

United States Senate

WASHINGTON, DC 20510

September 29, 1986

Helen Hoyt, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Judge Hoyt:

I am writing to express my strong objection to the ruling of September 11, 1986 by the Atomic Safety Licensing Board prohibiting four Massachusetts communities from participating in upcoming proceedings on the licensing of the Seabrook Nuclear Power Plant. I have very serious concerns with both the legality and fairness of this decision.

Although the communities of Amesbury, Newbury, Salisbury, and Newburyport did not respond to interrogatories, the Town of Amesbury filed a motion for protective order on July 1, 1986. The Atomic Safety Licensing Board has not ruled on this motion, but chose to rule on the Applicant's motion for sanctions against the Town on August 20, 1986, which erroneously stated that none of the cities and towns "...sought any other relief from the order." The Board also erroneously states that "No response by any of the named cities or towns was filed with the Board in response to our granting the Motion to Compel and a search by the Commission's Docketing and Service Section...disclosed that no response by these cities or towns had been served." It is difficult to believe that the ASLB was unaware of the motion for protective order, as they were at least notified of it in NRC Staff Counsel Robert Perlis' letter to the Board of July 21, 1986. However, the NRC Staff recommendation on the motion for sanctions of September 9 also fails to mention Amesbury's petition.

I am also deeply disturbed by the severity of the sanctions imposed on these communities. The Statement of Policy on Conduct of Licensing Proceedings provides the following guidance to the Board on the imposition of sanctions,

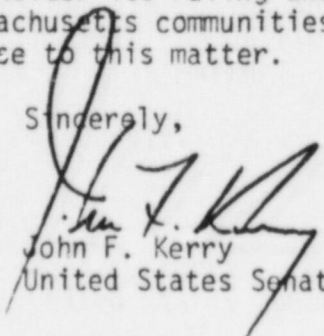
In selecting a sanction, boards should consider the relative importance of their unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concern raised by the party, and all of the circumstances.

None of these communities filed contentions, and only the town of Amesbury indicated its interest in participating in the hearing regarding two contentions, which were dismissed by the Board. The question of their participation in the New Hampshire portion of the proceedings therefore had already been decided. As none of these communities were planning to take a position before the Board on these contentions, the Board should consider whether they should have been relieved from having to respond to interrogatories. Further, these communities were directed to respond to interrogatories regarding possible contact between the Massachusetts Attorney General's Office and towns in New Hampshire, information unrelated to safety or environmental concerns. No additional information pertinent to the New Hampshire evacuation plans has been withheld, and I believe that the sanctions imposed are extreme in their severity. Massachusetts communities have planned to take an active role in the proceedings that pertain to Massachusetts, and they should be allowed to participate.

Lastly, the opinion of the Atomic Safety Licensing Board that evacuation plans "will ultimately be in place" is of gravest concern to me. The Board implies in its ruling that communities which have chosen not to participate in evacuation planning are irresponsible, when in fact the determination that no evacuation plan can adequately protect the public health and safety is highly responsible, and must be entertained by the Board. I am deeply distressed that the Board seems to have precluded the decision that no plans may be able to adequately protect the public in the event of an accident at Seabrook. I have asked the Nuclear Regulatory Commissioners, under separate cover, for a full explanation as to how the Board's opinion on this matter can be reconciled with the proper exercise of the Atomic Safety Licensing Board's responsibility.

I strongly urge the Board to reconsider its ruling and to act favorably on appeals filed by the Massachusetts communities in question. I eagerly await your response to this matter.

Sincerely,



John F. Kerry
United States Senator

JFK: tmc