

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

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In the Matter of)
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)
PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)
)
(Seabrook Station, Units 1 and 2))
)
)

Docket Nos. 50-443-OL
50-444-OL

ANSWER OF THE COMMONWEALTH IN
OPPOSITION TO APPLICANTS' MOTION
TO STRIKE THE NOTICE
OF THE COMMONWEALTH OF NON-RECEIPT
OF ORDER SETTING SPECIAL
PREHEARING CONFERENCE



On April 15, 1982, the Commonwealth of Massachusetts ("Commonwealth") filed with the Board a Notice of Non-Receipt of Order Setting Special Prehearing Conference. The Commonwealth filed that document to advise the Board that it had never been served with a copy of the Board's Order. On April 8, 1982, the Applicants filed a Motion to Strike the Commonwealth's Notice, apparently on the grounds that the Commission's rules never specifically mention the right to file such a Notice.

Applicants' Motion should be denied. Commission regulations do not, and could not, specifically mention every conceivable

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pleading which parties may need to file. They do not, for instance, specifically mention motions to strike such as that which Applicants have filed. It would be surprising for the rules to mention a notice of non-receipt of a Board order, since the presumption is certainly that all parties will receive such orders.

The Commonwealth's pleading was entirely appropriate. Not having received the Order, and learning on Friday, April 2, 1982, that the Board apparently intended its Order to require the submission of contentions by Tuesday, April 6, 1982, the Commonwealth was obliged to file a pleading with the Board explaining for the record the reason for its inability to comply with that deadline.¹ The Commonwealth was

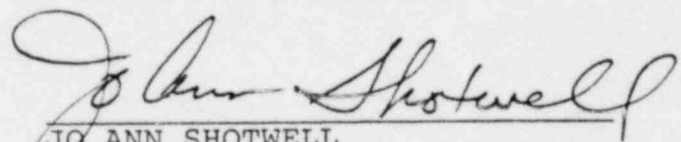
1 Applicants complain that the Commonwealth filed its Notice on April 5, when it learned of the Order on March 29, 1982. Following receipt on March 29 of the New Hampshire pleading which alerted the Commonwealth to the Board's Order, the Commonwealth contacted the Commission's Staff and other parties in an attempt to ascertain whether the Order did, in fact, set a deadline of April 6 on filing of contentions. Based on these conversations, the Commonwealth concluded that the Order required only amendments to petitions to be filed by that date - - not supplements to petitions. On Friday, April 2, however, the Commonwealth learned that the Board had denied New Hampshire's "Motion for Additional Time for Filing Supplement to Petition to Intervene." That denial indicated to the Commonwealth that the Board intended its Order to require the filing of contentions by April 6. Thus, on April 5, the next business day, the Commonwealth filed its Notice explaining its inability to comply with that deadline.

in no position to file a motion for an extension of the deadline, as Applicants suggest, since it still had not received a copy of the Board's Order and could not, therefore, ascertain whether in its opinion the Order did in fact set a deadline of April 6 on the filing of contentions. In any event, a motion to extend would have been entirely inappropriate and prejudicial to the rights of the citizens of the Commonwealth as it would have implied, and given the Board the authority to determine, that the Commonwealth could somehow be bound by the terms of an Order which it never received.

Applicants apparently wish to deny the citizens of the Commonwealth the protection of the Commission's procedures (and those required by due process of law). They seek to bind the Commonwealth to the terms of an Order which it did not receive and, further, to prevent the record from reflecting that non-receipt and the resulting inability of the Commonwealth to comply with an April 6 deadline.

Applicants' motion shows bad faith in this particular and should be denied. Allowance of the motion would violate the due process rights of the citizens of Massachusetts.

Respectfully submitted,



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DATED: April 16, 1982

CERTIFICATE OF SERVICE

I Jo Ann Shotwell, Esquire, hereby certify that a copy of the foregoing Answer has been mailed this 16th day of April, 1982, by first class mail, postage prepaid, to:

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