deputy Chief
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
617-727-2200

Date: November 8, 1988

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CERTIFICATE OF SERVICE

I, Stephen A. Jonas, hereby certify that on November 8, 1988, I made service of the within Massachusetts Attorney General's Response to October 25, 1988 Appeal Board Order, by First Class Mail, or by Federal Express as indicated by [*], or by Hand Delivery as indicated by [**] to:

Alan S. Rosenthal, Chairman
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Thomas S. Moore
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Howard A. Wilber
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Sheldon J. Wolfe, Chairperson
U.S. Nuclear Regulatory Commission
1717 H. Street
Washington, DC 20555

Dr. Emmeth A. Luebke
5500 Friendship Boulevard
Apartment 1923N
Chevy Chase, MD 20815

H. Joseph Flynn, Esq.
Assistant General Counsel
Office of General Counsel
Federal Emergency Management Agency
500 C Street, S.W.
Washington, DC 20472

Docketing and Service
U.S. Nuclear Regulatory Commission
1717 H. Street
Washington, DC 20555

Roberta C. Peaver
State Representative
Town of Hampton Falls
Drinkwater Road
Hampton Falls, NH 03844

Atomic Safety & Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
1717 H. Street
Washington, DC 20555

Sherwin E. Turk, Esq.
U.S. Nuclear Regulatory Commission
1717 H Street
Washington, DC 20555

Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Commission
1717 H. Street
Washington, DC 20555

Ivan W. Smith, Chairman
U.S. Nuclear Regulatory Commission
1717 H. Street
Washington, DC 20555

Dr Jerry Harbour
U.S. Nuclear Regulatory Commission
1717 H Street
Washington, DC 20555

Stephen E. Merrill
Attorney General
George Dana Bisbee, Esq.
Assistant Attorney General
25 Capitol Street
Concord, NH 03301

Paul A. Fritzsche, Esq.
Office of the Public Advocate
State House Station 112
Augusta, ME 04333

Diana P. Randall
70 Collins Street
Seabrook, NH 03874

Robert A. Backus, Esq.
Backus, Meyer & Soloman
116 Lowell Street
P.O. Box 516
Manchester, NH 03106

Judith H. Mizner, Esq.
Silvergate, Gertner, Baker
Fine, Good & Mizner
88 Broad Street
Boston, MA 02110

Jane Doughty
Seacoast Anti-Pollution League
5 Market Street
Portsmouth, NH 03801

Paul McEachern, Esq.
Matthew T. Brock, Esq.
Shaines & McEachern
25 Maplewood Avenue
P.O. Box 360
Portsmouth, NH 03801

Sandra Gavutis, Chairperson
Board of Selectmen
RFD 1, Box 1154
Route 107
Kensington, NH 03827

Senator Gordon J. Humphrey
One Eagle Square, Suite 507
Concord, NH 03301
(Attn: Herb Boynton)

Donald E. Chick
Town Manager
Town of Exeter
10 Front Street
Exeter, NH 03833

Brentwood Board of Selectmen
RFD Dalton Road
Brentwood, NH 03833

Philip Ahrens, Esq.
Assistant Attorney General
Department of the Attorney General
State House Station #6
August, ME 04333

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

Beverly Hollingworth
209 Winnacurnet Road
Hampton, NH 03842

J.P. Nadeau
Board of Selectmen
10 Central Road
Rye, NH 03870

Calvin A. Canney
City Manager
City Hall
126 Daniel Street
Portsmouth, NH 03801

Edward Molin
Mayor
City Hall
Newburyport, MA 01950

William Lord
Board of Selectmen
Town Hall
Friend Street
Amesbury, MA 01913

Gary W. Holmes, Esq.
Holmes & Ellis
47 Winnacurnet Road
Hampton, NH 03841

Diane Curran, Esq.
Harmon, Curran & Towsley
Suite 430
Washington, DC 20009

Richard A. Hampe, Esq.
Hampe & McNicholas
35 Pleasant Street
Concord, NH 03301

William Armstrong
Civil Defense Director
Town of Exeter
10 Front Street
Exeter, NH 03833

Robert Carigg, Chairman
Board of Selectmen
Town Office
Atlantic Avenue
North Hampton, NH 03862

Allen Lampert
Civil Defense Director
Town of Brentwood
20 Franklin Street
Exeter, NH 03833

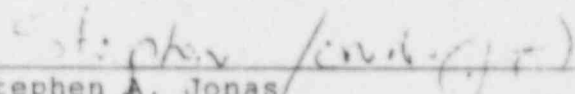
Gustave A. Linenberger, Jr.
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
717 H. Street
Washington, DC 20814

Michael Santosuosso, Chairman
Board of Selectmen
Jewell Street, RFD 2
South Hampton, NH 03827

Ann E. Goodman, Chairperson
Board of Selectmen
13-15 Newmarket Road
Durham, NH 03824

Charles P. Graham, Esq.
Murphy and Graham
33 Low Street
Newburyport, MA 01950

Sheldon Wolfe
1110 Wimbledon Drive
McLean, VA 22101


Stephen A. Jonas
Assistant Attorney General
Public Protection Bureau

Dated: November 8, 1988