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

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Before Administrative Judges:
Helen F. Hoyt, Chairperson
Gustave A. Linenberger, Jr.
Jerry Harbour

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In the Matter of)	Docket Nos. 50-443-OL
)	50-444-OL
PUBLIC SERVICE COMPANY)	(ASLBP No. 82-471-02-OL)
OF NEW HAMPSHIRE, <u>et al.</u>)	(Offsite Emergency Planning)
)	
(Seabrook Station, Units 1 and 2))	February 11, 1987

MEMORANDUM AND ORDER

(Ruling on Petition of U.S. Senator Gordon J. Humphrey
for Status as a Participant Pursuant to 10 CFR 2.715(c))

On January 8, 1987 the Petition of U. S. Senator Gordon J. Humphrey for Permission to Participate as a State Representative in the Atomic Safety and Licensing Board Proceedings Pursuant to 10 CFR 2.715(c) was filed with this Board. Responses from the State of New Hampshire Attorney General, Applicants, and NRC Staff¹ have been received and have been considered by the Board.

¹ Response of the State of New Hampshire to Petition of U.S. Senator Gordon J. Humphrey for Permission to Participate as a State Representative in the Atomic Safety and Licensing Board Proceeding Pursuant to 10 CFR 2.715(c), dated January 21, 1987; Applicants' Response to Petition of U.S. Senator Gordon J. Humphrey for

(Footnote Continued)

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The New Hampshire Attorney General "does not intercede herein to bar Senator Humphrey's participation" The Attorney General states he is participating in this proceeding as the "State's sole representative" and has done so in all phases of the proceeding since November 1981. It is the Attorney General's position that "Senator Humphrey may not technically qualify as a representative of an interested State as the term has been interpreted by other licensing boards," citing General Electric Company (GE Test Reactor, Vallecitos Nuclear Center) LBP-79-28, 10 NRC 578, 582 (1979).² The Attorney General reiterates his position that he will continue his representation on behalf of the State of New Hampshire.

Applicants maintain that Senator Humphrey is precluded from 10 CFR 2.715(c) status as a matter of law. They also cite the GE Test Reactor case. Applicants suggest and would have no objection if the Senator filed a late-filed petition to intervene or if he were to participate by way of a limited appearance.

NRC Staff states that Senator Humphrey's petition "appears to be inconsistent with certain language in the Licensing Board decision" in

(Footnote Continued)

Permission to Participate as a State Representative in the Atomic Safety and Licensing Board Proceedings Pursuant to 10 CFR 2.715(c), dated January 23, 1987; and NRC Staff's Response to Petition of U.S. Senator Gordon J. Humphrey to Participate under 10 CFR § 2.715(c), dated January 29, 1987.

- ² The GE Test Reactor case is dicta as the NRC Staff points out at page 1 of its response. We note it only in passing for it is not binding on this Board in any event.

the GE Test Reactor case. The Staff also cites Consolidated Edison Company of New York (Indian Point, Unit No. 2), LBP-82-15, 15 NRC 715, 725-26 (1982) where a state representative was denied status under 2.715(c). However, the Staff has no objection to Senator Humphrey's participation in the Seabrook offsite emergency planning proceeding under 10 CFR 2.715(c).

The Commission's Rules of Practice were amended effective May 26, 1978 with the announced purpose of facilitating public participation in its facility license application review and hearing process and to improve coordination with States, counties and municipalities. The Statement of Consideration relative to the rule change provided in part:

. . . Limited appearances at prehearings, interested counties and cities, and "Amicus" participation. Section 2.715 sets forth the ground rules for limited appearances at NRC proceedings and for participation by interested States without the necessity for their being admitted as a party under § 2.714. This form of participation by members of the public and the States has been a welcome and valued part of the Commission's licensing proceedings.

* * * *

(b) Section 2.715(c) of the Commission's Rules of Practice permit interested States to participate in NRC licensing proceedings without taking a position with respect to the issues. Pursuant to section 161 of the Atomic Energy Act, which grants broad discretionary authority to the Commission to obtain information, make investigations or hold hearings as it deems necessary, this type of cooperation could be extended to other units of government which also have an interest in the licensing proceeding. Therefore, § 2.715(c) is expanded to include interested cities, counties, and agencies thereof. In addition, § 2.715(c) is amended to specifically provide that such interested States, counties, cities, and agencies thereof may, in addition to participation at the hearing, file proposed findings of fact and conclusions of law pursuant to § 2.754, file exceptions (appeals) pursuant to § 2.762 and petition for review by the Commission pursuant to § 2.786" (Emphasis supplied).

Nothing in the above-cited interpretation of Section 2.715(c) defines or gives status to individuals who may be officers of an interested State, county, municipality, and/or agencies of these governmental divisions or units. In this case, it is the Attorney General of New Hampshire as an agency of and on behalf of the State of New Hampshire who has intervened under Section 2.715(c) and represents the state's interest. Each of the towns that are also Intervenors has been admitted because of their status as municipalities. The status of these various local entities as participants has not been altered when an individual representing it is no longer available. The status conferred is on the political subdivision of State, town, municipality or agencies of these divisions.

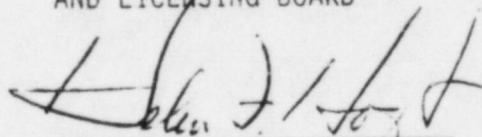
The case of Consolidated Edison Company of New York (Indian Point, Unit No. 2), LBP-82-15, 15 NRC 715, 725-26 (1982) presents a situation similar to Senator Humphrey's Section 2.715(c) petition. There, a member of the Westchester County Legislature sought to participate in the proceeding as a representative of an interested municipality.³ In denying the member of the county legislature status under 2.715(c) the Board commented that while the member was elected to represent the people in his county, "he was elected by them solely to represent them in that body."

³ The same member also petitioned to intervene under Section 2.714. The member was permitted to intervene as a 2.714 pro se party because he had met late filing requirements.

Senator Humphrey is, indeed, a state representative. However, Section 2.715(c) contemplates that a government unit of a State, county, municipality or agency will be provided a forum for expression of concerns. It does not confer status on an individual who holds office in one of the named units of government.

Senator Humphrey's short petition reflects his elective office but is signed "Pro Se." We do not believe that it is necessary for us to consider whether the Senator seeks to intervene as a state representative or in his own interest. Our decision is to deny status under Section 2.715(c). We have reached this decision after careful evaluation of Senator Humphrey's petition and the three responses received. This Board has encouraged the use of written limited appearance statements and does so again. In short, without accruing status as a 2.715(c) participant, Senator Humphrey and others, not a party, are already offered the opportunity to make a written record of their concerns. We believe this procedure best serves the interests of all the parties.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 11th day of February 1987.