

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

Before the Commission:

Kenneth M. Carr, Chairman  
Thomas M. Roberts, Commissioner  
Kenneth C. Rogers, Commissioner  
James R. Curtiss, Commissioner

'90 JAN 17 P2:33

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

) January 16, 1990  
)

INTERVENORS SUPPLEMENTAL BRIEF IN SUPPORT  
OF THEIR NOVEMBER 13 AND DECEMBER 1, 1989  
MOTIONS FOR MANDATORY RELIEF

The Massachusetts Attorney General, the Seacoast Anti-Pollution League and the New England Coalition on Nuclear Pollution (the "Intervenors") submit the following additional argument in support of their November 13 and December 1, motions to revoke and vacate the Seabrook Licensing Board's November 9 license authorization.

1. On January 16, 1990 the Intervenors received a copy of the Licensing Board's January 11, 1990 Memorandum and Order (the "Order") which states in relevant part:

The purpose of this memorandum and order is to provide to interested parties an opportunity to advise the Board on how to proceed in accordance with the directives of ALAB-924 and how they propose to participate in the resolution of the remanded issues.

Order at 1 (emphasis supplied).

2. It is now obvious that the Licensing Board did not resolve or otherwise close out the ALAB-924 remanded issues either on November 9 when it authorized a license or on November 20 when it issued its first "explanation" of its licensing action. Moreover, although the Licensing Board's misleading language immediately identifies its author, the Board is now proceeding with the "hearings" that Intervenor were entitled to as a matter of law before the Seabrook license was authorized.<sup>1/</sup>

3. Thus, the Smith Board's action makes it clear beyond peradventure that 10 C.F.R. 50.47(c)(1) has had and can have

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<sup>1/</sup> Intervenor are invited to "participate in the resolution of the remanded issues." In plain English: we are now going to have whatever hearings are necessary to resolve the issues we have never resolved.

nothing to do with the November 9 license authorization.<sup>2/</sup>  
Instead, just as Intervenor argued, the Board simply made a very quick and dirty "no significant hazards" determination on November 9, thereby postponing the necessary hearings until after the license authorization. Intervenor's December 1 Supplemental Motion at 28-30 and note 21. Such a procedure is unlawful and constitutes a clear violation of Intervenor's prelicensing hearing rights supporting revocation of the November 9 license authorization.

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2/ The Board never mentioned 50.47(c)(1) in its November 9 decision. After the Appeal Board suggested 50.47(c)(1) on November 14, 1989, the Smith Board again failed to mention it at all in its November 20 memorandum. Thus, for the third time, the Board has now made it clear that (c)(1) is not relevant to its actions. Notwithstanding these facts, the Applicants again represented to the Court of Appeals in their January 10 Response to the Motion for Expedited Review at 7-8 that 50.47(c)(1) is relevant. Indeed, the Applicants audaciously stated to the Court that the Intervenors had failed to describe the full significance of (c)(1) to this case:

The Petitioners [Intervenor here] again bring to this Court's attention that the Licensing Board acted to authorize the license after the Appeal Board had found four particularized shortcomings (in the Appeal Board's view) in the [NHRERP]. This is argued as substantial error to this Court without informing the Court: (a) that NRC regulations clearly contemplate that a license may issue even with shortcomings in the emergency plan if they are not significant, 10 C.F.R. §50.47(c)(1), (b) the Appeal Board, after the Licensing Board authorized issuance of the license, expressly cited this very regulatory provision in response to the present Petitioners' demand that the Appeal Board summarily revoke the license authorization, and (c) that the Licensing Board issued a 41-page memorandum and order explaining precisely why the shortcomings perceived by the Appeal Board were not significant.

(emphasis supplied). What a surprise to the reader of this passage to learn that the Smith Board never mentioned (c)(1) and has now acknowledged that the remanded issues are still open and need to be resolved!



4. Any application of 50.47(c)(1) to this case -- as for example concocted by the Applicants for the Court of Appeals' consumption -- is predicated on the purported finding by the Smith Board that the remanded issues are not significant for the plant in question and therefore not material to licensing. Instead of this finding, the Board found only that the remanded issues are not significant safety issues in general, believing erroneously, that this finding, while obviously not making these issues immaterial, permitted it to postpone hearings on these issues. Thus, the Board's order only confirms what the Intervenor~~s~~ have been arguing since November 13: the Board impermissibly denied Intervenor~~s~~' prelicensing hearing rights on issues that are material to licensing and which now the Board plans on addressing and at some point in the future resolving. See Intervenor~~s~~' Supplemental Motion at 17-34 and 62-70.

5. Thus, the January 11 Order is further evidence that the Board acted unlawfully in authorizing the Seabrook license notwithstanding the Appeal Board's reversal less than 48 hours earlier.

CONCLUSION<sup>3/</sup>

For all of the reasons set forth above, the Commission should grant Intervenor's motions and revoke the November 9 license authorization pending, at least, the completion of those hearings the Smith Board now contemplates.

Respectfully submitted,

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3/ Intervenor's will also file shortly with the Appeal Board a motion seeking to enjoin or otherwise prohibit the Licensing Board from taking any further actions of any kind (including the procedural actions set out in the January 11 Order) which may or will interfere with the merits of Intervenor's appeal of the November 9 licensing action presently pending before the Court of Appeals for the District of Columbia Circuit, Docket No. 87-1743.

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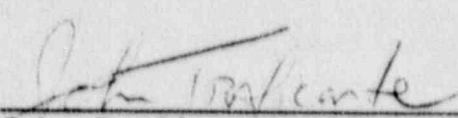
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