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October 25, 1989

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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)	)	(Offsite Emergency Planning Issues)

APPLICANTS' ANSWER TO INTERVENORS' MOTION FOR SUMMARY DISPOSITION ON CONTENTIONS JI-ONSITE EX-1 AND JI-ONSITE EX-2

STATEMENT OF THE CASE

The Attorney General of The Commonwealth of Massachusetts (MAG) on behalf of himself, Seacoast Anti-Pollution League (SAPL), and the New England Coalition on Nuclear Pollution (NECNP) has filed two motions seeking the admission into litigation of two contentions as to the scope of the onsite exercise conducted at Seabrook Nuclear Power Station on September 27, 1989. These motions were filed under the dates of September 28, 1989,[1] and October 13,

1 Intervenors' Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise (Sept. 28, 1989) (alleging Contention JI-Onsite Ex-1 and certain bases therefore - and hereafter cited and referred to as "Motion #1").

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1989,[2] and answered by the Applicants on October 11, 1989,[3] and October 20, 1989.[4] respectively. In addition, on October 16, 1989, MAG filed a motion to amend Motion #1 and Motion #2 to add thereto allegations purporting to meet the pleading requirements of 10 CFR § 2.734 with respect to each of the motions.[5] Applicants answered this motion substantively as part of its response set out in Answer #2.[6]

Under date of October 18, 1989, MAG has now filed, on behalf of himself, SAPL and NECNP, a Motion for Summary Disposition of all the onsite exercise scope contentions

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2 Intervenors' Second Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise (Oct. 13, 1989) (alleging Contention Onsite Ex-2 and bases therefore and also additional bases for Onsite Ex-1 - hereafter referred to and cited as "Motion #2").

3 Applicants' Response to Intervenors' Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise (Oct. 11, 1989) (hereafter referred to and cited as "Answer #1").

4 Applicants' Answer to Intervenors' Second Motion to Admit Contentions on the September 27, 1989 Emergency Plan Exercise (Oct. 20, 1989) (hereafter referred to and cited as "Answer #2").

5 Intervenors' Motion to Amend Intervenors' Motions of September 29, 1989 and October 13, 1989 to Admit Contentions on the September 27, 1989 Onsite Emergency Plan Exercise (Oct. 16, 1989) (hereafter referred to and cited as "Motion #3").

6 Answer #2 at 5-9. In addition, a procedural response was also filed acknowledging that whether or not to allow the amendment was a matter of Board discretion. Applicants' Response to Intervenors' Motion to Amend Intervenors' Motions of September 29, 1989 and October 13, 1989 to Admit Contentions on the September 27, 1989 Onsite Emergency Plan Exercise (Oct. 20, 1989).

raised in Motion #1 and Motion #2,[7] accompanied by an extensive memorandum in support thereof.[8]

The basic thrust of the Intervenors' position as articulated in the motions and their memorandum is that, as a matter of law, the scope of the exercise in question was not broad enough. In particular, they claim six specific shortcomings in the exercise as follows:

1. There was insufficient exercise of the ability of the Applicants' personnel to formulate offsite protective action responses (PARs) which was due, according to the Intervenors, to the fact that the exercise scenario did not escalate to the point of an offsite release and a concomitant general emergency.[9]

2. "[N]o plume monitoring procedures or correlative accident assessment activities were tested even by mini-scenario."[10] This is otherwise articulated

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7 Intervenors' Motion for Summary Disposition on Contentions JI-Onsite Ex-1 and JI-Onsite Ex-2 (Oct. 18, 1989) (hereafter cited and referred to as "SD Motion").

8 Memorandum of the Intervenors in Support of Their Motion for Summary Disposition of the Scope Contentions Filed in Response to the September 27, 1989 Onsite Exercise (Oct. 18, 1989) (hereafter referred to as "Intervenors' Brief" and cited "Int. Br.").

9 Int. Br. at 34; Motion #1, Attach 1 at 3; Motion #2, Attach. A at 1-2.

10 Int. Br. at 34.

as: "The Applicants did not test their capacity to locate a plume, track its course and measure its content."[11]

3. There was no exercise of the Seabrook Fire Department in its capacity as a local support services agency or the Exeter Hospital as an offsite medical treatment facility.[12]

4. There was no testing of the monitoring or decontamination of personnel evacuating the site at the Seabrook Dog Track or the warehouse on Rte. 107.[13]

5. There was no demonstration of an actual shift change or demonstration of an ability to staff for continuous (24 hour) operations for a protracted period.[14]

6. There was no exercise of the Vehicular Alert Notification System (VANS) in the Massachusetts portion of the Seabrook EPZ.[15]

It is the position of MAG, writing on behalf of himself and the other intervenors that the allowance of the SD Motion depends only upon the acceptance of his basic legal theory

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11 Id. at 2, n.3.

12 Int. Br. at 34; Motion #1, Attach. A at 3.

13 Int. Br. at 34-35; Motion #1, Attach. A at 3.

14 Int. Br. at 35; Motion #2, Attach. A at 3-4.

15 Int. Br. at 35; Motion #2, Attach. A at 4-5.

that NRC regulations require that each of the foregoing activities be conducted as part of an exercise held in accordance with the third and fourth sentences of 10 CFR 50, App. E § IV.F.1. According to MAG, the SD Motion (and Motions Nos. 1 and 2) "raise (and are intended to raise) [a] purely legal question,"[16] and, thus, there is no need for the taking of any evidence in order to reach the moved-for result.

Applicants respond herein to the SD Motion.

ARGUMENT

I. BECAUSE OF THE FAILURE TO SATISFY THE PROVISIONS OF 10 CFR § 2.734 FOR THE REOPENING OF THE RECORD, 10 CFR § 2.714(a) FOR THE FILING OF LATE-FILED CONTENTIONS, NECESSARY PLEADING REQUIREMENTS FOR AN EXERCISE SCOPE CONTENTION, AND THE REQUIREMENTS OF 10 CFR § 2.714(b), AS AMENDED, THE BOARD SHOULD NOT REACH THE ISSUE OF SUMMARY DISPOSITION.

In Answers Nos. 1 and 2 we have briefed a number of arguments which Applicants believe should prevail and preclude the admission of the proffered scope contentions and thus obviate the need for the Board even to address the SD

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16 Int. Br. at 3.

Motion. These are summarized below with references in footnotes to where they appear.

1. The requirements of 10 CFR § 2.734 must be, and have not been, satisfied.[17]

2. The balancing test required for late-filed contentions set out in 10 CFR § 2.714(a) results in a balance which dictates that the proffered contentions not be admitted for litigation.[18]

3. The intervenors have failed in pleading their contentions to allege how the undertaking of the various activities they wish to have undortaken

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17 That the requirements must be met is argued in Answer #1 at 2-5; that the showing set out in the attachment to Motion #3 is not sufficient to satisfy the requirements of the regulation is set out in Answer #2 at 5-9. Finally, it is noted that in the Intervenors' Brief it is argued that if the Board finds that 10 CFR § 2.734 is not met for want of a significant safety question, the Board will have granted Applicants an exemption from the exercise requirements which the Commission has denied. Int. Br. at 9. This reasoning is fallacious. What the Board will have done is hold that the Intervenors did not satisfy the Commission's regulations for reopening which are deliberately difficult to comply with in order that litigation after record closure be limited to real issues. The Applicants will not have become exempt from the regulation which requires the holding of the exercise; rather, the enforcement of compliance with that regulation will be in the hands of the Staff instead of in the adjudicatory forum. This is just one more example of why, in NRC jurisprudence, the high standards for reopening work no adverse effect on public policy. The Staff remains in the position to assure regulatory compliance even in the absence of an ongoing adjudication.

18 Answer #1 at 5-8; Answer #2 at 10-12.

would cause the revelation of an otherwise undiscovered and undiscoverable fundamental flaw in the plan; in addition, the intervenors would have no basis for such an allegation had they made it.[19]

4. The intervenors have failed to comply with the provisions of 10 CFR § 2.714(b)(2), as most recently amended, and are estopped by their prior conduct from failing to do so.[20]

II. THE SD MOTION IS BASED UPON A FLAWED LEGAL THEORY.

Introduction

As noted above, it is MAG's theory that 10 CFR 50, App. E, § IV.F.1 and Footnote 4 thereto and other regulations of the Commission should be read as requiring, as a matter of law, that certain activities enumerated in his motions and brief must be included in the prelicensing onsite exercise called for in the third and fourth sentences 10 CFR 50, App. E § IV.F.1. The fundamental premise to the entire legal argument is that Footnote 4's language which requires "testing the major observable portions of the onsite and offsite emergency plans" applies to the exercise conducted by the Applicants on September 27, 1989. We have addressed this

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19 Answer #1 at 13-16; Answer #2 at 3-5.

20 Answer #1 at 16-18; Answer #2 at 12-15.

argument in our prior answers.[21] To some extent what follows in this section of the brief will be repetitive of these prior efforts. However, it was not until the filing of the SD Motion that MAG spelled out his theory on this matter in detail.

A. The Language of 10 CFR 50, App. E § IV.F.1 Does Not Admit of the Construction MAG Would Give It.

As recently stated by the Appeal Board:

> "As is the case with statutory construction, interpretation of any regulation must begin with the language and structure of the provision itself. [Citations omitted.] Further the entirety of the provision must be given effect. [Citation omitted.] Although the administrative history and other available guidance may be consulted for background information and the resolution of ambiguities in a regulation's language, its interpretation may not conflict with the plain meaning of the wording used in that regulation. [Citations omitted.]"[22]

As noted earlier, the key to the entire legal theory of MAG is that the requirement for testing "the major observable portions" found in Footnote 4 to 10 CFR 50, App. E § IV.F.1 be applied to the exercise of September 27, 1989. Such a construction of the regulation would be at complete odds with the language of the regulation itself. To begin with, 10 CFR 50, App. E § IV.F.1 begins by describing a "full

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21 Answer #1 at 12-13; Answer #2 at 2-3.

22 Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288 (1988). This case is hereafter referred to as "ALAB-900."

participation exercise" in the first sentence. It then goes on to state in the second sentence that "[t]his exercise" shall be conducted within two years of the plant receiving a license to operate at greater than 5% of power. In the third sentence it states that if "the full participation exercise" is held more than one year prior to the issuance of a license to operate at above 5% power, "an exercise which tests the licensee's onsite emergency plans" (emphasis added) shall be conducted within one year of the issuance of such a license, and in the fourth sentence we are told that "[t]his exercise" need not have State or local governmental participation.

When one parses through the regulation as above at least two things become patently clear. First, whatever the "an exercise" is that is referred to in the third and fourth sentences, it is not the same thing as the "full participation exercise" referred to in the first and second sentences. Second, the words "full participation" are not used in conjunction with the "an exercise" referred to in the third and fourth sentences. This being the case, Footnote 4 has no part in defining the "an exercise" of the third sentence because, by its terms, that footnote only purports to deal with situations where the term "full participation" is used in a regulation "in conjunction with emergency preparedness exercises" (emphasis supplied). Thus if, as MAG is trying to do, one wishes to engraft the "major observable portions" criterion on the "an exercise" in the third

sentence, in the words of the apocryphal Maine farmer "you can't get there from here."

The interpretation argued for above is reinforced by the language in the second sentence of Footnote 4 which contains the "major observable portions" language. The reference to "mobilization" is set forth in the conjunctive with the testing requirement, and the listing of personnel: "State, local and licensee" is also set out in the conjunctive. The reading that MAG tries to give the regulation, see infra, would require that that listing of personnel be in the disjunctive. The interpretation argued for is further strengthened by the language used by the Commission in its recent decision denying the Applicants' request for an exemption.[23] In describing the regulation under discussion the Commission stated:

> "Pursuant to the Commission's regulation, from which the Applicants seek relief in their instant petition, if more than a year has passed since a full participation exercise, an exercise of the Applicants' onsite plan must be held within one year before license issuance."[24]

By use of the indefinite article in the above quoted language in referring to the phrase "full participation exercise," the Commission makes clear that whatever the "an exercise"

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23 Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-19, 30 NRC ___ (Sept. 15, 1989).

24 CLI-89-19, supra, Slip Op. at 2.

referenced in the third sentence of 10 CFR 50, App. E § IV.F.1 is, it is not a "full participation" exercise and, thus, not subject to the criteria enunciated in Footnote 4 to 10 CFR 50, App. E § IV.F.1.

B. The Argument Made From Regulatory Interpretation and History Made by MAG is Flawed.

Introduction

As we understand the argument being made by MAG, it is as follows: He begins with an analysis of the regulatory language itself.[25] Basically, he claims that the phrase "full participation" should be viewed as having been used in two ways. One is defining the "how" of an exercise and the other as defining the "who." MAG states that what this all means is that while the exercise which took place on September 27, 1989, did not require the participation of State and Local Governments because it was not a "full participation" exercise, it still required the "full participation" of the licensee in the sense that licensee personnel were required to test all "major observable portions" of the plan being exercised. Next, MAG goes on to say that his reading of the regulation is further supported by the regulatory history of the exercise requirements of 10 CFR 50, App. E.[26] In summary, this is an argument that,

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25 Int. Br. at 11-15.

26 Int. Br. at 15-23.

as of 1980, there was only one prelicensing exercise required called a "full scale" exercise which MAG claims required what he views as full participation by everyone who was required to play, and that, since then the Commission has stated that various changes in the regulation governing exercise requirements have not served to lessen the duties or burdens of licensees with respect to such exercises, therefore, the licensee must engage in "full participation" in its onsite exercise referenced in the third sentence of 10 CFR 50, App. E § IV.F.1.

Having made his two parallel arguments for the concept that the exercise of September 27, 1989, was required to meet the "major observable portions" criterion, and after attempting to justify his appeal to administrative history,[27] addressing certain Staff arguments made in a prior pleading,[28], and making a public policy argument,[29] MAG then goes on to argue that under the holding of the Appeal Board in ALAB-900, the necessary "major observable portions" to be exercised are defined as a matter of law in the regulations and include the activities which he argues should have been carried out, but were not.[30]

We address each of the facets of his argument below.

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27 Int. Br. at 24-25.

28 Int. Br. at 25-28.

29 Int. Br. at 28-29.

30 Int. Br. at 29-35.

1. The Regulatory Interpretation Argument is Flawed.

As already pointed out, MAG's argument simply ignores the fact that the words "full participation" nowhere appear "in conjunction with" the term "an exercise" in the third sentence which is what was being run on September 27, 1989. It has further been pointed out earlier, that MAG's argument, insofar as it interprets the sentence containing the "major observable portions" language in Footnote 4 to 10 CFR 50, App. E § IV.F.1[31] simply ignores the "mobilization" language and the use of the conjunctive, as opposed to the disjunctive, throughout the sentence. Finally, MAG also ignores the fact that the second sentence of Footnote 4, which contains his key "major observable portions" language wholly refutes the concept that "major observable portions" constitutes a definition of what must be included in the scenario as MAG would have it. This is so because the "major observable portions" of the plan which that sentence requires to be tested and the personnel which the sentence requires to be mobilized, are only those which are necessary to "verify the capability to respond to the accident scenario." In short, the sentence of the footnote contemplates that the scenario will be set independently of any requirement contained in that sentence. The actual language of the

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[31] Int. Br. at 12-13.

regulation simply cannot be twisted to the meaning MAG desires.

2. The Argument From History Also Ignores Certain Salient Facts.

When MAG quoted the regulation in his brief,[32] he neglected to insert the Footnote 4 call into the quoted language from 10 CFR 50, App. E § IV.F.1. This may have been a Freudian slip given its location directly after the first use of the term "full participation" which tends to negate the idea that the word was used in two ways as MAG would have us believe. But what is interesting is to observe the placement of the call of what became Footnote 4 the first time it was proposed for inclusion in the regulations. This occurred with the publication of the proposed rule which eventually, after alteration, became the final rule adopted effective August 6, 1984.[33] That proposed rule was published on July 21, 1983,[34] and it proposed the following ¶ 2.b. to be included in 10 CFR 50, App. E § IV.F:

> "2. Each licensee at each site shall:
>
> "a. Annually exercise its emergency plan.[5]
>
> "b. Except as provided in paragraph three below, include in its annual exercise:
>
> "(i) Annual full participation[6] by local government agencies.

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32 Int. Br. at 10-11.

33 See 49 Fed. Reg. 27733 et seq. (July 6, 1984).

34 48 Fed. Reg. 33307 et seq.

"(ii) Annual full or partial participation[7] by States within the plume exposure EPZs."[35]

The call to what was the footnote which became Footnote 4 to the present 10 CFR 50, App. E § IV.F.1 was "6" in the above-quoted proposed regulation. Given its setting, it is clear that from the beginning "full participation" was a term designed to designate the "who," not the "how," to utilize MAG's own terms.

Another piece of the history of the regulation conveniently ignored by MAG is certain language of the Commission in the Statement of Reasons and Basis which accompanied the promulgation of the present rule.[36] In that statement, the Commission, in referring to the "an exercise" requirement of the third sentence of 10 CFR 50, App. E § IV.F.1 in response to the Commonwealth Edison Comment urging its elimination, described the justification for the exercise as follows:

"The importance of annual onsite emergency planning exercises by the licensee's operational staff has already been recognized in the Commission's regulations, which now require that after a facility is licensed to operate there must be an annual onsite exercise. This annual emergency response function drill ensures that the licensee's new personnel are adequately and promptly trained and that existing licensee personnel maintain their emergency response capability. The existing requirement of a pre-operational

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35 48 Fed. Reg. at 33310.

36 52 Fed. Reg. 16823 et seq. (May 6, 1987).

> onsite exercise within one year prior to full-power license issuance is consistent with this philosophy as well as the Commission's general desire to have pre-operational emergency planning exercises as close as practicable to the time of licensing."[37]

What the language quoted with emphasis reveals is an understanding by the Commission that the "an exercise" contemplated by the third sentence of 10 CFR 50, App. E § IV.F.1 was an exercise that would serve the purpose of uncovering personnel deficiencies in the nature of lack of training or slippage of skills rather than "fundamental flaws" in the plan itself. This makes sense because any "fundamental flaws" in the plan itself would have been revealed in the "full participation" exercise already held for that facility more than one year prior to licensing and also prior to the holding of the third sentence "an exercise." Indeed, as the Commission itself further observed in promulgating the present version of 10 CFR 50, App. E § IV.F.1:

> "To the extent that an offsite pre-licensing exercise is intended to reveal whether an emergency plan has fundamental flaws, that purpose can be achieved at least as well by an exercise held within two years of licensing as within one year."[38]

Undoubtedly, it is this concept that the Commission had in mind in its decision denying the exemption sought by the

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37 52 Fed. Reg. at 16824-25.

38 52 Fed. Reg. at 16824.

Applicants when it referred to the on-site plan for Seabrook as having "previously been exercised and adjudicated" and then went on to state that "any contention" would need to allege a fundamental flaw.[39] In short, it is doubtful that any contention can be asserted with respect to this exercise at all, and certainly the "any contention" language of the Commission would dictate that the intervenors at least plead the fundamental flaw that the improper scope would fail to reveal.

3. ALAB-900 Provides no Basis for an Assertion That the Appropriate "Major Observable Portions" Which Must be Exercised by an Exercise Scenario are Determined as a Matter of Law in the Regulations.

As noted above, a necessary part of MAG's legal theory is that ALAB-900 is to be read as holding that the regulations, in and of themselves, define what constitute the "major observable portions" of an emergency plan which must be exercised. That ALAB-900 did not purport to make any such ruling is apparent from the face of the decision inasmuch as the Appeal Board devoted much of its opinion to a factual analysis of whether certain facets of the plan at hand were required to be exercised.[40]

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39 CLI-89-19, supra Slip Op. at 4 & n.5.

40 ALAB-900, supra at 293-300.

III. EVEN IF MAG's LEGAL THEORY WERE CORRECT, THERE WOULD STILL BE NO BASIS FOR AWARDING SUMMARY DISPOSITION ON THIS RECORD.

Even though, as set forth above, MAG's theory that the proper scope of an onsite exercise can be determined from the regulations as a matter of law is erroneous, there still does remain the question of what standard the scope must meet, assuming it has to meet any. The standard is that expressed in ALAB-900:

> "[T]he exercise itself must be comprehensive enough to permit a meaningful test and evaluation of the emergency plan to ascertain if that plan is fundamentally flawed."[41]

The obverse of this is that if a given allegedly necessary activity is demonstrated to be such that if included in the exercise scope it would not result in the discovery of a "fundamental flaw or flaws," then the ruling must be that the scope of the exercise need not include the activity argued for. As seen below, none of the activities which MAG asserts should have been included in the exercise were necessary under the above-described standard.

Beginning with VANS: VANS simply is not a part of "the licensee's onsite emergency plans" as that phrase is used in 10 CFR 50, App. E § IV.F.1. This is clear from a portion of the very language quoted by MAG at Page 33 of the Intervenors' Brief from the statement of reasons issued with

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41 ALAB-900, supra at 286.

the change in the regulations that excluded the prompt notification system from the review of emergency plans to be conducted prior to allowance of low power testing.[42]

> "This practice of reviewing an offsite element of licensee emergency plans that <u>has no onsite application</u> is being discontinued . . . ." (Emphasis added.)

Furthermore, as shown by the Affidavit of Anthony M. Callendrello (hereafter "Callendrello Affidavit") attached hereto and marked "A", the operation, including the mobilization and deployment, of VANS is part of the Seabrook Plan for Massachusetts Communities (SPMC) (the offsite plan), is implemented by the Offsite Response Organization, and was exercised, as required, during the June 1988 full participation exercise.[43]

As will be seen below, the remaining items which MAG claims were necessary, but not accomplished, were either accomplished or were unnecessary to assure detection of "fundamental flaws."

<u>The alleged need for additional PAR decision making</u>: As seen from the Affidavit of S. Joseph Ellis (hereafter "Ellis Affidavit"), attached hereto and marked "B," the capability of the Seabrook Station Emergency Response Organization (ERO) to formulate and communicate to offsite officials was demonstrated in accordance with the applicable PAR procedures

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42 53 Fed. Reg. 36955 (Sept. 23, 1988).

43 <u>Callendrello Aff</u>. ¶¶ 4-7.

even though the scenario did not progress beyond the Site Area Emergency classification.[44] And it is established in the Callendrello Affidavit that even had the accident advanced beyond the Site Area Emergency classification, the same PAR procedure would have been used, which procedure has been tested to the general emergency level in prior exercises including the June 1988 full participation exercise.[45] Thus, all that could have been uncovered by additional activity of the kind MAG desires would be individual personnel weaknesses remediable by training and therefore not fundamental flaws.[46]

Alleged shortcomings with respect to plume tracking, monitoring, and analysis: In fact, monitoring activities called for by the relevant procedures were performed.[47] Even if this were not the case, given the fact that these procedures have ben tested in three previous graded exercises, the only shortcomings that could be revealed at this point are those readily remedied by supplemental

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44 Ellis Aff. ¶¶ 10-15.

45 Callendrello Aff. ¶¶ 8-9.

46 Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-918, 29 NRC 473, 485-86 (1989). See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-903, 28 NRC 499, 506 (1988).

47 Ellis Aff. ¶¶ 16-20.

training or otherwise of a "readily correctable" nature.[48] Such matters are not fundamental flaws.[49]

Exercise of Seabrook Fire Department and Exeter Hospital: The medical drill, due to constraints, and consistent with the practice of the past three years, is conducted as a separate event. In light of the fact that three medical drills have been conducted, the only flaws which would have been uncovered would be personnel flaws which are remedial by supplemental training;[50] these are not fundamental flaws.[51] Moreover, when the Commission promulgated the present regulation, it made clear that its concern in requiring the onsite exercise was not in exercising entities such as the Exeter Hospital or the Seabrook Fire Department. The Commission, in stating its justification for the two year rule for "full participation" exercises stated:

> "Moreover, to mandate an onsite exercise within one year of operation while requiring an offsite exercise within two years is a recognition of the distinct nature of the participants involved in each instance. The State and local emergency planning organizations that are primarily involved in offsite emergency planning are in almost all instances organized and trained to deal with emergency situations long before facility operation. While the offsite emergency test

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48 Callendrello Aff. ¶¶ 10-11.

49 ALAB-918, supra.

50 Callendrello Aff. ¶¶ 13-15.

51 ALAB-918, supra.

> is important to judge the ability of these existing organizations to respond to the particular of a radiological emergency, in light of their ongoing responsibility for all types of emergencies a demonstration of offsite preparedness by such agencies within two years prior to licensing affords reasonable assurance of their capabilities at the time of licensing."[52]

The Exeter Hospital and the Seabrook Fire Department fall squarely within the class of organizations referenced in the above-quoted language.

Offsite personnel monitoring: The offsite monitoring facility is not a major part of the plan, being used in only extremely limited circumstances.[53] Moreover, exercise of that facility could not have revealed a fundamental flaw because the equipment and procedures used there are either identical to, or based on, routine in-plant radiological control procedures, and the personnel who perform the functions are members of the plant health-physics department whose normal duties involve the routine performance of similar activities.[54]

Shift change: Second shift staffing was established by

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52 52 Fed. Reg. 16823, 16825 (May 6, 1987).

53 Callendrello Aff. ¶ 17.

54 Id. ¶ 18.

personnel rosters.[55] There was no need to actually undergo the shift change because:

> "Should the scenario have called for the actual replacement of personnel, all that possibly could have been revealed is; a specific performance problem of an individual or individuals, a problem in the ability to mobilize these personnel (highly unlikely since shift turnover occurs 12 hours into the accident) or the adequacy of the training program (just as well evaluated by the performance of the first shift). None of these problems involve a fundamental flaw in the emergency plan."[56]

In short, there would have been no discovery of an otherwise undiscoverable fundamental flaw in the onsite emergency plan had the activities which MAG desires to have carried out been included in the exercise scenario. Any fundamental flaw has long since been wrung out of this plan in prior exercises.

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55 Ellis Aff. ¶¶ 4-9.

56 Callendrello Aff. ¶ 12.

CONCLUSION

The SD Motion should not be reached for decision because the contentions should not be admitted. If it is reached, it should be denied.

Respectfully submitted,

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