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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

In the matter of:

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al

Docket Nos.

50-443 OL  
50-444 OL

(Seabrook Station, Units 1 and 2)

SEACOAST ANTI-POLLUTION LEAGUE'S OBJECTIONS TO  
BOARD ORDER RULING ON ADMISSIBILITY OF CONTENTIONS ON  
THE NEW HAMPSHIRE RERP AND MOTION FOR RECONSIDERATION

On August 30, 1983, this Board issued an Order ruling on the admissibility of contentions filed with respect to the New Hampshire State Radiological Emergency Response Plan for the Seabrook EPZ. SAPL hereby objects to the Board's rejection of SAPL's Contentions 1, 3, 4, 7 and 9 and moves for reconsideration of the Board's Order.

CONTENTION 1

Both the Applicants and Staff opposed Contention 1 on the grounds that it was "vague" and "open-ended". Yet both parties state they would have no objection to discrete contentions based on the specific deficiencies set forth in SAPL's statement of basis. In other words, the parties found fault with the format, not the substance of the contention itself.

Implicitly, the Staff and Applicants expressed concern that allowing admission of such a "broadly" worded contention would run contrary to the intent of the Peach Bottom decision (supra) that the parties be in a position of knowing generally what it is they will have to defend against or oppose. See Philadelphia Electric Company

(Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20-21 (1974).

In its response to these concerns, SAPL proposed deletion of the final contention sentence reading:

These are only a few of the many incompletions which prevent the NHRERP from providing a basis upon which reasonable assurance as required by the regulation can be established. (See SAPL Contentions on NHRERP, pg. 2, as well as SAPL's Response to Applicant and Staff Response to SAPL Contentions on NHRERP, pg. 1). r

Instead, SAPL added seven (7) discrete, additional bases to those already filed in support of the contention. The Board rejected SAPL's attempt at refining this statement of basis on the grounds that it fails to cure the "vagueness" and "overbreadth" problems with the contention itself.

SAPL is confused by the Board's decision on this point. Throughout these proceedings, the Board has expressed a strong interest in litigation efficiency, including the implementation of mechanisms to increase that efficiency. Clearly, one means to facilitate the management of contentions is to consolidate them where possible.

Apparently, none of the parties objects to the filing of eighteen "discrete" contentions all focusing on incompleteness. Yet the Applicants and Staff object to a consolidated contention which could easily be confined to those eighteen subject areas through appropriate discovery.

In the past, the Applicants have drafted their interrogatories to require detailed disclosure of SAPL's dissatisfaction with their performance under the regulatory criteria as set forth in the specific

contention. With respect to this contention for example, SAPL could easily be required to detail each and every respect in which it believes the NHRERP is incomplete. There is no reason why either the Applicants or Staff would be left with vagueness about the contention after discovery.

For this reason, SAPL moves the Board to reconsider its ruling on Contention 1. Acceptance of the Contention as worded along with SAPL's basis amendments is clearly a quality alternative in terms of judicial economy. Had SAPL revised its contentions in accordance with Applicant's and Staff's suggestions, the result would have been an additional eighteen contentions. Instead, the Board's ruling has eliminated an important and viable issue in this proceeding solely on the basis of format.

### CONTENTION 3

The Applicants had no objection to the admission of Contention 3 as worded. The Staff however found the contention to be overly broad, but acknowledged its readiness to accept additional, separate contentions based on the specifics included in SAPL's Contention 3 bases.

The Staff's position, and ultimately the Board's agreement, runs contrary to the Board's desire for judicial economy for the same reasons as those noted above. While it is true that the roles of many organizations are described in the NHRERP, those particular organizations not described are set forth in SAPL's basis, and the specifics of SAPL's concerns can easily be nailed down through the appropriate mechanisms of discovery.

#### CONTENTION 4

As stated by Staff in its response to SAPL's contentions, SAPL chose to defer filing contentions on the evacuation time estimates until the NHRERP became available. SAPL has adhered to its position that a determination of time estimate accuracy is directly related to the adequacy and completeness of state and local emergency plans.

It has been pointed out by Staff that the contention raises a proper, litigable issue at this time. A ruling by the Board that Contention 5 is "bereft of any new issue" (see Board's Order, pg. 14) is a de facto ruling on the merits of the contention. SAPL is prepared to defend the contention against res judicata dismissal motions on the grounds that there are, in fact, numerous and substantial reasons why the August hearings are not dispositive of the issue.

Those defenses are based on the merits of the contention as it relates to the NHRERP, however, and they are presently irrelevant for purposes of ruling on the contentions acceptance. See 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, infra, 8 AEC at 20.

To the extent that the Board rejected the contention due to a lack of specificity, SAPL raises the same objections as those noted above with respect to contentions 1, 3 and 4.

#### CONTENTION 7

The Staff has not objected to the admission of this contention.

The Applicants have objected on the basis that SAPL misstates the regulatory requirements.

In its Order, the Board disagreed with the Applicants citing its deference to NUREG-0654 as an appropriate interpretation of the regulations where there is no indication to the contrary. However, the Board rejected the contention based on its own analysis, in the first instance, that the contention was "overly broad and lacking specificity". (See Board Order, pg. 8.)

The raising of this issue sua sponte by the Board has made it impossible for SAPL to make a timely response in the way of proposing clarifying amendments to the contention as worded. If the Board is to raise objections at the time of its ruling in the first instance, it is depriving SAPL of its right to make good faith, appropriate responses. It also results in the unnecessary rejection of timely and litigable issues important to SAPL based only on the format of their presentation. SAPL strenuously objects to this procedure and urges the Board to reconsider its rejection of contention 7 or, in the alternative, to at least provide SAPL with an opportunity to bring the contention into conformance with the specificity threshold established by this Board.

#### CONTENTION 9

The substance of contention 9 is that the NHRERP fails to meet the requirements of 10 C.F.R. §50.47 (b)(10) as clearly and straightforwardly interpreted by NUREG-0654 J.12. Although the Applicants objected on the basis that SAPL misstated the regulatory requirement, the Board properly made note of the NUREG-0654 regulatory

interpretation, and deferred to it. In addition, however, the Board read into the Applicant's objections an "implicit" concern about the specificity of the contention and its relationship to the statement of basis.

For the same reasons as those stated above regarding the other SAPL contentions dismissed for lack of specificity, this contention should be admitted precisely as worded. SAPL has identified not only the regulatory requirement, but the specific and narrowly construed interpretation of that requirement adopted by the Commission. SAPL has also provided specific examples of how the plans fall short of meeting that requirement in its statement of basis. Given that the NUREG-0654 interpretation of this requirement is specific and straightforward in itself, SAPL fails to see why a contention based directly on the language of that requirement is "overly broad" in any way.

#### SUMMARY

Many if not all of the grounds for the Board's rejection of SAPL contentions have been based on concern with breadth and specificity. SAPL contends that consolidation of contentions is a reasonable and prudent mechanism and more efficient in handling this already extensive and complex litigation. As stated above, SAPL sees no reason why specifics of its case cannot be nailed down in discovery rather than being laid out in extensive detail at the very initiation of the proceedings.

Further, the practical result of insisting that SAPL draft numerous, narrow, and specific contentions based on every element

of every statement of basis, is that the burden is shifted from the Applicants to the intervenors. It is not SAPL's responsibility to draft these emergency plans for the Applicants, yet the nature of the Board's ruling requires SAPL to do just that. While SAPL recognizes the importance of putting all parties to this proceeding on notice as to specifically what shall be litigated, the rejection of contentions based on consolidated pleadings provides a remedy already available through discovery. It also denies an opportunity for intervenors to raise and litigate important issues related to the public safety.

Therefore, SAPL respectfully requests that this Board reconsider its decision to reject the above cited contentions, and allow their admission as originally drafted.

Respectfully submitted,  
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