

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

Docket Nos.  
50-4430L  
50-4440L

PETITION OF ATTORNEY GENERAL  
FRANCIS X. BELLOTTI FOR DIRECTED  
CERTIFICATION OF ASLB ORDER DATED  
MARCH 24, 1983

Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts, hereby moves pursuant to 10 C.F.R. §2.718(i) that the Atomic Safety and Licensing Appeal Board direct certification to it of the decision of the Atomic Safety and Licensing Board for the Seabrook Operating License Proceeding set forth in its March 24, 1983 "Order (Addressing 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)," ASLBP 82-471-02-0L. With that decision, the Licensing Board has commenced a formal licensing process over emergency planning for a Massachusetts city within the Seabrook Emergency Planning Zone on the basis of a draft emergency plan which was prepared by parties not affiliated with or under contract to the city, which has never been reviewed or accepted even in broad outline by the officials of that city, and which is, in fact, just now being presented to city officials for the first time.

DSB

This decision below does a grave disservice to the citizens and officials of Newburyport, Massachusetts, and to the parties to the license proceeding. For Newburyport officials to ensure that the plant is not licensed and operation begun on the basis of a plan which does not accurately reflect the emergency response needs and capabilities of their city, they must divert resources from the planning process to formal litigation. Their representatives are forced to raise in the proceeding every conceivable concern that city officials and citizens could possibly have with the draft plan even though there has not yet been any in-depth review of the draft plan by the city or any planning session where concerns could be addressed and revisions made.

The Board's decision is not in the public interest, will result in unusual litigation expense and delay in the planning process, will impede rather than aid development of a sound record for decision-making, and is inconsistent with action taken by another licensing board, all of which is more particularly set forth in Attorney General Bellotti's Motion to the Board, a copy of which is attached hereto as Exhibit A. Moreover, given the nature of the Board's ruling (a copy of which is attached hereto as Exhibit B), it must be reviewed now or not at all. These are the precise circumstances in which, according to Commission precedent, directed certification is appropriate. See Houston Lighting & Power Co., et al., (South Texas Project, Units 1 and 2),

ALAB-639, 13 NRC 469, at 472-73 (1981); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-379, 5 NRC 565, at 566-68 (1977); Kansas Gas & Electric Co., et al. (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-327, 3 NRC 408, at 413 (1976); Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, at 483 (1975).

Attorney General Bellotti submits this petition in the hope of forestalling needless litigation and interference with the ongoing emergency planning process for Massachusetts communities in the vicinity of the Seabrook site.

Respectfully submitted,

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL

By:



JoAnn Shotwell  
Assistant Attorney General  
Environmental Protection Division  
Public Protection Bureau  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2265

Dated: April 7, 1983

EXHIBIT A

FILED: March 18, 1983

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.

Docket Nos.        50-443 OL  
                         50-444 OL

(Seabrook Station, Units 1 and 2)

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

By letter dated February 28, 1983, the NRC Staff transmitted to the Board and the parties a document previously sent to the Federal Emergency Management Agency which appears to be a draft emergency plan of the City of Newburyport, Massachusetts. As appears from the letters being submitted herewith, officials of the City of Newburyport have not yet reviewed that document. In fact, many of the Department heads who are expected to perform emergency response tasks under the terms of that document received copies of it for the first time on March 11, 1983 -- nearly two weeks after the document was filed with the Board. The document was prepared by a consulting firm under contract to the State of New Hampshire with the assistance of the Massachusetts Civil Defense Agency and is just now being presented to the City for its review.

An official of the Massachusetts Civil Defense Agency had forwarded the subject document to FEMA solely for the purpose of obtaining and sharing with the City the initial reactions of the federal Radiological Assistance Committee. This was done without any knowledge that the document would then be filed with the Board or that it might be treated as the City's plan for purposes of the licensing process. The City and Civil Defense agree that this document, not having yet been reviewed or accepted even in broad outline by City officials, is not yet a plan of the City of Newburyport and should not be so treated for purposes of this license proceeding.

In its Memorandum and Order dated January 17, 1983, memorializing the conference call of December 22, 1982, the Board ordered that "...contentions addressing emergency plans must be filed after the draft emergency plans (or relevant part thereof) have been submitted to FEMA and within 30 days of the plans being made available to the parties." While it is clear from that order and from the discussion that took place during the December 22 conference call that the Board does not necessarily intend to await the receipt of a completely finalized, signed emergency plan from a local community before commencing the hearing process thereon, it remains unclear whether the Board would commence the hearing process on the basis of a document prepared by third parties which has not yet been reviewed or accepted even in general terms by the affected



municipality. We submit that it would be improper for the Board to proceed to a hearing on the basis of such a document and request clarification that the 30-day period set forth in the January 17 order was not triggered by receipt of this document.

The 30-day filing period, if commenced by the receipt of this particular document, expires for Attorney General Bellotti on April 4, 1983. We, therefore, further request that the Board either immediately order a conference call for purposes of resolving this question or immediately notify all parties that any deadline will be stayed pending clarification of this matter. And, finally, we request that we be provided a minimum of 14 days to prepare and submit contentions following any ultimate ruling that contentions should be filed on the basis of this document.<sup>1/</sup>

The Commission's regulations require that the applicant for an operating license submit to the Commission "radiological emergency response plans of State and local governmental entities" within the EPZ. It seems undeniable that a document

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<sup>1/</sup> This office first became aware of the possible problems associated with this planning document during the week of March 7. We immediately took all necessary steps to obtain full information with respect to this situation and had intended to raise the need for clarification of the Board's order at the March 17 prehearing conference. We prepared this written motion and accompanying documents for submission to the Board as quickly as possible upon learning of the cancellation of that conference. These pleadings are being forwarded to the Board and the Staff by express mail; they are being hand-delivered to the Applicants.

which has not been seen or reviewed by local government officials cannot constitute a plan of that locality for purposes of this requirement. If the obligation to file contentions relating in any way to emergency planning for the City of Newburyport is to be triggered by the parties' receipt of the document now before the Board, then Attorney General Bellotti will be forced to file a contention stating, in essence, that the document does not constitute Newburyport's emergency plan and raising every conceivable objection to that planning document that the City might have. Only in that way could he preserve his objection to the licensure and operation of this plant on the basis of a planning document which he knows does not necessarily reflect, in any of its provisions, the actual emergency response needs or capabilities of the City of Newburyport.

The effect of a requirement that contentions be filed at this time with respect to emergency planning for Newburyport would be, therefore, to involve all parties prematurely in litigation over a plan that is still being developed and to divert to such litigation resources which would otherwise be directed to any necessary revision of this planning document on the basis of the City's review. The Atomic Safety and Licensing Board in the TMI Restart Proceeding spoke at length about the problems associated with commencing an adjudicatory process in connection with emergency plans before interested parties have

had an opportunity to review and contribute to the plans. The Board wrote,

The board has expressed its concern that the intervention process in this proceeding has not been the best forum for intervenors to influence for the first time the emergency plans affecting their interests. ...

. . .

We sense that some of the contentions have been advanced not so much as issues upon which informed intervenors wish to prevail, but as a means of seeking information and satisfying concerns. As far as we can determine, no appropriate opportunity has been provided for intervenors to have a voice in the formulation of emergency planning except in the discovery and hearing phases of this adjudicatory proceeding.

The evidentiary hearing, we believe, is a poor place initially to seek information of this nature and is a poor place to first raise issues concerning the details of emergency planning.

The licensing board has limited emergency planning expertise. . . . Emergency plans cannot easily be drafted by adjudication. Moreover, hearing time is precious; many issues can be decided no other way.

Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), ASLB, Memorandum and Order on Revised Emergency Planning Contentions (November 12, 1980).

If we commence the adjudicatory process now in connection with this preliminary draft document which does not reflect the input or review of the affected municipality, we will find



ourselves in the precise situation deplored by the TMI Board. Mayor Sullivan of the City of Newburyport has indicated in the attached letter that he will inform the Board when the City has in place a plan which, at least in major detail, accurately reflects its emergency response needs and capabilities. We urge that the Board forestall needless and hopelessly confused litigation in this matter by clarifying that it is that plan which will trigger the 30-day filing deadline for contentions. A refusal by the Board to so clarify this matter will likely result in less willingness on the part of state and local officials to share planning documents for other Massachusetts communities with federal agencies until such time as they have been finally approved and signed by the locality involved. Hence, a decision to force the parties to litigate at this time issues related to emergency planning for Newburyport will likely result in greater delay in the ultimate conclusion of this license proceeding.

Respectfully submitted,  
FRANCIS X. BELLOTTI

By: 

Jo Ann Shotwell  
Assistant Attorney General  
Environmental Protection Division  
Public Protection Bureau  
One Ashburton Place  
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*Office of the Mayor*  
CITY HALL  
CITY OF NEWBURYPORT  
MASSACHUSETTS  
01950

THARD EMMET SULLIVAN  
Mayor

March 14, 1983

TELEPHONE 465-8122

Helen Hoyt, Esq., Chairman  
Adm. Judge  
Atomic Safety & License Board Panel  
United States Nuclear Regulatory Commission  
Washington, D.C., 20555

Dr. Emmeth A. Luebke  
Atomic Safety & License board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Jerry Harbour  
Atomic Safety & License Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Public Service Company / et al  
Seabrook Station, Units I II  
Dockets: 50-443-O.L.  
50-444-O.L.

Dear Committee:

It has come to my attention that a document which appears to be a draft of the Emergency Plan for the City of Newburyport was submitted to you on or about February 28, 1983. I am writing to inform you that officials of the City of Newburyport have not yet reviewed the document and have not at this time accepted it as the City's plan in principle or detail.

Indeed, many of the Department Heads who will be called upon to perform emergency functions in the event of a accident at the Seabrook Station first received copies of the document on March 11, 1983, nearly two (2) weeks after you were presented with it.

The officials of the City of Newburyport are currently reviewing the document submitted to you and will undoubtedly revise it in whole or in part to reflect the needs and capacities of this community.

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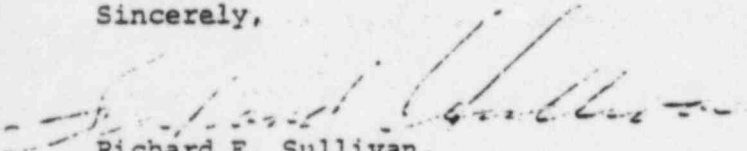
Page 2

U.S. Nuclear Regulatory Commission  
March 14, 1983

At such time as the City has in place a Plan, which at least in major detail does accurately reflect our situation in Newburyport we will so advise the Board.

Until that time, I must strenuously object to any treatment of the document provided to you as constituting any kind of Emergency Plan, draft, or otherwise of the City of Newburyport, Ma.

Sincerely,



Richard E. Sullivan,  
Mayor



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT

CIVIL DEFENSE AGENCY AND OFFICE OF EMERGENCY PREPAREDNESS  
400 WORCESTER ROAD  
P.O. BOX 1496  
FRAMMINGHAM, MASS. 01701



MICHAEL S. DUKAKIS  
GOVERNOR

March 17, 1983

Robert J. Boulay  
~~XXXXXXXXXXXX~~  
DIRECTOR

Helen Hoyt, Esq., chairman  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Dr. Emmeth Luebke  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Jerry Harbour  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

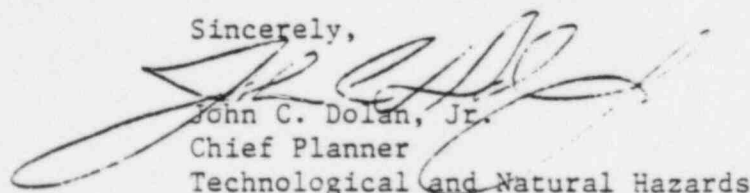
In the Matter of  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.  
(Seabrook Station, Units 1 and 2)  
Docket Nos. 50-443 OL and 50-444 OL

Dear Administrative Judges:

It has come to my attention that a document which I submitted to the Federal Emergency Management Agency has been forwarded to you and may potentially be treated as a basis for commencing formal hearings on off-site emergency planning for the City of Newburyport. I submitted that document to FEMA solely for the purpose of obtaining and sharing with the City the initial reactions of the Federal Radiological Assistance Committee. I did not understand that the document was to be submitted to you or that it could have the effect of initiating formal litigation.

While I have been working with the firm of Costello, Lomasni and DiNapoli in the preparation of this draft plan, it is just now being presented to the officials of the City for their final review and acceptance. The draft document should not, therefore, be treated at this time as the City's emergency plan for purposes of your licensing proceeding. A decision to treat this draft document in that fashion 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.

Sincerely,

  
John C. Dolan, Jr.  
Chief Planner  
Technological and Natural Hazards

8303290415

EXHIBIT B

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

RECEIVED

ATOMIC SAFETY AND LICENSING BOARD

'83 MAR 24 P2:51

Before Administrative Judges:  
Helen F. Hoyt, Chairperson  
Emmeth A. Luebke  
Jerry Harbour

E. P. D.

SERVED MAR 24 1983

In the Matter of	)	Docket Nos. 50-443-OL
	)	50-444-OL
PUBLIC SERVICE COMPANY OF	)	(ASLBP 82-471-02-OL)
NEW HAMPSHIRE, <u>et al.</u>	)	
(Seabrook Station, Units 1 and 2)	)	March 24, 1983

ORDER

(Addressing 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)

1. On March 18, 1983, the Attorney General of the Commonwealth of Massachusetts filed a Motion 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 on March 18, 1983. Applicants' Answer was filed on March 22, 1983 and the NRC Staff Response was filed March 23, 1983. The motion and responses have been considered by the Board.


2. The Board denies the movant's request for clarification of the Board's Order of January 17, 1983. The plain language of that Order identified the triggering event for filing of emergency planning contentions as the submission of "draft emergency plans (or relevant part thereof) to FEMA and within 30 days of the plans being made available to the parties." The draft Newburyport Plan was submitted to the Board and the parties on February 20, 1983.

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3. The Board grants an extension of filing time for the contentions of seven days from the filing date of March 28, 1983 to April 6, 1983.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD



Helen F. Hoyt, Chairperson  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 24th day of March, 1983.

CERTIFICATE OF SERVICE

I, Jo Ann Shotwell, Esquire, counsel for Massachusetts Attorney General Francis X. Bellotti, hereby certify that on April 7, 1983, I made service of the within Petition, by mailing copies thereof, postage prepaid, to:

Helen Hoyt, Chairperson  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D C 20555

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