

August 26, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)

(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443 OL
50-444 OL

NRC STAFF RESPONSE TO NECNP CONTENTIONS ON RADIOLOGICAL
EMERGENCY RESPONSE PLAN FOR GREENLAND, NEW HAMPSHIRE
AND ON NEW HAMPSHIRE EMERGENCY RESPONSE PROCEDURES

I. INTRODUCTION

On August 11, 1983, NECNP filed separately contentions on the Radiological Emergency Response Plan for the town of Greenland, New Hampshire ("Greenland RERP") and on the State of New Hampshire's emergency response procedures. The Staff herein responds to both filings.

II. RULES GOVERNING ADMISSION OF CONTENTIONS

In order for proposed contentions to be found admissible, they must fall within the scope of the issues set forth in the Notice of Hearing initiating the proceeding, and comply with requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. See, e.g., Duke Power Company (Catawba Station, Units 1 and 2), CLI-83-19, 17 NRC ____ (June 30, 1983); Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission,

DESIGNATED ORIGINAL

8309090078 830826
PDR ADOCK 05000443
G PDR

Certified By DW

DSOZ
11

502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973). 10 C.F.R. § 2.714(b) requires that a list of contentions which intervenors seek to have litigated be filed along with the bases for those contentions set forth with reasonable specificity. The Appeal Board has stated that a contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The purposes of the bases requirements of 10 C.F.R. § 2.714 are (1) to assure that the contention in question does not suffer from any of the deficiencies enumerated in the Peach Bottom decision, supra, (2) to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and (3) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra, 8 AEC at 20. From the standpoint of basis, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC

423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board should not reach the merits of the contentions. Duke Power Co. (Amendment To Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra, 8 AEC at 20; Grand Gulf, supra, 6 AEC at 426.

Thus, at the petition stage, although petitioners need not establish the validity of their contentions and the bases therefor, it is incumbent upon petitioners to set forth contentions and the bases therefor which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose.

III. GREENLAND RERP

NECNP submitted two contentions on the Greenland RERP:

Contention 1

Contention 1 asserts that the Greenland RERP fails to comply with 10 C.F.R. § 50.47(a)(1) in that the town lacks adequate equipment and/or staff to respond to an emergency in three listed respects:

a) NECNP asserts that the Greenland Police Department lacks the personnel necessary to fulfill the functions assigned to the department in the RERP.

b) NECNP contends the RERP does not assure a sufficient number of vehicles to evacuate school children.

(c) NECNP claims the Highway Agent lacks sufficient staff and equipment to provide road service in the event of an emergency.

The Staff does not object to the admission of Contention 1, but suggests that it be subdivided into three discrete contentions corresponding to the three alleged deficiencies listed above.

Contention 2

Contention 2 challenges the RERP's provisions for special transportation services. The Staff does not object to the admission of this contention.

IV. NEW HAMPSHIRE EMERGENCY RESPONSE PROCEDURES

NECNP offered five contentions challenging various aspects of the emergency response procedures which implement the Radiological Emergency Response Plan of the State of New Hampshire.^{1/} Procedures challenged by NECNP include those involving: contact and coordination between the New Hampshire and Massachusetts state governments (proposed contention 1); responsibilities of the Emergency Medical Services (proposed contention 2); responsibilities of the Division of Public Health (proposed contention 3); responsibilities of the State Highway Department (proposed contention 4); and the provision of buses for evacuation of school children from the Emergency Planning Zone (proposed contention 5).

^{1/} Contentions relating to the Radiological Emergency Response Plan, as opposed to the procedures implementing that plan, have previously been filed by NECNP. See NECNP Contentions on the New Hampshire Radiological Emergency Response Plan, Volume I, dated June 27, 1983.

NECNP prefaces its discussion of its proposed contentions with the correct observation that 10 C.F.R. § 50.47(a)(1) requires the Commission to find "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" before an operating license may be issued. NECNP goes on, however, to state:

Unless the [emergency] plan details the steps that must be taken in order to implement the plan's directives, there can be no "reasonable assurance" that the plan "can and will" be effectively implemented to protect the public health and safety.

The New Hampshire procedures do not provide this crucial information on how the RERP will be implemented.

NECNP Contentions on New Hampshire Emergency Response Procedures, p. 2.

The argument advanced by NECNP is contrary to Commission policy regarding the litigability of the procedures which implement emergency plans. In Louisiana Power & Light Co. (Waterford Station, Unit 3), ALAB-732, 17 NRC ___ (June 29, 1983, slip op. 53-54), the Appeal Board recognized that onsite implementing procedures for emergency plans are not a proper subject for licensing proceedings. It noted that 10 C.F.R. Part 50, Appendix E, § V requires a utility to submit the detailed implementing procedures to the appropriate NRC Regional Administrator no less than 180 days prior to the scheduled issuance of an operating license. (slip op. at 53). On this basis it concluded that the Commission did not intend to allow inquiry into the details of particular implementing procedures in judging whether emergency plans meet requirements of NRC regulations. As the Board stated:

[T]he Commission never intended the implementing procedures to be required for the "reasonable assurance" finding and thus to be prepared and subject to scrutiny during the hearing. Although there is little "administrative history" on implementing procedures, we believe the Commission did not want licensing hearings to become bogged down with litigation about such details. Instead, the focus should be on whether an applicant's emergency plan itself satisfies the 16 more broadly drafted standards of 10 C.F.R. § 50.47(b). Thus, because Joint Intervenors' complaint about the nonfinality of the implementing procedures amounts to a challenge to the Commission's regulations, we must reject it. See 10 C.F.R. § 2.758, supra note 44.

Id. at 53-54 (footnotes omitted).

There is no reason to treat offsite implementing procedures in a different manner from onsite procedures. The contentions offered by NECNP on the New Hampshire offsite emergency response procedures, in contrast to those dealing with the emergency response plans, are not litigable in this proceeding under Waterford, and therefore must be rejected under Peach Bottom, supra.^{2/}

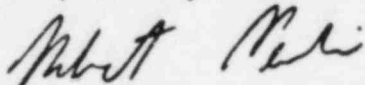
V. CONCLUSION

For the reasons discussed in Part III, supra, the Staff does not object to the admission of NECNP Contentions 1 and 2 on the Greenland, New Hampshire RERP, but suggests that Contention 1 be modified as described above.

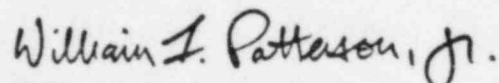
^{2/} The Staff has previously filed similar objections in response to the first of NECNP's proposed contentions on the New Hampshire Radiological Emergency Response Plan. See NRC Staff Response to Contentions on the New Hampshire Radiological Emergency Response Plan Filed by the Attorney General of Massachusetts, Seacoast Anti-Pollution League, and New England Coalition on Nuclear Pollution, filed July 12, 1983, at pp. 15-16.

For the reasons discussed in Part IV, supra, the Staff opposes the admission of NECNP Contentions 1 through 5 on the New Hampshire emergency response procedures.

Respectfully submitted,



Robert G. Perlis
Counsel for NRC Staff



William F. Patterson, Jr.
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of August, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

}
}
}
}
}
Docket Nos. 50-443 OL
50-444 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO NECNP CONTENTIONS ON RADIOLOGICAL EMERGENCY RESPONSE PLAN FOR GREENLAND, NEW HAMPSHIRE AND ON NEW HAMPSHIRE EMERGENCY RESPONSE PROCEDURES" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 26th day of August, 1983:

Helen Hoyt, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry Harbour*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Beverly Hollingworth
7 A Street
Hampton Beach, NH 03842

Edward L. Cross, Jr., Esq.
George Dana Bisbee, Esq.
Environmental Protection Division
Office of the Attorney General
State House Annex
Concord, NH 03301

Dr. Emmeth A. Luebke*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jo Ann Shotwell, Asst. Attorney
Office of the Attorney General
Environmental Protection Division
One Ashburton Place, 19th Floor
Boston, MA 02108

Nicholas J. Costello
1st Essex District
Whitehall Road
Amesbury, MA 01913

Sandra Gavutis
Town of Kensington, New Hampshire
RFD 1
East Kingston, NH 03827

Edward F. Meany
Town of Rye, New Hampshire
155 Washington Road
Rye, NH 03870

Mr. Robert J. Harrison
President and Chief Executive Officer
Public Service Co. of New Hampshire
P.O. Box 330
Manchester, NH 03105

Robert A. Backus, Esq.
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

Brian P. Cassidy
Regional Counsel
FEMA, Region I
John W. McCormack Post Office &
Courthouse
Boston, MA 02109

Senator Gordon J. Humphrey
U.S. Senate
Washington, D.C. 20510
(Attn: Tom Burack)

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Atomic Safety and Licensing
Appeal Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jane Doughty
Field Director
Seacoast Anti-Pollution League
5 Market Street
Portsmouth, NH 03801

Calvin A. Canney, City Manager
City Hall
126 Daniel Street
Portsmouth, NH 03801

Roberta C. Pevear
Town of Hampton Falls, New Hampshire
Drinkwater Road
Hampton Falls, NH 03844

William S. Jordan, III, Esq.
Ellyn R. Weiss, Esq.
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006

Phillip Ahrens, Esq.
Assistant Attorney General
State House Station #6
Augusta, ME 04333

Donald L. Herzberger, MD
Hitchcock Hospital
Hanover, NH 03755

Sen. Robert L. Preston
State of New Hampshire Senate
Concord, NH 03301

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

John B. Tanzer
Town of Hampton, New Hampshire
5 Morningside Drive
Hampton, NH 03842

Brentwood Board of
Selectmen
RFD Dalton Road
Brentwood, NH 03833

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

David R. Lewis, Esq.
Law Clerk to the Board
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Mauray Tye
209 Summer Street
Haverhill, MA 01830

Town of North Hampton
North Hampton, New Hampshire 03862


R. K. Gad III, Esq.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Patrick J. McKeon
Chairman of Selectmen, Rye,
New Hampshire
10 Central Road
Rye, NH 03870

Anne Verge, Chairperson
Board of Selectmen
Town Hall
South Hampton, NH 03842

Town Manager's Office
Town Hall - Friend Street
Amesbury, MA 01913

Senator Gordan J. Humphrey
1 Pillsbury St.
Concord, NH 03301
(Attn: Herb Boynton)


William F. Patterson, Jr. Esq.
Counsel for NRC Staff