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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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BEFORE ADMINISTRATIVE JUDGES:
Helen F. Hoyt, Chairman
Dr. Emmeth A. Luebke
Dr. Jerry Harbour

OFFICE OF REGULATORY
ADMINISTRATION
BRANCH

In the matter of)	
)	Docket Nos.
PUBLIC SERVICE COMPANY OF)	50-443-OL
NEW HAMPSHIRE, et al.)	50-444-OL
(Seabrook Station, Units 1 and 2))	(Off-Site EP)
)	March 24, 1986

ANSWER OF ATTORNEY GENERAL FRANCIS X. BELLOTTI TO
THE STAFFS', APPLICANTS' AND STATE OF NEW HAMPSHIRE'S
RESPONSES TO HIS CONTENTION RELATIVE TO EMERGENCY
PLANNING FOR THE NEW HAMPSHIRE BEACH COMMUNITIES

On February 21, 1986, Attorney General Bellotti submitted a single contention relating to the local emergency plans for the coastal New Hampshire communities within the Seabrook Emergency Planning Zone. On March 5, March 6 and March 14, respectively, the Applicants, State of New Hampshire and the Staff filed their responses to that contention. Attorney General Bellotti hereby responds to the Applicants, State of New Hampshire, and Staff positions as set forth in those pleadings.

The State of New Hampshire objects to the admission of Attorney General Bellotti's contention "to the extent that [the] contention asserts that the protective actions of

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evacuation and sheltering must ensure complete protection to the transient beach population under all circumstances. . . ."

See, the State of New Hampshire's Response to Contentions Filed by NECNP, the Commonwealth of Massachusetts, the Towns of Rye, Hampton, South Hampton, Kensington and Hampton Falls on the New Hampshire Radiological Emergency Response Plan, dated March 6, 1986, at 5. The Applicants and Staff similarly posit as their major basis for either limiting or not admitting the Attorney General's sole contention that, "neither the Commission's regulations nor NUREG-0654 requires that absolute assurance of radiological safety be provided in the event of an emergency or that evacuations be completed in any particular time frame."

See, NRC Staff's Response to Contentions Filed By State of Massachusetts Attorney General Francis X. Bellotti, dated March 14, 1986, [hereinafter "Staff's Response"], at 3. See also, Applicants' Response to Off-Site EP Contentions Submitted by Massachusetts Attorney General, dated March 5, 1986 [hereinafter "Applicants' Response"], at 14. The short answer to these objections is that the Massachusetts Attorney General is not contending that emergency plans must assure absolute protection under all circumstances or even that the protective action of evacuation must be completed within any particular amount of time. Nor is the Attorney General contending, as the Applicants' response to our contention suggests, that one must plan only for a worst case accident. See Applicants' Response at 2-3.

What the Attorney General does contend is that, pursuant to the Commission's regulations, emergency response plans must provide reasonable assurance that adequate protective measures can and will be taken in response to a full spectrum of possible accident sequences, and that the New Hampshire plans fail to meet this standard because they provide virtually no assurance that adequate protective measures can or will be taken in the event of a severe accident at the Seabrook power plant on a summer weekend. There can be no basis, then, for not admitting Attorney General Bellotti's contention to this proceeding. The relevant inquiry at this stage is simply whether the contention states a violation of a regulatory requirement with reasonable specificity and this it clearly does.

The Staff and Applicant would nevertheless argue that the contention is not admissible, as is, for the simple reason that the Commission has never established a precise level of protection which emergency plans must meet. It does not follow, however, that just because there is no absolute level of protection required for emergency plans, that no standard at all exists against which protective response actions must be judged. See Applicants' Response at 15; Staff's Response at 3-4. Commission regulations require that there be "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.R.

§ 50.47(a)(1). Thus, there is a standard, a level of protection, which must be satisfied. To say otherwise, would be to disregard the plain meaning of the regulation which requires "adequate protection." Cf. Guard v. NRC, 753 F.2d 1144, 1149 (D.C. Cir. 1985). The fact that the Commission has not particularized that standard by establishing a "threshold number of unacceptable deaths or injuries" or otherwise further defined what constitutes "adequate protection," does not mean that a contention challenging the level of protection accorded in a given instance is inadmissible. It means, rather, that any such contention is admissible and it is then up to the Board to determine whether the level of protection provided is adequate, thus meeting the regulatory standard.

In the basis to our contention, we present evidence that evacuation within the times currently estimated will, under typical meteorological conditions, subject thousands of beachgoers to doses which can lead to death in a matter of days. It is Attorney General Bellotti's contention that an emergency plan which relies solely on evacuation and sheltering as the two possible protective options, which cannot at present prevent thousands of beachgoers from being exposed to early death does by means of evacuation even under typical meteorological conditions, and which contains no plans or provisions for sheltering the beach population does not provide adequate protection for that population.

While the Staff concedes that Attorney General Bellotti's contention should be admitted to this proceeding, they seek to limit that contention by limiting the evidence which the Attorney General may introduce in support of its contention. See Staff's Response at 2. Yet, fear that certain evidence or arguments might be proffered in support of a contention is not a proper basis for limiting the admissibility of a contention. The issue of what evidence may be introduced is just not a relevant inquiry at this stage in the proceedings. Moreover, the fact that the Commission has not further defined what constitutes "adequate protection" means that the Board should not be able to limit the type of evidence admissible on this point.

While it may be the case that in a typical licensing proceeding it would be unnecessary to look at dose consequences of particular accidents to determine the adequacy of the provided protective response actions, Attorney General Bellotti intends to introduce evidence in support of its contention which will show that, primarily due to the large summer beach population, the situation at the Seabrook plant is unique; that emergency response measures which might be perfectly adequate to protect the populations surrounding the average nuclear power plant are simply not adequate to protect the summer beach population near the Seabrook plant. The Attorney General thus seeks to introduce relevant evidence on this very serious issue

concerning the ability of the New Hampshire Plan's emergency response measures to provide adequate protection for the beach population. The admissibility of such relevant evidence should certainly not be limited at this stage.

The Staff also attempts to inappropriately narrow Attorney General Bellotti's contention to the sole issue of whether the New Hampshire Plan makes adequate provision for sheltering the summer beach population. Our contention, however, is intended to address the broader requirement that the plan provide "reasonable assurance that adequate protective measures can and will be taken" to protect the beach population. Since there has, to date, been no examination of the availability of adequate sheltering for the beach population, the contention cannot be so limited with respect to the possible means for providing adequate protection. Other potential means for assuring adequate protection include improvements in traffic management or control or improvements in the evacuation network to decrease evacuation times, examination of alternative protective options such as evacuation by foot, and imposition of a license condition prohibiting operation of the facility during the summer months. Again, the Commission's regulation is not restrictive in terms of the means by which adequate protection must be provided and the Board and parties to the proceeding cannot, therefore, be restricted to sheltering as the sole means for providing the necessary protection.

The only remaining objection to our contention, not yet addressed, is the Applicants' objection, that the issues raised by our contention should have been litigated at the siting stage. We agree with the Applicants, in part. Unfortunately this was not possible to do. The Applicants received their construction permit before the Commission's current emergency planning regulations, requiring evacuation planning for the area within ten miles around a nuclear power plant, were in effect. When these emergency planning regulations did become effective, Attorney General Bellotti supported the Seacoast Anti-pollution League ["SAPL"] in seeking an Order to Show Cause why the construction permit for the Seabrook nuclear power plant should not be suspended or revoked. See, Memorandum of the Commonwealth of Massachusetts in Support of Seacoast Anti-Pollution League's Request for an Order to Show Cause dated June 30, 1980, dated March 13, 1981. In that proceeding, we sought to have determined the feasibility of evacuating the population within ten miles around the Seabrook plant. The Applicants argued, however, and the Commission ruled, that the issue of evacuability was one to be decided at the licensing stage. See SAPL v. NRC, 690 F.2d 1025 (D.C. Cir. 1980). The Applicants, then, would place the Attorney General in a "Catch-22" type of situation, in which this important issue over the adequacy of the New Hampshire plans' protective responses may never be heard. That position is simply

untenuous. As the court affirmed in SAPL, the issue of whether adequate protection responses can and will be implemented with respect to the summer beach population near the Seabrook nuclear power plant is an issue of emergency planning properly before the Licensing Board at this time. SAPL v. NRC, supra at 1030.

Respectfully submitted,

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March 24, 1986

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NUCLEAR REGULATORY COMMISSION

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PUBLIC SERVICE COMPANY OF NEW)
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Docket OFFICE OF SERVICE)
50-433/444-OL)
BRANCH)

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I Carol S. Sneider hereby certify that on March 24, 1986 I made service of the within document by mailing copies thereof, postage prepaid, to:

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