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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

Kenneth M. Carr, Chairman
Thomas M. Roberts
Kenneth C. Rogers

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
PUBLIC SERVICE COMPANY OF	)	Docket No. 50-443-OL
NEW HAMPSHIRE, et al.	)	(Offsite Emergency
	)	Planning Issues)
(Seabrook Station, Unit 1))	
)	

FURTHER COMMENTS OF THE SEACOAST ANTI-POLLUTION
LEAGUE IN REGARD TO "IMMEDIATE EFFECTIVENESS"
OF LICENSING AUTHORIZATION OR,
IN THE ALTERNATIVE IN SUPPORT OF A STAY

On February 6, 1990 the intervenors filed with the Appeal Board an "Emergency Motion of the intervenors: (1) to clarify the status of the appeal of LBP-89-33 and (2) to reopen the record on the NHRERP as to the need for sheltering in certain circumstances." (Copy attached as Appendix A). That motion dealt with the fact that, on February 1, 1990, the Applicants' for the first time were claiming that the New Hampshire Radiological Response Plan (NHRERP) had been amended in October 1988 to eliminate sheltering as a planned protective action in the event of an emergency for the beachgoers on the Seabrook are beaches. If the Applicants are correct in this claim--which SAPL disputes--the Commission should conclude that this revised plan eliminates any basis for licensing authorization. On the terms of the Licensing Board's own decision, in LBP-88-32, the availability of

sheltering as a protective response for the beach population was important to both FEMA's and the Licensing Board's determination that the NHRERP was in compliance with 10 CFR 50.47(a) and (b) and was adequate. (Among other things the availability of sheltering in these limited circumstances provides the range of protective actions required under 10 CFR 50.47(a)(10), which would not otherwise exist.)

Moreover, whether or not the NHRERP can be said to have been materially changed in October, 1988,¹ there is now extant a recently purported revision to the NHRERP which seems to eliminate sheltering for Condition 1, (when it would maximize dose savings), thereby also raising the question of the status of the FEMA finding of adequacy on the NHRERP, as well as whether the emergency plan approved as "adequate" by the Licensing Board is still the operative plan.²

The recent change to the NHRERP to eliminate the use of sheltering for beachgoers for Condition 1, when it would achieve maximum dose savings, raises the question not only of whether the NHRERP can be substantially amended in a manner contrary to the requirements of the Licensing Board, but also the question of

¹/ Both the State of New Hampshire and FEMA have denied the plan has changed. (See "SAPL Supplement to Emergency Motion of the Intervenors", attached hereto as Appendix B.)

²/At paragraph 8.96(9) of LBP-88-32, the ASLB stated: "FEMA has concluded that the requirements for a range of protective actions under NUREG-0654, FEMA-Rev. 1, have been satisfied even though the State of New Hampshire has chosen not to shelter the beach population except in very limited circumstances. FEMA also concluded that there is a technically appropriate basis for New Hampshire's choice. FEMA's finding is supported by the preponderance of the reliable, probative, and substantial evidence."

whether or not, if it indeed can be amended in this fashion, there can now be said to be FEMA "findings and determinations" in support of the adequacy of the plan, or a "range of protective actions" for the beach population.

BACKGROUND

As the Commission knows, prior to January 1988, the official FEMA position before the ASLB was that the NHRERP was fundamentally inadequate as to the protection of the beach population. According to the prefiled FEMA testimony, September 11, 1987:

. . . .

(2) On peak summer days there are thousands of beachgoers in the Seabrook EPZ in areas beginning approximately 1.7 miles from the plant. The current New Hampshire plans contemplate evacuating the many thousands of beachgoers who have access to no adequate shelter as a protective action in the event of an accident at Seabrook. We understand that the plans contain no consideration of sheltering the 'daytrippers' because on summer days when there is a large number of these people, it is not possible to find reasonably accessible shelter for them. There is an additional number of persons who would be in or have access only to shelter in unwinterized cottages and motel rooms. The protection afforded by sheltering in these structures will definitely be less than that afforded by a normal wood frame house.

. . . .

*Therefore, using the standard guidance for the initiation and duration of radiological releases, and the current NHRERP including ETE, it appears that thousands of people could

be unable to leave during an accident at Seabrook involving a major release of radioactivity without adequate shelter for as much as the entire duration of that release."

. . . .

That testimony was directed to the then current version of the NHRERP (REV 2, 9/86) which expressly acknowledged:

"Sheltering may not be considered a feasible protective action on the seacoast beaches during the summer. For this reason, early precautionary beach closures may be implemented. The conditions under which such an action may be taken are described in NHRERP Vol. 4, NHCDA Procedures, Appendix F."

As it is now well known, the FEMA position did not survive past 1987. In January 1988, FEMA filed testimony saying that it "could" find the NHRERP adequate as to New Hampshire, if New Hampshire had "considered" the use of sheltering. As FEMA said in its January 25, 1988 testimony:

"FEMA interprets these provisions [NUREG-0654/FEMA Rep. 1, Rev. 1, Planning Standards J.9 and J.10] as requiring consideration of more than a single protective measure. FEMA notes that the NHRERP includes no explicit consideration of sheltering for transient beach population."

On February 11 and 19, 1988, New Hampshire provided, by letter, the information FEMA had claimed was necessary to permit it to find the NHRERP adequate: i.e., "consideration" of sheltering. In fact, what New Hampshire did was to not only "consider" sheltering, but include it as a planned protective

action for the beach population in certain limited circumstances, including when it would maximize dose savings, (Condition 1).

Accordingly, in March, and again in its final iteration in June, 1988, FEMA filed testimony, replacing its September 1987 testimony (and ultimately its January 25, 1988 testimony), and finding the NHRERP to be adequate because of New Hampshire's "consideration" of sheltering, which "consideration" had led the State to adopt sheltering as a planned protective action response in certain limited circumstances.

As set forth in the June 10 FEMA testimony, FEMA now stated that:

"The response by New Hampshire to the FEMA supplemental testimony is adequate in concept. The transient beach population is treated as a special population and a special circumstance is afforded this special population to include precautionary actions such as early beach closure at the emergency action levels (ECLs) prior to the necessity for considerations of protective actions for the general public."

The conclusion of the testimony was:

"The requirement for a range of protective actions has been satisfied even though the State of New Hampshire has chosen not to shelter the summer beach population except in very limited circumstances. With respect to the summer beach population, the planning elements of J.9. and J.10.m. of NUREG-0654/FEMA Rep. 1, Rev. 1 have been met. There exists a technically appropriate basis for the choice made by the State of New Hampshire not to shelter the summer beach population except in very limited circumstances. At the same time, whenever there are choices incorporated into the NHRERP, implementing detail will be necessary."

Thus, as the history of the FEMA position on the NHRERP reveals, the entire basis on which FEMA justified changing its position from a conclusion that the NHRERP was fundamentally inadequate, to a position that the NHRERP was adequate, was the decision of the State of New Hampshire, as a result of having "considered" the sheltering option, to include it in certain limited circumstances as the protective response action of choice.

In County of Rockland v. NRC, 709 F.2d 766 (Ca. 2, 1966), the decision of the NRC, on a three to two vote, to permit the continued operation of Indian Point Nuclear Plant was under review. In that case, FEMA had made a finding that deficiencies remained in the adequacy of emergency preparedness around the plant. Those deficiencies concerned primarily the lack of a county plan for Rockland County, and a present inability of Westchester to secure a contract with local bus drivers to provide an emergency bus evacuation in the event of a nuclear accident.

In discussing the problem with the bus drivers, the Court states as follows:

"Directing its intention to the Westchester bus problem, the Commission observed that substantial progress had been made in resolving the bus issue and that interim measures were added during negotiations with Westchester bus drivers. The Commission explained that any emergency evacuation could be accomplished in part through car pooling and that experience had shown that bus drivers do not shirk their responsibilities during emergencies. Moreover, the NRC staff had represented that if a fast-breaking nuclear accident were to occur, sheltering, not evacuation, would be

the preferred initial safety procedure until the radioactive plume had passed. Hence, the four to five hour delay in mobilizing National Guard troops would be less dangerous; by the time the radioactive plume had passed, National Guard troops would be positioned to evacuate surrounding populations." (Id. at 773, emphasis as to "sheltering" in original.)

Thus, there is clearly precedent, in the Commission's own decision, for the proposition that where an evacuation is likely to be delayed, i.e., to be an inadequate response due to the time it would take, that sheltering must be considered, and may be the more effective action. That is precisely the situation at Seabrook on those many warm beach days when the beach will be crowded with beachgoers with no means of timely evacuation, due to the road network, if there is a fast breaking accident.

In those situations, as the FEMA testimony so clearly laid out, consideration of sheltering was essential to a determination of plan adequacy. The plan having been amended to provide the option of sheltering as a protective response, it cannot now simply be deleted because the sheltering option is difficult to implement. Moreover, any such change would undercut the Licensing Board's December 20, 1988 decision upholding the NHRERP, as well as the Appeal Board affirmance on this point in ALAB 924.

RECENT AMENDMENT TO THE NHRERP

The NHRERP has recently been revised. The most recent revision is known as Rev. 3, which was furnished to the parties and the Board by a cover letter, NYN-89156, December 1, 1989 (copy attached as Appendix C). As identified in that cover letter, the changes made in Rev. 3 do not indicate a major change

to the plan, such as eliminating the sheltering option for Condition 1, when it would maximize dose savings. Rather, the revisions in Rev. 3, as described in a December 1, 1989 cover letter, included changes due to:

- o "The annual plan review, including training and drill comments from participants and controllers,
- o commitments made during the ASLB proceedings.
- o FEMA comments provided as a result of technical assistants visits, plan reviews of the 1988 graded exercise;
- o quarterly updates to call lists and telephone numbers and
- o issues identified in the ASLB Partial Initial Decision (PID) on the NHRERP dated December 30, 1988."

However, by a subsequent letter, NYN-9030, February 5, 1990, (a copy attached as Appendix D), the first revision to Rev. 3 was announced. In that revision, for the first time, the provisions pertaining to protective action responses for the beach population are changed in a forthright manner. Thus, whereas Rev. 3, Vol. 1, Section 2.6 "Protective Response", stated:

"If potential radiological exposure can be avoided by implementing a timely evacuation, evacuation may be the preferred protective action."

The February 5, 1990 revision, (a copy attached as Appendix E), changes that language to the following:

"If potential radiological exposure can be avoided by implementing in evacuation, evacuation will be the preferred protective action. Where implementation of protective action is deemed appropriate (i.e., a prognosis of decreasing ability to mitigate the emergency at the plant), evacuation will generally be the selected course of action. If constraints exist which impede evacuation, appropriate actions, such as impediment

removal or alternative evacuation routing, will be implemented to facilitate evacuation. If an evacuation cannot be implemented, sheltering in place will be recommended."

Thereby as of February 5, 1990, for the first time, the NHRERP clearly states that evacuation is going to be the only protective action strategy for the beach population, unless it cannot be implemented, due to physical impediments to the evacuation, (in which case, evidently, nothing is to to be done at all, since beachgoers are not in shelters and therefore cannot sensibly follow a recommendation to "shelter in place.")

RELEVANT REGULATORY PROVISION

Pursuant to 10 CFR §50.47(a)(2):

"The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether the State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented . . . a FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability."

The FEMA finding in the Seabrook proceeding that the NHRERP met regulatory standards J.9 and J.10(m) (of NUREG-0654, REV. 1) was based on the commitment of the State of New Hampshire, as a result of its "consideration" of sheltering, to include a limited sheltering option in the plan. The option has now been removed, except in the situation where an evacuation cannot be carried out due to physical impediments.

That being the case, on the plan as amended, there can no longer said to be FEMA "findings and determinations" on which rebuttable presumption can be based. Moreover, there is now no longer any "range of protective actions" as required in 10 CFR 50.47(b)(10), and no possible basis for an NRC finding that the NHRERP is adequate.

Respectfully submitted,

Seacoast Anti-Pollution League
By its Attorneys,


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By: 

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Dated: February 22, 1990

I hereby certify that copies of the within Further Comments of the Seacoast Anti-Pollution League in Regard to Immediate Effectiveness or, in the Alternative, in Support of a Stay have been forwarded by Federal Express to the parties on the attached service list indicated by an asterisk, and to the remainder of the parties on the service list by first class, postage prepaid.


Robert A. Backus, Esquire

APPENDIX A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Before Administrative Judges:

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

In the Matter of	)	Docket Nos. 50-443-OL
	)	50-444-OL
PUBLIC SERVICE COMPANY)	
OF NEW HAMPSHIRE, ET AL.)	
(Seabrook Station, Units 1 and 2)	)	February 6, 1990

EMERGENCY MOTION OF THE INTERVENORS:
(1) TO CLARIFY THE STATUS OF THE APPEAL OF LBP-89-33
AND (2) TO REOPEN THE RECORD ON THE NHRERP
AS TO THE NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES

INTRODUCTION

The Massachusetts Attorney General ("Mass AG"), the Seacoast Anti-Pollution League and the New England Coalition On Nuclear Pollution (the "Intervenors") received the Applicants' February 1 Response to the Licensing Board Order of January 11, 1990 on February 2, 1990. This pleading is attached hereto as Exhibit 1. Certain representations in this pleading require a response by the Mass. AG to this Board. Specifically, the Applicants assert that the Licensing Board's November 20 "explanation" (LBP-89-33) concerning ALAB-924's remanded issues was itself either never appealed, or if appealed, the Intervenors' claims of error were never briefed to this Board.

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Further, astoundingly, the Applicants now assert for the first time that an October 10, 1988 plan revision to the NHRERP effectively eliminated sheltering as a protective measure option for what was called in ALAB-924 at 50 Condition (1): those circumstances in which sheltering for the general beach population would maximize dose savings. The Intervenor's move in response for permission to clarify and have this Board confirm that there has been no failure to seek review of LBP-89-33 by the Intervenor's. Further, Intervenor's move to reopen the record on the NHRERP in light of the Applicants' February 1, 1990 disclosure of the meaning of the October 1988 plan revision. If the plan is now to be interpreted as represented by the Applicants to the Smith Board, even under those circumstances when sheltering the beach population would be the dose-minimizing strategy as found by the Smith Board and upheld on appeal in ALAB-924, sheltering nonetheless would not be recommended. Thus, new evidence--the October 1988 plan changes as interpreted as of February 1, 1990--should be considered in determining whether the NHRERP makes the most effective use of sheltering and otherwise contains protective action decision criteria which maximize dose savings under the circumstances of the Seabrook site. The Intervenor's move to reopen the record to have this Board consider this "new" NHRERP revision. Further they seek summary disposition on the NHRERP sheltering contentions based on the principles of res judicata.

I. INTERVENORS HAVE PRESERVED THEIR RIGHT TO APPEAL LBP-89-33 AND HAVE OTHERWISE EXHAUSTED ALL INTRA-AGENCY APPELLATE OPPORTUNITIES AVAILABLE TO DATE TO CHALLENGE LBP-89-33

The Applicants assert that:

LBP-89-33 is now the law of the case, subject only to sua sponte Appeal Board review. This is so because two intervenors, NECNP and SAPL, never filed a Notice of Appeal with respect to LBP-89-33, and the remaining intervenors never sought an extension of time to brief their appeals with respect to that decision. Thus, there is no appellate challenge to LBP-89-33.

Exhibit 1 at 3, n.6. This statement is simply wrong.

1. First, the Applicants no doubt make this assertion because they intend to argue, if and when necessary, to the Court of Appeals (before whom appeal of the Smith Board's November 9 licensing action is now pending) that intervenors did not preserve their appellate rights regarding LBP-89-33 and that, therefore, based on principles of exhaustion of administrative remedies, they can not claim error in the Licensing Board's disposition of the ALAB-924 remand.

2. In fact, Applicants' statements are based on a fundamental misunderstanding of the nature of intervenors' efforts to have the Licensing Board's errors regarding the ALAB-924 remand corrected. As this Board is aware, on November 13, intervenors filed a motion to revoke the November 9 licensing action on the grounds, inter alia, that the Smith Board had violated the letter and spirit of the mandate of ALAB-924. This November 13 motion for mandatory relief was filed pursuant to this Board's jurisdiction over LBP-88-32 and intervenors' appeal thereof. On November 16, the Commission

took jurisdiction over this motion away from this Board indicating that it would rule on this motion. On November 20, the Smith Board issued LRP-89-33. On November 22, the Mass AG noticed the appeal of LBP-89-32 and also specifically noted that he was appealing LBP-89-33. On December 1, the Intervenors then supplemented their mandamus motion before the Commission to include a discussion of the errors made by the Board in LBP-89-33 as further support for mandatory relief. Then, on January 24, 1990, the Mass AG (and other Intervenors) filed briefs on LBP-89-32, excluding from these briefs the legal errors already briefed at length on December 1 in support of the mandamus petitions pending before the Commission. At 1-2 of his January 24 Brief on Appeal of LBP-89-32, the Mass AG noted the absence of any briefing on the issues surrounding the disposition of the remanded issues and stated:

The Mass AG believes those errors entitle Intervenors to mandatory relief revoking the November 9 license authorization. The merits of Intervenors' motions for such mandatory relief are presently pending before the Commission.

3. Applicants' notion that LBP-89-33 has never been challenged by the Intervenors in briefs is a remarkable misreading of this record. Mandamus, of course, is an appellate remedy available to enforce the mandate of a superior tribunal when it has been disobeyed. Mandamus can lie as an alternative to appeal and error if the disobedient tribunal's order is otherwise final and reviewable. On November 13, Intervenors sought mandatory relief as a form of appellate remedy for the Smith Board's contravention of ALAB-924 (which had issued on review of LBP-88-32). That mandamus remedy was

(and is) available as part of the ongoing appeal of the New Hampshire decision and was available on November 13 notwithstanding the fact that no appeal of LBP-89-32 had been filed at that time. After the Commission took jurisdiction over the Intervenor's mandamus away from this Board on November 16, all claims that the disposition of the ALAB-924 remand by the Smith Board was in error were no longer before this Board. This is the case whether those claims are part of the continuation of Intervenor's appeal of LBP-88-32 (the November 13 Motion) or are part of Intervenor's appeal of LBP-89-32 (the December 1 Supplemental Motion). Indeed, Intervenor supplemented their mandamus with the clear errors committed by the Smith Board in LBP-89-33 (which of course simply "explained" the errors actually committed in and by LBP-89-32).^{1/} Thus, the Intervenor have briefed the errors

^{1/} It was actually unnecessary for the Mass AG to separately identify LBP-89-33 in his November 22 Notice of Appeal. SAPL and NECNP by noticing an appeal of LBP-89-32 also, in effect, were appealing all post-facto "explanations" for this licensing action. The alternative proposed by the Applicants would result in either a final and appealable decision being noticed for appeal and the lengthy series of post-facto "explanations" that issue afterward not being considered as part of that decision or if each later decision is appealed separately each would become a separate decision on appeal needing to be consolidated with the first. But then how and why was the first decision "final" and "reviewable" if the later-issued "explanations" are necessary to it? The procedural morass arises because of the inherent intellectual confusion of the Smith Board which issued a "final" and "reviewable" decision on November 9 (beginning the immediate effectiveness review, for example) and then a lengthy series of "post-final" decisions. Intervenor was under no obligation to file separate notices of appeal each time as each post-facto "explanation" must be deemed (if it is to be even considered at all) part of the "final" and "reviewable" decision issued in LBP-89-32. Regarding the exquisite procedural complexity that results when a Board first decides to license and only later decides how and why, see Intervenor's January 22 Brief on Appeal of LBP-89-38 at 4-13.

in LBP-89-33 and that decision has been challenged to the full extent possible before this agency.

Apparently, the Applicants understand some of this and yet they assert that the Mass AG should have sought "an extension of time to brief [his] appeals" with respect to LBP-89-33 and the disposition of the remanded issues. Exhibit 1 at 3 n.6. But this Board after November 16, 1989 did not have appellate jurisdiction over the disposition of the ALAB-924 remand and LBP-89-33. Moreover, Intervenors had already briefed these issues on December 1. So, it is simply incoherent to assert that Intervenors should have asked for more time: 1) to brief issues he (with other Intervenors) had already briefed; and 2) to put these briefs before a Board which no longer had jurisdiction.

Of course, in the event the Commission grants the Intervenors' November 17 Motion for Reconsideration and returns the mandamus claims -- asserted after November 22 pursuant to appeal of both LBP-88-32 and LBP-89-32 -- to this Board, then this Board can proceed to determine whether the Smith Board disobeyed its mandate.^{2/} In that event, the Commission would

^{2/} For example, this Board could then decide the not-very-difficult question whether ALAB-924 was disobeyed when the Smith Board asserted (LBP-89-33 at 4) that ALAB-924 did not impact on the "requisite findings of reasonable assurance of public safety" even though ALAB-924 held that the NHRERP was not an approvable plan and no reasonable assurance finding could be made without sheltering detail. ALAB-924 at 68, n.194 and cases cited therein. Indeed, no terribly difficult analysis is needed to determine the necessity for a mandamus when one compares LBP-88-32, 28 NRC at 769-770 with ALAB-924 at 60-61, 63-64 and then with LBP-89-33 at 29-33.

be returning to this Board the mandamus motions in their present posture with LBP-89-33 fully briefed. It was in this sense and in light of these circumstances that the Mass AG on January 24 asserted to this Board that he had not briefed these remand issues again and that the merits of his challenge to the disposition of the ALAB-924 remand in LBP-89-32 and LBP-89-33 was before the Commission.

4. Because of the potential importance of any argument that might later be made concerning the exhaustion of administrative remedies regarding this all-important error which Intervenors are seeking to have the Court of Appeals review, the Mass AG moves that this Board clarify the present posture of Intervenor efforts to seek intra-agency appellate review of the errors in the disposition of the ALAB-924 remand and issue an order that states:

- A. Intervenors, (SAPL, NECNP and the Mass AG) did timely file Notices of Appeal of LBP-89-32. The Mass AG expressly referenced LBP-89-33 in his Notice of Appeal. SAPL and NECNP are deemed to have appealed LBP-89-33 when they noticed the appeal of LBP-89-32 on November 22, 1989. Indeed, their notices of appeal were filed 2 days after LBP-89-33 issued.
- B. Intervenors, (SAPL, NECNP and the Mass AG) have timely briefed the errors they claim the Smith Board committed in its disposition of the ALAB-924 remand. Intervenors were under no obligation on January 24 to file briefs with this Appeal Board which repeated what they had already argued to the Commission and were under no obligation to seek an extension of time from this Board in which to file or refile such briefs. As of November 16, 1989, the Commission and not this Board had jurisdiction over these claims of error.

II. THIS BOARD SHOULD IMMEDIATELY REOPEN THE RECORD ON THE NHRERP AND GRANT INTERVENORS SUMMARY DISPOSITION ON THE SHELTERING CONTENTIONS.

A. Background

This Board is intimately familiar with the issues surrounding sheltering as a protective action in the NHRERP for the general beach population at Seabrook. ALAB-924 at 47-69. In brief outline, in earlier versions of the NHRERP, it was stated that "sheltering may not be considered a feasible protective action on the seacoast beach during the summer." NHRERP, §2.6.5. In response to FEMA's concerns about the absence of adequate consideration or exploration of a sheltering option, the State of New Hampshire between approximately September 1987 and October 1988 determined that sheltering for the general beach population would be appropriate in certain circumstances. See App. Direct Testimony No. 6 at 19-20 and Appendix 1 at 7-8, ff. Tr. 10022. At the hearings on the NHRERP in May and June 1988, witnesses for the Applicants and the State of New Hampshire asserted that certain changes^{3/} to the NHRERP indicated that there would

^{3/} Attached as Attachment II to Appendix 1 (beginning 42 of 47) of the Applicants' Direct Testimony No. 6, ff. Tr. 10022, were proposed modifications to the protective action decision criteria in the NHRERP. See also Attachment 1 to App's Direct Testimony No. 6 (1-35). These proposals were as of April 27, 1988, the date of the testimony, which was received on May 2, 1988. These changes were not made before the record closed in June 1988. At §8.14 of LBP-88-32, the Smith Board noted that revisions would be made in the NHRERP reflecting the proposals litigated.

be 2 different sets of circumstances or conditions when sheltering would be recommended for the general beach population:

(1) if sheltering is the dose minimizing protective action; and

(2) if there are physical constraints on evacuation.

ALAB-924 at 50, citing record at notes 133-136. Condition (1) was represented to include a certain kind of release for which it was asserted sheltering would be the dose minimizing action. ALAB-924 at 50-51. See also 52 at notes 140-142 and accompanying text. FEMA's Keller reviewed the proposed sheltering option and found it appropriate at this site "not to shelter the summer beach population except in very limited circumstances." Amended Testimony of Cumming/Keller, ff. Tr. 13,968 at 11 (emphasis supplied). Of course, those limited circumstances are the same identified as Conditions (1) and (2) above.

The Licensing Board in December 1988 approved the NHRERF based on the use of sheltering as a protective action for the general population in these limited circumstances.^{4/}

Although this Board then reversed the Smith Board regarding the need for sheltering detail, it affirmed the Board regarding

^{4/} Intervenor's argued (and continue to argue) that: 1) sheltering is underutilized for the beaches in light of the long ETEs and 2) comparative efficacy of protective actions cannot be determined in the absence of dose comparisons which were excluded when proffered.

the appropriateness of limiting sheltering to these identified conditions in November 1989. ALAB-924 at 50-58. Indeed, at oral argument in July 1989 this Board (Judge Rosenthal) explored at some length the precise circumstances under which sheltering is considered by New Hampshire as the dose minimizing protective action. Tr. of Oral Argument, July 27, 1989 at 15-17.

JUDGE ROSENTHAL: Well, accepting for the moment that thesis, your opponents argue quite vigorously that the plan deals with the sheltering alternative. And I would like your response to that. . . . (88)

MR. DIGNAN: [Condition] [n]umber one is, I use the example of the "puff release", and I mean the true puff release. I don't mean the one you have to predict in advance, because that's pretty difficult. But technical people tell me it is possible you could have an accident situation develop where you had a pressurization situation and you would have a planned release: you would know you're going to release, or how long you're going to release and you could reach a decision, a rational decision as an emergency planner at that point to shelter instead of evacuate because you would know your duration. You would know the type of release you're going to get and so forth and so on. That's item [or condition] number one.

JUDGE ROSENTHAL: Well, now here is item number one: now let's say that you have this puff release and we're invoking number one. . . . What does the plan do with respect to sheltering.

MR. DIGNAN: New Hampshire is all sheltering-in-place; that's what the plan. And the shelter-in-place concept is laid out in the plan. . . . (90-91)

B. Amendment and Revision of the NHRERP

Applicants and the State of New Hampshire represented to the Smith Board in sworn testimony that the NHRERP would be updated and revised to reflect the changes in protective action criteria. As noted above, at ¶8.14 of LBP-88-32, the Smith

Board noted that revisions would be made in the decision criteria reflecting changes proposed in Attachment 1 to the Applicants' Direct Testimony No. 6, ff. Tr. 10022 (to be distinguished from Attachments I and II to Appendix 1 to that same testimony). At ¶8.20 the Board noted:

NHRERP is being updated to reference the emergency classification and plant conditions under which precautionary and protective action recommendations would be made. App. Dir. No. 6, ff. Tr. 10022, at 11-12, Attachment 2.

Indeed, the FEMA's approval of the plan on which the Smith Board then relied, is predicated on the identification of those circumstances, albeit limited, when sheltering would be employed as the protective action for the general beach population. See Appendix 1 to Applicants Direct Testimony No. 6 at page 1 of 47 (Strome quoting FEMA's January 25, 1988 position). These circumstances were identified in the testimony and representations were made that the NHRERP would be or was being updated to reflect these circumstances. In fact, the Smith Board made these revisions into a license condition:

[I]ssuance of an operating license for Seabrook Station shall be subject to the satisfaction of the following conditions:

. . .

(b) The Director of Nuclear Reactor Regulation, in consultation with the [FEMA], shall verify that the NHRERP revisions committed to by the State of New Hampshire, as discussed herein, have been made.

LBP-88-32 at ¶10.4

In October 1988, the NHRERP was amended, ostensibly in compliance with the representations made during the hearings.

In December 1988, LBP-88-32 issued with its holding regarding the circumstances in which sheltering would be recommended. In July 1989, oral argument before this Board was held as noted above. In November 1989, this Board issued ALAB-924 reversing the Smith Board regarding the need for sheltering detail. On January 11, 1990 the Board for the first time sought guidance from the parties as to how to proceed to resolve the remanded issues. Then on February 1, 1990 for the first time the Applicants asserted that plan changes in October 1988 actually eliminated sheltering for the general beach population under Condition (1) as discussed above! Since only Condition (2) is left, say the Applicants, and the beach population by definition is small under these conditions,^{5/} there is nothing left to resolve regarding the absence of sheltering detail. See Exhibit 1 at 8-12.^{6/} Thus, in an attempt to

^{5/} Intervenors do not question here the accuracy of Applicants' characterization of Condition (2). That is a matter for the Smith Board. The elimination of Condition (1), however, is a matter not remanded to the Smith Board. See infra.

^{6/} Applicants identify Step IV.B.4 (General Emergency) as the key change made in October 1988 that apparently put the Board and the parties on notice that the State of New Hampshire was not going to update the NHRERP as it represented that it would during the hearings and as the Board required with a license condition regarding the use of sheltering. Attached as Exhibit 2 hereto are the relevant pages from the October 1988 revisions to Appendix U to Volume 4A of the NHRERP. (Appendix F to Volume 4 and Appendix U to Volume 4A are virtually identical.) Certainly, these pages do not assert or state that even under those limited circumstances when sheltering is dose minimizing (like the "puff release") evacuation is always preferred. Obviously, the Board and parties read the October 1988 revision in light of the representations made by the witnesses for the Applicants and the State of New Hampshire regarding the appropriate conditions for sheltering the general beach population.

eliminate the blatant errors the Smith Board made in finding "reasonable assurance" without sheltering detail in place (in express contradiction to ALAB-924) and in denying Intervenors' their prelicensing hearing rights regarding sheltering detail, the Applicants now simply assert for the first time that since October 1988 sheltering has not been the recommended protective action under the NHRERP even when, as Applicants' counsel described it at oral argument in July 1989, technical conditions make sheltering the dose-minimizing action! Thus, the NHRERP has essentially been returned to that state where it had started in 1985 and 1986 in which sheltering the general beach population is simply not considered feasible or implementable!

C. Motion to Reopen This Record and For Summary Disposition.

Under normal adjudicatory conditions it seems obvious that Applicants would be and should be estopped from asserting that the NHRERP was amended in October 1988 as represented by them for the first time in February 1990. However, emergency planning is not a static but an ongoing process. If the NHRERP has been changed as Applicants represent and sheltering for Condition (1) has been eliminated, then based on the record developed during the New Hampshire proceeding concerning the dose minimizing aspects of sheltering in certain circumstances, and the holdings of the Smith Board and this Board, the effect

of that change is an inadequate plan not in compliance with the regulations because the protective actions provided therein do not maximize dose savings in certain circumstances. Thus, Intervenor move to reopen the record on the NHRERP regarding the sheltering contentions (NECNP/RERP-8, SAPL-16 and TOH-VIII) and to have this Board review new evidence not available before February 2, 1990; viz. the October 1988 NHRERP revisions as now interpreted by the Applicants.

1. Jurisdiction

This Board has jurisdiction over LBP-88-32. In ALAB-924, certain issues were remanded to the Smith Board. Regarding sheltering detail, this Board stated:

[T]he Licensing Board should have required that the same implementation actions that are being taken for the beach population without transportation under sheltering condition (3) be taken for the entire beach population under conditions (1) and (2). Therefore, we remand the matter for appropriate corrective action by the Licensing Board.

ALAB-924 at 68. From this it is clear that this Board held that implementing detail is necessary for conditions (1) and (2). Thus, if the record must now be reopened regarding the adequacy of the NHRERP in the absence of sheltering as the protective action for Condition (1) then this Board and not the Smith Board has jurisdiction over this matter. Obviously, the Smith Board is not free to violate the mandate of ALAB-924 and

now find that sheltering is not necessary for Condition (1).^{7/}

2. Timeliness

As discussed above, there was no reason for the Board and the parties to read the October 1988 revisions as anything other than the revisions and updates promised in the State of New Hampshire's and Applicants' sworn testimony in May and June, 1988. The Applicants did not amend their proposed findings on sheltering after October 1988 (filed on July 15, 1988) from which much of the Board's decision is taken. Thus, at Applicants' PF 10.1.41 (at 19 of the July 15, 1988 filing) the conditions for sheltering the general beach population are set out. The Applicants did not alert the Board that this proposed finding was no longer accurate after October 1988. Thus, although the State of New Hampshire is not estopped or otherwise prevented from changing its plan (or now disclosing that it had earlier changed its plan), on the narrow issue of timeliness, the Applicants are estopped from asserting that Intervenor's were on notice as of October 1988 concerning the

^{7/} Even though Applicants' representations about the October 1, 1988 revision and the elimination of Condition (1) fly directly in the face of what they represented to the Smith Board in 1988 and what that Board expressly found in LBP-88-32, they now seek literally by magic to have that Board simply reverse itself and eliminate the need for sheltering. Of course, the Smith Board is constrained on this issue by the affirmance in ALAB-924 of its earlier holding in LBP-88-32 regarding the circumstances in which sheltering is appropriate. An affirmance on appeal on an issue is just as much a "mandate" on remand of a linked issue as a reversal. In any event, the remand back to the Smith Board did not include the authority to decide whether sheltering should be or would be appropriate and therefore necessary for Condition (1).

meaning and significance of these earlier changes.^{8/}

3. Safety Significance

This Board has already held that the absence of sheltering detail for those conditions in the NHRERP in which sheltering is appropriate prevents the reasonable assurance finding.^{2/} ALAB-924 at 68, n.194, and cases cited therein. It follows that if sheltering is no longer to be relied upon at all in those very circumstances in which it was established and held to be the appropriate dose minimizing protective action, then this deficiency too prevents a reasonable assurance finding and is safety significant. ALAB-924 at 58 n.164

^{8/} Of course, had Intervenors moved to reopen the record in October 1988, the Applicants and the State of New Hampshire could easily have asserted that the October revisions were precisely what were described in the May and June 1988 testimony. This is because nothing in the October 1988 revision is expressly inconsistent with still retaining sheltering for Condition (1). Obviously, the Board read the revisions the same way when it received them before it issued LBP-88-32 and nonetheless proceeded to adopt the Applicants' findings on the conditions for which sheltering is appropriate.

^{9/} Intervenors believe that if there is a planning deficiency in the NHRERP which prevents the reasonable assurance finding, then if this deficiency is discovered and asserted after the record has closed, it is of sufficient safety significance to merit reopening the record under §2.734. The alternative is absurd: a deficiency sufficient to prevent the 50.47 (a)(1) finding and preclude licensing until remedied is somehow not sufficient to reopen a closed record if established after licensing. Of course, if the record is reopened after a license authorization but before that license has been made effective by the lifting of the §2.734 immediate effectiveness stay, that authorization is stayed as a matter of law until the material issues now reopened are adjudicated and then any deficiencies found are corrected. Such a procedural posture is distinct from the record being reopened after a license has become effective.

(noting that although sheltering is not per se required by the "range" requirement of 50.47 (b)(10) or by the "adequate protection" underpinings of 50.47 (a)(1), it is required when found appropriate by planners based upon "site-specific circumstances").

4. Materially Different Result

Had the Smith Board and this Board been apprised of the meaning of the October 1988 update of the NHRERP it is quite obvious that that evidence would have likely affected the disposition of Intervenor's claims that sheltering is underutilized for the general beach population at Seabrook. As this Board noted:

Intervenor's central concern is whether confining sheltering to such a limited use under the plan is, in accordance with the first condition specified in the NHRERP, the most effective use of this protective action option to achieve maximum dose reductions.

ALAB-924 at 51. If the use were even further limited -- not even to be used when as set forth in Condition (1) it is dose-minimizing for the population -- Intervenor would have prevailed on this issue for the very reasons this Board ruled against them. See ALAB-924 at 51-58.

5. Affidavit Requirement

Intervenor relies in support of their motion to reopen on the February 1, 1990 uncontradicted representation by the Applicants regarding the meaning of the October 1988 NHRERP update and those portions of the record of the NHRERP proceeding cited by the Smith Board and this Board in which

sworn testimony was received regarding the conditions under which sheltering the beach population would be the dose minimizing strategy. ALAB-924 at 51 at notes 135 and 136 and accompanying text; 52, notes 141 and 142 and accompanying text. LBP-88-32 at ¶8.70. See also Tr. 14231.

6. Summary Disposition

As discussed above, the material change in the NHRERP disclosed for the first time on February 1, 1990 supports the reopening of the record on the NHRERP. Moreover, summary disposition is appropriate in light of the principles of res judicata.^{10/} Thus, based on the same adjudicated facts as found by the Licensing Board and this Board regarding the appropriateness of sheltering for Condition (1), Intervenor are entitled to summary disposition on their sheltering contentions as a matter of law.

7. Expeditious Consideration

The representations made by the Applicants in their February 1, 1990 pleading are remarkable and indeed astounding. The NHRERP has been approved^{11/}

^{10/} Again: the State of New Hampshire and the Applicants are free to change the plan (or now disclose that the plan was changed). However, on principles of res judicata the inadequacy of the NHRERP in light of this change is established. Thus, without further evidence in the record that would support this change and permit the holding of LBP-88-32 and ALAB-924 in this regard to be modified, the absence of sheltering for Condition (1) is a deficiency precluding the reasonable assurance finding.

^{11/} Intervenor ignore the conundrum that it was also disapproved by this Board on November 7 regarding a related but legally distinct issue.

by the Smith Board on November 9, 1989, based on an apparent and understandable failure to comprehend the significance of plan changes made in October 1988. As is now clear, the NHRERP is not an adequate plan and has not been adequate since October 1988. As this Board is aware, the Commission is nearing the end of its immediate effectiveness review which may lead to plant operation. This motion should be entertained immediately and ruled upon so that the Commission can be apprised about the significance of those changes. Obviously, if Intervenors are now entitled as a matter of law to have the record reopened, this should occur before operations would actually begin so that any deficiencies would be corrected beforehand.^{12/}

CONCLUSION

For all the reasons set forth above, this Board should:

1. Issue an order declaring the status of Intervenors' efforts to appeal LBP-89-33 and the disposition of the remanded issues by the Smith Board as set out above;

^{12/} Applicants and the NRC Staff may urge the Board to refer this motion to the Commission. That would be an inappropriate disposition for the following reasons: 1) this Board has appellate jurisdiction over LBP-88-32 and the record on the NHRERP - it has lost jurisdiction only over the disposition of the remanded issues in LBP-89-32 (and LBP-89-33) as that disposition supports a mandamus for violation of ALAB-924; 2) the integrity of this Board's adjudicative processes are at issue in this motion; and 3) the Commission has not taken review of ALAB-924 and otherwise has not put the NHRERP record before it.

2. Grant expeditious consideration of Intervenor's motion to reopen the record on the NHRERP;

3. Grant Intervenor's Motion to Reopen that record in the particulars as set out above; and

4. Grant Intervenor's Motion for Summary Disposition on the present inadequacy of the protective action decision criteria in the NHRERP.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

NEW ENGLAND COALITION ON
NUCLEAR POWER

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Dated: February 6, 1990

APPENDIX B

February 23, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Administrative Judges:

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

In the Matter of)	
)	
PUBLIC SERVICE COMPANY	)	Docket No. 50-443-OL
OF NEW HAMPSHIRE, et al.	)	(Offsite Emergency
	)	Planning and Safety
(Seabrook Station, Unit 1)	)	Issues)
)	

OBJECTION TO PETITION OF EMERGENCY MANAGEMENT
AGENCY FOR LEAVE TO FILE FEMA'S RESPONSE TO EMERGENCY
MOTION OF THE INTERVENORS TO REOPEN THE RECORD
AS TO NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES

INTRODUCTION

By a pleading dated February 16, the Federal Emergency Management Agency (FEMA), has requested permission to be allowed to file a response to the intervenors' Emergency Motion of February 6, 1990, seeking to reopen the record on the New Hampshire Radiological Emergency Response Plan (NHRERP). The proposed response was attached to FEMA's petition for leave to file a response as to the need for sheltering in certain circumstances.

For the reasons stated below, Seacoast Anti-Pollution League (SAPL) states that the petition of FEMA for leave to file FEMA's response should be denied, and, in the event that the petition is

*90030/0165
SPP*

granted, the following further response from SAPL should be allowed.

OBJECTION TO FEMA RESPONSE

In its proposed response, FEMA purports to state a "clarification" of its review of the NHRERP. This "clarification" is to the effect that the NHRERP has not been materially changed as to the concept of sheltering since it was offered in testimony, before the ASLB, amended in October of 1988, and currently exists in the form of "Rev. 3, February 1, 1990". According to FEMA, at all times, the concept of sheltering in the NHRERP has been to "shelter in place".

According to FEMA, in its proposed "clarification":

"To emphasize the point, other than the 'shelter-in-place' concept described above, there has never been any provision for shelter in the NHRERP under any circumstances for any segment of the population. When 'shelter-in-place' is the recommended protective action, transients without access to an indoor location (e.g. a private residence, beach cottage, or hotel room) would be directed to evacuate in those vehicles. Those transients without transportation will be directed to predesignated to temporary shelter locations while waiting for buses to evacuate them. There is no provision or instruction in the NHRERP for the transient beach population to attempt to find a nearby building and enter it, nor is there any reliance in the NHRERP in the Stone & Webster Survey to identify potentially-available shelters."

In its conclusion, FEMA goes on to state:

"As noted above, the 'shelter-in-place' concept provides for the transient beach population to evacuate and the people indoors to remain indoors."

FEMA's representation to this Board is flatly contradictory to the evidence before the ASLB, and on which this Appeal Board, quite correctly, found that sheltering was an intended protective action for the transient beach population.¹

FEMA should be called upon to explain its failure to acknowledge the evidence of record in this proceeding, and its attempt to again reverse its position on the need to "consider" sheltering as a protective action response for the beach population in this case by transforming "evacuation in those vehicles" into the same thing as "sheltering-in-place".

For FEMA to suggest, and state in a pleading to this Board, that because New Hampshire uses the "shelter-in-place" concept, there was never any intent or plan to shelter the transient beach population is unworthy of the integrity expected of a federal agency.

The record of this proceeding, on the day of the admission of Applicants' panel no. 6, dealt with the issue of the sheltering option for the beach population. The panel witnesses supporting Applicants' Direct Testimony no. 6, dealing with sheltering, included the former Director of the New Hampshire Office of Emergency Management, Mr. Strome, John Bonds, Assistant Director

¹/ It is also an example of the overwhelming distortion of the integrity of the English language that has crept into the Seabrook proceeding. According to FEMA, the sheltering option for the beach-going transients, shelter-in-place, actually means "to evacuate". Thus, black becomes white, love becomes hate, war becomes peace, and FEMA will do anything, and say anything, in order to justify its flip-flop on the adequacy of the NHRERP.

for Planning, Division of Public Health Services of New Hampshire, and Anthony M. Callendrello, Manager, Emergency Planning, New Hampshire Yankee. This panel's direct testimony also included the State's February 11 response to the FEMA interim testimony, as Appendix I. That testimony, at page 5 thereof, indicated that although evacuation was going to be the preferred protective action in most scenarios, "this position does not preclude the State from considering and selecting sheltering as a protective action for the beach population." As set forth at pages 7-8 of Appendix I, the State then laid out scenarios in which sheltering would be the preferred protective action response for the beach population, including, as condition 1, "when it would be the more effective option in achieving maximum dose reductions."

The cross-examination of this panel made it perfectly clear that by including sheltering as an option for the beach population, the State was intending to include within the sheltering option not only that beachgoers without transportation, but the entire beach population.

At Tr. 10061, Mr. Strome was asked the following:

Q "Now, under headings one and two, what portion or is it the whole beach population that is being recommended -- that it is recommended to them that they shelter?"

A (Strome) That would be conceivable, but obviously, as we pointed out before, sheltering is not the preferred option for people -- for the total beach population.

Q Well, I appreciate that point, but as to the specific enumeration of those circumstances under which sheltering would be the recommendation, there are such circumstances, are there not?

A (Strome) I think they're conceivable, but as I pointed out before, they are certainly not the optimum consideration as far as we're concerned. WE made that crystal clear throughout the testimony.

Q No question that you've made that clear. My question is, are there circumstances under which you would recommend sheltering for the beach population?

A (Strome) Certainly conceivable."

Further, at 10069, Mr. Callendrello testified as follows:

"Q Yes. Well, that's fine except the problem is on page 19 of your testimony, you are still indicating: 'There are two sets of circumstances under which you would recommend -- you would still intend to consider recommending shelter to the entire beach population, not just to the transients without transportation.' It's part of a plan to consider a recommendation to the entire beach population to shelter; that's correct, isn't it?

A (Callendrello) That is correct.

Q And you have no messages for that circumstances, although you previously did have a message that covered that circumstance?

A (Callendrello) That is true, there are no prerecorded messages that specifically address that, consideration of that recommendation. But as the statement says: 'The mechanisms are now in place, and the EBS system, the EBS activation procedure and the mechanism for modifying the messages exist.'

Mr. Bonds also testified concerning this matter at Tr.

10421:

"Q Well, isn't it true then that even when sheltering was found to be the most effective option in achieving maximum dose reduction, it

would not always be recommended for the beach population?

A (Bonds) Sheltering is found to be the most effective recommendation. That's the most effective recommendation for everybody, not for just some segment of the population in that area. We don't differentiate in the three communities, Hampton, Hampton Falls and Seabrook, between general population and beach population. We make the recommendation on the basis of those communities.

If there are beach people there, the recommendation applies to them as well."

No where did any of the witnesses suggest that this sheltering option for the transient beach population actually meant, under the "sheltering-in-place" concept, that these individuals were to evacuate. Indeed, Mr. Bonds made it clear that he was anticipating that the sheltering option would involve putting the beach transients into some sort of structures, not into their automobiles. At Tr. pages 10694-95:

"MR. BROCK: I'm referring to page 10573, beginning third paragraph, let me just read a sentence into the record. I believe this is a response of you, Mr. Bonds: 'So we haven't done our own assessment yet as to whether or not there is adequate shelter.' I can continue: 'But given that there was an awful lot of shelter there and that there are people there, there's got to be some relationship, we just don't know what that is, but we would certainly expect that at some point in time an independent assessment is going to be made.'

BY MR. BROCK:

Q Can you explain that to me in light of the answer you just gave?

A (Bonds) Yes, certainly. The answer I just gave, and what was intended with what is here is that, it is the state's judgment at

this time that there is adequate shelter. In terms of we haven't done our own assessment, we certainly haven't done our own assessment. AS to whether or not there is adequate shelter, that's what the empirical process, the empirical study, whether it's Stone & Webster style study or somebody else's study of our own, that has not been done yet. But the judgment is there that there is adequate shelter.

Q Well, and is that judgment based upon, essentially, adopting the Stone & Webster study and the view of New Hampshire Yankee rather than doing an independent assessment?

A (Bonds) Absolutely not.

Q What is the basis for the judgment of the state, that there was presently adequate shelter?

A (Bonds) The judgment was there long before Strome & Webster undertook any study. It is there with the original volumes of the plan, Rev. 0 way back. It's based upon an understanding that there is shelter that's there; there are people that are there. And that should the situation arise in which you did have to take sheltering or recommend sheltering, that there would be adequate space available for all of the people at that location, given that sheltering is an extremely limited option in the first place."

Further on, Mr. Bonds also indicated an intent to actually shelter the beach transients by opining in an intuitive way that adequate shelter was available at Tr. pages 10714-15:

"Q What elements, what elements of your experience lead you to believe that there is sufficient, adequate shelter space for that 31,250 people?

(Bonds) The state has accepted the sheltering -- the potential for sheltering of a beach population as being remote. Mr. Strome has pointed out that it's certainly not a 50/50. I've testified as to the factors that would lead one to indicate whether or not -- the factors that would predispose a decisionmaker towards sheltering.

The judgment that I have and the experience that I have is not based upon the number of walks down the board walk back and forth, whatever though there is some of that built into it. I have been to Hampton Beach long before I ever knew Seabrook and far before I ever knew there was a Division of Public Health in this state."

CONCLUSION

For the reasons stated, the Appeal Board should refuse to countenance FEMA's petition to file a response or, or in the alternative, should reject the FEMA "clarification" of its position on the NHRERP as contrary to the record in the case, the ordinary meaning of language and for the reasons stated herein.

Respectfully submitted,

Seacoast Anti-Pollution League
By its Attorneys,


BACKUS, MEYER & SOLOMON

By: 

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
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(603) 668-7272

Dated: February 23, 1990

I hereby certify that copies of the within objection have been forwarded, first class, postage prepaid, to the parties on the attached service list.


Robert A. Backus, Esquire

NYN- 89156

December 1, 1989

United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Document Control Desk

- References: a) Facility Operating License NPF-67, Docket No. 50-443
- b) PSNH Letter SBN-944, dated February 18, 1986, "Submittal by Applicants of Radiological Emergency Response Plans, State of New Hampshire and Affected New Hampshire Communities," G. S. Thomas to H. R. Denton
- c) PSNH Letter SBN-1186 dated September 8, 1987, "Radiological Emergency Response Plans, State of New Hampshire and Affected New Hampshire Communities: Additional Information," W. B. Derrickson to USNRC
- d) New Hampshire Office of Emergency Management Letter, dated November 30, 1989, G. L. Iverson to R. H. Strome, FEMA, Region I

Subject: Revision 3 to New Hampshire Radiological Emergency Response Plan (NHRERP)

Gentlemen:

By letter dated November 30, 1989, (Reference d), the New Hampshire Office of Emergency Management transmitted Revision 3 to the NHRERP to the Federal Emergency Management Agency. Revision 3 to the NHRERP and its implementing procedures is submitted as Enclosure 1 pursuant to the requirements of 10CFR50.4(b)(5). Nine (9) copies are provided to facilitate your review.

The changes contained in Revision 3, which are denoted by vertical change bars located on the left hand margin, were generated by the following:

- The annual plan review, including training and drill comments from participants and controllers.
- Commitments made during the ASLB proceedings.
- FEMA comments provided as a result of technical assistance visits, plan reviews or the 1988 Graded Exercise.
- Quarterly updates to call lists and telephone numbers.
- Issues identified in the ASLB Partial Initial Decision (PID) on the NHRERP dated December 30, 1988.

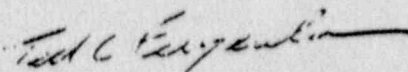
United States Nuclear Regulatory Commission
Attention: Document Control Desk

December 1, 1989
Page 2

To assist in your review, Enclosure 2 provides a matrix identifying the changes and the applicable plan/procedure sections in which they appear. Only those changes which are substantive in nature appear on this matrix. Minor editorial changes are not identified.

If you should have any questions regarding the above, please contact Mr. Anthony M. Callendrello, Manager, EP Licensing at (603) 474-9521, extension 2751.

Very truly yours,


Ted C. Feigenbaum

Enclosures

cc: Mr. William T. Russell (w/o enclosures)
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Mr. Victor Nerses, Project Manager (w/o enclosures)
Project Directorate I-3
Division of Reactor Projects
United States Nuclear Regulatory Commission
Washington, DC 20555

Mr. A. C. Cerne (w/o enclosures)
NRC Senior Resident Inspector
Seabrook Station
Seabrook, NH 03847

United States Nuclear Regulatory Commission
Attention: Document Control Desk

December 1, 1989
Page 3

STATE OF NEW HAMPSHIRE

Rockingham, ss.

December 1, 1989

Then personally appeared before me, the above-named Ted C. Feigenbaum, being duly sworn, did state that he is Senior Vice President & Chief Operating Officer of the New Hampshire Yankee Division of Public Service Company of New Hampshire, that he is duly authorized to execute and file the foregoing information in the name and on the behalf of New Hampshire Yankee Division of the Public Service Company and that the statements therein are true to the best of his knowledge and belief.

Beverly E. Silloway
Beverly E. Silloway, Notary Public
My Commission Expires: March 5, 1990

New Hampshire
Yankee

Ted C. Feigenbaum
Senior Vice President and
Chief Operating Officer

NYN-90030

February 5, 1990

United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Document Control Desk

- References:
- (a) Facility Operating License NPF-67, Docket No. 50-443
 - (b) PSNH Letter SBN-944, dated February 18, 1986, "Submittal by Applicants of Radiological Emergency Response Plans, State of New Hampshire and Affected New Hampshire Communities," G. S. Thomas to H. R. Denton
 - (c) PSNH Letter SBN-1186 dated September 8, 1986, "Radiological Emergency Response Plans, State of New Hampshire and Affected New Hampshire Communities: Additional Information," W. B. Derrickson to USNRC
 - (d) NHY Letter NYN-89156, dated December 1, 1989, "Revision 3 to New Hampshire Radiological Emergency Response Plan (NHRERP)," T. C. Feigenbaum to USNRC
 - (e) New Hampshire Office of Emergency Management Letter, dated February 2, 1990, G. L. Iverson to R. H. Strome, FEMA, Region I

Subject: Revision 3, Amendment 2/90, to New Hampshire Radiological Emergency Response Plan (NHRERP)

Gentlemen:

By letter dated February 5, 1990, [Reference (e)], the New Hampshire Office of Emergency Management transmitted Revision 3, Amendment 2/90, of the NHRERP to the Federal Emergency Management Agency. This letter transmits Revision 3, Amendment 2/90, of the NHRERP and its implementing procedures, Enclosure 1, to the NRC pursuant to the requirements of 10CFR50.4(b)(5). Nine (9) copies are provided to facilitate your review.

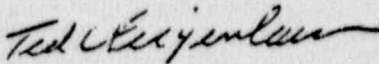
United States Nuclear Regulatory Commission
Attention: Document Control Desk

February 5, 1990
Page 2

The changes contained in Revision 3, denoted by vertical change bars located on the left hand margin, were generated by FEMA Technical Assistance Comments. To assist in your review, Enclosure 2 provides a matrix identifying the changes and the applicable plan/procedure sections in which they appear. Only those changes which are substantive in nature appear on this matrix. Minor editorial changes are not identified.

If you should have any questions regarding the above, please contact Mr. Anthony M. Callendrello, Manager, EP Licensing at (603) 474-9521, extension 2751.

Very truly yours,


Ted C. Feigenbaum

Enclosures

cc: Mr. William T. Russell (w/o enclosures)
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Mr. Noel Dudley (w/o enclosures)
NRC Senior Resident Inspector
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Atomic Safety and Licensing Board Service List

United States Nuclear Regulatory Commission
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February 5, 1990
Page 3

STATE OF NEW HAMPSHIRE

Rockingham, ss.

February 5, 1990

Then personally appeared before me, the above-named Ted C. Feigenbaum, being duly sworn, did state that he is Senior Vice President & Chief Operating Officer of the New Hampshire Yankee Division of Public Service Company of New Hampshire, that he is duly authorized to execute and file the foregoing information in the name and on the behalf of New Hampshire Yankee Division of the Public Service Company and that the statements therein are true to the best of his knowledge and belief.

Beverly E. Silloway
Beverly E. Silloway, Notary Public
My Commission Expires: March 6, 1990

Protective Actions: Evacuation

If potential radiological exposure can be avoided by implementing an evacuation, evacuation will be the preferred protective action. Where implementation of protective action is deemed appropriate (i.e., a prognosis of decreasing ability to mitigate the emergency at the plant), evacuation will generally be the selected course of action. If constraints exist which impede evacuation, appropriate actions, such as impediment removal or alternative evacuation routing, will be implemented to facilitate evacuation. If an evacuation cannot be implemented, sheltering-in-place will be recommended.

The primary means of transportation for evacuation will be privately-owned vehicles of the evacuees. Each town that may require evacuation of its population has designated a person with the responsibility for assessing specific transportation needs of persons who cannot implement their own evacuation. Special needs persons with no transportation are divided into categories which include school population, other special facilities, residents with no transportation, and persons who have special transportation needs. Allocation of evacuation resources will be based on the following priority scheme by community according to its proximity to the power plant: public schools/private schools/day care centers, transit-dependent beach transients at Hampton and Seabrook beaches (May 15 - September 15), hospitals/nursing homes, residents requiring transportation and special needs individuals. Special arrangements have been made for the transport of these people.

- o Evacuation of Schools - If an evacuation is recommended during school hours, school children will be bused directly to Reception Centers. Bus transportation will be coordinated by the State in conjunction with the local EOC and school authorities. Children will remain under supervision of either school personnel or members of the State Emergency Response Organization until they are released to their parents or guardians.
- o Evacuation of Beach Transients Requiring Public Transportation (May 15th to September 15th) - In the event an evacuation is recommended for beach areas in the Towns of Hampton and Seabrook, transients without transportation will be directed to temporary shelters until resources arrive to transport them to designated Reception Centers.

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