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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD
OFFICE OF SECRETARY
DOCKETING SERVICE
BRANCH

In the Matter of)	Docket Nos. 50-443 OL-1
)	50-444 OL-1
PUBLIC SERVICE COMPANY OF)	Onsite Emergency Planning
)	and Safety Issues
(Seabrook Station, Units 1 and 2))	

NRC STAFF RESPONSE TO CONTENTION OF
ATTORNEY GENERAL JAMES M. SHANNON AND MOTION TO
ADMIT LATE-FILED CONTENTION AND REOPEN THE RECORD

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January 14, 1988

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	Docket Nos. 50-443 OL-01
PUBLIC SERVICE COMPANY OF)	50-444 OL-01
NEW HAMPSHIRE, <u>et al.</u>)	On-site Emergency Planning
)	and Safety Issues
(Seabrook Station, Units 1 and 2)	

NRC STAFF RESPONSE TO CONTENTION OF ATTORNEY
GENERAL JAMES M. SHANNON AND MOTION TO ADMIT
LATE-FILED CONTENTION AND REOPEN THE RECORD

INTRODUCTION

On November 13, 1987, the Attorney General for the Commonwealth of Massachusetts ("AG") filed with the Appeal Board a "Motion To Admit Late-Filed Contention And Reopen The Record" ("AG Motion") in which he requests the Appeal Board to reopen the on-site emergency planning phase of this proceeding and admit a late-filed contention which alleges that "Applicants have failed to comply with the provisions of 10 C.F.R. § 50.47(b)(5) and Part 50, Appendix E, § IV(D)(1) and (3), because no means have been established to provide early notification and clear instruction to the populace of the City of Newburyport, Massachusetts." AG Motion at 9. Applicants filed a response opposing the AG's motion on December 18, 1987. See Applicants' Opposition To Motion Of Attorney General Of Massachusetts To Reopen The Record And Admit Late-Filed Contention (December 18, 1987) ("Applicants Brief"). Pursuant to the NRC Staff's requests, the Appeal Board granted the Staff an extension of time until January 18, 1988 to file this response to the AG's motion.

BACKGROUND

The asserted basis for the late-filed contention which the AG requests the record be reopened to consider is that six of the eight sirens situated in the City of Newburyport which Applicants planned to use to notify the populace in the event of an emergency at the Seabrook Station have been removed at the direction of the Mayor of Newburyport pursuant to an ordinance passed by the Newburyport City Council on June 30, 1986. See AG Motion at 9 and attached Affidavit of Peter J. Matthews at ¶ 4 (September 18, 1987); Affidavit of Peter J. Matthews at ¶ 3, attached to Supplemental Memorandum of Attorney General James M. Shannon In Support Of Motion To Admit Late-Filed Contention (December 31, 1987) ("Supplemental Memorandum"). The remaining two sirens "will be used for the City's fire alarm system" and "will not be used for Seabrook emergency planning purposes." Matthews Affidavit, supra, at ¶ 5. According to the AG, these developments indicate that Applicants do not now have in place an adequate alternative means of providing early notification and clear instruction to the residents of Newburyport as required by 10 C.F.R. § 50.47(b)(5), as it must before a low power operating license may be issued. AG Motion at 10.

In its response, Applicants oppose the AG's motion, arguing, inter alia, that the motion to reopen the record does not set forth a "significant safety issue" as is required by 10 C.F.R. § 2.734(a). According to Applicants, an alternative alert notification system was developed to compensate for the unavailability of the Newburyport sirens. Applicants Brief at 4-5. This alternative system is described in a document entitled "Alternative Alerting System Design Description for the

City of Newburyport, Massachusetts" (Newburyport Plan"). See Attachment to Affidavit of Travis N. Beard, attached to Applicants Brief.

Essentially, the Newburyport Plan provides that in the event of an emergency at the Seabrook Station, the people of Newburyport will be notified promptly by "fixed sirens in neighboring communities and an airborne alerting system with a route alerting back-up system." Newburyport Plan at 3. According to the plan, "approximately 60 percent of the city is adequately covered by these fixed sirens," id., which are located in the neighboring Massachusetts towns of Amesbury, Newbury, Salisbury, and West Newbury. Id. at 4. A copy of the plan also was submitted to the Staff for its review as to whether the plan complied with 10 C.F.R. § 50.47(b)(5).

On December 30, 1987, and prior to the completion of the Staff's review of the Newburyport Plan, Applicants issued a press release which states that Applicants have "offered to give its 32 siren poles in five northeastern Massachusetts towns to each of the respective town governments, saying the Massachusetts sirens will no longer be part of the plant's licensing efforts. See Attachment to Letter from Edwin J. Reis to Members of the Appeal Board and Licensing Board Panels (January 7, 1988). According to the press release, if the towns involved accept the siren poles, Applicants "will disconnect all equipment used by Seabrook personnel to activate sirens." Id. Four of the towns to whom this offer was made -- West Newbury, Amesbury, Newbury, and Salisbury -- are the same "neighboring communities" upon whose fixed sirens Applicants' Newburyport Plan indicates will be used to notify 60 percent of the residents of Newburyport in the event of an emergency. Compare,

Id. at 1, with, Newburyport Plan at 4. Thus, it appears that the sirens situated in the towns bordering on Newburyport will not be utilized by Applicants in its program to provide early notification to the residents of Newburyport in the event of an emergency at the Seabrook Station.

DISCUSSION

A. Legal Standards

1. Motions to reopen a closed record

In NRC proceedings, motions to reopen a record are governed by 10 C.F.R. § 2.734. Paragraph (a) of this regulation provides:

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

- (1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
- (2) The motion must address a significant safety or environmental issue.
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

In addition, a motion to reopen which relates to a late-filed contention must also meet the standards governing late-filed contentions set forth in 10 C.F.R. § 2.714(a)(1). See 10 C.F.R. § 2.734(d). Reopening a closed record is, as the Commission has noted, an "extraordinary action" and thus requires the movant to bear a "heavy burden." See 51 Fed. Reg. 19535, 19538 (May 30, 1986); accord Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 328 (1978). The reason a motion to reopen is not to be granted lightly is because of the public interest in ensuring that "once a record has been

closed and all timely-raised issues have been resolved, finality will attach to the hearing process." 51 Fed. Reg. at 19539.

2. Alert Notification Systems

10 C.F.R. § 50.47(b)(5) states, in pertinent part, that an emergency response plan must provide that:

[M]eans to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established. -

Generally, the Staff has interpreted section 50.47(b)(5) to require that an applicant have installed and operable a means of notifying the affected populations in the event of an emergency. See NRC Staff Response To Appeal Board Order Of July 30, 1987 Regarding Merrimac Sirens at 4, n.3 (October 6, 1987); NRC Staff Supplemental Response To Appeal Board Order Of September 17, 1987 Regarding East Kingston Sirens at 3, n.3 (October 6, 1987). The Applicant, of course, certifies that the alert notification system employed is designed to be in accordance with NUREG-0654/FEMA REP-1, Rev. 1, Appendix 3. Section 50.47(b)(5), however, does not mandate that an applicant use sirens or any other particular method to notify the public, rather it leaves it to the applicant in the first instance to devise and employ the "means" capable of doing so. See NUREG-0654, Rev. 1, Appendix 3.

In view of the foregoing, were Applicants to have in place and operable an alternative means of notifying the residents of Newburyport in the event of an emergency, they would be in compliance with

1/ See also 10 C.F.R. Part 50, Appendix E, § IV(D); NUREG-0654, Rev. 1, Supp. 1, § II(E) and Appendix 3 to Rev. 1

regulatory requirements notwithstanding the unavailability to Applicants of the Newburyport sirens. It therefore follows that the removal of the Newburyport sirens alone would not necessarily present a "significant safety issue" to warrant a reopening of the record.

B. A Determination As To Whether Applicants' Alert Notification System For Newburyport Presents A "Significant Safety Issue" Should Be Deferred Pending Additional Information From Applicant

As noted above, to compensate for the removal of Newburyport sirens by town officials, Applicants devised an alternative notification system which relied upon the availability of sirens in the towns bordering Newburyport to provide notification to 60 percent of Newburyport and an airborne alerting system (a helicopter able to deliver siren signals and voice messages). See Newburyport Plan at 3. Subsequent to the development of this system, the First Circuit United States Court of Appeals issued an opinion which paved the way for the town of West Newbury and others to dismantle and remove the alert sirens located within their jurisdictions. See Public Service Company of New Hampshire v. Town of West Newbury, ___ F.2d ___ (No. 87-1395) (1st Cir. December 16, 1987). Shortly thereafter, each of the towns bordering Newburyport notified Applicants of their intent to remove the alert sirens located therein. See AG's Supplemental Memorandum at 4 and Exhibit 2. In response, Applicants offered to donate the siren poles in question to the towns and stated that it would not rely upon any of those sirens before the NRC. See December 30, 1987 Press Release at 1, supra, attached to January 7, 1988 letter from Edwin Reis to Members of Appeal Board and Licensing Board Panels. Applicants stated that they were

"taking steps to provide alternative methods to notify residents of a plant emergency, as required by federal law." Id. (emphasis in original).

As of this writing, the Staff has not been informed by Applicants whether the "alternative methods" referred to above have been developed and ready to be reviewed by the Staff. When Applicants develop an alternative method to notify the residents of Newburyport in the event of an emergency at the Seabrook Station, Intervenor would be able then to determine whether the alternative plan raises any "significant safety issues" which they believe should be the subject of new contentions in a reopened proceeding. The Staff would also complete its review of that plan and be in a position to address whether the plan meets the requirements of 10 C.F.R. § 50.47(b)(5). ^{2/} At that time it can be ascertained whether the removal of the Newburyport sirens presents "a significant safety issue" as required by 10 C.F.R. § 2.734 to warrant a reopening of the record. ^{3/} The Appeal Board should therefore defer ruling upon the AG's motion to reopen the record until after Applicants

^{2/} The Staff has been preparing a Supplemental Safety Evaluation Report (SSER) addressing Applicants' Newburyport alert notification plan. However, in view of Applicants' announced intention to modify again their alert notification plans, the subject SSER no longer is germane to the proceeding and the Staff does not intend to issue it.

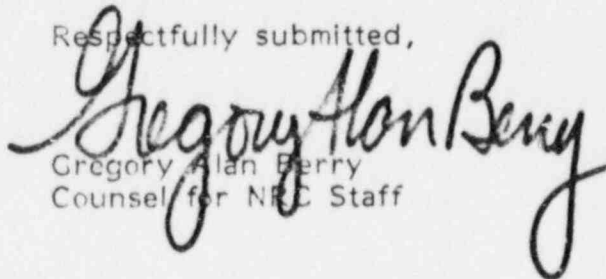
^{3/} A reopening of the record would not in itself preclude the issuance of a low power license. Under 10 C.F.R. § 50.57(c), in determining whether low power operations should be authorized before all contentions are resolved, the Board is to consider, inter alia, whether any of the admitted contentions are relevant to the "activity to be authorized" and whether there is reasonable assurance that low power operations can be conducted without endangering the public health and safety. See also, 10 CFR § 50.47(c)(1) and (d).

submit their alternative plans and the Intervenor submit their contentions, if any, on such plans. ^{4/}

CONCLUSION

For the reasons stated in this response, the Appeal Board should defer ruling upon the Massachusetts Attorney General's motion to reopen the record to admit his late-filed contention until after Applicants submit their alternative plans for notifying the residents of Newburyport in the event of an emergency at the Seabrook Station and Intervenor file their contentions, if any, to Applicants' alternative plans.

Respectfully submitted,


Gregory Alan Berry
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of January 1988

^{4/} The Staff notes that in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-87-05, 25 NRC (June 12, 1987), the Commission, upon agreement of the parties, reopened the record to reconsider the adequacy of the applicant's emergency public notification procedures occasioned by the withdrawal of the principal emergency broadcast system station from participation under the Shoreham plan. The Commission delayed the submission of contentions addressing this development until after the applicant provided updated information regarding its alternative public notification procedures.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CONTENTION OF ATTORNEY GENERAL JAMES M. SHANNON AND MOTION TO ADMIT LATE-FILED CONTENTION AND REOPEN THE RECORD" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by double asterisks, by express mail, this 14th day of January 1988.

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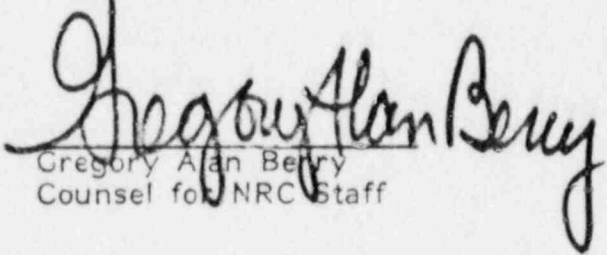
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