

## UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION<sup>83</sup> APR -8 AIO:57

## BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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NECNP OBJECTION TO BOARD ORDER OF March 24, 1983, AND  
REQUEST FOR CERTIFICATION TO THE APPEAL BOARD

On March 18, 1983, the Commonwealth of Massachusetts moved the Licensing Board to clarify the question of whether the Board considered the "prototype" plan for Newburyport, forwarded by the NRC Staff to the Board on February 28, 1983, to trigger the requirement for filing contentions. The Commonwealth pointed out that the plan had been sent to FEMA by the state civil defense agency for advice in drafting, and that officials of the City of Newburyport had not reviewed, or in some cases even seen the report before it was filed with the Board.<sup>1</sup> Therefore it could not possibly be the town of Newburyport's emergency plan. The Board denied the Commonwealth's motion by order of March 24, 1983, and ordered the submittal of contentions on the plan by April 6, 1983.

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<sup>1</sup> Motion of Attorney General Bellotti for Clarification of Board Order Dated January 17, 1983 and for Immediate Stay of Filing Deadline for Contentions on Emergency Planning for the City of Newburyport, filed March 18, 1983.

NECNP objects to the Board's order and requests certification to the Appeal Board of the question whether an unapproved offsite plan triggers the filing of contentions in this licensing proceeding. The litigation of plans that do not represent the intentions of the local governments that will be required to implement them simply cannot result in a determination under 10 C.F.R. § 50.47(a) that emergency plans "can and will be implemented." It is an empty exercise that wastes the resources of all the parties, and that may result in poorer planning for the entire Seabrook area.

The Board may certify issues to the Appeal Board or the Commission

when a major or novel question of policy, law or procedure is involved which cannot be resolved except by the Commission or the Appeal Board and when the prompt and final decision of the question is important for the protection of the public interest or to avoid undue delay or serious prejudice to the interests of a party.

Appendix A to Part 2, Section V(f)(4). The question of whether as a matter of law, an unsponsored and unapproved offsite emergency plan can be the subject of litigation meets this standard for certification. The issue is central to the Commission's interpretation of 10 C.F.R. § 50.47(a), which requires a finding that offsite plans "can and will be implemented." It is difficult to perceive how the Licensing Board can even begin to assess compliance with that standard when the government that must implement the plan has not reviewed it or made any commitment to implementing it. If the

Board continues to follow its policy of commencing litigation for all twenty-odd offsite plans for the Seabrook Emergency Planning Zone before those plans have been reviewed or approved by the concerned governments, the parties will be forced to litigate an apocryphal and meaningless emergency response scheme which will provide no reasonable assurance of safety to the public.

Furthermore, the Board's treatment of the Newburyport plan may seriously hamper the effectiveness of the emergency planning process at Seabrook. The Newburyport plan was forwarded by the Commonwealth of Massachusetts Civil Defense Agency to FEMA only for consultative purposes. The Chief Planner of the Civil Defense Agency has now told the Board that if the Board decides to treat the Newburyport plan as an official planning document, such a decision "will affect our willingness to draw upon the assistance of federal authorities in the future in connection with the planning for other Massachusetts communities until such time as those communities have finally accepted and signed off on emergency plans."<sup>2</sup> The quality of the offsite plans may thus be seriously jeopardized by the reluctance of state and local officials to utilize the expertise of FEMA while drafting plans, for fear that FEMA will forward the plans to the NRC and they will

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<sup>2</sup> Letter from John C. Dolan, Commonwealth of Massachusetts Civil Defense Agency and Office of Emergency Preparedness, to Administrative Judges, dated March 17, 1983.

become subject to litigation. Such an effect would not only prejudice the interests of the intervenors who are attempting to assure the quality of emergency plans for Seabrook, but would impede the public interest in obtaining the most efficient and effective emergency plans possible. The Board's ruling should be reviewed because it "threaten[s] to impede rather than aid the full development of the record." Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-379, 5 NRC 565, 568 (1977).

The litigability of the Newburyport plan is an issue ripe for review under the Commission's standards for interlocutory appeal, for the following reasons. First, the Board's decision will affect the "basic structure of the proceeding in a pervasive or unusual manner." South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1162 (1981). The Board's order will affect the litigation of emergency plans for the entire emergency planning zone. In every case, intervenors may be forced to file contentions on emergency plans before the supposed sponsors of those plans have decided whether to endorse them or even to accept them as a basis for further planning. This will not only cause confusion in the licensing proceeding, but will lead to much wasted effort by all the parties and the Board. And, as discussed above, the constricting effect of the Board's order on the consultative process will have the pervasive effect of impeding development of adequate offsite plans for all the communities in the EPZ.

Second, the harm caused by the Board's order is an "immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal." Id. The localities will probably file approved plans after litigation of so-called "prototype" plans has gotten underway; and intervenors will be forced to submit a whole new set of contentions on the actual plans. Therefore, an Appeal Board may consider the issue of whether contentions should have been filed on the earlier, unapproved plans to be moot on final appeal. There will thus be no later opportunity to redress the confusion and wasted effort resulting from the Board's order.

For the foregoing reasons, NECNP requests the Board to certify to the Appeal Board the question of whether submission of an unapproved offsite plan to the Board triggers the period for filing contentions on that plan.

Respectfully submitted,

  
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Dated: April 6, 1983

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NUCLEAR REGULATORY COMMISSION  
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CERTIFICATE OF SERVICE

I certify that on April 6, 1983, copies of NECNP OBJECTION TO BOARD ORDER OF MARCH 24, 1983, AND REQUEST FOR CERTIFICATION TO THE APPEAL BOARD and NECNP CONTENTIONS VI.1 AND VI.2 ON NEWBURYPORT RADIOLOGICAL EMERGENCY RESPONSE PLAN were served by first-class mail on the following:

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