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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING APPEAL BOARD  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before Administrative Judges:  
G. Paul Bollwerk, III, Chairman  
Howard S. Wilber  
Alan S. Rosenthal

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

Docket No. 50-443-OL  
Docket No. 50-444-OL  
(Off-site EP)  
  
January 24, 1990

TOWN OF WEST NEWBURY'S BRIEF ON APPEAL  
OF THE PARTIAL INITIAL DECISION ON THE SPMC LBP-89-32

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## STATEMENT OF ISSUES

The Town of West Newbury (TOWN) is appealing LBP-89-32, the Partial Initial Decision (Seabrook Plan for Massachusetts Communities and 1988 FEMA Graded Exercise) served on November 13, 1989.

TOWN is raising the following issues:

1. Whether the Board erred in rejecting certain contentions filed by TOWN.

2. Whether the Board erred in its rulings concerning the adequacy of the traffic management plan of the SPMC (PID. 3)

3. Whether the Board erred in its rulings concerning the adequacy of the provisions of the SPMC concerning the evacuation of the transit dependent and the bus routes (PID. 4)

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INTRODUCTION

The Town of West Newbury, Massachusetts (hereinafter referred to as "TOWN") is located within the 10 mile Emergency Planning Zone (hereinafter referred to as "EPZ") for the nuclear power plant located in Seabrook, New Hampshire. In May, 1986, TOWN sought and was granted leave to intervene in the licensing proceedings for Seabrook Station with regard to any Massachusetts Radiological Emergency Response Plan submitted and/or considered in connection with the licensing proceedings. Neither the Commonwealth of Massachusetts nor any Massachusetts municipality filed such a plan. In the absence of state or local government plans, the utility, New Hampshire Yankee, prepared and submitted its own emergency response plan for the Massachusetts communities

within the EPZ -- the Seabrook Plan for Massachusetts Communities (hereinafter referred to as "SPMC"). TOWN filed and litigated contentions concerning the adequacy of that utility plan before the Licensing Board.

On November 13, 1989 the Licensing Board issued LBP-89-32, its "Partial Initial Decision (Seabrook Plan for Massachusetts Communities and 1988 FEMA Graded Exercise)" (hereinafter referred to as "PID"). The Board concluded, inter alia, that "the SPMC is adequate and implementable" (PID. 13.2) and that the SPMC "meets the requirements of 10 C.F.R. sec. 50.47 and Appendix E to 10 C.F.R. Part 50" (Id. 13.5). It authorized the issuance of of an operating license (Id. 13.10). TOWN filed its notice of appeal from this decision on November 23, 1989.

In this brief in support of its appeal, TOWN maintains that the Licensing Board erred in rejecting certain contentions filed by TOWN and that the Board erroneously decided crucial issues concerning traffic management and the evacuation of the transit dependent population presented in JI-4 and JI-7.<sup>1</sup>

I. THE LICENSING BOARD ERRED IN REFUSING TO ADMIT CERTAIN  
CONTENTIONS FILED BY TOWN

TOWN maintains that certain contentions rejected by the Licensing Board presented substantial emergency planning issues directly addressing the adequacy and implementability of the SPMC

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<sup>1</sup> "JI" refers to joint intervenors. Following the prehearing conference of August 3-4, 1988 the contentions and bases of all intervenors accepted for litigation by the Licensing Board were consolidated for litigation (PID. 1.8 - 1.9).

required by 10 CFR sec. 50.47, and that those contentions should have been admitted for litigation and hearing.

A. Standards of Review

Pursuant to 10 C.F.R. sec.2.714(b) a party must file contentions "and the bases for each contention set forth with reasonable specificity." The Appeals Board in Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB -845, 24 NRC 220 (1986), while recognizing that "there is no easy formula for determining what are 'basis' and 'reasonable specificity'", reiterated that "such judgment must be exercised case-by-case, with the underlying purposes of this requirement in mind." Id., at 230. The purposes include:

to help assure at the pleading stage that the hearing process is not improperly invoked....to put the parties on notice of what issues they will have to defend or oppose, and to assure the issues raised are appropriate for litigation in the particular proceeding.

Id.

It is well established that an acceptable contention and the reasonable specificity for a basis for a contention do not require detailing supporting evidence either in the contention or the basis at the initial pleading stage. See, e.g., Houston Power and Lighting Co., (Allens Creek Nuclear Generating Station, Unit 12), ALAB-590, 11 NRC 542, 551 (1980); Mississippi Power and Light Co., (Grand Gulf Nuclear Station), ALAB-130, 6 AEC 423, 426 (1976). Rather, at the initial pleading stage, a party need only allege the reason(s) for its concern that a particular emergency

planning standard is not met; it need not, at that initial pleading stage, demonstrate "factual support for the particular assertions which they have advanced as the basis for their contentions." Houston Power and Lighting Co., supra, ALAB-590, 11 NRC at 551. Indeed, if a party was required to provide all the factual support for a contention at the pleading stage there would be no need for discovery.

These principles have been summarized in Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982):

While the "basis with reasonable specificity" standard requires a contention to be stated with particularity, ...it does not require a petition to detail supporting evidence.... Nor should a licensing board address the merits of a contention when determining its admissibility....What is required is that an intervenor state the 'reasons' for its concern.

TOWN submits that the Licensing Board misapplied these standards in ruling on the admission of certain contentions submitted by TOWN and, in so doing, plainly erred.

B. Relevant Facts Concerning Rejected Contentions

On April 13, 1988 TOWN filed its "Contentions of the Town of West Newbury Concerning the Seabrook Plan for Massachusetts Communities" (hereinafter referred to as "TOWN Contentions"). Contention 4 raised the issue of the validity of the assumption of NUREG-0654 I.D.1.c. and the findings of adequacy required by 10 CFR sec. 50.47(a), (b), or (c)(1). It was supported by a basis setting forth two reasons why the assumption that local officials

will "have the resources sufficient to implement those portions of the utility offsite plan where...local response is necessary" was erroneous as applied to TOWN. First, TOWN maintained that the SPMC:

makes no provision for New Hampshire Yankee Offsite Response Organization involvement in snow removal from roads should such action be necessary to effectuate an evacuation during or after a snow storm. Accordingly snow removal is left to the local authorities. The Town of West Newbury does not have adequate resources, equipment or personnel to clear the roadways in a timely fashion in the event that immediate evacuation during or after a major snowstorm becomes necessary. Nor is there any reasonable assurance that all of the Town equipment would be operable at the time of an emergency. At present the Town relies on private contractors to provide equipment and personnel to assist Town personnel in snow removal on a regular basis. Such additional private equipment and personnel cannot be required to participate, or be assumed to be available to participate, in snow removal during a radiological emergency.

TOWN Contentions, p.4. This part of the basis was explained again in the "Reply of the Town of West Newbury to Responses of the Applicant and the NRC Staff to Intervenors' Contentions Concerning the Seabrook Plan for Massachusetts Communities" filed on June 17, 1988 (hereinafter, "TOWN Reply"). TOWN explained, inter alia:

Given the New England weather, the possibility that a radiological emergency at Seabrook Station requiring immediate evacuation of the Town could occur during or immediately after a major snow storm cannot be ignored in determining whether the SPMC provides a basis for the findings of adequacy required by 10 CFR sec. 50.47(a), (b) or (c)(1). In this contention, the Town challenges the assumption of NUREG-0654 I.D.1.c that assumes that local officials will have the resources sufficient to implement snow removal in the event of an emergency at Seabrook Station requiring an immediate evacuation of the entire Town during or after a major snowstorm. A town-wide immediate

evacuation is an emergency far different from any the Town has faced in the past or is reasonably likely to have to face in the future absent a radiological emergency at Seabrook Station requiring such an evacuation. Thus the issue is...whether the SPMC is deficient in that it fails to make adequate provisions for snow removal in the absence of the Town's ability to do so using its best efforts and, thereby, fails to meet the requirements of 10 CFR sec. 50.47(a), (b) or (c)(i).<sup>2</sup>

TOWN Reply, p.2-3.

The Board stated that it was rejecting the snow removal issue raised in TOWN Contention 4 "for the same reasons we rejected MAG Contention 30." Memorandum and Order-Part II (Ruling on Contentions on the Seabrook Plan for Massachusetts Communities), LB 7/29/88, p.56. MAG Contention 30, which maintained that there was no assurance that snow removal would occur promptly enough or be sufficiently effective to enable an evacuation to be feasible in adverse winter weather, was rejected by the Licensing Board because, according to the Board:

To make sense of this explanation, the Board must infer that an evacuation would interfere with normal snow removal. But if we continue down that line of reasoning, we can see no basis for assuming that an evacuation would be ordered if unremoved snow makes that protective action impractical....Moreover...the general tenor of the contention...is inconsistent with the best efforts presumption of the emergency planning rule as modified.

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<sup>2</sup> The issue of snow removal as an issue to be litigated was also raised in contention 8, basis 9, which alleged that the plan does not provide compensatory measures for snowbound passenger cars or make provisions for resources necessary for expedited snow removal (Contentions, p.12). The licensing board also rejected this portion of the contention as "another snow-removal allegation which does not state a litigable claim... . See, e.g., Board's ruling on MAG Contention 30." Memorandum and Order- Part II (Ruling on Contentions on the Seabrook Plan for Massachusetts Communities), LB 7/29/88, p.60.

Memorandum and Order-Part I (Ruling on Contentions on the Seabrook Plan for Massachusetts Communities), LB 7/22/88, p.50-51

At the pre-hearing conference held on August 3-4, 1988, TOWN sought clarification of the Board's decision rejecting the snow removal issue, suggesting that the Board had misconstrued the focus of the contention and basis. The Board did not alter its position. See, TR. 14611-14615.

C. The Licensing Board Erred in Rejecting the Snow Removal Issue

TOWN maintains that the Licensing Board erred in precluding litigation on an issue clearly relevant to assessing the adequacy and implementability of an emergency response plan for Seabrook Station.

10 CFR sec. 50.47(b) sets out standards which offsite emergency response plans for nuclear power reactors must meet. These include, inter alia, the following:

- (8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.
- (10) A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, ....

NUREG 0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (hereinafter referred to as "NUREG-0654") provides standards for fulfilling the requirements of the planning regulations. According to New

Hampshire Yankee, the SPMC "has been developed to comply with NUREG-0654 guidance and evaluation criteria." Plan, section 1.3.1, p.1.3-1. NUREG 0654 (Rev. 1, Supp. 1) mandates that:

The offsite response organization's plans to implement protective measures for the plume exposure pathway shall include: ... Identification of and means for dealing with potential impediments (e.g., seasonal impassibility of roads) to use of evacuation routes, and contingency measures.

Criterion II.J.10.k. It also provides an assumption that local officials who have declined to participate in emergency planning will "have the resources sufficient to implement those portions of the utility offsite plan where State and local response is necessary." Assumption I.D.1.c.

Snow in New England in the winter months is a regular and normal seasonal occurrence which routinely results in traffic problems ranging from minor slowdowns to major tie ups. For emergency planning in New England, snow is undeniably a potential impediment to the use of evacuation routes within the meaning of NUREG 0654. Accordingly, since NUREG 0654 mandates means for dealing with such impediments and contingency measures, whether or not these standards have been met is a proper subject for litigation concerning the adequacy and implementability of an emergency response plan. The rejected snow contentions squarely raised issues within these regulatory parameters.

The SPMC says absolutely nothing concerning snow removal. Its total silence renders this an area where local response is necessary to achieve compliance with Criterion II.J.10.k, and,

under Assumption I.D.1.c of NUREG 0654 (Rev. 1, Supp. 1), an area where it is assumed that the local officials will have the necessary resources to respond adequately to the potential impediments. TOWN contended that under normal major winter snowfall circumstances, West Newbury has no need to clear all areas of the town virtually simultaneously as it would if evacuation of the entire town because of a radiological emergency at Seabrook Station was required, and that consequently, it does not do such townwide, simultaneous snow removal, and does not have the resources to do so. Indeed, not only does West Newbury lack the resources to clear the entire town at the same time, but, further, it normally relies in substantial part on private contractors with their own plows to assist in snow removal efforts. Plainly, independent contractors could not be required or even expected to remain in the area in the event of a radiological emergency.

In addressing this contention, the Licensing Board referred to its ruling on MAG 30, set forth, supra. However, that analysis totally misses the point of TOWN's contention. The issue TOWN sought to litigate was not whether evacuation would interfere with normal snow removal, but whether the plan contained provisions for accomplishing snow removal in time to make evacuation feasible if, absent snow, evacuation would be the protective action deemed to be the necessary and proper response to a particular emergency. Providing for snow removal in New

England cannot be deemed an extraordinary measure outside the scope of prudent emergency planning. It is simply inappropriate and plainly erroneous to say that measures for snow removal need not be addressed because evacuation would not be ordered if the town could not remove the snow. That is analogous to saying that the plan need not address the need for buses and other vehicles to evacuate special facilities and transit dependent persons because evacuation would not be ordered if there were not enough buses or enough emergency vehicles to deal with the transit dependent population. The SPMC, to comply with the relevant planning standards and to provide the requisite reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, must address the issue of the sufficiency of resources to deal with impediments that are likely to arise in normal situations and snow in the winter in New England is a normal situation.<sup>3</sup> Accordingly, it was error to reject the contentions raising the snow issues and the decision must be reversed and the case remanded for rehearing.

Nor does assuming that conditions making evacuation the preferred protective action might not frequently arise during or immediately after a snowstorm, mean that the possibility can be ignored in determining whether a contention should be admitted

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<sup>3</sup> Further, while the Licensing Board stated in its rejection of MAG 30 that that contention was not consistent with the best efforts assumption, TOWN's snow contentions were expressly predicated on the town's using its best efforts -- best efforts which it maintained would simply and clearly be inadequate.

for litigation, or render the exclusion harmless. It is well established, as this Board reiterated in Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-924 (November 7, 1989), p.65 that:

"The Commission's emergency planning regulations are premised on the assumption that a serious accident might occur and that evacuation of the EPZ might well be necessary....The adequacy of a given emergency plan therefore must be adjudged with this underlying assumption in mind. As a corollary, a possible deficiency in an emergency plan cannot properly be disregarded because of the low probability that action pursuant to the plan will ever be necessary."<sup>4</sup>

D. The Licensing Board Erred in Rejecting TOWN Contentions 1 and 2

For the reasons set forth by the Massachusetts Attorney General in his appeal of the rejections of MAG Contentions 1-6, which TOWN adopts herein, TOWN submits that the licensing board erred in rejecting TOWN contentions 1 and 2 (TOWN Contentions, p.1-2; TOWN Reply, p.1-2), which presented similar threshold issues.

II. THE LICENSING BOARD ERRED IN ITS RULINGS CONCERNING THE SPMC TRAFFIC MANAGEMENT PLAN AND PROVISIONS FOR TRANSIT DEPENDENT BUS ROUTES

Contention JI-4 addressed the SPMC's traffic management plan. JI-7 concerned the evacuation of transit dependent persons. Both included portions of TOWN's accepted contentions.

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<sup>4</sup> Quoting Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1, ALAB-832, 23 NRC 135, 155-56 (1986), aff'd in part and rev'd in part, CLI-87-12, 26 NRC 383 (1987), quoting Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 713 (1985), review declined, CLI-86-5, 23 NRC 125 (1986).

TOWN participated in the litigation concerning the traffic management plan and evacuation of transit dependent persons and submits that the Licensing Board made erroneous findings of fact and reached erroneous conclusions of law in accepting these provisions of the SPMC as adequate and implementable.<sup>5</sup>

A. Standards of Review

The fundamental prerequisite for the issuance of an operating license for a nuclear reactor is set forth in 10 CFR 50.47 (a)(1):

...no operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The regulations then set forth standards for adequate emergency response plans, including, inter alia, that "a range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public". 10 CFR 50.47 (b)(10). Criteria for developing and evaluating compliance with the regulatory standards are contained in NUREG 0654 (Rev. 1, and Rev. 1, Supp. 1). Criterion II.J sets out standards for protective responses.

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<sup>5</sup> The Licensing Board also concluded that "any failure to comply with Section 50.47(b) rests on the nonparticipation of the Commonwealth and local governments." (PID. 1.29; see also, 1.33). TOWN maintains that the inadequacies discussed below are in no way attributable to the nonparticipation of local officials. The road structure will not change if local authorities submitted plans. Nor can it be said that the ORO could not provide additional personnel and equipment if necessary to develop and staff an adequate plan.

This Board clearly has the power to reject or modify findings of fact of the Licensing Board where this Board believes that the record demonstrates that a different finding should have been made. It also has the power to substitute its judgment for that of the Licensing Board if the record supports that different judgment. See, e.g., General Public Utilities Nuclear Corporation (Three Mile Island Nuclear Station, Unit No. 1), ALAB-881, 26 NRC 465, 473 (1987).

B. The Licensing Board Erred in Finding the Traffic Management Component of the SPMC Adequate to Support Licensure

TOWN maintains that the rulings of the licensing board concerning the traffic management plan reflect erroneous findings of fact and a flawed interpretation and application of the "reasonable assurance" standard.<sup>6</sup>

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<sup>6</sup> While the precise definition of the reasonable assurance standard is an issue which has been certified to the Commission in Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-922 (October 11, 1989), the Chairman of the Commission, Kenneth M. Carr, stated, inter alia, the following in a January 17, 1990 letter to Representative Peter H. Kostmayer, Chairman of the House of Representatives Subcommittee on General Oversight and Investigations of the Committee on Interior and Insular Affairs:

The Commission in 1987 considered and rejected the option of making its findings on emergency planning turn on whether the applicant for a license had exercised its "best efforts."...The Commission's final rule resolved the question in favor of the existing approach, declaring that "a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in [an] emergency."...As the Commission told the First Circuit Court of Appeals in its appellate brief, "in its final rule the Commission rejected the proposed alternative which would have shifted the NRC's focus from evaluating the adequacy of the utility's emergency plan to evaluating whether the utility had done all it could to provide effective emergency planning."....

Thus, whatever reasonable assurance means, it means more than the best efforts of the utility; it means the provision of some

Albert Knowles Jr., the Superintendent of Streets in West Newbury, presented TOWN's primary testimony concerning the SPMC traffic management plan as it related to West Newbury (see, TOWN Dir., ff. Tr. 16621).<sup>7</sup>

Mr. Knowles testified concerning inadequacies in each of the TCP's located in West Newbury -- inadequacies which TOWN maintains could result in impairing effective traffic movement and the evacuation process. These inadequacies were not addressed or challenged by Applicants on cross-examination of the witness (see, Tr. 16622-16684), nor were they specifically addressed by the testimony of Applicants' panel on traffic management (see, App. Reb. No.9, ff. Tr.17333).

Mr. Knowles further provided testimony concerning the need for additional traffic personnel at the TCPs in the SPMC and for additional traffic control points and personnel at eight other intersections in West Newbury (TOWN Dir., ff. Tr. 16621, p.7-9). Applicants' panel generically responded that no additional TCPs

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objective standard of protection.

<sup>7</sup> Mr. Knowles has lived in West Newbury for 47 years and has held his current position for 20 years. As the Superintendent of Streets he is responsible for the maintenance and repair of streets in West Newbury and is familiar with the road structure and road conditions in all types of weather (TOWN Dir., ff. Tr. 16621, p.1). He has field experience in traffic management, including rerouting traffic (Tr. 16647), and in responding to emergency road conditions throughout the town arising from snow storms and storm damage (Tr. 16624). The Board found that he was familiar with and competent to testify concerning the road structure and traffic patterns in West Newbury (PID. 3.21).

were necessary because they would not influence the overall ETE (App. Reb. No.9, ff. Tr.17333, p.11-12). However, they also admitted that traffic guides could provide useful assistance at entrances to schools and other facilities (Tr. 17680).

The Board's traffic management findings concerning TOWN summarized the nature of the flaws alleged in TOWN's testimony (PID. 3.22). However, it completely, and erroneously, ignored the unrebutted testimony concerning inadequacies in the TCPs. TOWN also maintains that the board's finding that the SPMC provides an adequate number of TCPs because additional TCPs would not reduce the ETE (PID. 3.70), and that the SPMC provides an adequate number of traffic control personnel (PID. 3.78) who will not be tied up by people seeking information because they "are instructed not to have any long conversations with drivers, but rather to tell them to tune their radios to the EBS stations for information" (PID. 3.80) are plainly erroneous.

These findings ignore a number of important facts. First, the primary purpose of traffic management as part of the SPMC is to achieve maximum reasonable dose savings -- to maximize dose reduction -- and to achieve adequate protection for the public (Tr. 17538; PID. 3.62). NUREG 0654 is premised on a recognition that: "The overall objective of emergency response plans is to provide dose savings...for a spectrum of accidents." NUREG-0654 (Rev. 1), I.D.1. The licensing board, while recognizing that the underlying purpose of a traffic management plan is to

maximize dose reduction (PID. 3.62), and recognizing that, in some instances, additional TCPs might assist the flow of vehicles in certain areas (id., 3.69) and "might be helpful in providing reassurance to to evacuees and in assisting traffic movements" (id., 3.70), nonetheless concluded that because additional TCPs would not reduce the overall ETE, they are unnecessary (see, id., 3.68 - 3.70).

While lowering the overall ETE is a major component and goal of a traffic management plan, it is not the only objective. Alleviating congestion within an area in the event of a release of radiation so as to assist the public in moving further away from Seabrook Station -- even though still within the EPZ -- will further the goal of maximizing dose reduction, since the closer to the plant, the greater the risk (Tr. 17529). Second, since the overall ETE is defined as the ETE for the area with the longest evacuation time, enhancing traffic control and movement strategies in other areas may well result in a lower ETE for that area.

The Licensing Board has misconstrued the import of TOWN's argument. It is not simply a challenge to "the Applicants ability to move evacuees who are nearest to Seabrook Station away from Seabrook Station more quickly, even though they may reach a bottleneck somewhere else in the EPZ." (PID. 3.62). Rather, TOWN and other Intervenors were arguing that the inadequacies in the number of TCPs and personnel in the plan resulted in a plan which

failed to maximize dose reduction. Since the level of radiation exposure decreases with distance from the source (here, Seabrook Station), eliminating bottlenecks anywhere within the EPZ will further the goal of dose reduction by moving people farther from the plant more quickly. And, since NUREG 0654 (Rev. 1), I.D.3 recognizes that "The range of times between the onset of accident conditions and the start of a major release is of the order of one-half to several hours", speed is of the essence.

TOWN's argument depends only on the the existence of an accident with a release of radiation -- not on the existence of a summer scenario of crowded beaches, or any of the other conditions erroneously deemed essential to the argument by the Board.<sup>8</sup>

If, as TOWN maintains, the traffic management plan submitted in the SPMC cannot be implemented in a manner that achieves its

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<sup>8</sup> The Board postulated five conditions as inherent to Intervenor's argument: "1) a fast breaking accident where a radiological release is occurring or is imminent and an evacuation has been ordered; 2) a summer scenario when the beach areas are the most crowded; 3) a total ORO response without help from local authorities and police to alleviate local congestion; 4) a time at the beginning of the evacuation when critical pathways are at capacity and congestion is still evident on roads near the plant but could be relieved; and 5) that the Traffic Guides can be at the local congestion points early in the evacuation to be effective at removing the congestion." (PID. 3.63). Not only are conditions 2-5 not essential to the argument, but TOWN finds condition number 3 to be inconsistent with the Board's assumptions that, under the realism and local best efforts doctrines, local officials will do their best to protect the public and that they will follow the SPMC in so doing. If local officials follow the plan they will not be setting up additional TCPs, because to do so would be outside the plan.

underlying purpose of maximizing dose reduction, it does not provide the requisite reasonable assurance of adequate protective measures and must be found inadequate to support an operating license. Indeed, as Applicant's expert, Edward Lieberman, testified: "As a matter of fact, the plan is worthless if it can't be implemented." (Tr. 17533).

As to the ability of the assigned personnel to perform their functions, Applicants' panel also testified that discouraging traffic movement -- which is one of the functions of a traffic guide -- means to dissuade and direct motorists from travelling in a direction which is contrary to the recommended evacuation paths as delineated in the traffic control diagram (App. Reb. No.9, ff. Tr. 17333, p.30). Common sense dictates that dissuading and directing may well require verbal communications with motorists lasting longer than the time necessary to tell them to listen to their car radios for EBS messages and could, therefore (particularly in light of the fact that even those not needing discouragement may stop to ask questions), result in a single traffic guide being unable to perform all the functions necessary at a TCP.<sup>9</sup>

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<sup>9</sup> In addition, it is likely under fast-breaking accidents that some evacuation routes may experience congestion prior to the arrival of traffic guides at the TCPs. Activating a TCP in a congested traffic environment is likely to be more difficult and may take a significant amount of time. Comparisons to the ability of law enforcement personnel to assert control in congested situations are inapposite, given the differences between ORO personnel and police officers.

In sum, the traffic management plan fails to adequately implement an effective strategy for maximizing dose reduction and adequately protecting the public.<sup>10</sup> Nor are its deficiencies obviated because input was obtained in 1986 from five of six local chiefs of police. That input cannot even be viewed as an endorsement of the present plan since there is no evidence that the chiefs considered the proposal they reviewed to be a plan that would maximize dose reduction or adequately protect the public at the time, much less that they now consider the plan adequate.<sup>11</sup>

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<sup>10</sup> Mr. Knowles also testified to the narrow width of a number of roads in West Newbury which, in his opinion, based on his experience, would increase the likelihood of traffic obstructions and delays (TOWN Dir., ff. Tr. 16621, p. 10-12). On cross examination he testified that some of the streets on bus evacuation routes have no shoulders and steep dropoffs or embankments (Tr. 16650-16654). Again, this testimony was not directly addressed by Applicants' panel. The Licensing Board similarly failed to address the impact on evacuation presented by the road structure in West Newbury -- a structure which is such that the evacuation process could be impaired by traffic obstructions and natural obstacles. This failure to consider potential impediments and prepare contingencies further demonstrates the inadequacy of the plan as currently formulated.

<sup>11</sup> If the Licensing Board's finding that the TCPs and ACPs were developed with input from police chiefs from five of the six Massachusetts communities (PID. 3.37), is intended to suggest additional support for a finding of sufficiency and rebut intervenor's contentions of inadequacy, TOWN maintains that this fact is irrelevant to the issue of adequacy. Police chiefs in the Massachusetts EPZ communities were requested to provide input on the traffic routing and TCP and ACP strategies by way of comments on drafts submitted to them by Mr. Lieberman. Personnel constraints were clearly a factor they were to consider in their review. In January and February, 1986, inputs were received from five of the police chiefs and were incorporated into the traffic management plan (App. Reb. No.9, ff. Tr. 1733, p.6-7; Tr. 17444, 17475-77, 17596-99). At that time the chiefs believed that the plan would be implemented by law enforcement personnel (Tr. 17449). There has been no further input from the police chiefs (See, Tr. 17477). Nor was there any evidence that the chiefs considered

West Newbury also provided direct testimony concerning its resources available for traffic control. Sandra Raymond, a member of the Board of Selectmen, testified that the Board feels that the Town's resources, detailed in the testimony, are inadequate to provide appropriate coordination and control of traffic in the event of an order to evacuate due to a radiological emergency at Seabrook Station (TOWN Dir., ff. Tr. 16621, p.11-12).

Applicants presented no contrary evidence concerning West Newbury's resources or their adequacy for traffic coordination and control. While applicants' panel testified that West Newbury's police chief was contacted in early 1986, no witness had spoken to anybody in the West Newbury Police Department since then about traffic control points or traffic management (Tr. 17444-45). No member of the panel had any knowledge of the number of police available in West Newbury to respond to an emergency at any particular point in time, or when officers would become available after notification of an emergency (Tr. 17445). While Mr. Lieberman testified that in 1986 the police chief felt that the traffic control points reviewed could be handled, he

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the traffic management plan to be effective to maximize dose reduction and/or adequate to protect the public in the event of a radiological emergency, or that they would not have proposed additional control points absent their own personnel constraints and limitations. Accordingly, TOWN maintains that the prior, partial police participation provides no support for a finding that the SPMC traffic management plan is adequate and implementable.

also testified that he did not know whether the chief expected state aid (Tr. 17445).<sup>12</sup>

Accordingly, TOWN submits that the Licensing Board erred in finding that the SPMC traffic management plan was adequate to support a finding that the regulatory criteria for the issuance of an operating licence had been met.

C. The Licensing Board Erred in Finding the Provisions for the Evacuation of Transit Dependent Persons of the SPMC Adequate to Support Licensure

TOWN maintains that the rulings of the Licensing Board concerning the bus routes and evacuation for transit dependent persons reflect erroneous findings of fact and a flawed interpretation of the "reasonable assurance" standard.

First, while FEMA has found the procedures for the evacuation of the transit dependent to be adequate, that finding does not encompass a finding that the bus routes for transit dependent persons themselves are adequate (App. Ex. 43C at 64-65).

The board's summary of TOWN's testimony concerning the inadequacy of the bus routes (PID. 4.4) ignores crucial aspects of the testimony.

Albert Knowles provided TOWN's testimony concerning the bus routes for transit dependent persons. He testified concerning

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<sup>12</sup> While it is reasonable to assume, under a best efforts response, that state and local police will assist in efforts to protect the public, including traffic control and access activities, there is no evidentiary basis for assuming that a significant number of local police would be available at any time or for making any assumption as to when any local police would be available (See App. Reb. No.9, ff. Tr. 17333, p.20-21, Tr. 17444-45).

flooding conditions along some of the bus routes. First, part of Ash Street, as detailed in his testimony, is a dirt road which runs through the Ash Street swamp and is rendered seasonably impassible. It generally floods at least twice a year between February and May and may be totally flooded from 24 hours to five days. That road has been closed for as long as two months. An additional problem is caused by the fact that backup from clogged drainage ditches on Crane Neck Street flows toward Ash Street and may put it underwater. Second, parts of River Road, as detailed in his testimony, are subject to flooding. These areas will generally go underwater with a combination of northeast winds and an 11 -11 1/2 foot tide. In 1986 these portions of River Road were underwater for four days. All of the accesses to River Road and most of River Road is in the floodplain (TOWN Dir., ff. Tr. 16621, p. 13-14).

While Applicants' panel provided direct testimony concluding that impassibility due to flooding was highly unlikely (App. Reb. No.9, ff. Tr, 17333, p.69, 102-103,105-106), the reliability of that conclusion was substantially undermined by their own testimony on cross examination. For example, the map upon which they relied in determining that Ash Street in West Newbury was unlikely to flood, specifically stated that "This map is for flood insurance purposes only. It does not necessarily show all areas subject to flooding in the community..." (Tr. 17426). Nor did Applicants present any testimony to contradict Mr. Knowles

testimony concerning his personal knowledge of the flooding in that area. Finally, Applicants' panel agreed that flooding on an unpaved road with an organic soil could impair road traffic more than flooding on a paved surface (Tr. 17432).

Applicants' panel further testified that the map upon which they relied showed only the 100 and 500 year flood plain. The panel agreed that the map would not tell them whether roads in those boundaries, such as River Road in West Newbury, were also in a 1, 10, 25, 50 or 75 year flood plain and, therefore, were more likely to flood more frequently (Tr. 17427). Again, Applicants presented no testimony to contradict Mr. Knowles' testimony concerning his personal knowledge of flooding on River Road.

Nonetheless, the licensing board accepted Applicants' panel's conclusion concerning the unlikelihood of impassibility due to flooding (PID. 4.23). TOWN maintains that this finding is without factual foundation and clearly erroneous. It further maintains that the SPMC does not have sufficiently detailed contingencies to address the seasonal impassibility of roads as required in NUREG-0654. For example, while the SPMC calls for the determination of alternate roadways available to rejoin assigned bus routes when roads are impassable due to flooding or some other obstacle, given the configuration of some of the roads, adequate alternative roadways to achieve the goals of the bus routes do not always exist. One of the West Newbury route

maps in the SPMC indicates that the route involving Ash Street continues through and beyond the area bounded by the swamp. There is no alternative route through that area. Similarly, there is no alternative roadway for rejoining the route involving River Road in West Newbury so as to achieve the goals of the bus route. See SPMC, App. J. Nor does the SPMC have adequate implementing procedures for notifying transit dependent persons of any changes in routes which could arise after those persons had left their homes to await the arrival of the evacuation buses. These deficiencies, alone require reversal of the Licensing Board's finding that the bus routes were adequate and implementable (PID. 4.30).<sup>13</sup>

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<sup>13</sup> In addition, Mr. Knowles testified to inadequacies in the bus transfer point on Stewart Street, including its size, and the nature of the road in that area. Moreover, the transfer point is at the base of a hill which can become temporarily impassible due to ice and snow. A Highway Department snowplow was unable to negotiate this hill eight years ago and went off the road (TOWN Dir., ff. Tr. 16621, p.14). He also testified to another potential blockage on a bus route. Moulton Street, between Brickett Street and the reservoir can be blocked temporarily during a snowstorm with high winds, due to the configuration of the banking on the side of the road (TOWN Dir., ff. Tr. 16621, p.14). Mr. Knowles further testified that there is an increase in the likelihood that disabled or improperly parked vehicles would obstruct traffic flow, including buses, from the fact that a number of the streets in West Newbury have not been paved with state funds and are narrower than the 22 feet width required for roads paved with such funds. These include nine roads along the bus routes which range from 12 feet to 18 feet either in whole or in part. The narrower widths of these streets would increase the difficulty of simply circumventing an obstruction. Furthermore, some of the streets on bus evacuation routes have no shoulders and steep dropoffs or embankments, some on both sides of the road (TOWN Dir., ff. Tr. 16621, p.10-11. Tr. 16650-16654). As the Licensing Board found, 17 feet of road width -- absent on some of these roads -- are needed for two buses to pass each other (PID. 4.14). Finally, Mr. Knowles testified that delays may also result from the previously described inadequacy of traffic control points (TOWN Dir., ff. Tr. 16621, p.14). All of these inadequacies,

While the Licensing Board relied on testimony concerning a post plan development field study (PID. 4.14), no member of the Applicants' panel testifying concerning the results of the field study actually participated in or observed the study. No member of the panel was present on the buses while the field study was being conducted (Tr. 17380).

The Board's finding of adequacy was also premised on Applicants' commitment to make certain changes in the future (see, PID. 4.16). However, assertions that errors will be corrected in the future do not, TOWN submits, provide the Board with an adequate basis for a finding of "reasonable assurance" until the proposed corrections are set forth more specifically and examined, so that the Board can determine whether they will, in fact, rectify the errors so as to render the plan one that permits a "reasonable assurance" finding.

In sum, TOWN submits that the Board plainly erred in finding that the evacuation of transit dependent people could be effectuated in accordance with the reasonable assurance standard under the provisions of the SPMC relating to that issue.

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ignored by the Board, further support the conclusion that the bus routes are deficient and that the Board erred in its finding of adequacy.

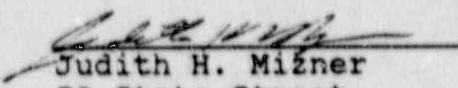
CONCLUSION

For all the reasons set forth above, the Licensing Board's Partial Initial Decision regarding the adequacy of the SPMC and the authorization of an operating license, should be reversed.

Respectfully submitted,

TOWN OF WEST NEWBURY  
By its Attorney,

Dated: January 24, 1990

  
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CERTIFICATE OF SERVICE

DOCKETED  
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I, Suzanne P. Egan, Counsel for the City of Newburyport, in  
above-entitled action, hereby certify that I have caused copies of the  
enclosed documents to be served upon the persons at the addresses  
listed below, by first class, postage prepaid, mail and by Federal  
Express, postage prepaid, mail to those names which have been marked  
with an asterisk.

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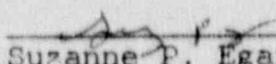
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Signed under seal this 24 day of January, 1990.

  
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