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.	Docket Nos. 50-443-OL 50-444-OL
(Seabrook Station, Units 1 & 2)	(Filed: August 2, 1982)

APPLICANTS' REPLY TO "NECNP SUPPLEMENTAL FILING ON EMERGENCY PLANNING CONTENTIONS"

Introduction

Pending before this Board is the Petition of the New England Coalition on Nuclear Pollution ("NECNP") for leave to intervene in this Operating License proceeding. NECNP seeks to intervene on the basis of fifteen emergency planning-related contentions (as restated and reworded in its most recent filing), the sufficiency of which is now before the Board.

In their initial response to NECNP's contentions, the Applicants took the position that they would interpose no objection to the admission of NECNP as a party under 10 C.F.R. § 2.714 upon a single emergency planning-related contention as drafted by the Applicant. The Applicants did not take this position because they believed NECNP's proposed contentions to be unobjectionable. Rather, the Applicants' position was grounded in the assumption that, given the newness of the emergency planning regulations, more time would be saved than lost in the long run if the Applicants' approach were followed. It was not the Applicants' position that the specificity and basis requirements of 10 C.F.R. § 2.714 are any less rigorous in the context of emergency planning-related contentions; it was the Applicants' intention to waive those requirements in the interest of long-term expedition.

This Board has not yet determined whether it will follow a course such as that proposed in the Applicants' response to NECNP's contentions or whether it will rule on the admissibility, under the rules of 10 C.F.R. § 2.714 strictly applied, of each of NECNP's contentions as NECNP has framed them. NECNP, per leave given at the prehearing conference, has filed a

pleading ("NECNP Brief") consolidating its legal arguments in support of its original contentions; the Applicants now respond to that document.

Contention 1

Insofar as NECNP proposed Contention 1 depends upon NUREG-0654 having the force of a regulation, and being used as a regulatory standard against which the pending application is to be measured, as if it had been duly promulgated as a regulation (which it has not been), this contention is not admissible. Moreover, that NECNP would continue to attempt to elevate non-regulation publications to the dignity and regulatory significance of regulation after having been specifically told by this Board that such a practice should not be followed, is difficult to understand. See Tr. 306 (7/15/82). While certain sub-sections of Contention 1 might provide a basis for an admissible contention, proposed Contention 1, in the form in which it is drafted, is not admissible and should be excluded.

Contention 2

The Applicants do not object to this contention.

Contention 3

This contention should be excluded because the training requirements of 10 CFR Part 50, App. E, § F "are part of the operational inspection process and are not required for any initial licensing decision." 10 CFR § 50.47(a)(2), as amended through 47 Fed. Reg. 30,232 (July 13, 1982).

Contention 4

As phrased, this contention should be excluded for the reasons set forth in "Applicants' Reply to 'Brief of the Commonwealth of Massachusetts in Support of its Contentions'" at 3-6. Arguably NECNP might have stated a contention to the effect that the EPZ boundaries should be established to include the entirety of the towns Newbury, West Newbury, Marrimack, Newtown, Exeter, Stratham, Greenland, Rye, Portsmouth, Newfields, Brentwood, Kingston, and Haverhill (some of which are cities), except that (i) NECNP has not framed a contention in these terms (and at NECNP Brief at 13 it appears to be intentionally refraining from doing so), and (ii) NECNP has stated no basis for contending that any of these towns ought to be included in their entirety. As framed, the contention should be excluded.

Contention 5

This contention should be excluded because it is contrary to the Commission's regulations and because it is lacking in any basis. For the reasons set for in "Applicatants' Reply to "Brief of the Commonwealth of Massachusetts in Support of its Contentions'" at 6-12, the emergency planning criteria of 10 CFR Part 50 do not purport to require that EPZ sizes or shapes depend upon or are to be adjusted on account of perceived consequences of possible accidents; that function has already been performed in the context of the site suitability criteria of 10 CFR Part 100 (and, for that purpose, accidents "beyond design basis accidents" were employed, see 10 CFR § 100.11(a) n. 1). Indeed, on the basis of the analysis performed and approved and affirmed on appeal for Seabrook under the Part 100 criteria, no emergency planning is required for any area outside of the "low population zone," which is a far smaller area than the approximately 10-mile plume exposure pathway EPZ. Rather, the operational requirements of 10 CFR Part 50 require planning on the assumption that, notwithstanding any lack of need, someone might someday determine to invoke protective

actions over a large area and in order to do so some advance planning is necessary.

Second, NECNP is simply wrong in its assertion that "it is not NECNP's burden to specify how consideration of beyond design basis accidents would affect emergency planning." NECNP's burden, if it wishes to litigate such a contention, is precisely that, for otherwise the "contention" is in fact mere groundless "speculation" of precisely the sort that the "basis" requirement was designed to pretermit. Perhaps the reason NECNP so urgently declines to accept such a burden is because it knows that it cannot succeed, as indeed it cannot without directly challenging both the Commission's regulations and the prior adjudications adverse to it in the construction permit proceeding under the Part 50 criteria. Thus, for instance, while NECNP asserts that a "beyond design basis accident" and one involving a "core melt" would produce "immediate injuries and fatalities [that] would overwhelm local medical capabilities and further delay evacuation" (NECNP Brief at 20), the adjudication of this agency has been that a "beyond design basis accident" that, in fact, would not be exceeded by any credible accident would not lead to an exposure to anyone of more than 25 rem (whole body),

an exposure that manifestly would not produce such consequence. ("The whole body does of 25 rem referred to above corresponds numerically to the once in a lifetime accidental or emergency does for radiation workers which, according to NCRP recommendations may be disregarded in the determination of their radiation exposure status . . . ." 10 CFR § 100.11(a)(1) n.2.)

Contention 6

The Applicants' do not object to this contention.

Contention 7

Again, NECNP has a contention that is based upon alleged non-compliance with an applegedly applicable Reg. Guide (i.e., Reg. Guide 1.97; see NECNP Brief at 23). This is the only basis given with any specificity at all, and it is not enough.

Contention 8

By this contention NECNP seeks to freight upon 10 CFR § 50.47(b)(9) its own legal conclusion as to the term "adequate." No basis is given for contending that the Applicants' proposed program is not "adequate" and thus no basis for a litigable contention has been supplied.

Contention 9

NECNP again attempts to obtain a ruling in favor of its legal position as to what regulations require through the artful phrasing of a contention. Not being a properly stated factual contention, proposed Contention 9 should be excluded.

Contention 10

Notwithstanding that a lot of words have been used, NECNP has failed to provide a factual basis for this contention or to state how the Applicants' proposal is inadequate under the regulations.

Contention 11

The Applicants do not object to this contention.

Contention 12

The Applicants do not object to this contention.

Contention 13

We agree that it is possible for a hot, sunny, summer day to turn into a foggy or stormy one. However, common experience teaches that well before the fog has become opaque or the rain and wind have become severe, the beachgoers have gone home. The proposed contention lacks any logical basis on its face.

Contention 14

This proposed contention assumes that the emergency planning regulations (apart from the site suitability regulations of 10 CFR Part 100) contain some set limit on the amount of radiation exposure that any individual may receive under any set of circumstances. The assumption is erroneous. Neither 10 CFR § 50.47 nor Appendix E requires that any showing be made that all or any number of person will be guarantied protection from any given exposure in any given circumstance. (On the other hand, under the Part 100 criteria, the Applicants must demonstrate (and in the construction permit case they did demonstrate) that people located on the Hampton and Salisbury beaches (both of which are outside of the LPZ) will not receive more than the reference exposure throughout the entire course of any credible accidental release.) This proposed contention should be excluded as seeking to impose upon the Applicants requirements beyond those contained in (and, indeed, contrary to those contained in) the regulations of the Commisssion.

Contention 15

This proposed contetnion is without basis. The "baseline data" contended for is unnecessary to comply

with the requriements of the emergency planning regulations. Indeed, it would be useless to have such data and impossible to get it without without giving everyone in the EPZ a physical examination.

Conclusion

For the foregoing reasons, proposed NECNP contention 2, 6, 11 and 12 meet the pleading requirements of 10 CFR § 2.714, and the balance do not.

Respectfully submitted,

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Dated: August 2, 1982

CERTIFICATE OF SERVICE

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