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DOCKETING
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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before the

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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
(Off-site Emergency
Planning Issues)

APPLICANTS' OBJECTION IN THE NATURE OF A
MOTION IN LIMINE TO PORTIONS OF THE
PREFILED TESTIMONY OF THOMAS J. ADLER ON
TRAFFIC GUIDE TRAINING

Applicants object to and move this Board in the nature of a motion in limine to exclude as evidence in this proceeding portions of the "Testimony of Dr. Thomas J. Adler on Behalf of James M. Shannon, Attorney General for the Commonwealth of Massachusetts, Concerning Contentions [sic] JI-13 (Traffic Guide Training)." In support of their motion, Applicants say that the sections of testimony in question are not relevant to any issue presently before this Board (Sections 1 and 2, infra) or are inadmissible because they raise issues for which the Board's deadline for filing testimony had previously expired (Section 3, infra).

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ARGUMENT

The following portions of the witness's testimony should be excluded, for the reasons noted:

(1) Testimony Beyond the Scope of the Contention.

The subject of providing instructions for traffic guides on how to take care of "routine physical needs," is not within the scope of JI Contention 13 and was not disclosed or discussed in any of the Intervenors' responses to Applicants' contention-by-contention interrogatories. Basis A to JI 13 posits only three reasons why traffic guides might need "substantial" prerequisite experience in order to know how to direct traffic: the high volume of vehicles, potentially adverse weather, and "disorderly" drivers. Intervenors' response to Applicants Interrogatory No. 116 (on traffic guides), instead of providing more extensive reasons or elaborating on those in JI 13, simply reasserted a need for "substantial prior experience." In neither place did Intervenors contend that Applicants were obliged to provide for traffic guides' physical needs. Yet the witness outlines this argument on page 5 (line 7 and the first two words of line 8) and discusses it in detail on page 8 (entire first paragraph). This new issue, raised for the first time in the witness's testimony, is not properly before this Board. The sections noted above should therefore be excluded.

(2) Testimony Concerning Withdrawn Contentions.

The issue of training state and local police on how to function as traffic guides under the SPMC was withdrawn by Intervenors when they withdrew JI Contention 14. JI 14, unlike JI 13, contained an allegation that the SPMC provides inadequate training to "state and local governments [sic] employees and other organizations." But Mass AG and TOA, in the stipulation signed on February 7, 1989, agreed to withdraw JI 14. Joint Stipulation Regarding Status of Admitted Contentions, at 2 (February 7, 1989).¹ Despite the withdrawal of JI 14, the witness has included the carry-over sentence at pages 8-9, which says that state and local police who become involved in traffic functions will need printed copies of "all of the policies and protocols specific to the SPMC." This sentence, which is not relevant to JI Contention 13, attempts directly to resurrect an issue that was withdrawn in JI Contention 14 by Intervenors and, accordingly, it should be excluded.

In addition, the witness's suggestion, at six lines from the bottom of page 5, that traffic guides need to be equipped

¹ The withdrawal of JI 14 was part of the overall stipulation, which involved consideration for both sides. The specific exchange involved relative to JI 14 was withdrawal of that contention (and narrowing of JI 13) in exchange for treating training as a Second Part -- i.e., April 3 instead of February 2) -- issue. Intervenors, having taken the benefit of that stipulation, cannot now be heard to renounce it. Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 58 n.2 (1984), aff'd, ALAB-798, 21 NRC 357 (1985).

with "timepieces"² should be excluded because it is an equipment allegation, and the evacuation equipment contention, JI 60, was withdrawn.³ In exchange for Applicants' commitment to supply additional traffic cones and to reflectorize all cones, Intervenor's agreed that the issues covered in JI 60, which specifically alleged that the SPMC failed to identify the equipment available for use in discouraging or encouraging direction of traffic flows, had been resolved. Joint Stipulation Concerning JI Contention 60, at 1-2 (February 24, 1989).

(3) Testimony Involving Issues for which the Filing Deadline Had Previously Expired.

The witness's testimony refers in three places to issues on which Intervenor's were required to file all of their testimony by February 21, 1989.⁴ First, the sentence in the middle of page 6, which discusses "written information" on traffic clearance time and "bottleneck" status, is a traffic control point ("TCP") diagram issue.

² The text that should be excluded reads, "nor are guides equipped with timepieces to monitor flows."

³ Moreover, Mass AG had previously stipulated that he would not be litigating that contention. Joint Stipulation Regarding Status of Admitted Contention, at 10 n.5 (February 7, 1989).

⁴ The Board directed Intervenor's to file their testimony on "Pure SPMC" Contentions by February 21, 1989, Memorandum and Order (Setting Hearing Schedule), at 3 (January 24, 1989), and Intervenor's stipulated that, among others, JI 4, 11, and 12 were "Pure SPMC" Contentions, Joint Stipulation Regarding Status of Admitted Contentions, at 10 (February 7, 1989).

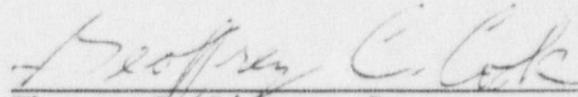
Second, the sentence on page 7, beginning "While the ACP/TCP diagrams . . .", also takes issue with traffic control diagrams and not with the training of traffic guides.

Third and last, all of the top paragraph on page 9 starting with "Similarly," except for the last sentence, discusses the readiness of second shift personnel during an emergency. The witness's testimony on traffic control diagrams goes to JI Contention 4 and should have been filed by February 21, along with Intervenors' other testimony on the subject. Likewise, although the witness couches his discussion of second shift personnel in terms of the training provided, the issue of the adequacy of the second shift came under the "first half" contentions JI 11 and 12. Because the Board's deadline for filing testimony on JI Contentions 4, 11, and 12 had expired long before the witness filed his testimony, the sections described above should be excluded.

CONCLUSION

For the reasons stated above, the testimony should be excluded.

Respectfully submitted,



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