

Filed: December 8, 1983

DOCKETED  
USNRC

'83 DEC 12 P12:01

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

before the  
ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO MASSAG MOTION  
FOR RECONSIDERATION REGARDING CORRECTIONS  
TO THE TRANSCRIPT

On October 26, 1983, the Massachusetts Attorney General ("MassAG") filed a motion to correct the transcript. Some 52 corrections were requested to the transcripts spanning five days of hearings. On November 10, 1983, the Board ruled on that motion, denying 27 of the requests in whole and one in part, and allowing the balance. Now MassAG has filed a motion for reconsideration as to six of the denied

8312130295 831208  
PDR ADOCK 05000443  
G PDR

DS03

requested "corrections." The Applicants now submit their response to the pending motion.<sup>1</sup>

Tr. 1063, Lines 17-18

As presently rendered, the transcript reads as follows:

JUDGE HOYT: I believe we're into adverse weather effect?

MassAG requests a correction so as to read as follows:

JUDGE HOYT: I believe we're into adverse weather affects . . . ?

The MassAG cross examination plan for the witnesses then on the bench contains, on page 9, the following

---

<sup>1</sup>Applicants did not respond to the original MassAG motion prior to the time when it was ruled upon. In part this was due to the fact that the motion seemed to be addressed to matters that were (i) inconsequential, in that they related to obvious errors (of the sort as to which correction is hardly necessary), or (ii) related to matters as to which the Board has personal knowledge at least as good as that of the Applicants, and as to which the Applicants would be content with the Board's recollection, or (iii), in one case, related to an attempt by MassAG to purport to know the unexpressed thoughts in the mind of the Chair, a debate into which the Applicants were (and are) hesitant to join. For these reasons, and given the press of other motions as to which responses were considered more substantive, the original motion to correct the transcript was assigned a lower priority and, in the course of things, was ruled upon before it could be reached. We apologize to the Board for any inconvenience that may have resulted to it.

item of relevance:

"VI. Examination re Adverse Weather Estimate

"A. Agree that adverse weather affects estimate?"

The apparent purpose of the requested change is to feed an argument to the effect that the Chair was in the process of reading the entire sentence following the letter "A." See "Memorandum in Support of Attorney General Francis X. Bellotti's Motion for Disqualification and Recusal of Judge Helen F. Hoyt and Motion for Reconsideration of Judge Hoyt's Ruling on Motion for Summary Disposition and Motion for Rehearing" (filed October 28, 1984) at 16-17.

As to this requested change in the record, the Applicants suggest that the following propositions are true: (i) the two versions of the statement (i.e., the one that the reporter heard and recorded and the one that MassAG contends was made) are phonetically identical; (ii) the reporter knows best what she heard; (iii) the Chair knows best what she said; (iv) the Chair knows better than the Applicants, and better than MassAG, what she intended to say. To contend that both the reporter and the Chair are incorrect in what one

heard, the other said, and the other had in her mind, is presumptuous; it is presumptuous on the part of MassAG and it would be presumptuous on the part of the Applicants.<sup>2</sup> While we do not believe that terribly much would turn upon the difference between the two statements in any event, the Applicants are content with the Chair's recollection of the matter and are not in a position to offer evidence one way or the other.<sup>3</sup>

Tr. 1159, Line 21

The Applicants have no particular recollection of words spoken. We must observe, however, that the

---

<sup>2</sup>The authors must confess to having no particular recollection one way or another since the exchange did not portend the significance that later events were momentarily to confer upon it, and they simply were not paying that close attention.

<sup>3</sup>One observation does seem irresistible. MassAG apparently believes that its proposed correction is the only version that is logical, since it is the only version that would be consistent with the speaker intending to read a printed document. But there is no reason for assuming that the speaker was reading. The topic in question has been loosely called "adverse weather effects" for some time, and that is an apt shorthand notation for the entire matter subsumed in the material under the heading "VI" of MassAG's cross-examination plan (as well as constituting one-half of restated Contention NECNP III.12 & .13). Thus in context it is just as logical for the speaker to have been using what had become a recognized generic label for the entire topic as it is to assume that the

thought that the authors heard the Board convey is consistent with the correction that MassAG proposed, namely that the Board had neither intended to nor in fact revealed MassAG's cross-examination strategy. Thus, while we have no present recollection of what was said, the correction proposed would leave the transcript consistent with what we recall having heard and understood.

Tr. 1165, Line 7

MassAG has proposed substituting the words "to date" for the word "today" in order to connote a reference to arguments made the previous evening (and taken by the Board under advisement). We have no recollection one way or the other; nor, however, do we

---

speaker was intending to read the single specific item under "A," and given the context in which the Chair made its inquiry to MassAG, the use of a phrase denoting the topic strikes the Applicants as a more logical thing to expect than a reference to only one of several items under that topic. The foregoing, of course, is not meant to indict the wisdom of our earlier observation that speculation about the mental processes of another person is at best presumptuous; it is offered, rather, only to rebut what MassAG contends is the only logical solution.

see the significance, since in context the speaker's meaning is clear even if she mis-spoke herself.<sup>4</sup>

Tr. 1216, Lines 18-20

The Applicants are not willing to say whether they recall Professor Herr say "at live" or "I live," which are phonetically difficult to distinguish. The Applicants do recall the gerund "parking," however. On the other hand, at the time the Applicants assumed that Professor Herr was simply employing a curious way of saying that he had engaged in "live parking," i.e., that he stopped his car but did not get out. Thus, prescindng entirely from whether reporter's or witness's error caused the dubious recorded grammar,

---

<sup>4</sup>We do, we must observe, have some difficulty with the proposition that "since the statement was one by Ms. Shotwell herself, it is highly unlikely that any other person has a better recollection of the statement than does she." MassAG Reconsideration Motion at 4. There is a large difference between a recollection as to what one intended to say and what one said, and the fact of the matter is that it is the experience of counsel for the Applicants that lawyers are prone to mis-speaking on occassion without at all being aware that they have done so.

the Applicants do not see either much ambiguity as to import or reason for extended controversy.

Tr. 1246, Lines 5-7

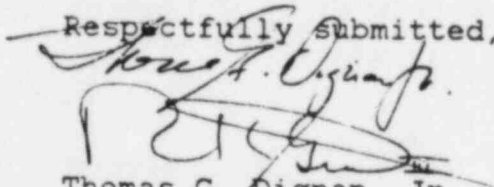
On this proposed correction, we submit that what MassAG is attempting to do is to clean up some poor diction on the part of the witness. We doubt that corrections of the magnitude proposed are warranted. On the other hand, as is the case in prior instances, we do not believe that, however badly the witness may have expressed his thoughts, there is much doubt as to the thought he was trying to express. Unfortunately, correction of the transcript lies only as to reporter's errors, not witness's bad grammar. We suggest this is an attempt to repair the latter and was properly denied.

Tr. 1264, Lines 8-12

Here MassAG proposes no changes to the words. Proposed, rather, are changes to the punctuation supplied by the reporter. We think this a trivial objection -- one with no potential for changing

meaning, and we stand totally indifferent as to its disposition.

Respectfully submitted,



Thomas G. Dignan, Jr.  
R. K. Gad III  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110  
Telephone: 423-6100

Dated: December 8, 1983



CERTIFICATE OF SERVICE

I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on December 8, 1983, I made service of the within "APPLICANTS' RESPONSE TO MASSAG MOTION FOR RECONSIDERATION REGARDING CORRECTIONS TO THE TRANSCRIPT" by mailing copies thereof, postage prepaid, to:

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

Diana P. Randall  
70 Collins Street  
Seabrook, NH 03874

Dr. Emmeth A. Luebke  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

William S. Jordan, III, Esquire  
Harmon & Weiss  
1725 I Street, N.W.  
Suite 506  
Washington, DC 20006

Dr. Jerry Harbour  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

G. Dana Bisbee, Esquire  
Assistant Attorney General  
Office of the Attorney General  
208 State House Annex  
Concord, NH 03301

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

Roy P. Lessy, Jr., Esquire  
Office of the Executive Legal  
Director  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

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

Robert A. Backus, Esquire  
116 Lowell Street  
P.O. Box 516  
Manchester, NH 03105

Philip Ahrens, Esquire  
Assistant Attorney General  
Department of the Attorney  
General  
Augusta, ME 04333

Anne Verge, Chairperson  
Board of Selectmen  
Town Hall  
South Hampton, NH

Carole F. Kagan, Esquire  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Rm. E/W-439  
Washington, DC 20555

Jo Ann Shotwell, Esquire  
Assistant Attorney General  
Environmental Protection Bureau  
Department of the Attorney General  
One Ashburton Place, 19th Floor  
Boston, MA 02108

Charles Cross, Esquire  
Shaines, Madrigan & McEachern  
25 Maplewood Avenue  
P. O. Box 366  
Portsmouth, NH 03842

Ms. Olive L. Tash  
Designated Representative of  
the Town of Brentwood  
R.F.D. 1, Dalton Road  
Brentwood, NH 03833

Ms. Roberta C. Pevear  
Designated Representative of  
the Town of Hampton Falls  
Drinkwater Road  
Hampton Falls, NH 03844

Mr. Patrick J. McKeon  
Selectmen's Office  
10 Central Road  
Rye, NH 03870

Mrs. Sandra Gavutis  
Designated Representative of  
the Town of Kensington  
RFD 1  
East Kingston, NH 03827

Mr. Calvin A. Canney  
City Manager  
City Hall  
126 Daniel Street  
Portsmouth, NH 03801

Senator Gordon J. Humphrey  
U.S. Senate  
Washington, D.C. 20510  
(Attn: Tom Burack)

Mr. Angie Machiros  
Chairman of the  
Board of Selectmen  
Town of Newbury  
Newbury, MA 01950

Senator Gordon J. Humphrey  
1 Pillsbury Street  
Concord, NH 03301  
(Attn: Herb Boynton)

Mr. Richard E. Sullivan  
Mayor  
City Hall  
Newburyport, MA 01950

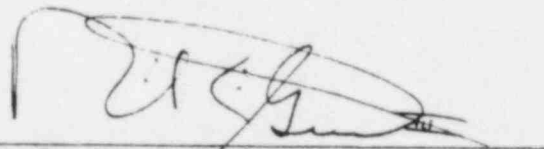
Mr. Donald E. Chick  
Town Manager  
Town of Exeter  
10 Front Street  
Exeter, NH 03833

Town Manager's Office  
Town Hall  
Friend Street  
Amesbury, MA 01913

Brian P. Cassidy, Esquire  
Regional Counsel  
Federal Emergency Management  
Agency - Region I  
442 POCH  
Boston, MA 02109

Brentwood Board of Selectmen  
RFD Dalton Road  
Brentwood, NH 03833

Gary W. Holmes, Esquire  
Holmes & Ells  
47 Winnacunnet Road  
Hampton, NH 03841

  
R. K. Gad III