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Seacoast Anti-Pollution League

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PRELIMINARY STATEMENT OF THE SEACOAST ANTI-POLLUTION LEAGUE
ON THE NRC PROPOSAL TO AMEND ITS RULES TO ALLOW FULL POWER
OPERATION OF NUCLEAR POWER PLANTS ABSENT STATE AND LOCAL
GOVERNMENT PARTICIPATION IN EMERGENCY PLANNING (SECY-87-35)

Throughout its history, both in its former incarnation as the Atomic Energy Commission and in its present form as the Nuclear Regulatory Commission, this Commission has asserted that public health and safety are its primary, final and enduring considerations. The Commission has on various occasions and consistently in the past disclaimed any interest in or consideration of the weight of economic investment borne by potential licensees. Further, the Commission, in promulgating the final rule on emergency planning in August 1980, did contemplate the eventuality that lack of participation by State and local governments could impede operation of some reactors.

Today, the Commission is seeking to backpedal on its commitment to public safety, inject utility economic considerations into licensing determinations, and pretend that it never envisioned that State and local governments would not go along with the planning process if they determined that adequate plan development was infeasible. In short, the Commission is seeking to stand history on its head to accomodate the needs of utilities that have run up against a reality that to them is most unpleasant, i.e. the fact that there are certain locations in this country where plans simply cannot be developed that provide "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" as required at 10 CFR 50.47(a)(1).

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A) THE COMMISSION IS RETREATING FROM ITS PUBLIC SAFETY RESPONSIBILITIES

The Commission, in considering this proposed rule, acknowledges that the adequacy of plans is improved if there is the cooperation of state and local governments:

The governments or others may dispute whether planning is adequate, but it would seem fairly indisputable that the adequacy of a plan with cooperation will be enhanced relative to a utility sponsored plan without it.

(SECY-87-35, Attachment A at 11)

Adoption of the proposed rule could, in a few cases where State or local governments do not cooperate in emergency planning, result in nuclear plant operation with less than optimum governmental coordination in emergency planning. In this circumstance, the public in the vicinity of the few affected plants would be placed at somewhat greater risk relative to what would be the case if either the governments cooperated or the NRC adhered to its current emergency planning rules.

Emphasis Added

(SECY-87-35, Attachment C at 1)

In short, it is incontestable that adoption of the proposed rule would lead to a reduction in the margin of public safety and the NRC Staff has conceded this point.

The purpose of emergency planning is to provide a means of achieving dose savings for the population in the event of a radiological emergency. The discussion of the proposed rule states that that proposed approach "focuses on what is prudent and achievable dose reduction taking into account lack of governmental cooperation." The Seacoast Anti-Pollution League believes that the use of the word "prudent" in this context is ridiculous in the extreme. There is nothing at all prudent about adopting a set of rules, particularly in light of the lessons that can be learned from the response to the accident at Chernobyl, which provide an avenue for circumventing State and local governmental assessments as to the feasibility of plan implementation.

In the first Supreme Court case arising out of a contested

licensing proceeding, Power Reactor Development Co. v. International Union of Electrical, Radio & Machine Workers, 367 U.S. 396 (1961), the Atomic Energy Commission assured the Court that "public safety is the first, last, and a permanent consideration in any decision on the issuance of a construction permit or a license to operate a nuclear facility." If such were indeed still the case, the NRC would not now be entertaining a rulemaking proposal that represents an admitted reduction in the level of public protection. SECY-87-35 states that: "The rule change would have a minimal impact on safety." This statement is simply gratuitous and unsubstantiated. As a sop to try to appear to retain a concern about public safety, the Commission tosses out the statement that:

Moreover, the Commission emphasizes that it would not be possible under this option to license a plant for full power operation unless the applicant demonstrates that adequate offsite emergency planning is achievable and all other aspects of foregoing criteria are satisfied. This rulemaking is intended only to address non-cooperation by responsible State or local governments; it does not provide a remedy or excuse for other offsite emergency planning problems.

(SECY-87-35, Attachment A at 5-6)

Any party that has ever intervened in an NRC licensing proceeding knows how hollow this assurance is. In the Seabrook licensing proceeding, many meritorious contentions detailing serious planning deficiencies have been rejected by the Board. (See, for example, the contention appended as Attachment I.)

B) THE COMMISSION IS IMPROPERLY REVERSING ITS PAST POSITION THAT ECONOMIC INVESTMENT BY UTILITIES HAS NO BEARING ON LICENSING

In 1979, in the wake of the Three Mile Island nuclear accident, the Seacoast Anti-Pollution League petitioned the NRC, pursuant to 10 CFR 2.206, for a hearing on suspension or revocation of the

construction permits for Seabrook in light of that fact that the Commission was promulgating emergency planning requirements. The Commonwealth of Massachusetts filed a memorandum in support of SAPL's request. SAPL believed then, as it believes today, that it is impossible to develop a feasible evacuation plan for the area around Seabrook because of dense population and an inadequate roadway network.

On July 15, 1981, Harold Denton, then the NRC's Director of the Office of Nuclear Reactor Regulation, denied the request for a hearing, stating:

As a basis for instituting a show cause proceeding, the Commonwealth of Massachusetts suggests that permitting continued construction may result in "perhaps billions" of dollars of wasted investment if the Commission ultimately rejects the Seabrook operating licenses on the basis of inability to adequately cope with emergencies. That risk of lost investment is the risk that every holder of a construction permit carries. See Power Reactor Development Co. v International Union of Electrical, Radio & Machine Workers, 367 U.S. 396 (1961). The permittee's investment in constructing the facility is not, however, a proper factor for consideration in determining at the operating license stage whether a nuclear power plant is safe to operate. Id at 415.

(Director's Decision Under 10 CFR 2.206, July 15, 1981 at 11)

SAPL challenged the denial of a hearing in the U.S. Court of Appeals. Though the Court upheld the NRC's decision, the Court noted:

The Commission thus argues that because the EPZ evacuation issue will be addressed in the operating license review, it was not arbitrary or capricious to refuse to address it sooner. The Commission further denies that PSC's financial investment in the plant will influence its consideration of whether to grant the operating license.

(Seacoast Anti-Pollution League v. Nuclear Regulatory Commission, 690 F. 2d 1025 (D.C. Cir. 1982))

Today, the Commission has reversed its position. The proposed rule states:

Significant policy questions of equity and fairness are presented where a utility has substantially completed construction and committed substantial resources to a nuclear plant and then, after it is far too late

realistically for the utility to reverse course, the State or local government opposes the plant by non-cooperation in offsite emergency planning.

(SECY-87-35, Attachment A at 4)

It is only "far too late" for the utility to reverse course because the utility and the NRC refused to deal with the infeasibility of evacuation at Seabrook back in 1979 when SAPL requested that the matter be addressed. It is intervenors who have not been accorded "equity and fairness".

C) THE COMMISSION, IN ADOPTING ITS CURRENT EMERGENCY PLANNING REGULATIONS, DID CONTEMPLATE THE EVENTUALITY THAT STATE AND LOCAL GOVERNMENTS MIGHT NOT PARTICIPATE IN EMERGENCY PLANNING

The Commission's present claim that it always expected that State and local governments would participate in the development or implementation of offsite emergency plans is plainly erroneous.

In the discussion of the rationale for the adoption of the final emergency planning rule, the Commission stated:

The Commission recognizes there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules.

(45 Fed. Reg. 55402 at 55404,
August 19, 1980)

The Commission did state that it expected State and local officials would "endeavor to provide fully for public protection." Id. at 55404. SAPL believes that this is what responsible government officials have done in refusing to submit inadequate emergency plans for the areas surrounding Seabrook and Shoreham.

D) CONCLUSION

The NRC, in proposing this rule change in response to utility claims that politically ambitious public officials are taking advantage of a "flaw" in the licensing process in blocking nuclear plant operation, has put forth a false characterization of the past regulatory history

and intent of emergency planning regulations. Further, the Commission has executed an abrupt about face on the issue of consideration of utility investments in licensing decisions. Most importantly, the Commission has retreated from that which is supposed to be its highest commitment, the public health and safety.

Respectfully submitted,

Jane Doughty

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Seacoast Anti-Pollution
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February 24, 1987

Contention 4:

The New Hampshire, State, local and host community plans fail to meet in adequate fashion the requirements that provisions be made for medical treatment of contaminated injured individuals as set forth at 10 C.F.R. §50.47 (b)(12) and NUREG-0654 II.L. 1. and L. 3.

Basis: Section 2.8 of the New Hampshire State plan describes the medical and public health support available to cope with a radiological emergency. Table 2.8-1 lists the local medical facilities capable of treating radiation accident patients. The total capacity of all these facilities, even assuming their maximum capacity, is inadequate for the task of treating those numbers of individuals who are likely to be both contaminated and injured in a serious nuclear accident at Seabrook, much less those in addition who are exposed to excessive amounts of radiation. Assuming maximum capacity, the hospitals listed can treat a total of 51 Type 2 patients (Type 2 patients being defined in the Table as those requiring *medical care as well as radiologically contaminated) and a total of 76 Type 1 patients (defined as those who have experienced excessive exposure to radiation). Only two of the hospitals listed can treat the numbers of patients specified for Type 2 treatment in addition to the numbers requiring Type 1 treatment. This means that the absolute maximum number of patients who could be treated at any one time is 91 patients.

Table 1, located in each of the 17 New Hampshire local plans, provides 1985 peak population figures for each of the New Hampshire municipalities within the plume exposure EPZ. The combined total 1985 peak population of the 17 New Hampshire towns is 191,849. Even if dealing only with the Type 2 patients, it is unreasonable to assume that only 51 persons out of 191,849 would be both injured and contaminated in a serious nuclear accident involving an evacuation of the plume exposure EPZ. 51 is only .027% of 191,849. Realistically, in a serious accident scenario, thousands of people could require specialized medical care.

1. SAPL holds the position that "contaminated injured individuals" at 10 C.F.R. §50.47 (b)(12) should properly be construed to include those exposed to excessive levels of radiation as well, the so-called Type 1 patients. Excessive radiation exposure injures living tissue.

Furthermore, the capacities listed for Exeter Hospital and Pease Air Force Base hospitals should not be assumed since Exeter Hospital lies within the plume exposure EPZ and might need to be evacuated. Pease is just a short distance beyond the EPZ boundary and might conceivably also be evacuated. If evacuated, neither facility would be available for the provision of medical treatment, thereby reducing the capacity for treatment of Type 2 patients to 47. Five of the hospitals listed, Mary Hitchcock Memorial Hospital, Cheshire Medical Center, Cottage Hospital, Newport Hospital and Sceva Speare Memorial Hospital are more than 50 miles from Seabrook Station and would require significant travel time before arrival. If contaminated individuals were severely injured, they might not be able to survive the duration of the trip. Travel time would be lengthened by the congestion of the roadways in the EPZ in an evacuation scenario.