

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 )  
and 2) )

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

July 15, 1983

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

On June 23, 1983, Attorney General Francis X. Bellotti filed his contentions relative to emergency planning for the State of New Hampshire. In their response thereto, the Applicants appear to contest the Attorney General's standing to participate in this proceeding. And yet, the Applicants long ago stated, and the Board long ago determined, that Attorney General Bellotti does have the requisite standing to

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participate in this proceeding. See Applicants' Answer to the Petition to Intervene of the Attorney General of Massachusetts, at 1; ASLB Memorandum and Order of September 13, 1982, at 86-90. It is true that the Board limited the Attorney General's involvement to participation as the representative of an interested state under 10 C.F.R. §2.715(c) until such time as he refiled contentions on off-site emergency planning in accordance with the Board's order. However, the same showing which led the Board to accept the Attorney General as the representative of an interested state entitles him to full-party status under 10 C.F.R. §2.714. Moreover, the Board could not even have reached the question of the admissibility of Attorney General Bellotti's contentions had it not determined that he has standing to participate as a party to this proceeding.

Thus, Applicants' argument on this score amounts to an extremely late-filed objection to the Board's order admitting Attorney General Bellotti to this proceeding, any such objection having been due within five days of the issuance of the order. See 10 C.F.R. §2.751a(d). In any event, for the reasons outlined in his original Petition to Intervene, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, Attorney General Bellotti clearly does

have standing to participate in this proceeding as a full party.

In their Answer to Attorney General Bellotti's contentions the Applicants proceed to argue that, even where a party has the necessary standing to participate in a license proceeding and the Board has jurisdiction to entertain certain claims, that party may somehow be unable to raise those claims. Thus Applicants contend that, while this Board clearly has subject matter jurisdiction over the adequacy of the New Hampshire Radiological Emergency Plan for licensing purposes, Attorney General Bellotti (even if a proper party to the proceeding) cannot ask it to exercise that jurisdiction. See Applicants' Response to Contentions of Attorney General Francis X. Bellotti Relative to Emergency Planning for the State of New Hampshire" (undated) [hereinafter, "Applicants' Response"], at 2-5. (For the Applicants' admission that the Board does have jurisdiction over the adequacy of the plan for purposes of licensure see particularly page 5, n.4.) This novel argument is not really a "standing" argument, as Applicants suggest, but depends entirely on their dramatic and patently erroneous assertion that what is involved here is a controversy between states as to which the Supreme Court has exclusive jurisdiction. See Applicants' Response, at 5. Suffice it to say that

Massachusetts has not sued New Hampshire. Attorney General Bellotti has no claim against and seeks nothing from New Hampshire. He has merely asked the Board to exercise its jurisdiction, acknowledged by the Applicants, not to license this plant.

#### CONTENTION I

Attorney General Bellotti's first contention addresses the failure of the draft New Hampshire plan to demonstrate that the State has the necessary resources to support an emergency response. As we discussed at length in the bases for the contention, the Commission's regulations require the plan to demonstrate that response organizations have the necessary personnel, equipment, facilities, and vehicles to carry out emergency action. See Contentions of Attorney General Francis X. Bellotti Relative to Emergency Planning for the State of New Hampshire [hereinafter, "Contentions"], at 2. Applicants agree that the plan must demonstrate that the State has "adequate" equipment and other resources, but take issue with the Attorney General's use of the word "assessment" in his contention. See Applicants' Response, at 8. While it is true that the word "assessment" does not appear in the Commission's regulations, there can be no finding that the State has

"adequate" resources or that "adequate protective measures can and will be taken" when there has been no determination as to the extent of either the State's needs or its resources.

In order to foreclose needless debate, however, Attorney General Bellotti is willing to redraft his first contention to track more closely the exact language of the Commission's regulations. Before doing so, however, he wishes to await the Staff's response to his contentions, for he has been informed that the Staff may recommend redrafting of certain contentions and wishes to take those recommendations into account as well.

We do note that NECNP has submitted a contention (number 8) which addresses many of the same concerns as does this contention and the bases for which provide additional facts supporting this contention. Rather than restating those additional facts here, we attach a copy of them hereto marked Exhibit B and incorporate them herein by reference.

#### CONTENTION II

Applicants have indicated that they have no objection to this contention provided the second sentence is deleted. See Applicants' Response, at 9. While strongly disagreeing with Applicants' characterization of the second sentence as

containing "various conclusions" (the sentence exactly tracks the language of a regulatory requirement and states that it has not been satisfied), Attorney General Bellotti will agree to drop the sentence. Contention II so amended reads as follows:

"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."

CONTENTION III

Again, Attorney General Bellotti disagrees that his quotation of a Commission regulation and simple statement that it has not been satisfied constitutes a "legal conclusion" inappropriate for a contention. However, he will agree to delete the second sentence of Contention III so as to cure the sole defect alleged by the Applicants (see Applicants' Response, at 10), provided the first sentence is amended to include a citation to the regulatory requirement now referenced in the second sentence. The new contention would read as follows:

The New Hampshire Radiological Emergency  
Response Plan does not satisfy the  
requirements of 10 C.F.R. §50.47 (a)(1),



(b) (5) or (b) (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.

#### CONTENTION IV

Applicants do not object to either the regulatory basis of this contention or the specificity of the stated bases, but imply that there is some requirement that any given contention recite only one regulatory requirement which has been violated. See Applicants' Response, at 11. There is no such requirement. Nor does the contention contain "rhetoric" as the Applicants so love to assert. It contains a detailed specification of the respects in which the fairly general regulatory requirements set forth at 10 C.F.R. §50.47(b) (10) and (11) have not been satisfied -- specification which, if omitted, would have led the Applicants to contest the admissibility of the contention.

There is simply no basis in the Atomic Energy Act or Commission regulations for Applicants' suggestion that a contention can be rejected because it is too long or cites more than one regulatory requirement. If Applicants are requesting that Attorney General Bellotti subdivide his contention for

their convenience, he is willing to consider doing so but would expect some greater contribution from the Applicants as to the manner in which they would like to see that favor performed. Again, it appears that the Staff may recommend such subdivision and, fully expecting that the Staff will offer concrete suggestions as to both the goals which we should be seeking in undertaking any redrafting and the ways in which those goals might be accomplished, we will await the Staff's response to the contentions before attempting any redrafting.

#### CONTENTION V

This contention and the bases therefor are identical in substance to a contention which Attorney General Bellotti submitted at the commencement of this proceeding, with the exception of the reference to the New Hampshire plan. See Supplement to the Petition to Intervene of the Commonwealth of Massachusetts, filed April 20, 1982, at 6-18; Brief of the Commonwealth of Massachusetts in Support of its Contentions, filed July 22, 1982, at Exhibit B [containing the contention redrafted to incorporate the bases previously provided]. In its Memorandum and Order dated September 14, 1982, the Board ruled that the original contention was premature and could be



reframed and refiled once off-site emergency plans were made available. See ASLB Memorandum and Order, September 14, 1982, at 86-90. The New Hampshire plan having been made available, Attorney General Bellotti has refiled the contention. And now Applicants claim that it is late-filed. Applicants' counsel should be censured by the Board for even making such an argument. Suffice it to say, if Applicants disagree with the Board's judgment that the contention was premature when originally filed or its determination that the appropriate time for refiling was following submission of off-site emergency plans, they long ago lost the opportunity to contest those decisions.

Attorney General Bellotti agrees that the data which this contention refers to should be contained in the Applicants' or Staff's filings, rather than the New Hampshire plan, and will therefore agree to omit the reference to the plan in the first sentence of the contention as currently drafted. The first sentence would then begin as follows:

The PSAR, ER-OL, SER, and FES contain insufficient data . . .

The final sentence would then need to be revised to indicate the source of information as to "planned protective actions" as follows:

. . . 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 as set forth in the New Hampshire Radiological Emergency Response Plan are "adequate" and "capable of being implemented," as required by 10 C.F.R. §50.47(a)(2). [New material underscored.]

Respectfully submitted,

ATTORNEY GENERAL  
FRANCIS X. BELLOTTI

By:



Jo Ann Shotwell  
Assistant Attorney General  
Environmental Protection Division  
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(617) 727-2265

Dated: July 15, 1983

UNITED STATES OF AMERICA DOCKETED  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

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

Seabrook Station, Units 1 and 2 )  
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Docket Nos.  
50-44301  
50-444

PETITION OF THE MASSACHUSETTS  
ATTORNEY GENERAL TO  
INTERVENE IN  
OPERATING LICENSE PROCEEDING

Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts, hereby petitions the Commission for leave to intervene in the operating license proceeding for the Seabrook Station, Units 1 and 2. Attorney General Bellotti is a duly elected representative of the citizens of Massachusetts and seeks to participate in this proceeding on their behalf with respect to the subject areas of accident prevention and mitigation and emergency response.

In its regulations on emergency planning the Commission requires that plume exposure pathway and ingestion pathway emergency planning zones be established around each light-water nuclear power plant. 10 C.F.R. §50.33 and §50.47(c)(2). The rules provide that "[g]enerally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall

consist of an area about 50 miles (80 km) in radius." And no operating license will be issued until the Commission finds that "[a] range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public . . . and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed." 10 C.F.R. §50.47(b)(10).

The Commission recognizes, then, that citizens within 50 miles of a reactor (and particularly those within 10 miles) are within the zone of danger in the event of a severe accident and that protective actions may be necessary within those areas to prevent or mitigate adverse consequences to public health and welfare. Since the Commonwealth of Massachusetts has several communities located within ten miles of the Seabrook site, and since a large portion of the state (including much of the metropolitan Boston area) is within fifty miles of the site, the citizens of Massachusetts have a clear and significant interest in the safe operation of these plants.

In addition, many citizens of Massachusetts have an interest in the safe operation of and the emergency plans for the Seabrook Station because they frequently visit the beaches located within five miles of the site. In a document already on file in this matter, "Memorandum of the Commonwealth of Massachusetts in Support of Seacoast Anti-Pollution League's Request for an Order to Show Cause dated June 30, 1980"

["Memorandum"], Attorney General Bellotti discusses in some detail the severe difficulties associated with evacuation of these beaches and the inadequacy of current evidence as to the feasibility of safe evacuation. The difficulties associated with evacuating the beaches have long been recognized by the NRC Staff, the Advisory Committee on Reactor Safeguards, and other parties. See Memorandum, at 6. Recently two members of the Commission concluded that the beaches in the vicinity of Seabrook pose "difficult, and perhaps unique, emergency planning problems" and that "if emergency preparedness is not improved sufficiently . . . , Seabrook's operation may be contingent on restricted use of the beaches." See Separate Views of Commissioner Gilinsky, Commissioner Bradford concurring, on September 11, 1981 Commission vote declining review of decision DD-81-14, Docket Nos. 50-443, 50-444.

The problems posed by the beaches in the Seabrook vicinity alone give rise to serious concern for the safety of Massachusetts citizens. Only by participating fully as a party to this proceeding can Attorney General Bellotti help ensure that adequate steps are taken to prevent and to mitigate the effects of a severe accident at the Seabrook Station. Attorney General Bellotti will seek to ensure that proposed protective actions are feasible and will adequately protect the public and that the citizens of Massachusetts are receiving the benefit of the lessons to be learned from the accident at Three Mile Island.


The Atomic Energy Act, at 42 U.S.C. §2021(1), specifically recognizes the right of states having an interest in the proposed construction or operation of nuclear power plants to participate in the proceedings relating thereto. For the reasons outlined above, the Commonwealth of Massachusetts clearly has such an interest in this proceeding and is entitled to participate fully therein through its Attorney General.

Respectfully submitted,

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL

By: PAULA GOLD  
Assistant Attorney General  
Chief, Public Protection Bureau

STEPHEN M. LEONARD  
Assistant Attorney General  
Chief, Environmental Protection Division

  
JO ANN SHOTWELL  
Assistant Attorney General  
Environmental Protection Division  
Public Protection Bureau  
Department of the Attorney General  
One Ashburton Place, 19th Floor  
Boston, Massachusetts 02108  
(617) 727-2265


Dated: November 18, 1981



CERTIFICATE OF SERVICE

I, Jo Ann Shotwell, hereby certify that I have this day served a copy of the foregoing Petition on the NRC Staff by mailing a copy thereof, postage prepaid, to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Signed under the pains and penalties of perjury this 18th day of November, 1981.

By:   
JO ANN SHOTWELL  
Assistant Attorney General  
Environmental Protection Division  
Public Protection Bureau  
Department of the Attorney General  
One Ashburton Place, 19th Floor  
Boston, Massachusetts 02108  
(617) 727-2265

CERTIFICATE OF SERVICE

I, Jo Ann Shotwell, hereby certify that I have this day served a copy of the foregoing Petition on the Applicants by mailing a copy thereof, postage prepaid, to their attorney, Thomas G. Dignan, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

Signed under the pains and penalties of perjury this 18th day of November, 1981.

By: 

JO ANN SHOTWELL  
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English. Yet, the New Hampshire RERP does not provide for bilingual emergency announcements. In order to provide a reasonable assurance that the entire transient adult population in the Seabrook EPZ can be properly instructed during an emergency, the RERP must provide for emergency instructions in both English and French.

8. The New Hampshire RERP violates 10 C.F.R. § 50.47(b)(1) in that it does not adequately demonstrate that "each principal response organization has staff to respond and to augment its initial response on a continuous basis."

Basis: NRC regulations at 10 C.F.R. § 50.47(b)(1) require "adequate staffing" for a continuous response to an emergency. As provided by NUREG-0654, the organizations must be capable of response on a 24-hours basis. § II.A.1.e. The RERP gives many emergency response organizations major tasks without assuring that they have adequate staff to fulfill their responsibilities, or that they can be carried out on a 24-hour basis. For example,

a. The Division of Public Health is given the responsibility for all field radiological monitoring and conducting food and water screening, but only 3 two-person teams with 6 monitors are provided for all the ground level monitoring in the entire EPZ and 50-mile ingestion pathway zone. RERP at 2.5-7. It is simply impossible to expect this small number of people to be able to cover such a wide area.

The staffing of the DPH laboratories is also insufficient to assure operation on a continuous basis. The lab time estimates for a 24 hour day contain the cautionary footnote "presupposing the availability of personnel." RERP at 25-21 (Table 25-4). Unless the availability of personnel is assured rather than "presupposed", the plan is inadequate. The DPH is also given responsibility for running the decontamination centers, but no decontamination centers have been designated, nor have the personnel needs at these centers been assessed, much less assured.

b. The Emergency Medical Services Organization is required by the RERP to coordinate ambulance and hospital facilities for a variety of needs, such as emergency medical treatment and special services, transportation of contaminated individuals to hospitals, treatment of injured individuals, and evacuation of non-ambulatory individuals requiring ambulance service. RERP at 1.3-13 - 14. Yet, no assessment has been made of the number of personnel needed to carry out these functions or the kinds and amounts of equipment needed to carry out the tasks. For instance, there is no discussion of the number of ambulances and ambulance drivers needed to evacuate nonambulatory patients and injured individuals from the EPZ. The RERP cites only the names of the ambulance services. Unless the state assesses these needs and provides assurances that these needs will be met, the plan is inadequate.

c. The Pupil Transportation Supervisor is responsible for coordinating bus evacuations for the school children in the EPZ, as well as assisting the general evacuation. RERP at 1.3-17. No information is provided on the number of bus drivers available; whether they will be trained in emergency procedures; or whether enough buses are available to evacuate the children. The bus drivers' other general evacuation responsibilities are too vaguely described to provide any assurance they they can and will be carried out.

d. The American Red Cross has been given responsibility both to assist at the relocation centers (whose location and numerical capacity are still undetermined) and to operate the long-term mass care centers. The plan provides no basis for assurance that the Red Cross is adequately staffed to perform both these tasks on a 24-hour basis.

e. The Civil Air Patrol is given three major tasks by the RERP: aerial observation of the EPZ; air and ground transportation of key officials in the emergency response organizations; and the transportation of field samples. Yet, there is no assessment of the number of trained pilots available to perform the tasks, and the plan provides no basis for assurance that the CAP will be able to respond adequately on a continuous basis.

9. The New Hampshire RERP violates 10 C.F.R. § 50.47(b)(7) in that the Media Center is located inside the Emergency Planning Zone.