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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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before the  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

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

RESPONSE OF THE COMMONWEALTH OF MASSACHUSETTS  
TO "APPLICANTS' REPLY TO BRIEF OF THE  
COMMONWEALTH OF MASSACHUSETTS  
IN SUPPORT OF ITS CONTENTIONS"

On August 2, 1982, the Applicants first stated certain objections to the admission of the Commonwealth's second, third, and fourth contentions in a document entitled "Applicants' Reply to 'Brief of the Commonwealth of Massachusetts in Support of its Contentions'" [hereinafter, "Applicants' Reply"]. The Commonwealth responds briefly to these objections below.

CONTENTION II

In response to this contention regarding EPZ boundaries Applicants argue, in effect, that compliance with an express requirement of the Commission's regulations would be a

"patently foolish waste of time." See Applicants' Reply, at 4. This argument must be rejected as a challenge to the Commission's emergency planning regulations. Furthermore, it is clear from a review of the Applicants' response to a similar contention filed by NECNP that there is no way in which intervenors can satisfy Applicants' demands with respect to this contention. Given that the Applicants have not conducted the required study of local factors and their impact on EPZ boundaries, intervenors are left with the options of drawing new boundaries without the benefit of that study, in which event Applicants will object to the contention as lacking basis (see "Applicants' Reply to NECNP Supplemental Filing on Emergency Planning Contentions," at 4), or continuing to object to the Applicants' failure to conduct the required review, in which event Applicants will claim that the contention lacks both specificity and basis (see Applicants Reply, at 5).

The Commission's requirement for review of local factors is not a waste of time. The Applicants cannot refuse to comply with that requirement and then use that refusal to the prejudice of the intervenors. Applicants are correct that there will not be much to litigate on this point if they continue to refuse to comply with the Commission's regulation. The Board will be obliged to find such noncompliance on summary disposition.

The Commonwealth's second contention states a litigable issue firmly based in the Commission's regulations and specifying the nature of the violation alleged . It should be admitted.

CONTENTION III

If the Applicants are correct in their response to this contention, then Section 50.47(a)(1) of the Commission's regulations has no meaning or effect to the extent it purports to require assurance that "adequate protective measures can . . . be taken in the event of a radiological emergency." Applicants argue that this regulatory provision can have no effect because the area which it seeks to regulate is already covered by 10 C.F.R. Part 100. See Applicants Reply, at 6-12. And they further seem to suggest that the Commission intended the provision to have no effect -- a remarkable suggestion for which the Applicants have provided no basis or authority. Ibid.

It is an elementary proposition, requiring no citation, that no provision of a statute or regulation may be deemed superfluous or meaningless. Section 50.47(a)(1) of the Commission's regulations requires "reasonable assurance" that persons within the Emergency Planning Zones surrounding any plant can be adequately protected in the event of a radiological emergency. This is a separate regulatory requirement from those set forth in Part 100 and is in no way

precluded by those other provisions,<sup>1/</sup> whether or not it can properly be characterized as a "site suitability" criterion. See Applicants' Reply, at 7. A comparable requirement must now be satisfied before a construction permit may be granted. See 10 C.F.R. Part 50, Appendix E, Section III, as amended 46 Fed. Reg. 28838 (May 29, 1981) ["The plans submitted must include a description of the elements set out in Section IV for the Emergency Planning Zones (EPZs) to an extent sufficient to demonstrate that the plans provide reasonable assurance that adequate measures can and will be taken in the event of an emergency."] <sup>2/</sup> Again, this requirement is in addition to those set forth in Part 100.

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<sup>1/</sup> 10 C.F.R. Part 100 clearly provides that it is an "interim guide," based on "insufficient experience" and intended "to identify a number of factors considered by the Commission in the evaluation of reactor sites." 10 C.F.R. §100.1. [Emphasis supplied] Part 100 does not, therefore, purport to contain all Commission requirements which may lead to the denial of a license to construct or operate a facility at a given site.

<sup>2/</sup> It is notable that the Commission engaged in "extensive debate" over the use of the word "adequate" in describing the protective measures which must be available, rather than the word "appropriate." See 46 Fed. Reg. 28838 (May 29, 1981). Clearly, the Commission was concerned that there be reasonable assurance that the public would in fact be adequately protected, and not simply that appropriate types of protective action would be taken. See also 45 Fed. Reg. 55403 (August 19, 1980) ["In order to discharge effectively its statutory responsibilities, the Commission must know that . . . adequate protective actions in response to actual or anticipated conditions can and will be taken."] The Applicants would now read the requirement for such assurance out of the Commission's regulations.

It is possible that application of the standard set forth in 10 C.F.R. §50.47(a)(1)(or the comparable provision for construction permit applications) could lead to denial of a license to construct or operate a facility at a particular site. However, that result would follow only if the Licensing Board concluded that there were no additional accident mitigation devices or other measures (such as improved access routes for use in evacuation, additional or improved sheltering facilities, or even shutting down the station or operating it at reduced power during certain months) which could raise the level of protection available to members of the public to acceptable limits. Thus, Applicants are not correct in characterizing the Commonwealth's third contention as relating exclusively or necessarily to site suitability. See Applicants' Reply, at 6 et seq.

In any event, Applicants' argument amounts to a suggestion that the Commission has intentionally deceived the public by promulgating a rule which by its terms appears to assure that no plant will be licensed unless the public can be protected in the event of a radiological emergency but which, in fact, adds nothing in this respect to pre-existing regulatory requirements -- requirements which the Commission found inadequate in light of the accident at Three Mile Island. See 45 Fed. Reg. 55403

(August 19, 1980).<sup>3/</sup> With its new emergency planning regulations the Commission now requires that emergency planning take place within Emergency Planning Zones, rather than the smaller Low Population Zone, and that there be proof of the feasibility of adequately protecting all persons within the larger zones. Applicants would have this Board enforce the Commission's requirement that plans be prepared within the larger area, but ignore the requirement that those plans must be able to provide an adequate level of protection to the public. It is disturbing, to say the least, that Applicants feel the need to limit the Board to such meaningless review. Applicants' response to this contention further demonstrates the critical need for review of whether the public can be adequately protected in the event of a radiological emergency at the Seabrook site.

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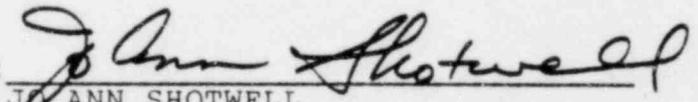
<sup>3/</sup> One of the respects in which the criteria of Part 100 have been found inadequate is addressed by the Applicants in their Reply. As Applicants note, the criteria of Part 100 allow for contraction of the area within which evacuation must be demonstrated to be feasible for purposes of that regulation (i.e., the LPZ) on the basis of the addition of engineered safeguards. See Applicants' Reply, at 10-11. Thus, that rule allows consideration of accident probabilities to affect the area within which feasibility must be demonstrated. As the Applicants again note, that is not possible under the Commission's emergency planning regulations. Once established on the basis of relevant local factors, the Emergency Planning Zones for a given facility are fixed and, regardless of any estimates as to the probability of accidental releases, there must be a demonstration that all persons within that zone can be adequately protected in the event of an accident.

CONTENTION IV

Applicants suggest that the Commonwealth, in rewriting this contention, has ignored advice given at the last prehearing conference as to the proper effect of NUREG documents and Regulatory Guides. See Applicants' Reply, at 12-13. The Commonwealth's fourth contention, as rephrased, is in complete accord with the position taken by the Applicants on this point at the prehearing conference.<sup>4/</sup> Thus, while sometimes referring to NUREG documents or Regulatory Guides as one means by which the Applicants could have satisfied a regulatory requirement, each subpart of this contention references a specific regulatory requirement and asserts that the Applicants have in no way satisfied that requirement. This contention should, therefore, be admitted in its entirety.

THE COMMONWEALTH OF MASSACHUSETTS

By:



J. ANN SHOTWELL  
Assistant Attorney General  
Environmental Protection Division  
Public Protection Bureau  
Department of the Attorney General  
One Ashburton Place, 19th Floor  
Boston, Massachusetts 02018  
(617) 727-2265

4/ Counsel for the Commonwealth does not recall that the Board ruled on this question, as Applicants have suggested.

CERTIFICATE OF SERVICE

I, Jo Ann Shotwell, Esquire, hereby certify that a copy of the foregoing Response has been mailed this 10th day of August, 1982, first class mail, postage prepaid, to:

Helen Hoyt, Chairwoman\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. NRC  
Washington, D.C. 20555

Dr. Oscar H. Paris\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. NRC  
Washington, D.C. 20555

Lynn Chong  
Bill Corkum  
Mary McCool  
Box 65  
Plymouth, NH 03264

Roy P. Lessy, Jr., Esquire  
Office of the Executive Legal  
Director, 10205 MNBB  
U.S. NRC  
Washington, D.C. 20555

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

Rep. Arnie Wight  
State of New Hampshire  
House of Representatives  
Concord, NH 03301

Paul A. Fritzche, Esquire  
Public Advocate  
State House, Station #12  
Augusta, ME 04333

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

E. Tupper Kinder, Esquire  
Assistant Attorney General  
Office of the Attorney General  
208 State House Annex  
Concord, NH 03301

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

Tomlin P. Kendrick  
822 Lafayette Road  
P.O. Box 596  
Hampton, NH 03842

William S. Jordan, II, Esquire  
Ellyn R. Weiss, Esquire  
Lynne Bernabei  
Diane Curran  
Harmon & Weiss  
1725 I Street, N.W.  
Suite 506  
Washington, D.C. 20006

Philip Ahrens, Esquire  
Assistant Attorney General  
State House, Station #6  
Augusta, ME 04333

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

\* By Express Mail, 8/10/82

Wilfred L. Sanders, Esquire  
Sanders and McDermott  
408 Lafayette Road  
Hampton, NH 03842

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. NRC  
Washington, D.C. 20555

Docketing and Service Sec.  
Office of the Secretary  
U.S. NRC  
Washington, D.C. 20555

Ms. Patti Jacobson  
3 Orange Street  
Newburyport, MA 01950

Cooperative Members for  
Responsible Investment  
Box 65  
Plymouth, NH 03264

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

Robert G. Perlis  
Office of the Executive Legal  
Director, 10205 MNBB  
U.S. NRC  
Washington, D.C. 20555

Edward J. McDermott, Esquire  
Sanders and McDermott  
408 Lafayette Road  
Hampton, NH 03842

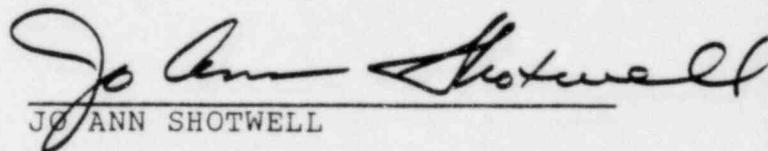
Atomic Safety and Licensing  
Board Panel  
U.S. NRC  
Washington, D.C. 20555

Robert L. Chiesa, Esquire  
Wadleigh, Starr, Peters,  
Dunn & Kohls  
95 Market Street  
Manchester, NH 03101

David A. Repka, Esquire  
Counsel for NRC Staff  
U.S. NRC  
Washington, D.C. 20555

Thomas G. Dignan, Jr., Esquire\*\*  
Robert K. Gad, III, Esquire  
Ropes and Gray  
225 Franklin Street  
Boston, MA 02110

Beverly Hollingworth  
7 A Street  
Hampton Beach, NH 03842

  
JO ANN SHOTWELL

\*\* By Hand, 8/11/82