

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



In the Matter of )

PUBLIC SERVICE COMPANY OF NEW )  
HAMPSHIRE, et al. )

(Seabrook Station, Units 1 & 2) )

Docket Nos. 50-443  
50-444

APPLICANTS' RESPONSE TO CONTENTIONS  
OF ATTORNEY GENERAL FRANCIS X. BELLOTTI  
RELATIVE TO EMERGENCY PLANNING FOR THE  
STATE OF NEW HAMPSHIRE

Introduction

Under date of June 23, 1983, the Attorney General of the Commonwealth of Massachusetts (MassAG) filed a pleading entitled "Contentions . . . Relative to Emergency Planning for the State of New Hampshire." MassAG is not presently a party to this proceeding, however. Rather, the Commonwealth of Massachusetts (Commonwealth) has been admitted as an interested state

under 10 CFR § 2.715(c). ASLB Memorandum and Order of September 13, 1982, at 86-90. We are unclear as to whether this filing is to be deemed a petition to intervene by the MassAG or a petition by the Commonwealth to obtain 2.714 as opposed to 2.715(c) status. However, regardless of which is the formal party, as seen below, the Commonwealth is simply without standing to raise the contentions asserted in this latest filing.

I. MASSACHUSETTS HAS NO STANDING  
TO RAISE THE CONTENTIONS SET  
FORTH IN THE FILING

The Commonwealth has in this filing raised a total of five contentions, all of which allege noncompliance with the "reasonable assurance" standard articulated in 10 CFR § 50.47(a)(1) by virtue of asserted noncompliance with certain of the standards set out in 10 CFR § 50.47(b)<sup>1</sup> or alleged mandatory requirements that the Commonwealth reads in 10 CFR § 50.47(a)(2).<sup>2</sup>

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<sup>1</sup>Contention I alleges noncompliance with Subparagraphs 1, 8, 9 and 12; Contention II alleges noncompliance with Subparagraph 4; Contention III with Subparagraphs 5 and 6; Contention IV with Subparagraph 10.

<sup>2</sup>Contention V.

Each of the first four contentions<sup>3</sup> begins with the words "The New Hampshire Radiological Emergency Response Plan does not satisfy the requirements of . . ." and is followed by a citation to one or more specific subparagraphs of 10 CFR § 50.47(b). There then follows, in part, as part of the contention and, in part, as the "basis" for the contentions, a dissertation as to how the New Hampshire State Emergency Plan falls short of the specific regulatory standard(s) cited. At no time in its 31-page document does the Commonwealth even attempt to demonstrate how it is caused any harm or injury by these alleged deficiencies in the New Hampshire plan. It is clear that the Commonwealth has at least an academic interest in New Hampshire's Plan being in conformity with NRC regulations, but this is not enough.

Contemporary concepts of judicial standing are to be utilized in determining whether or not a putative intervenor has standing in NRC proceedings. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). To obtain standing, inter alia,

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<sup>3</sup>As is demonstrated, infra, Contention V, in part, is one that is no longer open to litigation in this proceeding any longer and, in remaining part, is not well founded in the regulations.

"one must allege some injury that has occurred or will probably result from the action involved. Under this 'injury in fact test' a mere academic interest in a matter, without any real impact on the person asserting it, will not confer standing." Id. at 439. Accord Public Service Co. of Indiana (Marble Hill Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980). Similarly, the Commonwealth has not demonstrated any particularized harm to it allegedly arising from the alleged deficiencies in New Hampshire's plan. The Commission has stated:

"One focus of the 'injury in fact' test is the concept that a claim will not normally be entertained if the 'asserted harm is a "generalized grievance" shared in substantial equal measure by all or a large class of citizens' [citation]. Thus, even if there is a generalized asserted harm, the Petitioners must still show a distinct and palpable harm to them [citations]."

Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

It may be that the Commonwealth will argue that its satisfaction of the injury in fact test is obvious and need not be articulated. For example, the Commonwealth might argue that it has an interest in Massachusetts citizens visiting New Hampshire being adequately planned for by New Hampshire, or it may argue that New Hampshire's alleged defalcations will adversely impinge

upon activities in Massachusetts. Prescinding from the question of whether one sovereign state can impose duties of this nature upon another, it is clear that any action to impose such duties cannot be brought before this Board. Indeed, the Commission itself cannot supply the forum. "The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states." 28 U.S.C. § 1251.

This is not a case where two states are arguing about whether a discharge pipe is or is not located on one side of a state line or another. See Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-469, 7 NRC 179 (1978). This is a situation where Massachusetts is attempting to impose upon New Hampshire its own views of the emergency planning activities that the State of New Hampshire should undertake in New Hampshire. Such disputes are beyond NRC's jurisdiction.<sup>4</sup>

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<sup>4</sup>NRC may of course impose its views upon a state by virtue of (a) the Supremacy Clause of the Constitution and (b) by the practical alternative of denying Seabrook a license absent adequate plans. But this is not the same as providing itself as a forum for Massachusetts to attack the judgments of New Hampshire's duly appointed and elected officials.

## II. RESPONSES TO INDIVIDUAL CONTENTIONS

### Introduction

In this section of the response we assume arguendo that the Commonwealth has standing and respond to the various contentions individually. Responding to these verbose contentions is no simple matter, in part because in many cases what is denominated the "basis" of the contention can be read as additional contentions as opposed to a basis for the already stated contention presumably being supported. However, we are taking the contentions as phrased and treating everything under the headings "bases" in the pleading as being just that, i.e., as not being a contention which Massachusetts seeks to have litigated.

### Contention I

Massachusetts' Proposed EP Contention I is:

"The New Hampshire Radiological Emergency Response Plan does not satisfy the requirements of 10 C.F.R. §50.47(b)(1), (8), (9) or (12) because there has been no assessment of the State's emergency response needs and resources or satisfaction of its resource requirements in the following areas: overall emergency transportation; transportation for special facilities, schools, and people with special needs or without



private transportation; emergency medical transportation; medical treatment for contaminated injured individuals; radiological monitoring and assessment equipment; dosimeters and respiratory equipment for emergency workers; and manpower for traffic management and access control, emergency transportation and security operations, emergency maintenance of evacuation routes and response to abandoned vehicles, traffic accidents, and other obstructions to evacuating traffic flow, and staffing of emergency response facilities. In the absence of an assessment and satisfaction of the State's requirements in these areas, there can be no 'reasonable assurance that adequate protective measures can and will be taken' to protect persons present in the State of New Hampshire in the event of a radiological emergency at Seabrook Station, as required by 10 C.F.R. §50.47(a)(1)."

As we understand the contention it is an argument that the cited regulations (10 CFR §§ 50.47(b)(1), (8), (9), (12)) require that New Hampshire make what Massachusetts calls an overall "assessment" of New Hampshire's needs and resources in various enumerated areas. The cited standards actually read as follows:

"(1) Primary responsibilities for emergency response by the nuclear facility licensee and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff

to respond and to augment its initial response on a continuous basis.

"(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

"(9) Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

"(12) Arrangements are made for medical services for contaminated injured individuals."

The word "assessment" appears in none of these regulations. It may be that doing what Massachusetts suggests would make demonstrating compliance easier (although that is not clear), but in any event no "assessments" are required. Thus, the contention states nothing litigable in this proceeding.

#### Contention II

Massachusetts' Proposed EP Contention II is:

"The New Hampshire Radiological Emergency Response Plan does not satisfy the requirements of 10 C.F.R. §50.47(b)(4) because there is no emergency action level scheme for an emergency at the Seabrook Station. In the absence of an adequate emergency action level scheme there can be no 'reasonable assurance that adequate protective measures can and will be taken' to protect persons present in the State of New Hampshire in the event of a radiological emergency at the



Seabrook Station, as required by 10 C.F.R. §50.47(a)(1)."

Provided that the contention is rephrased to include only the first sentence (i.e., that the various conclusions in the second sentence is dropped), no objection is made to admitting this contention for litigation.<sup>5</sup>

### Contention III

Massachusetts' Proposed EP Contention III is:

"The New Hampshire Radiological Emergency Response Plan does not satisfy the requirements of 10 C.F.R. §50.47(b)(5) and (6) because procedures have not been established for notification of emergency personnel by the response organizations in the state and there is no demonstration that provisions exist for prompt communications among principal response organizations, to emergency personnel, or to the public. Until these requirements have been satisfied there is no 'reasonable assurance that adequate protective measures can and will be taken' to protect those present in the State of New Hampshire in the event of a radiological emergency at the Seabrook Station, as required by 10 C.F.R. §50.47(a)(1)."

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<sup>5</sup>This contention will be short-lived, however, because it addresses only the non-existence at the moment of a given document, and it is fully satisfied once the document has been published.

As in the case of Contention II, if No. III is stripped of legal conclusions by deletion of the second sentence, no objection is made to its admission into litigation.

#### Contention IV

Massachusetts' Contention IV is:

"The New Hampshire Radiological Emergency Response Plan does not satisfy the requirements of 10 C.F.R. §50.47(b)(10) and (11) because protective actions for emergency workers and the public have not been sufficiently developed. The protective option of evacuation has not been sufficiently developed in that no evacuation routes, traffic access or control points, or reception centers have been established and the evacuation time estimates contained in the plan are inaccurate and fail to provide information needed by protective action decision-makers. Furthermore, no plans have been made for evacuation of special institutions (including schools) or people with special needs or dependent on public transportation or for decontamination of all persons and vehicles exposed to radiation. The protective option of sheltering has not been sufficiently developed because no plans have been made for sheltering the summer beach population or those seasonal residents whose homes provide inadequate shielding from radionuclides. The plan further provides insufficient basis for protective action decision-making, and lacks adequate provisions for controlling the radiological exposure of emergency response personnel. Given these deficiencies in the plan, there is no

'reasonable assurance that adequate protective measures can and will be taken' to protect those present in the State of New Hampshire in the event of a radiological emergency at the Seabrook Station, as required by 10 C.F.R. §50.47(a)(1)."

This "contention" is a whole series of contentions and it should be broken down into separate contentions bereft of legal conclusions and rhetoric. See 10 CFR § 2.714(a)(3). In its present multifaceted form it should be rejected.

#### Contention V

Massachusetts' Contention V is:

"The FSAR, ER-OL, SER, FES, and New Hampshire Radiological Emergency Response Plan contain insufficient data as to the effectiveness of the protective actions of evacuation and sheltering in mitigating adverse consequences to human health (early fatalities, early injuries, delayed fatalities, delayed injuries, and genetic and developmental defects) in the event of an accident at Seabrook Station requiring off-site protective action. Those filings contain no calculations as to the mean numbers of these specified health effects associated with PWR-1 to PWR-9 accidental releases or SST 1, SST 2, or SST 3 accidents at the Seabrook Station. In the absence of such calculations, based on realistic evacuation time estimates and shielding factors, reflecting the peak transient population within the EPZ, and accounting for population growth over the lifetime of the plant, there is no basis for assessing the effectiveness of evacuation

or sheltering in minimizing radiological exposures. There is, therefore, no basis at this time for determining that 'adequate protective measures can and will be taken' to protect those present in New Hampshire at the time of an accident, as required by 10 C.F.R. §50.47(a)(1), or that the planned protective actions are 'adequate' and 'capable of being implemented,' as required by 10 C.F.R. §50.47(a)(2)."

To the extent Massachusetts is contending that the FSAR, ER-OL, SER and FES should contain certain things, this contention is an extremely late-filed contention; no attempt has been made to justify the late filing; and thus, it should be rejected.

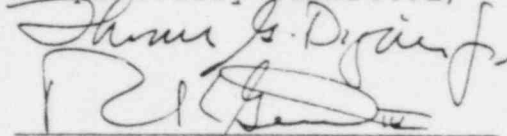
Insofar as the contention is that the New Hampshire State Emergency Plan should contain this data, there simply is no regulatory basis for the contention. No regulation or law requires that the New Hampshire Plan contain the data or calculations to which the Commonwealth refers.

#### CONCLUSION

For the reasons set forth in Sections I above, all of the Massachusetts' contentions should be excluded and, as of this time, the Commonwealth should be denied 10 CFR § 2.714 status. In the event the Board overrules that position and reaches the issue of

admissibility as to the contentions themselves, Nos. II and III should be rephrased as set forth above and, as rephrased, admitted; Nos. I, IV and V should be excluded for the reasons stated above.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Thomas G. Dignan, Jr.", written over a horizontal line.

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CERTIFICATE OF SERVICE



I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on July 5, 1983, I made service of the within "APPLICANTS' RESPONSE TO CONTENTIONS OF ATTORNEY GENERAL FRANCIS X. BELLOTTI RELATIVE TO EMERGENCY PLANNING FOR THE STATE OF NEW HAMPSHIRE" by mailing copies thereof, postage prepaid, to:

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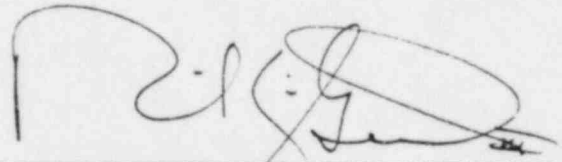
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