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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY LICENSING APPEAL BOARD

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

G. Paul Bollwerk III, Chairman
Howard A. Wilber
Alan S. Rosenthal

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
(Off-site EP)

BRIEF OF APPELLANTS-INTERVENORS TOWNS OF SALISBURY AND AMESBURY
ON APPEAL OF THE PARTIAL INITIAL DECISION ON THE SPMC LBP-89-32

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STATEMENT OF ISSUES

- I. Whether the Licensing Board erred in excluding Town of Salisbury Contentions 3, 7, 10 and 21 under the criteria for admission of contentions under 10 CFR §2.714. Memorandum and Order - Part II (Ruling on Contentions on the Seabrook Plan for Massachusetts Communities), July 29, 1988, p.42, 44-45, 47, 52. (hereinafter "Memorandum - Part II").
- II. Whether the Licensing Board erred in interpreting 10 CFR §2.714 as limiting the scope of Town of Salisbury contention 6 and Town of Amesbury Contention 4, which challenged the adequacy of the SPMC traffic management plan on the grounds that it fails to supply adequate personnel and equipment to control traffic at key intersections in each town that were not designated as TCP's, to only those specific intersections identified in the contentions and bases. Memorandum - Part II, at 11, 14, and 44. Tr. p. 16243-5.
- III. Whether the Licensing Board erred in rejecting certain proposed findings of fact submitted by the Town of Salisbury, where the record fairly sustains those findings. Public Service Company of New Hampshire, (Seabrook Station, Units 1 and 2), LBP-39-32, 30 NRC ____ (Nov. 9, 1989), Findings of Fact paragraph 3.68; Conclusions paragraphs 3.131 and 3.132; Town of Salisbury Proposed Findings 3.12, 3.14, 3.15, and 3.1-13.

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STATEMENT OF THE CASE

This is an appeal from the Partial Initial Decision issued by the Licensing Board on November 9, 1989, with respect to the Seabrook Plan for Massachusetts Communities ("SPMC") and the FEMA Graded Exercise. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LPB-89-32, 30 NRC _____ (Nov. 9, 1989) (hereinafter cited as "PID" to paragraphs). The Towns of Amesbury and Salisbury, as Intervenors before the Licensing Board, entered appeals on or about November 22, 1989.

Amesbury filed six contentions with the Licensing Board challenging the adequacy of the SPMC, while Salisbury filed twenty-three. On July 22 and 29, 1988, the Licensing Board

entered a Memorandum and Order in two parts which ruled on the admissibility of contentions filed by Amesbury, Salisbury and the other Intervenor. Memorandum and Order - Parts I and II, (Ruling on Contentions on the Seabrook Plan for Massachusetts Communities) (hereinafter cited as "Memorandum - Part I" or "Memorandum - Part II"). Part I dealt with contentions filed by the Massachusetts Attorney General's office (hereinafter "MAG Contentions"), the Seacoast Anti-Pollution League and New England Coalition on Nuclear Pollution. Part II ruled on contentions filed by the various intervenor towns. Due to the large number of admitted contentions by numerous intervenors, many of which raised similar issues, the admitted contentions of the various intervenors were consolidated into Joint Intervenor Contentions ("JI" Contentions) and litigated before the Licensing Board in that form.

This brief addresses three categories of errors by the Licensing Board: 1. erroneous rejection of contentions; 2. erroneous limitation of certain contentions that were admitted; 3. erroneous rejection of proposed findings of fact.

I. THE LICENSING BOARD COMMITTED ERROR IN REJECTING SEVERAL OFFERED CONTENTIONS.

An intervenor's contention must set forth "the basis for each contention...with reasonable specificity." 10 C.F.R. §2.714(b). It is well settled that the purposes of this requirement are

to ensure, at the pleading stage, that the agency's adjudicatory process is not invoked for impermissible

purposes, such a attacks on statutory requirements or challenges to Commission regulations, and that the issue at hand is appropriate for litigation in the particular proceeding. Additionally, the requirement "help[s] assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose."

Texas Utilities Electric Company, (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 930 (1987); Philadelphia Electric Company, (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 220, 230 (1986). "Like modern notice pleading in the federal courts, the purpose of the bases requirement is to provide only general notice of the intervenors' claim. As the applicants are well aware, they may fill any gaps in their knowledge of the intervenors' case through discovery against the intervenors." Id. at 933. The requirement of reasonable specificity does not require an intervenor to detail at the pleading stage the evidence it will offer in support of the contention. Philadelphia Electric Company, (Peach Bottom Atomic Power Station, Units 2 and 3) ALAB-216, 8 AEC 13, 20 (1974). "Section 2.714 should not be read and construed as establishing secretive and complex technicalities such as in some other areas of the law are associated with special pleading requirements for which some practitioners have an almost superstitious reverence." Id. Moreover, the Licensing Board is not to rule on the merits of the contention at this stage. Comanche Peak, 25 NRC at 931.

In this case, the Licensing Board appeared to construe §2.714 as establishing the type of secretive and complex technicalities the Appeal Board warned against in the Peach Bottom case. It rejected numerous contentions offered by the

Town of Salisbury (hereinafter sometimes cited as "TOS") on the grounds they were "speculative", "vague", or lacked sufficient basis. While the Town is not appealing the denial of all rejected contentions, when the contentions detailed below are examined in light of the purposes of the pleading requirement, rather than overly technical requirements, it is clear that they should have been admitted. By failing to admit these contentions, the Licensing Board deprived the Town of Salisbury of an opportunity for a hearing on these issues.

TOS Contention No. 3

The SPMC fails to provide assurances that adequate measures can and will be taken to protect the public in the Town of Salisbury as it fails to establish any reasonable basis from which it may be assumed that the offsite response organization will be sufficiently equipped and replenished to continue 24 hour operations for a protracted period within the Town of Salisbury.

The Board rejected this contention as vague and lacking a basis. Memorandum - Part II at 42. However, the contention is certainly clear enough to provide notice to the parties of what is to be litigated. Comanche Peak, 25 NRC at 930. It questions whether the SPMC provides for the Offsite Response Organization ("ORO") to be sufficiently equipped and replenished as necessary for 24 hour operation. It could probably be said of any contention or basis that it could be more specific. However, §2.714(b) requires only reasonable specificity. The other parties, through discovery, would have been able to ascertain the evidence which the Town intended to offer in support of the contention.

The second prerequisite is that the contention not be an improper invocation of the hearing process, such as a challenge to an NRC regulation. This was not a basis for the rejection of this contention. In any event, it is clearly a proper subject for litigation. It is a direct challenge to whether the SPMC provides reasonable assurances that adequate protective measures can and will be taken in a radiological emergency. 10 C.F.R. §50.47(a)(1). Specifically, 10 C.F.R., §50.47(b)(1) and (8) require the plan to demonstrate that the ORO has sufficient staff and equipment to augment and maintain the emergency response. This contention challenges the adequacy of the SPMC in meeting those criteria.

The basis also meets the third test, that the issue is appropriate for this particular proceeding. Section 2.1.1 of the SPMC provides that evacuation-specific positions will have only one shift of available personnel, with an additional twenty percent as back-up. It further states that additional personnel for certain positions, including traffic guides, will be requested from Yankee Atomic Electric Company. However, there is no indication how many such personnel are available, for how long, and what training, if any, they have received. Nor is there support for the use of only twenty percent available back-ups. In short, there is no adequate assurance of long term availability of personnel.

TOS CONTENTION 7

The SPMC fails to provide assurances that adequate measures can and will be taken to protect the public in

the Town of Salisbury because the Utility's plan fails to compensate for emergency personnel vehicle parking at transfer points and other traffic sensitive areas in the town where any parked vehicles would impede evacuating traffic and cause critical delay in evacuating populated areas of the town.

The Licensing Board rejected this on the grounds that such parking is not likely to be done in a manner that will impede evacuation, and the contention contained no basis for believing otherwise. Memorandum - Part II, at 45. In effect, the Licensing Board reached the merits of the contention at the pleading stage, which is clearly improper. Comanche Peak, 25 NRC at 931. Rather than determining if it raised a litigable issue, the Licensing Board made a finding of fact, without benefit of a hearing, that the parked vehicles would not impede the evacuation. This is beyond its authority at the contention stage. Moreover, the Licensing Board is once again requiring the intervenor to detail its evidence prior to the hearing. This contention provided sufficient notice of what was to be litigated, which was the parking of ORO vehicles at the Salisbury transfer point and traffic control points ("TCP"). It further alleged that these vehicles would impede traffic, thereby causing delays in the evacuation of traffic. This is clearly a litigable issue, since it challenges whether the traffic management plan is adequate and implementable. Regardless of the Licensing Board's view of the merits of this contention, the Town of Salisbury had the right to present its evidence on this issue.

TOS CONTENTION NO. 10

The SPMC fails to provide assurances that adequate measures can and will be taken to protect the public in the Town of Salisbury because the Utility's plan fails to provide traffic control at critical points on Route 110 in Salisbury where eastbound emergency traffic is likely to be obstructed by westbound traffic entering from side streets and attempting to travel against the planned flow of traffic.

This contention was rejected by the Board for two reasons: the alleged critical points were not identified, and the allegations of drivers not following traffic control recommendations was deemed to be a previously litigated human behavior issue. Memorandum - Part II, at 47. The first grounds for rejection was deemed to be a common one used against intervenors by the Licensing Board in this case. The Board ruled a number of times that a contention or basis must identify each and every street or intersection at which an intervenor claimed additional traffic control is needed, or those intersections were outside the scope at the contention. How this served the purpose for reasonable specificity was never cogently explained by the Licensing Board, however, which seemed to impose a higher burden with respect to these types of contentions than it ordinarily would under §2.714(b).

JUDGE SMITH: Okay. Now, that's going back to what our practice was, to admit these contentions from the towns when they allege a particular intersection or particular problem known to them better than anybody else in the whole world, to limit the basis in the contention to the examples they gave. We did that over and over and over again with respect to every town, and that's what we did this time, and our rulings were consistent all the way through.

What do you believe that that phrase identified in the basis statement means?

MS. SAINT ANDRE: I believe, Your Honor, that that refers to the fact that you were excluding the very end of that bases which talks about the fact, "The SPMC, however, provides only two traffic guides to manage this entire area which would be wholly inadequate given anticipated traffic volume, including emergency vehicles."

JUDGE SMITH: No, we consistently on the towns required them to identify the particular traffic problem that they were alleging was a problem. And we did not allow, in general, unspecified allegations to be admitted because in this instance we held the towns to a particular standard of knowledge of the conditions within their town, and that's what we did. I'm sure that other of your colleagues from the towns can recall it has happened to them in their contentions, and we did it in every instances, and that's what I think we did now in this case.

....

JUDGE SMITH: Well, in this case what you tell me is not persuasive. My memory is, and my memory of the practice is that what was admitted here was the bottlenecks, choke points and needs identified in the basis statement and nothing else. It was not a example. We did not accept exemplary types contentions on traffic choke points and bottlenecks in the towns or other problems, because we held them to a thorough knowledge of the problems that existed in their town.

Tr. 16243-5. (emphasis added).

Thus, the Licensing Board seemed to single out certain contentions by the intervenor towns and hold them to a higher standard of specificity than the "reasonable specificity" of §2.714(b). The Licensing Board's assertion that the towns are more familiar with their streets, and therefore must provide more detail and specificity in their contentions, finds no support in §2.714(b) or prior decisions. The standard under §2.714(b) remains the same for all contentions. The Board unjustly deprived the Town of Salisbury, with regard to this contention,

of the opportunity to litigate one of the most important issue to the town - the adequacy of the traffic management plan. Had the Town of Salisbury known, through regulation, prior Nuclear Regulatory Commission ("NRC") rulings or caselaw, that its contentions in this regard were required to meet a higher standard, it could, indeed, have provided these details. Instead, it rightfully relied on §2.714(b) and NRC interpretations of that rule, and provided sufficient notice of what it sought to have litigated - the need for more TCP's along Route 110 in Salisbury - and properly left for discovery the specific intersections and other details of its case. This same ruling was used over and over again by the Licensing Board to exclude crucial contentions and evidence offered by the intervenors on numerous defects in the SPMC's traffic management plan. The Board's ruling went far beyond the three purposes of the reasonable specificity requirement.

The second ground offered by the Licensing Board to reject this contention was that it concerned a previously litigated issue, driver behavior. However, as the Licensing Board itself later acknowledged, the only driver behavior issue previously litigated was that of aberrant behavior (e.g. panic, assaults on emergency personnel). Tr. 16169-16171, 16252-16253. By contrast, evidence of normal driver behavior when faced with a traffic jam of any type, not necessarily one caused by an emergency evacuation, was admitted by the Licensing Board at the hearing. Tr. 16169. This included evidence that drivers would

use available travel lanes, even on the wrong side of the road. E.g., Beevers Dir. ff. 17217 at 7-8. Since this contention alleges only that westbound traffic will be entering from side streets and attempting to travel against the planned flow of traffic, it is not the type of driver behavior issue which is within the scope of the previously litigated issue, by the Licensing Board's own interpretation. Accordingly, the contention should have been admitted.

TOS CONTENTION NO. 21

The SPMC fails to provide assurances that adequate measures can and will be taken to protect the public in the Town of Salisbury because the Utility's plan fails to provide adequate measures to protect the public in the event of a snow storm emergency as it fails to identify necessary resources for expedited snow removal and additional buses necessary to compensate for snow bound passenger cars.

The Licensing Board rejected this as the "ubiquitous snow removal contention" on the same grounds as it rejected MAG Contention 30: that it lacked a sufficient basis, and that it is inconsistent with the best efforts presumption. Memorandum - Part II, at 52. TOS Contention 21 is somewhat different from MAG Contention 30, however, as it alleges that the SPMC fails to identify necessary resources for expedited snow removal and that additional buses will be necessary to compensate for snow bound passenger cars.

This is another example of the Licensing Board addressing the merits of the contention in ruling on its admissibility. The Board, in ruling on MAG Contention 30, inferred that the basis for the contention must be that evacuation would interfere with

snow removal, but continued that there was no basis for assuming an evacuation would be ordered if unremoved snow makes that impractical. (This ignores, of course, the possibility that adverse weather could strike after an evacuation has been commenced.) In this reasoning, the Licensing Board essentially speculated as to what evidence would be offered to support the contention, then ruled, on the merits, that a snow storm would not adversely effect an evacuation. Instead of stepping into the intervenor's shoes, trying its case for it, and ruling against it, the Board should have admitted the contention, allowed the Town of Salisbury to introduce its own evidence, then ruled on the evidence before it.

This contention satisfies the three-prong test. It addresses a litigable issue, whether adequate emergency equipment is available to support and maintain the emergency response. 10 CFR §50.47 (b)(8). Moreover, the Criteria for Preparation and Evaluation of Radiological Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG-0654, FEMA-Rep-1, Rev. 1, Supp. 1, Criteria I,J.10.k., requires the plan to identify and provide means for dealing with potential impediments to evacuation routes, including seasonal impassability of roads. It is also sufficient to put the parties on notice of what is to be litigated.

Moreover, this contention does not violate the best efforts presumption. Rather, even if best efforts are assumed, a wholesale evacuation of the population does not usually take

place during snow removal efforts. If anything, there usually tends to be less traffic during snow storms, as many people choose not to drive under adverse conditions. The contention focuses on the lack of provision for expedited snow removal under the usual circumstances of an evacuation, where two factors are present which are not ordinarily encountered by town snow removal personnel during a storm: a massive increase in traffic which would undoubtedly block snow removal equipment, and the need to expedite that large volume of traffic out of the town.

Finally, Salisbury's contention raises an issue not raised under MAG Contention 30 and not addressed by the Licensing Board in its ruling: whether additional buses would be needed to compensate for snow bound passenger cars. This contention clearly meets the three prong test for admissibility. It does not invoke the process for an improper purpose, since it challenges the adequacy of the SPMC's provisions for transit-dependent persons. It also provides sufficient notice of what is to be litigated, and is appropriate for litigation in this case. Accordingly, TOS Contention 21 should have been admitted.

II. THE LICENSING BOARD IMPROPERLY LIMITED THE SCOPE OF CERTAIN CONTENTIONS.

Town of Salisbury Contention 6 and Town of Amesbury Contention 4 challenged the adequacy of the SPMC traffic management plan on the grounds that it fails to supply adequate personnel and equipment to control traffic at key intersections in the towns which are not designated as TCP's. Although the

Licensing Board admitted the contentions, it ruled that they were limited to those intersection identified in the contentions or supporting bases. Memorandum - Part II, at 11, 14, and 44. As a result, it also excluded evidence offered by the Town of Amesbury regarding numerous intersections in the Town which required traffic control personnel. Tr. at 16243-5. All of these rulings were erroneous.

The Board premised its rulings on the requirement for reasonable specificity under 10 CFR §2.714(b). As noted in part I of this brief, the purposes of the specificity requirement are three fold. The first is to ensure that the agency's adjudicatory process is not invoked for an impermissible purpose, such as attacks on Commission regulations. Another is to assure that the issue is appropriate for litigation at the particular proceeding. Comanche Peak, 25 NRC at 930. The Licensing Board recognized that both of these two criteria were met in admitting these two contentions, albeit in a limited form. The third requirement, which is the crucial one here, is to put the other parties on notice so that they will know at least generally what they will have to defend against. Id.

Amesbury's Contention 4 provided:

The SPMC fails to provide for adequate personnel or resources to implement the SPMC, including a comprehensive traffic management plan, fails to provide for appropriate means of relocation for the public, and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook Station in violation of 10 CFR §50.47(a)(1), 50.47(b)(1), 50.47(b)(8), 50.47(b)(10), NUREG-0654 II.A and II.J.10.

The Town listed numerous bases to support this contention, each of which the Licensing Board reviewed and ruled on as if it were a separate contention. Two of the bases offered in support of Amesbury Contention 4 were 4.B.(2),

The Town of Amesbury will in fact require substantially more than 16 traffic guides to staff anticipated and significant traffic choke points....

and 4.J.,

The Traffic Management Plan for the Town of Amesbury is inaccurate or incomplete and fails to depict certain anticipated bottlenecks and choke points at key intersections in the town. For example, the routing map at Amesbury Center, Appendix J, p. A-3, TCP No. B-AM-01, omits the intersection with Friend Street, although up to 1/6 of Amesbury's resident population could be expected, during an emergency, to access onto Friend Street, which is adjacent to the Amesbury High School and Cashman Elementary School. No traffic control is provided under the SPMC for these likely congested areas, even though the SPMC itself contemplates that parents will be returning to schools to pick up their children. SPMC Plan, p. 3.1-6. Similarly, the Amesbury Transfer area, where evacuation buses will be entering and exiting, is located approximately 1.4 mile from Amesbury Center. The SPMC, however, provides only two traffic guides to manage this entire area, which would be wholly inadequate given anticipated traffic volume, including emergency vehicles.

In its Memorandum - Part II, at 11 the Licensing Board rejected basis 4.B(2) as too vague, and as to 4.J., the Licensing Board ruled:

Basis 4.J. We agree with the Staff and admit the portion of Basis 4.J. which concerns the Traffic Management Plan for the Town of Amesbury to the extent that it relies on bottlenecks, chokepoints, and the need for additional traffic management identified in the basis statement. Id. at 14.

At the hearing, Amesbury offered testimony from its Police Chief, Michael A. Cronin, with regard to twenty-two intersections

in the Town which were not designated as TCP's, yet which would become choke points or bottlenecks in the event of an evacuation due to a radiological emergency at Seabrook Station. Amesbury Exhibit 1, pp.12-16. The Board, however, limited the Police Chief's testimony to two intersections, i.e., Friend Street/Main Street and Friend Street/Highland Street. It ruled that the contention, as it pertained to basis 4.J., had been admitted only as to the two specific intersections mentioned in 4.J., and that the reference in 4.B. and 4.J. to "bottlenecks and chokepoints at key intersections" lacked the "reasonable specificity" required by 10 C.F.R. §2.714(b). Tr. at 16243-5.

The Board made a similar ruling with respect to Salisbury contention 6, which provided:

The SPMC fails to provide assurances that adequate measures can and will be taken to protect the public in the Town of Salisbury because the Utility's plan fails to provide for the dispatch of sufficient numbers of traffic guides and supplies along major evacuation routes and at major intersections in the Town of Salisbury particularly at the Salisbury Transfer Point and at points on Beach Road where traffic becomes restricted to fewer travel lanes, which failure would promote disorder and delay in evacuation of the beach areas of the town.

The Licensing Board found the contention to be too vague, and therefore admitted it only in a reworded fashion:

The SPMC assigns too few traffic guides and insufficient equipment to the Salisbury Transfer Point and to those points along Beach Road where travel lane reductions occur.

Memorandum - Part II, at 44. In limiting both of these contentions, the Licensing Board erred and deprived the Towns of their right to a hearing.

The Licensing Board apparently believed that, unless each intersection at issue was specifically identified at the contention stage, the other parties "will not know at least generally what they will have to defend against." Comanche Peak, 25 NRC at 930. However, the key word in this test is "generally". The intervenor is not required to detail all of the facts which support the contention. In both cases, the contention contained sufficient specificity for the other parties to know generally what was to be litigated. Under Amesbury Contention 4, it was to be the failure of the SPMC to depict and provide traffic control for anticipated bottlenecks and chokepoints in the Town. Under Salisbury Contention 6, it was to be the failure to provide sufficient traffic guides and supplies along major evacuation routes and at major intersections in the Town. In both cases, sufficient notice was given, and the other parties could obtain further details via discovery. Comanche Peak, 25 NRC at 933. (In fact, Amesbury provided all this information to applicants during discovery.) For these reasons, and the reasons set forth in Part I of this brief with regard to TOS Contention 10, these two contentions should have been admitted as is. The failure of the Board to allow Amesbury and Salisbury to litigate these issues deprived them of their right to a hearing.

III. THE LICENSING BOARD ERRONEOUSLY REJECTED CERTAIN PROPOSED FINDINGS WITH REGARD TO THE ADEQUACY OF THE SPMC TRAFFIC MANAGEMENT PLAN.

This Appeal Board has substantially more discretion to review and overturn the Licensing Board's findings of fact than a court exercising judicial review. Duke Power Company, (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 394, 403 (1976). The Appeal Board is not required to accede to a licensing board's findings of fact even if they are supported by substantial evidence or are not clearly erroneous. Id. In reviewing factual findings of a licensing board, the Appeal Board may substitute its judgment for that of the fact finder if the record fairly sustains such a different result. General Public Utilities, Nuclear Corp., (Three Mile Island Nuclear Station, Unit No. 1), ALAB-881, 26 N.R.C. 465, 473 (1987).

In this case, the Licensing Board made virtually no findings with regard to much of the evidence presented on behalf of the Town of Salisbury. Rather, it simply ignored un rebutted testimony as to the deficiencies in the SPMC traffic management plan for the town.

Specifically, the Board's findings with regard to TCP-B-SA-06, the intersection of Routes 1, 1A and 110 at Salisbury Square, through which traffic evacuating from Salisbury Beach will pass, ignored un rebutted testimony. This was one of only two TCP's, among the many that were assailed by the intervenors, which was discussed at any length in the Board's decision. PID, paragraphs 3.41-3.57. However, while discussing the testimony of Dr. Adler,

a witness for the Massachusetts Attorney General, and Mr. Lieberman, who testified on behalf of the applicants, the Licensing Board virtually ignored the testimony of Salisbury's Acting Police Chief Frank Beevers, despite the fact the Board found that Chief Beevers has over 30 years experience as a police officer in the Town of Salisbury, and that he was competent to testify as to traffic conditions and patterns in the Town of Salisbury. PID, paragraphs 3.12 and 3.14. Yet the Board, without one word of explanation, rejected Town of Salisbury's proposed findings of fact paragraphs 3.1.2, 3.1.4, 3.1.5, and 3.1.13, all of which dealt with traffic conditions and patterns in Salisbury, and all of which were supported by Chief Beevers' testimony.

In particular, Salisbury's Proposed Finding of Fact 3.1.4 described the long traffic jams which occur on summer weekend days on Route 1A, the access to Salisbury Beach. These traffic jams are from two to five miles of bumper-to-bumper traffic and can last for four to five hours. Similarly, proposed Finding 3.1.5 details the causes of this back-up, and indicates that the usual bumper-to-bumper traffic jam becomes considerably worsened when all the persons at the beach leave at once, as when a rain storm hits suddenly. This can result in three to four hours of gridlock, on top of the usual delay. These proposed findings were based on testimony from Chief Beevers based upon his personal observations. Beevers, Dir. ff. Tr. 17217 at 5-9; Tr. 17230. They were not contradicted by other testimony, yet were totally ignored by the Licensing Board. Obviously, the current

traffic conditions are not only relevant, but a crucial element in designing and evaluating an emergency evacuation plan and Evacuation Time Estimates ("ETE"). The Licensing Board erred in not allowing proposed Findings 3.1.4 and 3.1.5. Since the record as a whole fairly supports them, this Appeal Board should allow these Findings.

Based upon this unrebutted testimony, Town of Salisbury proposed Findings 3.1.2 found that the SPMC plan is inadequate, since it fails to provide adequate personnel to evacuate the Salisbury Beach area. The number of Traffic Guides provided for is inadequate to maintain two-way traffic, remove obstructions, and control conflict points. Beevers Dir. ff. Tr. 17217 at 10. Proposed Finding 3.1.13 provides that the failure of the SPMC to identify sufficient TCP's and adequately design and staff those it does identify, will lead to traffic queues rather than expedited traffic. Moreover, normal driver behavior in the face of such delays will lead to drivers driving over traffic control cones, using available travel lanes, and using cut throughs to attempt to escape the traffic jam. Beevers Dir. ff. 17217 at 7-8; O'Connor Dir. ff. Tr. 16458 at 14-19; Tr. 16321; 16330-2; 17264-6; 17282; 17285.

All of the facts underlying proposed Findings 3.1.2 and 3.1.13 were essentially undisputed. Chief Beevers' testimony that a wholesale exodus from Salisbury Beach causes up to four hours of traffic gridlock, plus up to five hours of bumper to bumper traffic, when coupled with the additional traffic impact

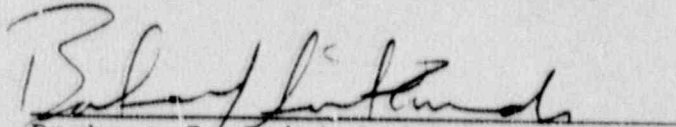
of local residents also trying to leave, leads to the inescapable conclusion that the SPMC does not and cannot evacuate the Salisbury Beach area itself in less than ten hours. Additional time will be needed for this traffic to exit the Emergency Planning Zone ("EPZ"). Thus, despite all of Mr. Lieberman's computers, the cold hard facts are that the ETE of ten hours for the last person to clear the ten mile EPZ boundary, which was found by the Licensing Board in Findings paragraph 3.68, is unrealistic. The SPMC does not provide reasonable assurances that adequate protective measures can and will be taken in the event of a radiological emergency. 10 CFR §50.47(a)(1). Since the proposed Findings are fairly supported by the record, the Appeal Board should so find.

CONCLUSION

For the foregoing reasons, this Appeal Board should find that the traffic management plan in the SPMC is inadequate and that the SPMC therefore fails to provide reasonable assurances that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook Station. In addition, it should find the Licensing Board improperly excluded

and limited contentions, as discussed herein, and reverse and remand this matter to the Board with instructions to admit those contentions in their entirety and hold further hearings.

Respectfully submitted
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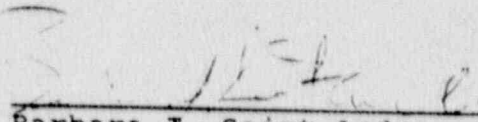
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CERTIFICATE OF SERVICE

I, Barbara J. Saint Andre, do hereby certify that on January 24, 1990, I served a copy of the foregoing Brief of Appellants-Intervenors Towns of Salisbury and Amesbury on Appeal of the Partial Initial Decision on the SPMC LBP-89-32 by mailing it, postage prepaid, to the parties on the attached service list and by express mail to those marked with an asterisk.



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