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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

NRG PUBLIC DOCUMENT



In the Matter of:

BOSTON EDISON COMPANY, et al.

(Pilgrim Nuclear Generating
Station, Unit 2)

Docket No. 50-471

MEMORANDUM OF THE COMMONWEALTH
OF MASSACHUSETTS IN SUPPORT OF
ITS OBJECTION TO THE ADMISSION
OF APPLICANT'S LEGAL OPINION
TESTIMONY.

During the hearings on May 31, 1979, the Applicant announced its intention to present as witnesses the out-of-state counsel who authored the four legal opinions attached to the August 2, 1978 letter from R. M. Butler/BECO. to W. H. Regan, NRC (See, Tr. 9859-9878). Upon objection of the Commonwealth, these legal opinions had not been introduced in evidence as part of Applicant's Exhibit 14 or Staff's Exhibit 52 (See, Tr. 9622-9624, 9651-52, 9654-9662).

At the close of the hearings on June 1, 1978, counsel for the Applicant again raised its desire to make these out-of-state counsel available for cross-examination of their legal opinions in the forthcoming hearing on Monday, June 11, 1979 (Tr. 10, 188, 10, 99[sic]). The Commonwealth continues to press its objection to the admission of these documents or any other testimony on the laws of neighboring New England states.

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It is a well-established principle of evidence that a witness may not give his or her opinion on questions of domestic law. See McCormick, Evidence, Sec. 12, 2d Ed., 1972. The reasons for this rule are self-evident. The judge, or in this case, the Licensing Board, is charged with the exclusive duty of making conclusions of law. Such conclusions can be based on factual evidence in the record, and other facts of which the decision-maker can take official or judicial notice, i.e., statutes, regulations, judicial and administrative decisions. See 10 CFR Part 2, § 2.7.43(h).

Opinions on the law are within the province of counsel to make by way of argument. It is, after all, the job of a lawyer to be an advocate, not an "expert", on how the law should be interpreted in view of the interests of his client.

The four legal opinions attached to the August 2, 1978 letter are no more than pure arguments of counsel. They contain interpretations of various statutes, some legislative history, and speculations as to the possible obstacles to be encountered by a foreign utility in complying with the laws of New Hampshire, Vermont, Rhode Island and Connecticut. As such, these legal opinions do not constitute factual expert testimony upon which the Board could determine the extent of the legal and constitutional barriers potentially posed by siting the Pilgrim 2 facility outside of Massachusetts.*

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Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 540 (1977); ALAB-471, 7 NRC 477, 490-498 (1978); CLI-78-14, CLI-78-14, 7 NRC 952, 976-977 (1978) (Bradford, concurring in part and dissenting in part).

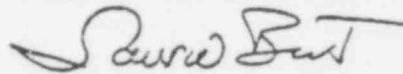
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The Commonwealth submits that such "legal testimony" is inadmissible as evidence, and would be more appropriately reserved for the Applicant's final trial memorandum in this proceeding. Certainly, nothing can prevent the Applicant from seeking assistance from out-of-state counsel in the preparation of its final brief.

The Board has indicated that it can take official notice of the relevant state statutes and that the parties may argue their respective interpretations of the law in their briefs (Tr. 9863-9878). The Commonwealth believes this procedure is both the correct and the most practical manner in which to proceed on this matter.

For the above-stated reasons, the Commonwealth respectfully requests the Board to sustain its objection to the introduction of the four legal opinions attached to the Applicant's letter of August 2, 1978 or related legal testimony by the authors of such opinions.

Respectfully submitted,



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Dated at Boston, Mass.
June 7th, 1978

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE.

I, LAURIE BURT, hereby certify that the foregoing "Memorandum of the Commonwealth of Massachusetts in Support of Its Objection to the Admission of Applicant's Legal Opinion Testimony" has been served on the following by depositing copies thereof in the United States Mail, first class postage prepaid, this 7th day of June 1979:

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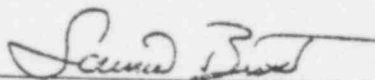
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