

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

DOCKETED  
USNR

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

Docket Nos. 50-443-OL  
50-444-OL  
December 5, 1983

ATTORNEY GENERAL BELLOTTI'S MOTION TO  
STRIKE "FEDERAL EMERGENCY MANAGEMENT AGENCY'S  
MEMORANDUM IN OPPOSITION TO ATTORNEY GENERAL BELLOTTI'S  
MOTION TO COMPEL ANSWERS TO INTERROGATORIES"

As indicated in a Certificate of Service previously filed in this proceeding, a copy of which is attached hereto, FEMA received a copy of "Attorney General Bellotti's Motion to Compel Answers to Attorney General Bellotti's Interrogatories and Request for Documents to the Federal Emergency Management Agency on Emergency Planning for the State of New Hampshire" on November 16, 1983. On December 1, 1983, FEMA filed an answer to that motion entitled "Federal Emergency Management Agency's Memorandum in Opposition to Attorney General Bellotti's Motion to Compel Answers to Interrogatories." That filing is untimely. The Commission's rules require that any answer to a motion be filed within ten days of service, unless service is by mail. See 10 C.F.R. §2.730(c). Attorney General Bellotti moves, therefore, that FEMA's answer be struck as untimely.

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Quite apart from the timeliness of the filing of this pleading, it is far too late for FEMA to assert the defense which it attempts to raise. FEMA rests its objection to the Attorney General's Motion to Compel exclusively on its alleged non-party status in this proceeding. However, FEMA filed no motion for a protective order on that basis when it received the interrogatories and has, therefore, waived any such objection.

Furthermore, Massachusetts counsel consulted with Brian Cassidy, FEMA counsel, before directing the Attorney General's interrogatories to FEMA, as opposed to the NRC Staff. FEMA counsel indicated at that time that the agency's status in NRC licensing proceedings is unclear and that he and other members of his agency were engaged in discussions with NRC personnel on issues related to FEMA's status at that very time. Massachusetts counsel proposed, given such uncertainty, filing the interrogatories directly with FEMA and reserving the right to redirect them to the NRC Staff should it later be determined that such was the proper approach. Mr. Cassidy indicated agreement with that course. The most that FEMA's opposition to the Attorney General's Motion to Compel can accomplish, therefore, is to relieve FEMA of the burden of actually preparing and filing the response to the Attorney General's interrogatories. In no event can FEMA's asserted non-party status deprive the Attorney General of answers to the interrogatories. If FEMA wishes to suggest that it has now become clear that FEMA is not a party for purposes of discovery, then the Attorney General must be given the opportunity to


address his interrogatories and document requests to the NRC Staff, which will then be obliged to respond to them after consultation with FEMA personnel.

Finally, this Department has always been willing to attempt to resolve this discovery dispute informally with FEMA counsel, and so indicated to him at the time it filed the Motion to Compel. We have now agreed upon a date for such discussions (Wednesday, December 7) and will promptly notify the Board of the results thereof.

Respectfully submitted,

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL

By:

  
Jo Ann Shotwell  
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CERTIFICATE OF SERVICE

DOCKETED  
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103 DEC 8 10:28  
I, Jo Ann Shotwell, Esquire, counsel for Massachusetts Attorney General Francis X. Bellotti, hereby certify that on December 5, 1983, I made service of Attorney General Bellotti's Motion To Strike "Federal Emergency Management Agency's Memorandum In Opposition To Attorney General Bellotti's Motion To Compel Answers To Interrogatories" by mailing copies thereof, postage prepaid, to the parties named below:

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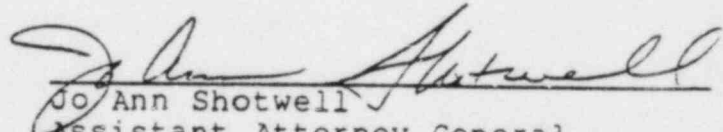
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(Attn: Tom Burack)

Signed under the pains and penalties of perjury, this 5th day of  
December, 1983.

  
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