

civil defense authorities is not a litigable issue in an Operating License proceeding. Without any discussion, NECNP apparently assumes that because New Hampshire prepared the document, and because it was made available to the parties, it must be litigable. Nothing, however, is litigable in these proceedings unless it can be demonstrated to relate to the meeting or failure of meeting of some condition precedent to licensing imposed upon the applicant by virtue of the Commission's regulations. NECNP points to no such connection.

Issues concerning evacuation time studies are litigable (to the extent that they are) because there is a regulatory requirement that applicants prepare such studies. 10 CFR Part 50, Appendix E, § IV, Preamble:

"The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations."

(Emphasis added.)

This imposes no requirement that New Hampshire also make the same studies, and, insofar as we are aware,

there is no other requirement for the submission of evacuation time studies. See NUREG-0654, Rev. 1, Item J(8) at p. 61. There is, therefore, no basis on which an operating license could be denied even if no evacuation time studies were prepared by the state civil defense authorities and a fortiori if a license cannot be denied on the ground that the state has prepared no studies, it cannot be denied on the ground that the content of studies gratuitously performed is not to someone's liking.

We hasten to point out that we are raising a legal argument about the admissibility of a contention in NRC licensing practice. We do not mean to be read as denigrating in any fashion the studies themselves.

Specific Objections

1. Contention 1. NECNP, latching on to a modelling convention to the effect that all persons instructed to do so will evacuate,¹ NECNP proposes

¹"Final Draft of Appendix E Emergency Planning Zone Evacuation Time Study, Seabrook Nuclear Power Station," Prepared by Costello, Lomasney & deNapoli, Inc. in association with C. E. Maguire, Inc. for New Hampshire Civil Defense Agency, July, 1983 (hereinafter "Maguire Report"), at II-13.

a contention to the effect that the evacuation times quantified must be understated because they do not include time spent by persons who first return to their homes and take other preparatory measures prior to beginning their evacuation trip. Unfortunately, NECNP has not read the Maguire Report closely enough, and it has attempted to mix unrelated concepts. As stated clearly in the report, with the exception of one case scenario modelled,² the Maguire Report assumes that "people within the EPZ will go home first to await further instructions or to begin mobilization for evacuation" Maguire Report at II-15 n.2. The resulting "clear times" include the time required for this activity. "Mobilization time refers to the time it takes evacuees to prepare for evacuation following their notification. . . . Clear time estimates include mobilization time but not include notification time." Id. at V-2, V-5.

²The "immediate response" scenario. See Maguire Report at II-15 & n.2. It is worth observing that nothing in the Commission's regulations, the appendix thereto, or the Staff guidance in respect thereof requires an "immediate response" scenario.

Proposed Contention 1 is based upon a manifest misreading of the written document in question. It therefore fails on its face as a matter of law to state a litigable issue and should be excluded.

2. Contention 2. Contention 2 proposes, ultimately,³ that the Maguire Report estimates are inaccurate because they assume that bus drivers and ambulance drivers will do their duty in the absence of "commitments" from the drivers to that effect. Prescinding from the small number of persons involved (and hence the small effect upon the overall estimates) (see Maguire Report at § III, Table 7, § III, Table 9), and prescinding from the small number of drivers

³The contention starts off with the global generalization that "The New Hampshire ETE's are inaccurate and overly optimistic in that they assume that public transportation will be available to those who need it." Perhaps in recognition that the Maguire Report contains detailed analyses both of the transportation needs of the transportation-dependent members of the EPZ community and the resources needed and available to meet those needs, Maguire Report at §§ III(b)(3) & (4), IV(E), VI(D), NECNP retreats behind the far more limited assertion that bus drivers won't do their duty and that a condition to licensing should be imposed that "commitments" to do so should be obtained from the drivers.

required (and hence the relative ease of replacing those requiring replacements for whatever reason) (Maguire Report at § IV, Table 13), this contention should not be admitted without some greater basis than is proffered. That public officials and employees -- indeed, persons charged with public service obligations without regard to who employs them -- will perform their duties when called upon amounts to nothing more than an application of the presumption of regularity. We have no doubt that the presumption is rebuttable, in a proper case where a sufficient basis has been put forth for concern that what usually happens will not happen in the case at bar. But NECNP's mere ipse dixit, and the bald assertions of unidentified "local officials" whose basis is wholly undisclosed and probably non-existent does not do the trick. In order to require litigation, we submit, more is required.

This contention should be excluded for lack of sufficient basis.

3. Contention 3. As framed, the contention is that the Maguire Report fails to analyze the effect upon evacuation time estimates of adverse weather. Such is manifestly false, for the studies in fact

examine such effects quite closely and quantify their effects quite conservatively:

"During adverse weather, highway capacities are reduced to 50% of normal capacity for winter snow storms and to 75% of normal capacity for summer rain/fog conditions. These percentages are conservative capacities and represent the effect of adverse weather on speed and headways in the traffic system."

Maguire Report at II-14.

What NECNP really means to say is that the studies have inadequately studied or quantified the effects of one kind of adverse weather, namely flooding (to which NECNP's statement of basis is limited). There is no assertion, however, that the effects of flooding, as a general phenomenon, will change the evacuation times estimated, and there is nothing in the statement of basis that supplies the missing link.⁴

⁴The Board is in the unique position in the posture of these proposed contentions of knowing that nothing in Chief Mark's qualifications affords him any basis for offering expert testimony on evacuation time estimates. Moreover, the Board has already heard evidence from qualified experts to the effect that the purpose of evacuation time estimates is not to state the obvious to officials (such as that, if a given highway is impassable (because of flooding or any other reasons), evacuation over that highway is not feasible). No decision-maker needs a study to inform him of a truism. The purpose of evacuation time studies, rather, is to estimate the times required

The contention should therefore be excluded on the basis that, as written, it is manifestly incorrect and that, as probably intended, it is without sufficient basis.

4. Contention 4. The Applicants believe that this would be an admissible contention, if the subject of the state's evacuation time estimates were litigable.

5. Contention 5. This contention, reduced to its essentials, is that the Maguire Report has underestimated the highway capacities of some of the roadway links in the evacuation roadway network, and, therefore, the evacuation times are lower than they would be if the proper values for capacity were used. However, the contention does not assert that Maguire did not analyze and quantify the capacities of the links, as manifestly it did. See Maguire Report at II-11, § IV. At bottom, therefore, the contention must be that Maguire got some of the capacities wrong.

That, however, is not what the contention asserts,

to evacuate over route that are available, but slowed, because of adverse weather.

and it is not what the proffered basis would support. All that the proffered basis supports, rather, is that a few of the links are congested. The evidence is plain that Maguire knows this, and there is no proffered basis for concluding that Maguire failed adequately to take the congestion into account. This contention amounts to nothing more than a fishing expedition and it should be excluded for failure to offer any basis for a litigable issue.

6. Contention 6. This contention suffers from a similar flaw. Even assuming, arguendo, that McGuire gave no consideration at all to vehicles "running out of gas," there is no assertion by NECNP in its statement of basis that the aggregate effect of taking cognizance of this potential would have any measureable impact on the overall time estimates. We suspect that NECNP has good reason for not going so far; in any event, the proffered basis is inadequate to support the contention as framed.

7. Contention 7. This contention comes close to being admissible. The assertion must be (though the verbiage obscures precise analysis) that the studies, because they employ one assumption (a law abiding

citizenry), result in numbers that are too low because another assumption (automotive anarchy) is correct and that assumption would yield higher (or at least different) numbers. It is true that the Maguire Report states a methodological assumption of lawfulness, Maguire Report at II-13, though some qualification is stated. However, even if we assume the contrary assumption (as NECNP is apparently willing to do), neither is it a priori that different numbers will result nor is there any basis asserted by NECNP for so assuming. What evidence appears from the face of the Maguire Report is to the contrary.⁵

We agree that this topic would be litigable, if NECNP were in a position to carry its threshold burden of showing that traffic control obeisance were a necessary premise to the values Maguire obtained. It has not done so, however, and the contention should therefore be excluded for want of a sufficient basis.

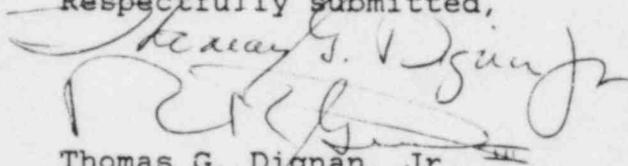
⁵Maguire Report at VI-1.

8. Contention 8. The Applicants believe that this would be an admissible contention, if the subject of the state's evacuation time estimates were litigable.

Conclusion

For the foregoing reasons, all of the proposed contentions regarding the New Hampshire evacuation time estimates should be excluded.

Respectfully submitted,



Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
Telephone: 423-6100

Dated: October 28, 1983

CERTIFICATE OF SERVICE

I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on October 28, 1983, I made service of the within "APPLICANTS' ANSWER TO 'NECNP CONTENTIONS ON NEW HAMPSHIRE EVACUATION TIME STUDY'" by mailing copies thereof, postage prepaid, to:

Helen Hoyt, Chairperson
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Diana P. Randall
70 Collins Street
Seabrook, NH 03874

Dr. Emmeth A. Luebke
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

William S. Jordan, III, Esquire
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, DC 20006

Dr. Jerry Harbour
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

G. Dana Bisbee, Esquire
Assistant Attorney General
Office of the Attorney General
208 State House Annex
Concord, NH 03301

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Roy P. Lessy, Jr., Esquire
Office of the Executive Legal
Director
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney
General
Augusta, ME 04333

David R. Lewis, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Rm. E/W-439
Washington, DC 20555

Charles Cross, Esquire
Shaines, Madrigan & McEachern
25 Maplewood Avenue
P. O. Box 366
Portsmouth, NH 03842

Ms. Roberta C. Pevear
Designated Representative of
the Town of Hampton Falls
Drinkwater Road
Hampton Falls, NH 03844

Mrs. Sandra Gavutis
Designated Representative of
the Town of Kensington
RFD 1
East Kingston, NH 03827

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

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

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

Jo Ann Shotwell, Esquire
Assistant Attorney General
Environmental Protection Bureau
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Ms. Olive L. Tash
Designated Representative of
the Town of Brentwood
R.F.D. 1, Dalton Road
Brentwood, NH 03833

Mr. Patrick J. McKeon
Selectmen's Office
10 Central Road
Rye, NH 03870

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

Mr. Angie Machiros
Chairman of the
Board of Selectmen
Town of Newbury
Newbury, MA 01950

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

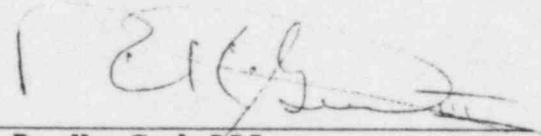
Mr. Donald E. Chick
Town Manager
Town of Exeter
10 Front Street
Exeter, NH 03833

Brian P. Cassidy, Esquire
Regional Counsel
Federal Emergency Management
Agency - Region I
442 POCH
Boston, MA 02109

Mr. Richard E. Sullivan
Mayor
City Hall
Newburyport, MA 01950

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

Brentwood Board of Selectmen
RFD Dalton Road
Brentwood, NH 03833



R. K. Gad III