

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

In the Matter of)	
)	
PUBLIC SERVICE COMPANY OF NEW)	Docket Nos. 50-443 OL
HAMPSHIRE, et al.)	50-444 OL
)	
(Seabrook Station, Units 1 & 2))	
)	

APPLICANTS' ANSWER TO "CONTENTION -
OF ATTORNEY GENERAL FRANCIS X.
BELLOTTI RELATIVE TO
APPLICANTS' EVACUATION TIME ESTIMATES
FOR BEACH AREAS"

Introduction: The Nature of the Pleading

Under date of July 15, 1983, the Massachusetts Attorney General ("MassAG") has submitted a curious pleading, entitled "Contention of Attorney General Francis X. Bellotti" (For want of a better abbreviation, we refer to the pleading hereinafter as "Contention".) On its face, the pleading purports to be the unilateral assertion of a new contention in this

proceeding (Contention at 3-5), a contention that would substantially broaden the scope of the evacuation-time-estimate-related issues presently remaining for litigation and a contention that would effectively relitigate issues that have already been disposed of by allowance of a motion for summary disposition. See Memorandum and Order (Ruling on Motions for Summary Disposition) (June 30, 1983) at 8-15.

The new proffered contention is preceded by a reference to and proposed interpretation of the Board's ruling on that summary disposition motion, thus:

"Read literally, this restated contention no longer presents a litigable issue once the Applicants amend their FSAR to provide estimates -- any estimates, no matter how erroneous or unfounded the assumptions and calculations giving rise to them -- for evacuating the beach areas and for evacuating all areas within the EPZ during adverse summer weather conditions."

Contention at 2. After disparaging its own proffered interpretation of the Board's prior ruling (id.), MassAG then offers another interpretation, one that would permit relitigation of any and all asserted deficiencies in the baseline assumptions and underlying methodology of the Applicants' evacuation time estimates and one that would, perforce, render the

prior ruling wholly nugatory (Contention at 3). Recognizing the unlikelihood that such is what the Board intended by its June 30th ruling, MassAG then "ask[s] that [the Board] accept the following contention for litigation" (Id. at 3-4.) The proposed new contention asserts five deficiencies in the Applicants' time estimates; one of the five is the omission of the scenario estimates called for by the Board in its June 30th Order (this aspect of the proposed new contention would, therefore, add nothing), while the remaining four are assertions going to the basic assumptions and underlying methodology of the Applicants' evacuation time estimates. These four purport to indict, not particular scenario estimates, but rather any estimate for any scenario that is run on the Applicants existing program:

"The [Applicants' evacuation time] estimates suffer from the following specific deficiencies:

- "(1) The demand forecast from transient population is understated by a margin so wide as to render the estimates unreliable;
- "(2) The characteristics of the road network in the beach area makes movement singularly vulnerable to the consequences of accidents and breakdowns, yet no analysis of the time effects of such incidents has been made;

- "(3) The estimates fail to reflect the travel impediace in the breach area resulting from non-evacuating traffic, such as persons returning to homes within the EPZ, milling about, or passing through the area;
- "(4) There is inadequate analysis of the time demands for evacuating the transit-dependent population, including beach visitors;

."

In fewer words, MassAG proposes to challenge population number assumptions, highway capacity assumptions, impact of accidents upon highway capacity, and time requirement for evacuation people who require someone else to drive them. As Massachusetts candidly concedes, these are identical to the challenges that it hoped to make the to the entirety of the Applicants' estimates themselves (Contention at 4), and of necessity the matters asserted are generic to the Applicants' estimates and not specific to the scenarios that the Board found missing.¹ Moreover, MassAG

¹It is important to bear two things in mind about evacuation time estimates prepared, as the Applicants have done, in a systematic manner using computer codes. First, the basic assumptions (i.e., population size, population distribution, people/car ratios, highway networks, highway capacities, nodal capacities, diminutions on capacities on account of

proposes this challenge on the basis of testimony of the same witness that NECNP offered in opposition to the summary disposition motion.

While MassAG "asks," it has, for reasons we cannot fathom, filed no motion and, more importantly, it has made no attempt to carry (or even address) the burden of one who proposes the allowance of a motion. In particular, MassAG, though requesting what amounts to the admission of a late-filed contention, has made no effort to demonstrate either "good cause" or any of the other requirements.

inclement weather, and so forth) are determined and the basic estimation methodology is formulated. At that point estimates can be run for any given population/weather/ sector scenario; particular scenarios do not change the underlying assumptions or methodology. Second, the Applicants have already run, and the Board had before it on summary disposition, estimates for each and every sector in the EPZ under various population/weather scenarios; running a scenario that combines two, three, or all of the sectors does not change either the baseline assumptions or the methodology, only the results. Likewise, running a scenario for the peak population/adverse weather scenario does not require that one return to "square one" and devise an entirely new methodology; one must, rather, simply run the program again specifying those population and weather variables (and picking a sector combination).

In short, one need not re-invent the ruler every time one is asked to measure the height of another lamp post.

Procedural History

On November 13, 1982, this Board admitted two contentions relating to the Applicants' evacuation time estimates, Contentions NECNP III.12 and .13. These contentions were not sponsored or co-sponsored by MassAG, nor did MassAG at any time serve notice of its intention to litigate them.² The Board had previously denied MassAG intervenor status, ruling that MassAG had not proposed any admissible contentions relating to on-site emergency planning issues (of which, both in fact and as the Board understands matters, includes the sufficiency of the Applicants' evacuation time

²The Board referred to the obligation of an interested state to specify, in advance of hearing, the subject matters in which it wishes to litigate in the very same breath by which it granted that status to massAG. Memorandum and Order of September 13, 1982, at 91. See also id. at 116. The Board deemed MassAG to have satisfied that requirement with respect to soffsite emergency planning matters. Id. At least by November 17th, however, it was plain to all that the Board did not consider the sufficiency of the Applicants' evacuation time estimates to be an offsite issue. MassAG at no time thereafter took steps to specify those time estimates as an area in which it desired to participate, even while the motions for summary disposition in Contentions III.12 and .13 were being considered.

estimates). Unlike other parties, MassAG made no attempt to seek reconsideration of that ruling.

In February, 1983, the Applicants moved for summary disposition on the two NECNP contentions, a motion in which the Staff joined, which NECNP opposed, and as to which MassAG chose to stand mute. (NECNP opposed the motion, it should be noted, on the basis, in part, of the testimonial affidavit of its witness, Mr. Phillip Herr. All of the matters proposed to be litigated by MassAG are, of necessity, either matters that were previously advanced in opposition to summary disposition and rejected, or matters not advanced when the summary disposition motion was pending.) The Board dismissed all but two aspects of the contentions (each relating to the absence of a particular estimate scenario), in an order that settled for purposes of this litigation the acceptability and appropriateness of the baseline assumptions and the methodology of the Applicants' estimates:

"All other issues and averments
[other than the two items in the
reformulated contention NECNP
III.12/III.13], including NECNP's
professed skepticism as to the
accuracy of Applicants' demographics
and efficacy of their model--

skepticism which the Board finds unsupported by specific, relevant, averred facts--are dismissed."

Memorandum and Order at 16.

Following that order, NECNP served notice that it intended to offer no direct testimony on the remaining portions of its contentions. Letter of Diane Curran dated July 5, 1983. MassAG, however, purported to file its own direct testimony on the contentions, which testimony is notable in two respects: first, MassAG seems to have adopted the expert witness of NECNP (Mr. Herr), and second, the proffered testimony challenges afresh the assumptions and methodology of the Applicants' time study, as if the Board's Order of June 30th -- and the procedural history that culminated in that Order -- had never occurred.

MassAG has now filed a new document in which, with no request for leave to do so, it has "filed" its "contention" on the Applicants' evacuation time studies.³

³MassAG apparently now recognizes that, given the Board's Order of June 30th and absent the admission of a new contention, the testimony of Mr. Herr is irrelevant to the remaining issues to be litigated and will not be received. See Contention at 3.

The Contention Should be Rejected or Excluded;
Clarification Is Not Warranted

1. If the Contention is treated as a unilaterally filed proposed contention (consistent with its tenor), it should be rejected summarily. The time for filing contentions has elapsed; the pleading is unaccompanied by any motion; and that omission appears to have been calculated and intentional.

2. If the Contention is treated as a motion for leave to file a late-filed contention, it should be denied and the proposed contention should be excluded. The present filing is hopelessly out of time, since the Applicants' evacuation time estimates have been available since the FSAR was published and, in fact, contentions on the evacuation time estimates were admitted many months ago. MassAG could construct no basis for qualifying its present contention under the "good cause" standard of Catawba,^{*} and, of course, it

^{*}Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, NRC (June 30, 1983), aff'g in part and rev'g in part ALAB-687, 16 NRC (August 16, 1982).

has not even attempted to do so. As a motion, therefore, the pleading does not even address the relevant standards.

3. As a motion for clarification, the MassAG pleading should be denied. Prescinding from the question of MassAG's standing to raise questions about the scope of NECNP's contention, the interpretation of the Board's order that MassAG first proffers and then attacks is one that does little credit to the Board. On the other hand, the alternative interpretation for which MassAG contends instead gives no credence to the Board's order of June 30th. It is that Order, in fact, that delimits the scope of what remains for litigation in this proceeding with respect to the Applicants' evacuation time estimates: while it is not sufficient for the Applicant to offer "any estimates [for the two cases the Board wants studied], no matter how erroneous or unfounded," it is sufficient that the two cases have been studied and assessed on the basis of the same methodology and the same baseline assumptions as those contained in the principle estimates. Challenges to the Applicants' methodology and to assumptions common to all scenarios are simply no longer open. All of

this is, we submit, obvious on the face of the Board's prior Order and clarification is not necessary.

4. As a proposed contention, MassAG's statement of the proposed issue fails on the additional ground of res judicata on all but the last of the five issues raised. The issues of the validity of the Applicants' assumptions about population, road network, travel impedece as it affects highway capacity, and evacuation of transit-dependent population are simply not issues as to which the Board denied summary disposition. If for any reason the "contention" were admissible, it should therefore be summarily dismissed on the basis of the prior ruling.

Respectfully submitted,



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Dated: July 26, 1983

CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on July 26, 1983, I made service of the within Applicants' Answer to "Contention of Attorney General Francis X. Bellotti Relative to Applicants' Evacuation Time Estimates for Beach Areas" by mailing copies thereof, postage prepaid, to:

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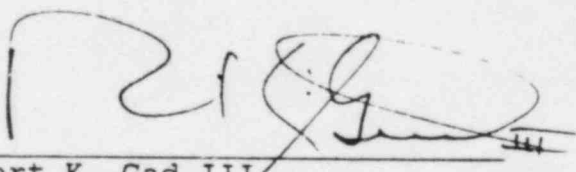
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