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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Jerry Harbour

In the Matter of	Docket Nos. 50-443-OL 50-444-OL
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.	(ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)
(Seabrook Station, Units 1 and 2)	
	July 22, 1988

MEMORANDUM AND ORDER - PART I
(Ruling on Contentions on the Seabrook Plan
For Massachusetts Communities)

I. PRELIMINARY STATEMENT

The several intervenors, led by the Attorney General of Massachusetts, now joined by some additional Massachusetts local governments, have submitted hundreds of contentions and sub-contentions on the Seabrook Plan for the Massachusetts Communities (SPMC). In Part I of our Order ruling on the contentions, we address the pleadings of the Massachusetts Attorney General (Mass AG), New England Coalition on Nuclear Pollution (NECNP), and Seacoast Anti-Pollution League (SAPL). Part I is issued without

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delay so that the parties and petitioners can have early notice of our rulings on fundamental threshold and legal issues and so that the respective intervenors may begin planning their discovery programs. In Part II, soon to follow, the Board will address the petitions of the Massachusetts cities and towns.

The central theme of most of the contentions is that the population residing in the Massachusetts communities within the ten-mile plume exposure emergency planning zone for Seabrook, especially the beach population, will not receive adequate protection in the event of a radiological emergency at the station.

The familiar history of this phase of the proceeding is that the Commonwealth of Massachusetts ceased its radiological emergency planning for Seabrook in 1986 on the stated ground that the nature of the Seabrook site made meaningful planning impossible. The Commonwealth has not since cooperated with the Applicants in the preparation of an emergency plan, although the NRC emergency planning rule assigns shared responsibility for planning to licensees and to state and local governments. Applicants, therefore, in September 1987, submitted their own plan for the Massachusetts communities -- the SPMC. The Commonwealth and local governments avow that they will not follow or implement the SPMC, again on the ground that no adequate planning is possible, and that the SPMC is inadequate, and,

in any event, impossible to follow. The governments acknowledge that they would respond to a radiological emergency at Seabrook on an ad hoc basis. But, as they argue, any response to a serious, fast breaking radiological accident at Seabrook would not realize any meaningful radiation dose reductions. Following this theme, the Massachusetts governments and the other Intervenors, in one way or another in many contentions, assert that the requirements of the NRC emergency planning rules cannot be met.

The Commission had precisely this type of situation in mind when, in the recently amended revised emergency planning rule, it established the framework upon which an applicant for an operating license can attempt to demonstrate to the NRC that its emergency planning is adequate even without state and local government participation. 52 Fed. Reg. 42078, November 3, 1987, revising 10 C.F.R. 50.47(c)(1), effective December 3, 1987. In the discussion that follows, the Board outlines its interpretation of the new emergency planning rule. We also set out the guidelines we used to assess the suitability of contentions for litigation, and set some guidelines for the litigation itself.

The Emergency Planning Rule

Offsite emergency planning for nuclear power plants is to be evaluated in accordance with the provisions of 10 C.F.R. 50.47. The overriding principle, set out in paragraph (a)(1), is the basic standard that no operating license may issue absent a finding that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The meaning of this standard has been and will remain an issue central to this proceeding, but all agree that at least some of the necessary elements of "adequate protective measures" are normally found in paragraph (b) of the section.

In paragraph (b), sixteen planning standards, both for offsite and onsite preparedness, are established, including the requirements underlying some of the issues already heard in this proceeding. For example, a range of protective actions must be developed for the plume EPZ. Paragraph (b)(10). As noted, many of the planning standards depend upon state and local government participation. In fact, the governments share "primary responsibility" with licensees in some of the planning standards. Paragraph (b)(1).

Paragraph (c)(1)[1] contains the newly added provisions

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[1]Section 50.47(c)(1). Failure to meet the applicable standards set forth in paragraph (b) of this section may result in the Commission declining to issue an operating license; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation. Where an applicant for an operating license asserts that its inability to demonstrate compliance with the requirements of paragraph (b) of this section results wholly or substantially from the decision of state and/or local governments not to participate further in emergency planning, an operating license may be issued if the applicant demonstrates to the Commission's satisfaction that:

(i) The applicant's ability to comply with the requirements of paragraph (b) is wholly or substantially the result of the non-participation of state and/or local governments.

(ii) The applicant has made a sustained, good faith effort to secure and retain the participation of the pertinent state and/or local governmental authorities, including the furnishing of copies of its emergency plan.

(iii) The applicant's emergency plan provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned. To make that finding, the applicant must demonstrate that, as outlined below, adequate protective measures can and will be taken in the event of an emergency. A utility plan will be evaluated against the same planning standards applicable to a state or local plan, as listed in paragraph (b) of this section, with due allowance made both for (1) those elements for which state and/or local non-participation makes compliance infeasible and (2) the utility's measures designed to compensate for any deficiencies resulting from state and/or local non-participation. In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency,

(Footnote Continued)

permitting an applicant to try to convince the NRC that its plan can meet the test of "adequate protective measures" even though it has been unable to demonstrate that it has satisfied those planning standards of paragraph (b) that relate to state and local government participation.

But before a utility may even start to convince the NRC that its planning is nevertheless sufficient, it must overcome two obstacles intended to impress upon utilities that it is desirable to do everything necessary to obtain and keep full state and local participation. Statement of Considerations, 52 Fed. Reg. 42083.

First, a utility must demonstrate that its inability to meet the planning standards "is wholly or substantially the result of the non-participation of state and/or local governments." Paragraph (c)(1)(i). Some of the contentions

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(Footnote Continued)
state and local government officials will exercise their best efforts to protect the health and safety of the public.

The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures, on a case-by-case basis, subject to the following guidance. In addressing the circumstance where applicant's inability to comply with the requirements of paragraph (b) is wholly or substantially the result of non-participation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan. However, this presumption may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency.

challenge Applicants' compliance with this threshold requirement, asserting that the inadequacies in the SPMC are attributable to causes other than the non-participation of the relevant governments.

Then a utility must show that it has made a sustained good faith effort to secure and retain the participation of the pertinent governments, including the furnishing of copies of the plan. Paragraph (c)(1)(ii).

Once the utility has demonstrated that, despite its good faith efforts, the inability to meet the planning standards can be attributed to state and local government non-participation, it gains the opportunity to try to demonstrate that its emergency plan nevertheless provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Paragraph (c)(1)(iii).

The utility, however, is held to an evaluation against the same sixteen planning standards of paragraph (b) including those applicable to a state or local plan. Id. At this point the rule steps in to provide some assistance to utilities in the face of state and local government non-participation. In evaluating the plan, due allowance may be made for: (A) those elements of the standards for which the non-participation makes compliance infeasible, and (B) the measures in the plan designed to compensate for the non-participation.

Finally the new rule creates two presumptions which may or must be considered on a case-by-case basis when the adequacy of the planned utility response and the compensatory measures is addressed. Paragraph (c)(1)(iii)(B). First, as an absolute given, we must accept the reality that, in an actual emergency, state and local governments will exercise their "best efforts" to protect the health and safety of the public. Id. We deem this to be a conclusive, irrebuttable presumption. The presumption was stressed in the Statement of Considerations where the Commission observed that, for two hundred years of American history, government officials have always done the "utmost to protect the citizenry." We are authorized under the rule to reject any claim to the contrary and we shall. 52 Fed. Reg. 42085. Actually this presumption is not at all controversial. In fact the Mass AG acknowledges that this state of affairs is not even justiciable. Reply, n. 7.

No government intervenor suggests in the contentions that it will not act in the best interests of its citizens in the event of a radiological emergency. We must, however, decide within the framework of the admitted contentions what the "best efforts" of state and local governments will be.

Although the "best efforts" conclusive presumptions is not in itself controversial, it merges with the next presumption under the rule which, in contrast, is very controversial. Where the inability to meet the pertinent

planning standards of paragraph (b) is substantially or wholly due to the non-participation of state and local governments, and where the applicant has submitted its own adequate plan with compensatory measures, then it may be presumed that the state and local officials will follow the utility plan. This is a rebuttable presumption, and, in the words of the regulation, ". . . it may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency." Paragraph (c)(1)(iii).

Several of the Mass AG's threshold contentions raise the issue of how the presumption may be rebutted. As we note below, the Applicants and the NRC Staff tend to ignore the phrase "for example" in the rebuttability clause of the rule, while the Mass AG and other intervenors would rebut any such presumption with other responses. We address the proper role of the rebuttable presumption in our discussion of the Mass AG's threshold and legal contentions (1 through 6) below.

The Statement of Considerations also expresses additional guidance implicit in the rule. The rule recognizes that it will be more difficult to satisfy the NRC requirements where state and local officials decline to participate, and concludes that it remains to be seen in

particular adjudications whether in fact it is possible to do so. 52 Fed. Reg. 42081-82.

An applicant is not required to demonstrate that its plan would afford the same protection as a plan with full state and local government participation. It is unlikely that a utility plan can afford the same protection as the "ideal" plan with state and local participation, but the utility plan may nevertheless be adequate. The acceptability of one plan is not to be measured against plans for other nuclear plants, nor against hypothetical plans with state and local participation. Similarly, the rule directs that the utility plan be evaluated on its own merits ". . . without reference to the specific dose reductions which might be accomplished under the plan . . ." or another plan. Id. at 42084, citing, Long Island Lighting Company (Shoreham Nuclear Power Station), CLI-86-13, 24 NRC 22 (1986).

Other Standards For The Admission of Contentions

In examining the contentions for suitability we have also applied the traditional NRC tests for admitting contentions. 10 C.F.R. 2.714. Contentions must have a basis set out with reasonable specificity. A basis is simply a reason for the contention. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1),

ALAB-590, 11 NRC 542, 548 (1980). Intervenors need not plead the evidence upon which they rely at the contention stage, nor will the Board inquire into the merits of a contention at this stage. Id., citing, Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, at 426 (1973).

Some of the submitted contentions, especially threshold and legal contentions of the Mass AG, have bases intertwined with arguments. Our responsibility in evaluating contentions is to determine whether there is at least one basis set out with reasonable specificity for each contention. We have not undertaken the very formidable task of culling arguments with which we disagree, or which we find inappropriate as support for a contention. We have often disregarded extraneous information offered in support of contentions. However, in most cases, bases for factual contentions have actually been discrete sub-contentions and we have reviewed them basis by basis, ruling upon their acceptability for litigation.

Our interpretation of the new emergency planning rule is set out above. While we do not foreclose argument that the interpretation is incorrect, we are without authority to accept contentions or evidence which contravene the rule. 10 C.F.R. 2.758(a).

II. CONTENTIONS OF THE MASSACHUSETTS ATTORNEY GENERAL

The Legal and Threshold Contentions (MAG Contentions 1 - 6)

The Mass AG terms his first six contentions as "Legal and Threshold Issues." They are, in the view of the Commonwealth, preliminary to the adjudication of the SPMC as a "paper plan." The legal contentions have been very useful to the Board in identifying the broad legal issues to be adjudicated in the SPMC phase of the proceeding and for allocating the burdens of proceeding with evidence. For the most part, however, the threshold contentions depend upon some 77 other contentions for their flesh.

MAG Contention No. 1

State and local officials responsible for emergency preparedness and response in Massachusetts have no intention of implementing or following the SPMC in the event of a radiological emergency at Seabrook. Based on its determination that no adequate planning is possible at this site, the Commonwealth will not participate in any tests, drills, exercises, training or otherwise engage in any planning for such an emergency. State and local officials officials [sic] will respond to any Seabrook emergency on an ad hoc basis in light of the resources, personnel and expertise then available. In light of this considered governmental position, the SPMC is irrelevant to this licensing proceeding.7 No emergency plan exists that meets the planning standards of 50.47(b) and further provides a basis for the finding of "reasonable assurance that adequate protective measures can and will be taken." 10 CFR 50.47(a) (emphasis supplied).

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7 The Applicant has acknowledged that NHY ORO could not implement the SPMC on its own.

The Applicants view Contention 1 as an impermissible rebuttal to the presumption that public officials will follow a utility-sponsored plan. The rebuttal would fail, according to Applicants, because the contention is nothing more than a naked argument that public officials will not follow the plan.

The NRC Staff opposes the contention because of its perception that it is a denial of the presumption that local government officials will exercise their best efforts to protect the health and safety of their citizens.

The Staff also believes that the contention improperly challenges the NRC's jurisdiction to determine the adequacy of an emergency plan for licensing purposes by replacing that determination with a Commonwealth of Massachusetts determination.

The Board, with the assistance of the Mass AG's reply, understands the contention to be simply an umbrella allegation that neither the SPMC nor any other plan does or can meet the planning standards of the NRC emergency planning rule. It is not a rebuttal to a presumptively adequate plan, as the Applicants misread it. It is, rather, a direct attack on the SPMC, placing the Applicants on their proof (as we discuss below) that the plan does indeed meet the planning standards but for the non-participation of the relevant governments and that the compensatory measures are appropriate. These are Applicants' burdens, imposed upon

them by the threshold requirements of Paragraph (c)(1)(i) of the rule.

In its simplest terms, as we understand the contention, it avers that the governments won't follow the plan because it is not an effective plan as measured by Section 50.47.

We do not fault the Applicants or the Staff for misreading the contention, but the express reference to Section 50.47(a) and (b) in the text carries the day for the Mass AG. We accept Contention 1 as interpreted by our understanding of it as stated above.

We do not accept the bases, however. Although portions of them are acceptable in that they provide reasons for the main contention, they are so mixed with unacceptable reasons that they cannot stand alone as sub-contentions. For example, we cannot accept the implication in Basis A that the Commonwealth's opinion of the feasibility of emergency planning for the site, and the opinions of local governments (on planned versus ad hoc responses), qua opinions, provide bases for a challenge to the SPMC. Those opinions, properly presented, will be accorded weight traditionally accorded to opinions of expert witnesses under an appropriate contention. We have also disregarded Bases B and C, because those issues are addressed under other contentions, in addition to other reasons for rejecting those bases.

The aspect of Mass AG Contention 1 which alleges that emergency planning is inherently impossible at Seabrook because of the nature of the site is very similar to NECNP Contention 1, infra. Below NECNP Contention 1 is rejected for want of permissible factual bases. Although the Board has accepted Mass AG Contention 1 as a statement of legal position, we have not accepted any of the bases for it, and Mass AG Contention 1 standing alone cannot be litigated as a factual contention.

MAG Contention No. 2

There exists at present no record support for the application of 10 CFR 50.47(c)(1) to the litigation of the adequacy of the SPMC. As a consequence, because, as noted, the SPMC will not be implemented or followed, there exists no plan that meets the planning standards of 50.47(b) or 50.47(a).

MAG Contention 2 is apparently intended to demonstrate that the Applicants have not met the threshold requirements which would entitle them to the benefits of 50.47(c)(1). It follows, therefore, that Applicants are not entitled to the rebuttable presumption of paragraph (c)(1)(iii).

Although the Mass AG contentions collectively assert that the Applicants have failed to meet many of the planning standards of 50.47(b), Basis A for Contention 2 would, in effect, have the Board find that Applicants have not demonstrated that they fail to meet those standards. Basis B faults Applicants because they have not, in so many words,

asserted that any failure (Basis A) results from non-participation of the state and local governments even though such an inference is the very reason for the SEMC.

Basis C is another procedural-type allegation, alleging that Applicants have not demonstrated that their inability to comply with paragraph (b) has been caused by the non-participation of the governments, and again, that the Applicants have not explained which of the standards they are, therefore, unable to meet. Basis D readily captures Applicants' attention, because it asserts that they have not, as they must, demonstrated that they made a good faith effort to secure and retain the participation of the pertinent state and local government authorities.

The Mass AG backed off from Basis D, acknowledging that it is not in dispute. Reply at 46. But the AG would hold Applicants to the threshold requirements precedent to the application of the rebuttable presumption, and, in effect, require Applicants to touch even those bases that are not in real dispute.

The NRC Staff opposes Contention 2 on solid grounds. It notes that the very purpose of the proceeding is to determine whether the utility may be licensed under 50.47 (c)(1) and that the effect of the contention would be to dismiss the application without providing Applicants an opportunity to demonstrate their entitlement.

Mass AG Contention 2 is, in essence, not a legal or factual contention, but an organizational and procedural one. It raises issues of first impression in NRC adjudications. In resolving the matter we must consider that:

(1) The Applicants have the burden of proving that the SPMC meets the regulatory requirements. Deference will be given to Applicants concerning the manner in which they elect to carry that burden.

(2) Applicants do not enter the adjudication on the SPMC cloaked with the presumption that the governments will follow it. They must earn that presumption.

(3) However, there has been no preexisting requirement that Applicants demonstrate anything about the SPMC before the proceeding begins. That is what the proceeding is about.

(4) An operating license adjudication may consider only matters put into controversy by the parties. 10 C.F.R. 2.760a.

(5) Intervenors may put matters into controversy only by well pleaded contentions with the bases set out with reasonable specificity.

(6) The presiding officer need not, indeed should not, hear factual issues that are not genuinely in dispute. E.g. 10 C.F.R. 2.718 (power of the presiding officer); section 2.749 (summary disposition on the pleadings); section 2.752

(simplification, clarification, and specification of the issues).

Many of the contentions accepted in this order place a burden upon Applicants to demonstrate that they are entitled to the rebuttable presumption with respect to those contentions. Thus the Attorney General's particularized concerns will be addressed. Yet there is merit to the Attorney General's concern that the proceeding needs better definition as to its structure and as to the order in which the parties must carry their respective burdens. We reject Mass AG Contention 2 because it does not present a litigable issue. Instead we shall set the matter for consideration in prehearing conference.

MAG Contention No. 3

Assuming arguendo that at some future time there is record support for the application of 10 CFR 50.47(c)(1) to the litigation of the SPMC, the permissive presumption set forth at 50.47(c)(iii) should not be applied to the SPMC. As a result, although this Board might assume that State and local governments will exercise their best efforts to protect the health and safety of the public at the time of the emergency, no presumption should be entertained that those officials "would generally follow the utility plan." In reality, as noted in Contention 1, these officials would respond to an emergency on an ad hoc basis. Such an incomplete and uncertain state of emergency preparedness cannot support a finding of adequacy under 10 CFR 50.47(a), (b), (c)(1).

The Board is not free of doubt that it fully understands MAG Contention 3. Looking at its place in the cascading logic of Contentions 1 through 6, and, in

examining some of the bases for Contention 3, we believe that it appropriately states that the Applicants are not automatically entitled to the "follow-the-utility-plan" rebuttable presumption simply by submitting a paper plan, yet to be tested in adjudication. Contention 3, as we interpret it, does not yet reach the issue of the rebuttability of the presumption, but seeks a determination that Applicants must first, in this proceeding, demonstrate that the SPMC is an adequate plan except for the non-participation of the state and local governments and that reasonable compensatory measures have been taken.

As stated, we are not certain that Mass AG has exactly this reasoning in mind because of the allegation in the contention that the officials would respond to an emergency on an ad hoc basis. The reference to the predicted ad hoc response would seem, at first, to fit better into the structure of the emergency planning rule as a rebuttal to the presumption that the governments would follow a utility plan. Carefully considered, however, this is not where the ad hoc-response concept belongs.

To explain, while we do not, at this stage of the proceeding, address the factual merits of contentions alleging an ad hoc response by the governments, we must place such contentions into the proper organization of the proceeding taking into account the conclusive and rebuttable presumptions of the rule and the allocation of the

respective burdens. Bearing in mind that we must presume that the governments will exercise their best efforts in a radiological emergency, a contention alleging that the best response would be ad hoc can prevail only if such a response is better than following the SPMC or some other plan. Of course a simple assertion that the response would be ad hoc tells us nothing. It will be disregarded, as will a bald statement of government policy to that effect.

In organizing the adjudication for hearing, the only place logically to fit the ad hoc-response assertion is as a direct attack on the Applicants' case-in-chief. That is, we accept the governments' ad hoc case as an averment that the SPMC (or any substitute for it) is so inadequate, considering its elements and the Seabrook site, that the rebuttable presumption is never born, thus needs no rebuttal.

Also adding to the confusion about the intent of Contention 3, is the fact that its Basis B.2 incorporates MAG Contention 6 (no legal authority for SPMC) which is also pleaded independently by the Mass AG as a rebuttal to the presumption that governments would follow a utility plan.

After all of the evidence is received, the distinction between (1), a direct attack on the adequacy of the SPMC, compared to (2), a rebuttal to a presumptively adequate SPMC may not be controlling. However, it is important now for organizational purposes. Contention 3, as we accept it,

stands for the principle that well pleaded contentions attacking directly and specifically the adequacy of the SPMC will place the burden upon Applicants to proceed with its respective proof that the plan is adequate except for the non-participation of the governments. As noted above in our discussion of MAG Contention 2, the proceeding does not begin with the presumption that the governments will follow the SPMC. Applicants must earn that presumption.

MAG Contention No. 4

Assuming arguendo that at some future time there is record support for the application of 10 CFR 50.47(c)(1) to the litigation of the SPMC, and this Board presumes that the relevant governments will "generally follow" [ ] that [sic] plan, that presumption will either be rebutted or its evidentiary significance eliminated by the Commonwealth. As a result, there would exist two evidentiary possibilities, neither of which could provide a basis for the requisite finding of "reasonable assurance that adequate protective measures can and will be taken":

1. Once the presumption is rebutted, the Board will find that the relevant governments will not "generally follow" the SPMC. As noted, in reality, the actual response of these governments would be ad hoc.

2. Once the presumption is rebutted, the Board will be unable to determine with any degree of certainty whether or not the relevant governments will "generally follow" the SPMC. (The governments will establish in the record that they will respond to an emergency on an ad hoc basis but will not "generally follow" the SPMC. Without benefit of the presumption, the Applicant will no doubt aver that the governments' response will result in the implementation of the utility plan.) The uncertainty surrounding this dispositive issue - whether the SPMC will be implemented - will make it impossible to find reasonable assurance that adequate protective measures "will" be taken.

Applicants, joined in most instances by the NRC Staff, meet MAG Contention 4 and, indeed, the other threshold contentions, by a very simple, and as it turns out, inadequate response. Both assert that the only way the presumption that the governments will generally follow the SPMC can be rebutted is by the governments' coming forward with another, adequate plan. Applicants Answer at 4, 11, 14, 20, and 24; Staff Answer at 11-12, 14, 15, and 16. Neither the Applicants nor the Staff confront the fact that the regulation itself expressly states that the presumption may be rebutted "for example" by a timely proffer of an adequate plan by the governments. Paragraph (c)(1)(iii)(B).

The Commission noted in the Statement of Considerations that it is only reasonable to suppose that state and local officials will either look to the utility plan for guidance, or will follow some other plan. But it did not foreclose the possibility that the presumption might be rebutted in some other way. 52 Fed. Reg. 42085.[2]

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[2] In support of their respective arguments the Applicants and NRC Staff relied heavily on the Licensing Board's April 8, 1988 Memorandum and Order Ruling on Summary Disposition Motions in the Shoreham proceeding. LBP-88-9, 27 NRC ____. It is true that the Shoreham Board ruled that, in the circumstances of that case, the effect of the new rule was to place upon the government intervenors the responsibility to produce some plan that they will follow or suffer the presumption that they will follow the LILCO plan. Id. (Slip op. at 21). But the Shoreham proceeding is in a

(Footnote Continued)

Moreover, in promulgating the new rule the Commission expressly left open for adjudication on a case-by-case basis the issue of what would be the probable response of state and local authorities -- subject to the presumption that the response will be the best efforts to protect the health and safety of the public. 52 Fed. Reg. 42084.

Therefore, as we examine the contentions below, we give effect to the rule's guidance that a rebuttal to the "follow-the-utility-plan" presumption is not limited to the rule's "example." At this contention-screening stage of the proceeding we may not categorically reject other rebuttals to the presumption. We accept Mass AG Contention 4 as a threshold, general legal principle. Its application will be left to particular factual contentions with respect to the other Intervenors. As it happens, the only class of

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(Footnote Continued)
different stage than this one. There is already a very large record upon which the LILCO plan for Shoreham was found adequate but for state and local government non-participation. Legal impediments to the LILCO plan were resolved. We read the Shoreham Board's opinion in LBP-88-9 to be carefully limited to the context of that proceeding, and to simply reject any bald, stonewalling assertion that the only response by the governments to an emergency at Shoreham would be ad hoc. Further, the Shoreham Board was emphasizing that aspect of the new rule that requires a recognition that some "best effort" response by local officials will be made to protect their citizens, and that without other rational responses set forth by the governments, the response will be either to follow the LILCO plan or some other plan. It is too early in this proceeding to determine whether the Shoreham rationale will apply.

contentions submitted by the Attorney General and accepted by the Board as permissible rebuttals to the presumption are legal-impediment contentions exemplified by MAG Contention 6, below.

MAG Contention No. 5

Assuming arguendo that at some future time there is record support for the application of 10 CFR 50.47 (c)(1) to the litigation of the SPMC and this Board presumes that the relevant governments will "generally follow" that plan, the legal impediments to the implementation of the SPMC, the factual uncertainties surrounding such implementation and the optional approach taken by the SPMC itself preclude a finding that the state of emergency preparedness is sufficiently adequate to meet the standards of 10 CFR 50.47(a), (b) or (c)(1).

MAG Contention 5 moves the reasoning of the legal contentions one step further. It takes advantage of Contention 4, a purely legal contention, and avers alternative rebuttals to the "follow-the-utility-plan" presumption. In the bases Mass AG alleges infirmities in the SPMC. As is usually the case, the Board has not reviewed the plan to determine whether the allegations are factually correct. We assume that they are, or that the facts are fairly in dispute.

One infirmity seen by the Mass AG is that the wide range of options left open to the relevant governments in the SPMC introduces uncertainty that they will follow any option under the plan. We view this allegation as an

example used by the Attorney General to establish the principle that subsequent contentions of like kind should be accepted as rebuttals to the "follow-the-utility-plan" presumption. But the AG takes on more than he needs to. As we ruled with respect to MAG Contention 3, for example, contentions challenging the fundamental effectiveness or implementability of the SPMC are not rebuttals to the presumption. Rather, they are direct attacks on the plan, placing Applicants on their proof with respect to that issue. This is not to say, however, that Intervenors are freed of the responsibility to be specific in their allegations, and to present evidence when needed to support their contentions. Our ruling means simply that an emergency plan that cannot be followed does not carry with it the presumption that it will be followed.

The bases for MAG Contention 5 are very argumentative, complex, and, as the Mass AG acknowledges, "prolix." They would require extensive editing before we could find them suitable as factual issues. In any event, as noted above, we understand that the purpose of the bases is to present a factual context for the legal question presented, and that subsequent contentions develop those factual allegations further -- for example, MAG Contention 6 (legal impediments)

Accordingly, the Board rejects MAG Contention 5 and its bases as unnecessary to a definition of the legal question

presented, and inconsistent with our rulings respecting the proper allocation of evidentiary burdens.

MAG Contention No. 6

The SPMC contemplates an unlawful delegation of the police powers of the Commonwealth by State and/or local officials to an unincorporated association or organization itself formed and maintained by a division of a bankrupt foreign corporation not licensed to do business in the Commonwealth. Activities envisioned for this entity are ultra vires under the relevant states' corporation laws. As a debtor-in-possession, PSNH's activities outside the ordinary course of business -- such as being the unlawful delegatee of the police powers of a sovereign state -- require prior approval of the bankruptcy court having jurisdiction over the debtor's estate. Without such approval these activities are not permitted under the Bankruptcy Code. As a corporation not licensed to do business in Massachusetts, PSNH and its division NHY are not authorized to engage in the contemplated activities - i.e., act as the delegatee of the police powers of Massachusetts. In sum, the SPMC can not be "generally follow[ed]" by the relevant governments because it contemplates an unlawful delegation of power to an apparent entity behind which operates a corporation not licensed to engage in the contemplated activities in Massachusetts and not authorized to do so by the court which now supervises it. Further, the activities themselves are ultra vires under the laws of New Hampshire and Massachusetts.

Applicants object to MAG Contention 6 on the now rejected grounds that only one type of rebuttal to the "follow-the-utility-plan" presumption is permissible -- producing another plan. Staff takes a similar position, but also misinterprets the contention as a financial-qualification contention with respect to the bankruptcy aspect. The Staff would require some evidence in support of the contention.

The general unlawful-delegation and ultra vires aspects of the contention are plainly litigable. In accepting the Bankruptcy Court-supervision allegation, the Board had to forebear judging what seems to be an implausible allegation. But there is a rational basis for the allegation.

The legal-authority issue is an affirmative and permissible rebuttal to the "follow-the-utility-plan" presumption. MAG Contention 6 and its bases are accepted. Mass AG recognizes that it has the burden of proceeding with the evidence in support of Contention 6.

Organization and Organizational Control (MAG Contentions 7 - 11)

MAG Contention No. 7

At this juncture, the Lead Owner Public Service of New Hampshire ("PSNH") is in bankruptcy as is its Seabrook operating division New Hampshire Yankee (NHY). NHY is ostensibly the immediate corporate form behind the organization identified in the SPMC as the NHY-ORO. At Plan 3.1-1, the SPMC asserts that "[t]he NHY Offsite Response Director has been authorized by the President of New Hampshire Yankee to commit the resources of the Company (money, manpower, facilities, and equipment) through the NHY [ORO], to respond in the Commonwealth of Massachusetts to protect the public . . . ." Further, the letters of agreement contained in Appendix C indicate that the Joint Owners and the bankrupts will share the expenses of emergency planning as they share other Seabrook expenses -- PSNH will bear 35% of the cost and liability will be neither joint nor joint or several as to the other presently solvent Joint Owners. In light of these facts, there is no assurance that sufficient funds will be available to maintain an adequate level of emergency preparedness. Therefore, the utility plan is in violation of all of the planning standards set forth at 50.47(b) and no reasonable assurance finding pursuant to 50.47(a)(1) can be made.

We agree with the responses of Applicants and Staff: since this contention goes to Applicants' financial qualifications, it is a matter that is outside of the Board's jurisdiction. 10 C.F.R. 2.104(c)(4), 50.33(f), 50.57(a)(4). Moreover, the Staff points out that the financial qualification issue is before the Appeal Board, and we note that in ALAB-895, July 5, 1988, the Appeal Board certified that matter to the Commission. Contention 7 is rejected.

MAG Contention No. 8

At an organizational level, the SPMC fails to adequately establish and define the relationships between the ORO and other organizations which are expected and relied upon to perform emergency response activities. Further, the SPMC does not adequately provide for effective coordination of effort between or clearly delineate the primary responsibilities of these other organizations and the ORO. As such, the SPMC does not meet the planning standards set forth at 50.47(b)(1), (2), (3), (5) and (6); 10 CFR Part 50, Appendix E, IV, A.6, 7, 8; and the planning guidance set forth in NUREG 0654 II. A.1.b., c, 2.a., b, 3; B.6, 9; C.5 (Supp. 1); E.1; and F.1.

Applicants propose rejection of the contention on the basis that it is too generalized. They propose, however, that Bases A, C, D, E, F and G comprise acceptable contentions. Basis B is said to misrepresent the intent of the SPMC with respect to its use of local governmental personnel and should not be entertained. Applicants' objection to Basis B may not be groundless, but it is a factual answer giving rise to a dispute on the merits and is

factual answer giving rise to a dispute on the merits and is rejected. The same ruling applies to the Staff's factual challenge to Bases B and C.

Staff also objects to Bases B and C for the reason that they fly in the face of the presumption that state and local government personnel can be assumed to use the SPMC in the absence of any other plan. Bases B and C are challenges to the adequacy of the SPMC. As discussed above, until or unless such adequacy has been established, Applicants are not entitled to the presumption.

Contention 8, as supported by Bases A through G, is accepted.

MAG Contention No. 9

The SPMC fails to provide necessary procedures to insure that employees of NHY, PSNH and other utilities who staff the ORO and who will exercise critical functions such as command and control in the event of a radiological emergency at Seabrook have the requisite independence and autonomy to exercise their emergency responsibilities effectively. Because the ORO staff individually and collectively is not independent of the owners of Seabrook, it will not plan for, order, manage, coordinate or control the emergency response adequately. As a result the SPMC is not in compliance with 50.47(a)(1); 50.47(b)(1), (3); Part 50 Appendix E, IV, and NUREG 0654 II.A.

Answering that the Commission contemplated that utility personnel would be in command and control of said utility's emergency plan, Applicants would have us reject this contention, we presume, for lack of a valid basis and lack of regulatory support.

The Staff likewise recommends rejection because of the lack of an adequate basis. Staff notes that the Licensing Board decision cited by Mass AG in its Basis A above was rejected on appeal, the Appeal Board stating that ". . . regulations and applicable regulatory guidance effectively rebut the notion that utility officials must be categorically excluded from exercising any command and control responsibilities." Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-847, 24 NRC 412, at 428.

We find nothing in the Commission's rules and regulations supportive of the conflict-of-interest concerns expressed by Mass AG. See, Id. at 424-429. The bases proffered by Mass AG do not overcome this deficiency, nor does Mass AG's response.

The Board rejects Contention 9.

MAG Contention No. 10

No provision is made in the SPMC for procedures to be employed in the event of a strike or other form of job action affecting the availability of the emergency personnel relied on to adequately staff and maintain the NHY ORO. In the absence of such procedures, this utility plan does not provide reasonable assurance that adequate protective measures can and will be taken. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), 21 NRC 644, 888 (1985).

The Applicants have no objection to the contention. Alleging a lack of basis, the Staff would have us reject the

contention. Staff further points to the speculative nature of Mass AG's concern about a future strike by Applicants' personnel.

Although, as submitted, the contention has no separately supported basis, Mass AG's response cites a regulatory basis, namely, 10 C.F.R. 50.47(b)(1) and (2), for the proposition that, absent contingency arrangements, a strike could result in inadequate staffing. The Attorney General further points to a strike at LILCO as supportive of a possible strike at Seabrook.

Mass AG has posited a permissible challenge to the implementability of the SPMC. Accordingly, Contention 10 is admitted.

MAG Contention No. 11

The Applicants and their Lead Owner PSNH have a developed, self-conscious and articulated position and policy toward emergency planning for the 10-mile plume exposure EPZ, including the portions of that EPZ that lie within Massachusetts. In a word, that corporate policy considers emergency planning for such an area unnecessary. Because of this long-held public position, the utility in this case is completely and totally unable to develop and maintain an emergency response organization that would successfully implement the SPMC. Thus, a utility plan in this case is unable to meet any of the planning standards set forth in 50.47(b) and no finding that "reasonable assurance that adequate protective measures can and will be taken" is possible pursuant to 50.47(a)(1).

Asserted as the principal basis for the contention (Basis A) is a December 1987 statement by the President and CEO of Public Service Company of New Hampshire to the effect

that the probability of a catastrophic event at Seabrook is very low.

Applicants, alleging no regulatory basis for the support of this contention, would have us reject it. The Staff's position is similar to that of Applicants. Staff notes that the Mass AG has made no showing that the statement of a particular corporate official has resulted in any plan deficiency.

The Attorney General replies that the statement referred to is corporate policy that cannot avoid being inimical to the adequacy and implementability of the SPMC.

The Board finds that there is an insufficient basis for admitting this contention. Even assuming that there is a factual basis for the allegation, which there is not, there is no statutory or regulatory requirement that NRC licensees agree that NRC regulations are good ones; the obligation is simply to comply with them.

Communications
(MAG Contentions 12 - 24)

MAG Contention No. 12

Communication systems relied on for the mobilization of ORO personnel and the activation of the EOC are not adequate because no back-up personnel will be contacted by these systems and critical positions are filled with only one designated person per shift.

Absent objections from the parties, and having none of our own, the Board accepts Contention 12.

MAG Contention No. 13

The SPMC fails to meet the standards set forth in 10 CFR Part 50, Appendix E, IV.E.9 and 50.47(b)(6) and (8) because there is no indication that the off-site communication systems relied upon for emergency communications with emergency response personnel have a back-up power source.

Absent any objections, the Board accepts Contention 13.

MAG Contention No. 14

The SPMC relies too heavily on commercial telephone links for critical and essential emergency communications. Because commercial telephone lines will be and should be assumed to be overloaded shortly after the onset of an accident at Seabrook, no essential emergency communications should be based in the first instance on commercial telephone communications. All of the liaison activities, all of the communications between contracted-for service providers and their personnel, most of the ORO to government communications and even elements of the notification of the public rely on the availability of commercial telephone lines. As such the SPMC fails to meet the planning standards set forth at 50.47 (b)(6) and planning guidance of NUREG 0654 II F.

Applicants and Staff do not object to accepting the contention. However, Staff proposes that Bases C and D of Contention 47 and Bases E and F of Contention 54 be consolidated as a basis for this contention owing to similarity of scope.

The Mass AG replies that Contentions 47 and 54 relate to the needs of special populations and that the Staff's proposal is not appropriate.

Our assessment of the comments of Staff and Mass AG regarding the shifting of bases proposed by Staff leads us to conclude that Staff's proposal is not efficacious. Staff's suggestion is rejected. The Board finds no problem with Contention 14 and it is accepted.

MAG Contention No. 15

The SPMC fails to meet the standards of 50.47 (b)(6) because there is no provision for an effective horizontal or lateral network of communications directly linking emergency field personnel with each other. As a result, all communications must be first vertically transmitted, processed and recommunicated leading to delay, miscommunication and gaps in the communications network. The failure to provide a lateral communications system is a defect in the SPMC which will affect traffic management and evacuation, security, timely response to emergencies-within-the-emergency and otherwise result in a wooden and ineffective emergency response. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-88-2, at 50, et seq. (February 1, 1988).

Applicants and Staff have no objection to accepting this contention. However, Staff points to a LILCO Licensing Board decision that found a vertical communication system to be adequate.

Finding no objection, the Board accepts Contention 15.

MAG Contention No. 16

The SPMC fails to meet the planning standards set forth at 10 CFR Part 50, Appendix E, IV, E. c., 50.47 (b)(6) and NUREG 0654, II.F.1 (Supp.1), because there is no provision for adequate communications with State and local response organizations or EOCs, or with other private response organizations.

The one separately stated basis for the contention alleges that Applicants have tried but failed to obtain FCC approval for its use of emergency radio frequencies also used by state and local governments.

Applicants have no objection to the contention. The Staff objects to its acceptance because (a) there is no requirement for FCC approval and (b) there is no stated basis for concluding that the proposed communication system does not meet regulatory requirements.

Mass AG states that Staff has misread the contention in that the thrust of Mass AG's challenge goes to the adequacy of the communication system and NOT specifically to the lack of FCC approval, the latter being mentioned only for the proposition that certain communication frequencies are not available.

The Board finds this contention to be a permissible challenge to the adequacy of the SPMC. Whereas it can be argued that lack of FCC approval, in the context offered by Mass AG's response, may not bar all other frequency options,

sufficient specificity exists to justify further inquiry.

Contention 16 is accepted.

MAG Contention No. 17

The SPMC states that ORO "can direct activation" of the EBS but that authorization to broadcast an EBS message must be given by the Governor of Massachusetts. Plan 5 3.7. The SPMC, therefore, proposes that ORO will advise the public through the EBS system upon authorization of the Massachusetts Governor. Pro-2.13. This arrangement is alien to the purposes and design of the EBS.

The EBS exists to provide government officials with direct access to broadcasting capabilities in times of crisis. Because the public needs and expects official guidance in emergency situations, it is extremely unlikely that the Massachusetts Governor would abdicate his duty to notify the public in the event of a radiological emergency. Emergency notification responsibilities, as exercised through the EBS, are at the heart of the state's police power and are therefore inappropriate for delegation to a private third party.

Further, Federal EBS regulations and the Massachusetts EBS Operational Plan ("Operational Plan"), which governs operation of the EBS in Massachusetts, makes no provision for third party activation as envisioned by the drafters of the SPMC. Rather, such provisions were designed to provide solely for government activation. Absent amendment of the Operational Plan to expressly provide for authorization of ORO, activation by parties other than the government officials expressly named in the Massachusetts Operational Plan is therefore inconsistent with both Federal and State EBS design. The plan, therefore, inadequately provides for notification through the EBS system and does not meet the planning standards set forth at 50.47(b)(5) and (7) and the planning guidance of NUREG-0654, II.E.5.

Applicants and Staff object to the contention because it is an impermissible attack on the "follow-the-utility-plan" rebuttable presumption of the emergency planning rule and on the non-rebuttable presumption of the rule that

presumes that government officials will exercise their best effort to protect those entrusted to their care.

We understand the contention, as explained by Bases A through E, to be something quite different, however. The central theme of the contention is that there is a Massachusetts "EBS Operational Plan" that is better than the SPMC and is the plan the Governor will follow in the event of a Seabrook emergency. This type of rebuttal to the "follow-the-utility-plan" presumption is exactly the rebuttal anticipated by the example set out in the rule.

Bases D and E taken together explain one of the reasons why the EBS Operational Plan would be more effective, in that the Governor is the most credible and appropriate source for such notifications to the Massachusetts public. If the evidence establishes that the EBS Operational Plan is the better plan for the dissemination of EBS messages, it will be irrebuttably presumed that the Governor, in exercising his best efforts on behalf of the people of Massachusetts, will follow that plan. That presumption was strongly implied by the contention.

Basis F is a direct factual attack of the SPMC, asserting ambiguity with respect to activation of the EBS system versus authority to broadcast the EBS messages. Contention 17, with all bases, is accepted in the context of the Board's above stated understanding.

MAG Contention No. 18

The SPMC fails to meet the planning standards set forth at 50.47 (b)(5) and the guidance provided in NUREG 0654, II. E. 1. and 2. because the notification and mobilization of response organizations and personnel is not adequate.

While opposing the contention itself, Applicants state that six of the seven supporting bases can be considered as separate contentions. Basis E is opposed by Applicants because it addresses human behavior considerations that were previously litigated.

Staff does not object to the contention but it would reject Bases C, D, and E.

Mass AG states that the contention including all bases should be admitted as challenging the adequacy of the SPMC with respect to the notification and mobilization of emergency personnel.

The Board finds that the contention constitutes a permissible challenge to the adequacy of the SPMC in the context of the Attorney General's response. The Staff's objections to Bases C, D, and E are, in effect, challenges to the factual merits and are therefore premature. We agree with the Applicants' objection to Basis E.

Thus, Contention 18 is accepted except for Basis E.

MAG Contention No. 19

There is no adequate alerting system for the public in existence or proposed which meets the regulatory

requirements set forth at 50.47 (b)(5); NUREG 0654 II. E.6 and Appendix 3 and FEMA-REP-10. For this reason, there is no reasonable assurance that adequate protective measures can and will be taken. 50.47 (a)(1).

Applicants and Staff both object to the contention for the reason that it is outside of the jurisdiction of this Board and is currently before the on-site Board.

Mass AG holds the contention to be appropriately before this Board, but withdraws Basis B. The overall thrust of Mass AG's response is that there are significant differences between New Hampshire and Massachusetts that are not adequately accounted for by the SPMC with respect to the use of siren notification. According to the Attorney General, Basis A raises questions of coordination of notification between New Hampshire, Massachusetts, and the Applicants' Off-site Response Organization. Without explanation, the Mass AG asserts that coordination of the sirens located in the two states could not have been an issue before the on-site Board. We disagree: there is nothing about the need for coordination, if any, that moves such a question from the on-site Board to the off-site Board. Basis C is similarly concerned with the early notification of people in the Parker River National Wildlife Refuge on Plum Island. There is nothing specific to that aspect of the matter that would change the jurisdictional nature of it.

Contention 19 is rejected.

MAG Contention No. 20

The emergency messages to be utilized by the ORO in the event of an emergency at Seabrook are inadequate and will not be effective in communicating necessary information to the public. As a result, the SPMC does not meet the planning standards set forth at 50.47(b)(1), (5) and (6) and the guidance provided by NUREG 0654 at II E.3, 4, 5, 6, 7, and 8, and F.1.

Applicants have no objection if Basis C is excluded, with respect to which they cite ALAB-847, 24 NRC 412 (1986), for the proposition that utility command and control of its emergency plan is appropriate. We agree. Staff has no objection if Bases C and D are excluded, which bases Staff considers to be speculative, and inadequately defended challenges to 10 C.F.R. 50.47(c)(1)(iii).

Mass AG defends Bases C and D. The Board would not have read Basis D as a credibility allegation had not the Attorney General, in his reply, acknowledged that such is the case.

The Board concludes that Bases C and D are speculative and without foundation. However, for the record, we do not share Staff's understanding that they are an impermissible challenge to the "best efforts" presumption of 10 C.F.R. 50.47 (c)(1)(iii).

Contention 20, excluding Bases B and C, is admitted.

MAG Contention No. 21

The SPMC fails to provide adequate procedures for the coordinated dissemination of information to the public and fails to sufficiently plan for the role of the news media and, therefore, does not meet the planning standards as set forth at 50.47(b)(8) and NUREG 0654, II G.3.b.4.

Applicants object to admission of the contention, but do not oppose a reworded contention grounded upon the same bases and stated as follows: "SPMC does not have adequate procedures for coordination with the media."

Staff has no objection if Basis B is excluded, since there is no requirement for backup facilities for the media.

Mass AG proposes a correction to the contention to include reference to 10 C.F.R. 50.47(b)(7) which, he states, explicitly refers to dissemination of information to the public. He says that, contrary to the Staff's objection to Basis B, the SPMC's media facilities are inadequate because of the large number of media personnel that can be expected.

The Board concludes that Basis B is speculative and lacking in specificity; it is excluded. We conclude that, restated as follows, the contention is satisfactory:

> The SPMC does not provide adequate procedures for coordination with the news media, and therefore does not meet the planning standards of 10 C.F.R. 50.47(b)(7) and (8).

As stated above and supported only by Basis A, Contention 21 is accepted.

MAG Contention No. 22

The SPMC fails to provide adequate information and access to information at the time of an emergency to those State and local governments which are not participating in emergency planning. While New Harpshire response officials will have access to the Emergency Operations Facility ("EOF") and the Emergency Operations Center ("EOC"), officials from the Commonwealth will not be permitted at these locations (assuming they could be reached in a timely fashion). As a result, no coordination of response, including coordination of public notification and communication will occur and the planning standards set forth at 50.47(b)(1), (2), (3), (5), (6), (7) and (8) and the corresponding criteria set forth in NUREG-0654 have not been met.

This contention, submitted without any separately stated bases, is not objected to by Applicants and Staff; nor does Mass AG's reply proffer any comments. Absent objections of our own, the Board accepts Contention 22.

MAG Contention No. 23

The SPMC provides inadequate procedures for rumor control during an emergency and fails to meet the standards set forth in 50.47(b)(7) and NUREG 0654 II G.4.

This contention is submitted along with four supporting bases. It presents a permissible challenge to the adequacy of the SPMC's provisions for controlling rumors. Applicants and Staff state that they have no objections to admitting it. Mass AG's reply provides no comments. The Board's analysis of the contention and its bases uncovers no deficiencies. Accordingly, we accept Contention 23.

MAG Contention No. 24

The information to be made available to the public pursuant to the SPMC prior to an emergency does not meet the regulatory standards as set forth at 50.47 (b)(7), NUREG 0654 II. G. and 10 CFR Part 50, Appendix E, IV. D.2.

The contention faults the SPMC for its inadequacy with respect to providing pre-emergency information. Four bases are submitted, the fourth basis having nine sub-parts. Applicants state that they have no objection to the contention's admission provided sub-parts 3, 4 and 5 of Basis D are excluded for lack of specificity. The Staff takes the same position as to admissibility and the three sub-parts of Basis D. In addition, Staff opposes the inclusion of Basis B regarding dissemination of information to farmers within the 50-mile ingestion pathway EPZ. Citing NUREG-0654, II.G.2, Staff states that there is no requirement to provide information to farmers other than that provided to the public within the 10-mile plume exposure EPZ. We agree.

The Board finds the contention to be a permissible challenge to the SPMC. It is accepted but Bases B, D.3, D.4 and D.5 are excluded, these exclusions being grounded on the same reasons given by Applicants and Staff.

Protective Measures
(MAG Contentions 25 - 63)

MAG Contention No. 25

In light of the absence of State and local participation in emergency planning for the Seabrook station, the plume exposure EPZ defined by the SPMC to include only the 6 Massachusetts towns of Salisbury, Newbury, West Newbury, Newburyport, Amesbury and Merrimac is not large enough to provide reasonable assurance as required by 50.47(a)(1).

In this contention, Mass AG states that lack of state and local government participation in emergency planning justifies the enlargement of the 10-mile EPZ. Two bases support the contention, the first stating that the towns of Haverhill and Rowley lie only partially within the EPZ; and the second attempting, supposedly, an appeal to reason as to why the EPZ should be extended. Applicants and Staff oppose the contention as lacking cognizable reasons for an enlargement. They both point out that the factors identified in 10 C.F.R. 50.47(c)(2) are not invoked to justify an enlargement of the EPZ, thus the contention is an impermissible challenge to that regulation.

The Attorney General's response reargues the contention without, to the Board's satisfaction, overcoming the objections of Applicants and Staff. Contention 25 is rejected.

MAG Contention No. 26

The SPMC fails to provide a range of protective actions for the public within the Seabrook plume exposure EPZ. No choice of protective actions is set forth in the SPMC for large numbers of people. Thus, the SPMC does not meet the standards set forth at 50.47(b)(10) and NUREG 0654 II.J.9, 10.m. and does not provide reasonable assurance that adequate protective measures can and will be taken. 50.47(a)(1).

The contention faults the SPMC for not providing a range of protective actions for the public within the Seabrook EPZ; thus it fails to meet planning standard 10 C.F.R. 50.47(b)(10). Two bases are given that state that the SPMC does not provide a sheltering option with the result that beach transients cannot evacuate quickly enough, given a fast-breaking accident, to avoid exposure.

Applicants would have us reject the contention because there is no requirement that a sheltering option be available. Staff accepts the contention as supported by Basis A, which concerns the requirement of a range of protective actions. Basis B is opposed by Staff because sheltering is not a required option for each portion of the EPZ at all times.

The Attorney General defends both bases on the ground that without a sheltering option there is no range of protective actions and evacuation alone is not an adequate measure for all fast-breaking accidents.

We read Basis B of the contention as alleging that, without a sheltering option, evacuation alone does not provide maximum dose savings for the beach population for all fast-breaking, serious accidents. We conclude that Basis B has not been overcome by Staff's response. Contention 26 including both bases is accepted.

MAG Contention No. 27

The SPMC's decision-making criteria for selecting a sheltering as opposed to an evacuation PAR is inadequate and inaccurate, and, therefore, fails to meet the planning standards set forth at 50.47(b)(10) and NUREG 0654 II.J.10.m. and Appendix E, IV.A.4. As a result, the SPMC fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. 50.47(a)(1).

The contention, with five supporting bases, faults the SPMC for having inadequate and inaccurate criteria to permit an appropriate choice between sheltering and evacuation, thus causing it to fail to meet 50.47(b)(10), NUREG-0654 II.J.10.m and Appendix E, IV, A.4. The bases point to a lack of information on times to implement sheltering, to dose reduction factors inappropriate to many structures in Massachusetts that can serve as shelters, and to potential dose assessment approaches that are either incomplete or inaccurate.

Applicants do not object to admitting the contention provided it is recognized that there is no requirement to provide sheltering implementation times. They state that

whereas the regulations (10 C.F.R. Part 50, Appendix E.IV) can be read to require such a study, NUREG-0654 does not so require. Since NUREG-0654 is not a regulation, Applicants' position on this point falls short of the mark.

Staff does not object to admitting the contention except for Bases A and E. Regarding Basis A, Staff states that there is no regulatory basis requiring sheltering time information. With respect to Basis E, Staff sees this as requiring dose allocations not appropriate for review in an emergency planning proceeding.

Mass AG's response states that Appendix E to 10 C.F.R. Part 50 must be read in conjunction with NUREG-0654 and reasserts the need for sheltering times in order for meaningful protective action decisions to be made. Regarding Basis E, Mass AG points out that a significant dose component has been ignored.

Having carefully considered all of the above, the Board concludes that the contention is suitable for litigation, including the five bases. We do not, nor should we, resolve the controversies over Bases A and E; to do so involves questions of merit that must await evidentiary presentations.

MAG Contention No. 28

The SPMC fails to meet the planning standard set forth at 50.47(b)(10) and NUREG 0654 II.J.10.m. because the decision criteria for PARs ignore a significant special

population. The SPMC fails to take into account the significant number of persons who reside in trailers located throughout the Massachusetts plume exposure EPZ. These trailers would provide only minimal shielding from radiation (significantly less shielding than would be provided by the typical house in the Massachusetts EPZ), and therefore special consideration must be given to residents of these trailers in PAR decision-making, such as ordering them to evacuate or to seek shelter elsewhere when other persons in their municipality are ordered to shelter.

The contention faults the SPMC for not making special provisions for the fact that trailer housing provides less shelter dose reduction than average Massachusetts residence structures. The SPMC thus fails to meet 50.47(b)(10) and NUREG-0654 II.J.10.m.

Applicants and Staff would have us reject the contention because there are no requirements to establish differing population control procedures based on differing dose reduction characteristics of residence structures.

The Attorney General counters with the assertion that 10 C.F.R. 50.47(b)(10) requires a range of protective actions that embraces the consideration of differing dose reduction capabilities for different types of structures. We disagree.

The Board concludes that the contention (which has no separately stated bases) in reality deals with a sub-set of residents, the size of which is unspecified. It lacks an adequate foundation, and Contention 28 is rejected.

MAG Contention No. 29

Because the residents of the six Massachusetts EPZ communities have so little confidence in and so much hostility toward the owners of Seabrook Station and the NRC, any and all efforts by the ORO during an emergency to provide the public with information, to direct traffic, or to provide transportation will generate a confused, disorderly, and uncontrolled public response. Thus, the SPMC cannot meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.

Lack of confidence of the residents of the six Massachusetts communities within the Seabrook EPZ is the springboard from which this contention (with four bases) alleges confusion and non-compliance with the attempts of Applicants' ORO to implement emergency plans. The bases address specific examples of how this distrust will manifest itself.

Applicants and Staff see the contention as basically seeking to litigate a human behavior type of issue that has already been litigated in the New Hampshire (NHRERP) phase of this proceeding. Applicants state that no basis is given for believing that there will be behavioral differences between New Hampshire and Massachusetts people within the EPZ.

The response of the Mass AG is that distinctly different grounds distinguish the behavioral considerations here from those previously litigated.

Although the results of previously litigated behavioral matters have yet to be judged, the Board concludes that no

adequate basis is provided to warrant relitigating the issue. Contention 29 is rejected.

MAG Contention No. 30

There is no assurance that snow removal will occur promptly enough or be sufficiently effective to enable an evacuation to be feasible in adverse winter weather. Therefore, the SPMC fails to meet the requirements of 10 C.F.R. 50.47(a), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.10.

It is alleged that untimely and inadequate snow removal measures are provided by the SPMC in the absence of state or local community response plans. The one supporting basis amplifies the inadequacy theme and concludes that timely evacuation will be thwarted by snow that renders evacuation routes unnavigable, by people attempting to leave New Hampshire as well as by people in Massachusetts.

Applicants would reject the contention because the SPMC assumes (apparently silently) that snow removal functions will be provided as they normally are. Absent the provision of that function, Applicants state that they have no responsibility to provide such resources. Staff would also reject the contention as an impermissible challenge to the "best efforts" presumption of 10 C.F.R. 50.47(c)(1)(iii).

The Attorney General replies that such a presumption cannot be made because there has been no planning for normal snow removal in emergencies. To make sense of this explanation, the Board must infer that an evacuation would

interfere with normal snow removal. But if we continue down that line of reasoning, we can see no basis for assuming that an evacuation would be ordered if unremoved snow makes that protective action impractical. Therefore, despite the Board's effort to infer a basis for the contention, we can find none. Moreover, consistent with the Staff's reply, the general tenor of the contention, without the Mass AG's reply, is inconsistent with the best efforts presumption of the emergency planning rule as modified.

Contention 30 is rejected.

MAG Contention No. 31

The SPMC, in conjunction with the NHRERP, allows and encourages decision-makers to call for an evacuation of EPZ by sectors (S, SW, NE, SE, N), even within 5 miles, depending on which way the wind is blowing. This is a deficiency in violation of 10 C.F.R. 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.

The contention, having one separately stated basis, points to the potential for quickly occurring large shifts of wind direction near the Seabrook site that renders the down wind sector approach to evacuation utilized by the SPMC an improper approach. A recent (1988) occurrence of a 180 degree sudden wind shift at the time of a fire at Seabrook is cited to support this. The contention proposes that a 360 degree annular segment approach to evacuation decisions is more appropriate.

Applicants would reject the contention because its proposal for a 360 degree annular segment approach to evacuation is contrary to NRC guidance (presumably NUREG-0654). Staff opposes the contention for the reason that it is at odds with NUREG-0654 II.J.10.1 and Appendix 4, and states that to adopt an annular segment approach in all scenarios is in violation of Commission guidance.

Mass AG responds by stating that Commission guidance does not rule out alternative evacuation approaches where site specific conditions (e.g., Seabrook meteorology) warrant.

The Board concludes that the opposing positions of the parties summarized above cannot be properly and fairly resolved without evidentiary information. We find the contention to be a permissible challenge to the adequacy of the SPMC. Contention 31 is admitted over the objections of Applicants and Staff.

MAG Contention No. 32

There is no evacuation time estimate study which has been done to assess what the realistic evacuation times would be in the Massachusetts portion of the EPZ in light of the special difficulties, circumstances, and delays in conducting an evacuation in Massachusetts under the SPMC. The Final Report of the KLD Evacuation Time Estimate Study and Traffic Management Plan Update, completed in August 1986, did not take into account these special circumstances, difficulties, and delays. A new evacuation time estimate study needs to be conducted before the SPMC can meet the requirements of 10 C.F.R. 50.47(a)(1), 50.47(b)(10), NUREG 0654, Rev. 1, Supp. 1, Section II.J.10.e, and Appendix 4 of NUREG 0654, Rev. 1.

This contention is supported by three paragraphs labelled as bases but the paragraphs have no identifying letter or number designations. For convenience, we assign letters A, B, and C to them in the order in which they appear. The contention faults the SPMC for using evacuation time estimates (ETEs) that are said to be inconsistent with with current circumstances and conditions in the Massachusetts portion of the Seabrook EPZ. The bases flesh out this allegation with a combination of alleged facts and speculations in support of the Attorney General's conclusion that the 1986 KLD study of ETEs provides results not applicable in Massachusetts.

Applicants and Staff object to the contention because the KLD ETE results were previously litigated. They do not address the question of the validity of those results in the face of changed circumstances identified in the contention and its bases.

Mass AG replies that changed circumstances have not been accounted for on the case-by-case basis mandated by 10 C.F.R. 50.47(c) and ALAB-727, 17 NRC 760, 770 (1983). Hence the adequacy of the SPMC is in question.

The Board concludes that responses of Applicants and Staff fall short of the goal. We find Basis B to be largely speculative as to how KLD ETEs may have been misapplied. However, Contention 32 supported by Bases A and C is admitted.

MAG Contention No. 33

Even if there were an appropriate ETE study accompanying the SPMC, the SPMC's procedures do not instruct ORO workers to refer to it at all, let alone describe how to use it to adjust an ETE contained in the table in Attachment 4 of IP 2.5. Absent such procedures, the SPMC fails to assure that the ETEs used by protective action decision-makers can or will be adequately adjusted to account for road conditions, transient population fluctuations, road impediments, either, delays in staffing traffic control or access control points, or other special evacuation problems that vary from the conditions assumed when the ETEs in the SPMC were calculated. The SPMC therefore fails to comply with 10 C.F.R. 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.10.

Absent any objections, Contention 33 is admitted.

MAG Contention No. 34

There is no reasonable assurance that there are sufficient resources available to provide gasoline to hundreds of vehicles which are likely to run out of gas during an evacuation from the EPZ. Absent these resources, the SPMC does not meet the standards set forth at 50.47(b)(10) and NUREG 0654, Supp. 1, II.J.9 and 10.g.

The contention states that, in failing to account for adequate resources to provide gasoline to evacuating vehicles that have run out, the SPMC does not meet certain identified planning standards, and stranded vehicles will seriously impede evacuation efforts. The one supporting basis for this contention expands upon this theme without adding particularity.

Applicants and Staff object to admitting the contention because, they state, there is no requirement for fuel-providing resources. In addition, Applicants state that the impediment of stranded vehicles was previously litigated in the NHRERP phase of the hearings.

The Attorney General's response merely reargues the logic of having fuel available for stranded vehicles.

The Board observes that Mass AG alleges nothing regarding prior litigation of this matter, nor does he even discuss the possibility of mitigating measures that might minimize the impact of stranded vehicles. We conclude that the contention lacks an adequate basis to support its admission. Contention 34 is rejected.

MAG Contention No. 35

If an evacuation is required on hot summer days when the beaches are crowded, the SPMC provides no contingencies for those thousands of beach area evacuees whose vehicles can reasonably be anticipated to overheat and stall as they proceed along the congested beach roads at the rate of about one car length per minute in weather that may well exceed 90°. The plans do not provide sufficient tow vehicles to adequately respond to this problem. It is unrealistic and imprudent to rely on ride-sharing to resolve a problem of this magnitude. For those whose vehicles will stall, there is no reasonable assurance that they will have a means of evacuation. Therefore, the SPMC does not meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10), or NUREG 0654, Rev. 1, Supp. 1, II.J.

This contention, with one separately stated basis, somewhat parallels the preceding one as to the stranded vehicles concept. Here, however, vehicles stranded because

of overheating and stalling are addressed. Ride sharing and tow trucks are said to be inadequate mitigating measures for overcoming this evacuation impediment. This is said to be true because walkers will make faster progress than vehicles in an evacuation that will be slow moving, and because tow trucks will be in short and uncertain supply.

Applicants characterize this issue as a generic one that has been previously litigated. They object to its admission. Staff states a similar objection to the contention, adding that the adequacy of the number of tow trucks is an issue that should be consolidated with MAG Contention 73 rather than being separately admitted.

Mass AG's response briefly reargues the logic for the contention and states that it is not a generic issue but specific to the SPMC.

The Board finds no reason why the prior litigation of the issue of overheated and stalled vehicles is not applicable here, nor does the Attorney General address this. We concur with Staff's recommendation concerning the adequacy of available tow trucks. Contention 35 is rejected and the issue of tow truck availability is consolidated with admitted Contention 73.

MAG Contention No. 36

There is no reasonable assurance that a vehicular evacuation, the only protective action utilized by the SPMC to protect those in the Massachusetts beach areas, will be feasible on summer days when the beaches are crowded. The SPMC therefore does not meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10), NUREG 0654, Rev. 1, Supp.1. Section II.J. and NUREG 0654, Appendix 4.

MAG Contention 36 is the first of several contentions alleging with many asserted bases that an evacuation of the beaches is impossible or infeasible (Contention 36); would be too slow to meet regulatory requirements (Contentions 37, 38, 41, 44, and 46); or that the evacuation time estimates are unreliable (Contentions 39, 42, 43, 44, and possibly 46).

As the Attorney General acknowledges with respect to his Contention 41, there is NRC precedent touching on the proper role of ETEs in radiological emergency planning and the considerations to be applied when evaluating the adequacy of evacuation protective actions. Without dispute, the basic goal of emergency planning is the achievement of maximum dose savings. E.g., Cincinnati Gas and Electric Co. (Wm. H. Zimmer Unit No. 1), ALAB-727, 17 NRC 760 (1983). In Zimmer the Appeal Board noted that the emergency planning regulations "...do not prescribe specific time limits governing the evacuation of plume EPZs." An evacuation plan must, of course, be efficient. However, the Appeal Board noted that the matter to be resolved in each case is the

time within which an evacuation "can," not must, be accomplished. Id. at 770.

Decision-makers must have accurate time estimates available to them in order to make an informed selection of the protective action appropriate to the radiological emergency. Further, and most importantly to the Seabrook proceeding, the "nearer to the plant the area that might have to be evacuated, the greater the importance of accurate time estimates." Id. at 771.

The Commission's decision in Long Island Lighting Company (Shoreham, Unit 1), CLI-86-13, 24 NRC 22, 30 (1986), has provided guidance to this Board and the parties throughout the proceeding respecting the issue of dose savings in radiological emergencies, for example, in our ruling respecting the admissibility of the testimony of Sholly, et al., Tr. 5594-5609. In Shoreham, the Commission removed any doubt about the issue, stating, "[O]ur emergency planning requirements do not require that an adequate plan achieve a preset minimum dose saving or a minimum evacuation time for the plume exposure pathway emergency planning zone in the event of a serious accident." Id. at 30.

Further, as we noted at the outset of this order, the Statement of Considerations for the new emergency planning rule, citing the Shoreham decision, reaffirmed that the intent of the rule is that emergency plans be evaluated without reference to specific dose reductions which might be

accomplished under the plan or another plan. 52 Fed. Reg. 42084, supra.

MAG Contention 36 begins the series with the allegation that summertime, peak-hour evacuation is simply not feasible. Basis A emphasizes the absolute quality of the contention with the averment that gridlock will prevent a vehicular evacuation. We read the contention to mean, not that evacuation is too slow, or inefficient, but that it is not possible. None of the other bases redeem the contention. Contrary to the thrust of the contention, we have learned during the earlier phases of the hearing, what logic tells us anyway, that the beach areas are spontaneously nearly evacuated almost every day.

The Mass AG replies that the contention really means that evacuation under the circumstances set out in the bases will make evacuation too slow, thus bearing on the issue of whether adequate protective measures can and will be taken as required by 10 C.F.R. 50.47(c)(1). Reply at 21. Since other, very similar allegations bring into question the efficiency and duration of any evacuation of the beaches, we interpret the contention by its plain language and reject it.

MAG Contention No. 37

The evacuation plan contained in the SPMC is so poorly designed and so inadequately staffed that, even if State and local officials are assumed to make a best efforts response,

there is no reasonable assurance that either the permanent residents or the beach area transients can or will be evacuated significantly faster than can be achieved by an uncontrolled evacuation. Thus, the SPMC will not achieve any reasonable or feasible dose reduction through evacuation. With additional manpower and intelligent plan revisions some feasible dose reduction could be achieved. But even then the SPMC could not obtain either reasonable dose reductions or reductions which are generally comparable to what might be accomplished with full Massachusetts governmental cooperation. Thus, the SPMC does not provide reasonable assurance that adequate protective measures can and will be taken, and it fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(c)(1), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.

The portion of MAG Contention 37 which would require a comparison of the SPMC to a hypothetical plan with state and local government participation is rejected. The Commission rejected that concept in the Statement of Considerations for the new emergency planning rule as we noted at the outset. 52 Fed. Reg. at 42084. In any event, the Mass AG backed off that portion of the contention. Reply at 22. Bases A and B are rejected for the same reasons.

The portion of the contention alleging that an uncontrolled evacuation would be faster than one under the poorly designed SPMC, as supported by Basis C, is a straightforward attack on the SPMC and is accepted for the reasons set out with respect to MAG Contentions 1 and 3.

There remains the middle portion of the Contention 41 that states: "With additional manpower and intelligent plan revisions some feasible dose reduction could be achieved." The foregoing seems to contradict MAG Contention 1. The

Attorney General is directed to explain whether there is in fact a contradiction in the two allegations and to propose an election if there is.

MAG Contention No. 38

There are inadequate traffic control personnel assigned along heavily travelled evacuation routes, especially Rt. 1A and Rt. 286 in Salisbury and the Plum Island Turnpike in Newbury and Newburyport, to ensure that two-way traffic flow can be maintained on these roads during an evacuation of the Massachusetts beach areas when the beaches are crowded, as required by the SPMC. Thus, there is no assurance that the SPMC's evacuation plan can or will be implemented to permit inbound returning commuters, emergency vehicles, tow trucks, or buses to use these roads.

The Staff has no objections to the contention as it is submitted. However, we agree, in part, with Applicants' objection that a portion of the contention has been litigated in the New Hampshire phase of the proceeding. Therefore we reject the first sentence of the basis alleging erratic driver behavior, but accept the contention and remainder of the basis.

MAG Contention No. 39

The evacuation time estimates contained in the SPMC, Pro-2.5 at Attachment 4, are too unrealistic to form the basis of adequate protective action decision-making. Realistic ETEs would be much longer. The SPMC, therefore, does not meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10), NUREG 0654, Rev. 1, Supp. 1, II.J.10.1, and NUREG 0654, Appendix 4.

The Applicants object to MAG Contention 39 and all of its very many bases with the unhelpful and sparse argument that the Attorney General seeks to relitigate each generic theory put forth in the New Hampshire phase. This is not responsive. As the Attorney General replies, the ETEs contained in the SPMC are not those contained in the NHRERP. Many of the bases are specific to Massachusetts and the SPMC.

The Staff would have us accept the contention, but objects to some of the bases on several grounds. According to the Staff, Bases E, F, M, T, and CC are previously litigated human-behavior issues. The Board agrees with respect to Basis E, recognizing that the issue is not how well the ORO personnel will perform, but whether they will even show up. A very similar issue has aleady been litigated and we see no material difference.

Basis F, is not, as the Staff views it, a human-behavior issue. It is, rather, a radiation-sickness matter not previously litigated. The Board does not understand the Staff's second objection to Basis F (Answer at 36-37), but the basis is rejected because it is lacking in foundation for the statement that radiation sickness can reasonably be expected to cause traffic delays, even assuming the wide range of accident sequences alleged in the basis.

Basis M is a spontaneous-evacuation allegation. Basis T is another aberrant-driver behavior allegation, as is

Basis CC. Each of these issues, as the Staff points out, has been litigated under the NHRERP. Those bases are rejected.

The Staff also argues that Bases B, H, I.1., I.2. and I.4., L, Q, S, U, W, Z, and DD have also been litigated previously. We agree with the Staff on Bases B, thus rejecting the Mass AG's argument that the acceptability of the basis depends upon our decision on the NHRERP part of the proceeding. The Mass AG's reply to the objection to Basis H is actually a late-filed amendment to it. There is nothing about poorly trained ORO traffic controllers expressed or implied in the original Basis H, which is rejected.

Bases I.1., I.2., L, and Z have been litigated before, as argued by the Staff, and are therefore rejected. We reject Basis I.3. for that reason also. Bases Q, S, U, and W, while similar to matters heard under the NHRERP, have particular applicability to Massachusetts not yet litigated. They are accepted. Basis I.4. has no foundation and is rejected.

Basis K is accepted over the Staff's objection that it is vague. The Staff has mischaracterized Basis O which does not allege a regulatory requirement, but challenges the reliability of the ETEs. Basis O is accepted. The Board is not convinced by the Attorney General's further explanation of Basis R (Reply at 30), and rejects it because it is a

population-notification issue beyond the jurisdiction of this Board.

Therefore MAG Contention 39 is accepted, except for Bases B, E, F, H, I.1., I.2., I.3., I.4, the human-factors aspects of I.5 (rejected sua sponte by Board), L, M, R, T, Z, and CC.

MAG Contention No. 40

In making the choice of protective actions during an emergency, it is extremely important for the decision-makers to have ready access to maps which accurately show the population distribution around the nuclear facility. The SPMC fails to include such maps. NUREG 0654, Rev. 1, Supp. 1, Section II.J.10 states: "The off site response organization's plans to implement protective measures for the plume exposure pathway shall include: . . . (5) Maps showing population distribution around the nuclear facility. This shall be by evacuation areas (licensees shall also present the information in a sector format)." Absent such maps, the SPMC fails to comply with 10 C.F.R. 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.10.b.

MAG Contention 40 is accepted without objection.

MAG Contention No. 41

There is no reasonable assurance that the SPMC is adequate to protect the health and safety of the public because for the transients in the beach areas for whom no sheltering or other protective action option is provided, the ETEs on crowded beach days are simply too long. While there is no NRC limit on evacuation times for populations for which the other protective action option of sheltering is available, where no sheltering option is provided, ETEs must have limits to ensure adequate protection. Those limits are exceeded here because the beach populations are entrapped and unable to timely evacuate. Therefore, the SPMC does not meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, II.J.

The basis states that, while the Zimmer decision, supra, for example, held that there are no maximum limits on ETEs, we must bear in mind that ETEs are merely tools used in selecting from among all protective actions available. The argument continues, as we understand it, that where no other protective actions are available, there must be some limit on the time needed for evacuation, whatever that time limit might be. We have reread Zimmer, the Commission's decision in Shoreham, CLI-86-13, the discussion accompanying the promulgation of the emergency planning rule, 52 Fed. Reg. 42078, supra, and we can find no support for the Attorney General's argument. It is, as Applicants respond, simply another argument that the protective actions must accomplish minimum dose savings. MAG Contention 41 is rejected.

MAG Contention No. 42

The SPMC does not provide protective action decision-makers with sufficiently realistic ETEs for the Massachusetts EPZ population for a wide range of times and conditions in the summer months. Only one pre-determined ETE is provided for a summer weekend with good weather, despite the fact that ETEs for such occasions vary dramatically as the size of the beach population (a factor to which the ETEs are highly sensitive) rises and falls. These beach population changes are substantial and occur from hour to hour, day to day, and week to week. Absent a real-time, computer-based system to monitor the size of the beach population and compute real-time ETEs, the SPMC is deficient, because there is no reasonable assurance that adequate protective measures can and will be taken as required by 10 CFR 50.47(a)(1).

Applicants and Staff oppose MAG Contention 42 on the ground that there is no regulatory requirement for a "real-time" computer-based population monitoring system for ETEs. That response is not completely responsive. Such a contention goes to the reliability of the ETEs. As we noted from the Appeal Board's comment in Zimmer, supra, ETE accuracy becomes even more important where the area to be evacuated is near the nuclear facility. 17 NRC at 771.

The contention alleges that ETEs, without real-time monitoring, are not likely to be accurate. This factual allegation, which we must accept as valid for the evaluation of contentions, raises a litigable issue. Moreover, the issue would be litigable even under a lower threshold. If real-time monitoring could substantially improve the accuracy of ETEs which are otherwise as accurate as traditional methods can make them, a constructive contention seeking that improvement would be acceptable.

Applicants oppose the real-time monitoring issue on the additional ground that it is generic and was litigated under the NHRERP. The Attorney General, in reply, states that the contention is specific to the Massachusetts roadway network. Reply at 33. The Board recognizes that evidence was adduced, particularly on cross-examination, concerning real-time, computer-based monitoring of the beach population. It does not seem, however, that the parties identified such monitoring as a discrete issue. A fast

review of the proposed findings on the size of the beach populations and ETEs in general discloses no significant treatment of the potential value of real-time monitoring.

The Board accepts Contention 42 on the following basis. First we recognize that there is no specific regulatory requirement for real-time monitoring as the Applicants and Staff point out, and accepting Contention 42 does not suggest that there is. Through Contention 42 and other ETE contentions the Attorney General is free to attack the adequacy of the SPMC and the reliability of the ETEs. The basis for the contention does not satisfy significant doubts harbored by the Board that such a system would be practical and useful. Therefore, with respect to the proposed real-time, computer-based, data-collection, ETE-calculation system, the Attorney General has the burden of proceeding with evidence that such a system has material benefit and is practical.

MAG Contention No. 43

Because the SPMC's evacuation time estimates have been rejected by State and local officials as totally unrealistic and unreliable, in the event of an emergency at Seabrook Station, Massachusetts State and local decision-makers will always reject any immediate implementation of ORO's protective action recommendations based on those ETEs. As a result, and because those decision makers have no alternative set of ETEs available to them, State and local decision-makers will make an ad hoc judgment regarding what protective actions are likely to maximize dose reductions. However, there is no reasonable assurance that adequate protective measures can or will be taken through such an ad hoc decision-making process. Therefore, the SPMC does not

meet the requirements of 10 CFR 50.47(a)(1), (b)(10), (c)(10), and NUREG 0654, Supp. 1, Sections II.J.10.1 and 10.m.

MAG Contention 43 is a follow-on to MAG Contention 1, focused to apply to ETEs in particular. We accept the contention with the understanding and limitations relating to asserted ad hoc responses set out under MAG Contentions 1 and 3, supra.

MAG Contention No. 44

The SPMC is deficient because it utilizes a set of evacuation time estimates which have been rejected by Massachusetts State and local officials as totally unrealistic and unreliable. In the event of an emergency at Seabrook Station Massachusetts officials will always reject any immediate implementation of ORO's protective action recommendations based on those ETEs until they have had a chance to assess the situation independently. Because Massachusetts decision-makers have no reliable evacuation time estimates of their own, this independent assessment can and will require an uncertain amount of time. Thus, the SPMC fails to provide reasonable assurance that in the event of an emergency Massachusetts officials will make protective action decisions promptly enough to permit the effectuation of protective measures which are "adequate" or which achieve dose savings that are generally comparable to what would reasonably be accomplished were State and local officials fully cooperating in the planning process and were in possession of a set of ETEs in which they had confidence. At best, because of this SPMC deficiency, there is simply too much uncertainty with respect to how promptly Massachusetts officials can and will make protective action decisions. At worst, this deficiency guarantees that such decisions cannot and will not be made promptly. The SPMC therefore violates 10 CFR 50.47(a)(1), 50.47(b)(10), NUREG 0654, Rev. 1 Supp. 1, Sections II.J 9, J.10.1, and J.10.m.

MAG Contention 44 is much like Contention 43 except that it seems to refine the concept to allege that, for the

reasons stated in Contention 43, the officials will not act promptly enough to achieve results comparable to those hypothetically achievable with the cooperation of the officials. Contention 44 is therefore rejected. It is a challenge to the amended emergency planning rule which does not permit a comparison of evaluation between a utility-sponsored plan and a hypothetical, ideal plan with state and local government participation.

MAG Contention No. 45

The SPMC fails to meet the planning standards set forth at 50.47(b)(10) and NUREG 0654 II. J. because no adequate provisions for security in evacuated areas have been made. The SPMC contains no discussion of security in evacuated areas. Table 2.0-1, the "Key Position Response Function Matrix," provides that primary responsibility for law enforcement lies with the State Police and local police authorities. No procedures are set forth for coordinating these agencies' activities and providing for security in evacuated areas. Moreover, the Local EOC Liaison Coordinator has secondary responsibility for law enforcement but neither PRO-1.8 nor any other portion of the SPMC indicates what ORO's capabilities in this regard actually are.

Applicants oppose Contention 45 on the ground that there is no regulatory requirement for planning for security or law enforcement in evacuated areas. In reply the Mass AG cites NUREG-0654, II. J. 10. j. which requires control of access to evacuated areas and organization responsibilities for such control. The cited provision, read in context with the entire section on protective responses, is a provision for radiological protection, not non-radiological, law

enforcement. The language of the contention clearly alludes to security against crime, not controlled access to the evacuated area. Therefore Contention 45 is rejected. In any event, as the Staff argues, local law enforcement authorities may be presumed to exercise their best efforts to protect their charges.

MAG Contention No. 46

The SPMC fails to meet the planning standards set forth at 50.47(b)(10) and the guidance of NUREG 0654 II. J. 10.a because the bus routes as delineated in the SPMC are totally unrealistic and cannot form the basis for adequate planning.

The Staff does not object to Contention 46, but the Applicants complain that the basis lacks specificity. The Attorney General replies that the contention is specific enough and that there is no obligation to plead evidence in a contention.

We see merit on both sides of this debate. Here the Mass AG is attacking the SPMC, not offering an affirmative case. The SPMC apparently identifies the routes which, arguably, could have been specified in the basis. But the SPMC, of course, does not identify the alleged deficiencies in the routes. That aspect would be a matter of evidence -- or of basis. Presumably the Attorney General is aware of examples of these deficiencies and he could have listed them as a basis for the contention. But a route-by-route,

enforcement. The language of the contention clearly alludes to security against crime, not controlled access to the evacuated area. Therefore Contention 45 is rejected. In any event, as the Staff argues, local law enforcement authorities may be presumed to exercise their best efforts to protect their charges.

MAG Contention No. 46

The SPMC fails to meet the planning standards set forth at 50.47(b)(10) and the guidance of NUREG 0654 II. J. 10.a because the bus routes as delineated in the SPMC are totally unrealistic and cannot form the basis for adequate planning.

The Staff does not object to Contention 46, but the Applicants complain that the basis lacks specificity. The Attorney General replies that the contention is specific enough and that there is no obligation to plead evidence in a contention.

We see merit on both sides of this debate. Here the Mass AG is attacking the SPMC, not offering an affirmative case. The SPMC apparently identifies the routes which, arguably, could have been specified in the basis. But the SPMC, of course, does not identify the alleged deficiencies in the routes. That aspect would be a matter of evidence -- or of basis. Presumably the Attorney General is aware of examples of these deficiencies and he could have listed them as a basis for the contention. But a route-by-route,

deficiency-by-deficiency recitation would have enlarged an already distressingly large contention pleading.

The Attorney General states that he has no objection to having Contention 46 combined with similar contentions filed by other intervenors. Reply at 34. This is a sensible approach. Although the Board has not completed its review of all of the SPMC contentions, this is clearly an area of interest shared by the Mass AG with some of the Massachusetts towns. Therefore, the Board deems MAG Contention 46 withdrawn, but will permit the Attorney General to participate in similar contentions submitted by the Massachusetts towns.

MAG Contention No. 47

The SPMC fails to offer reasonable assurance that adequate protective measures can and will be taken in a timely fashion for school children. Thus, it fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(b)(14), 50.47(b)(15), 50.47(c)(1); NUREG 0654, Rev. 1, Supp. 1, II.J, II.N and II.O; and NUREG 0654, Rev. 1, Appendix 4.

MAG Contention 47 was submitted with twenty-two bases, A through U, with S.1 and S.2. Neither the Applicants nor the Staff object to the broad contention, but each objects to some of the bases.

Bases N, Q, R, and S.1 are human-behavior considerations, alleging, for example, role conflict and abandonment by school-bus drivers and teachers, refusal of students to board buses, and chaotic behavior by parents.

Applicants and the Staff object to the human-behavior bases on the grounds that similar issues have already been generically litigated.

The Attorney General counters by arguing that no similar contentions or bases were admitted earlier. While this may be narrowly the case, the human-behavior issues were in fact litigated under other broad issues, evacuation time estimates and personnel resource issues, for example. The Attorney General participated in the litigation of those issues.

The Mass AG also argues that it may still offer contentions on human behavior because the Board has not yet issued its decision on the merits of those issues. This argument misses the point. The record has long been closed on human behavior issues. The instant proffer is, in effect, a motion to reopen the record. The AG has not even mentioned, let alone met, the standards for reopening a closed record for the consideration of additional evidence. See 10 C.F.R. 2.734.

Finally the AG would have the Board accept human behavior issues now even if they may have been heard in the New Hampshire phase of the proceeding because, in this phase, there is no state participation in emergency planning. This argument appears to be an afterthought. The AG does not explain, nor can we infer, how state participation, or non-participation, relates to, for

example, role abandonment. Except for the baseless assumption that actors in school-oriented emergency activities will not trust the Applicants' Offsite Response Organization, there is nothing fundamentally new about Bases N, Q, R and S.1. They are not accepted.

The NRC Staff also objects to Bases A, J, L, M and S.2 on the ground that there are no specific regulatory requirements covering the deficiencies alleged in those bases. We accept the bases, and agree in part with the AG's explanation that school children, as a part of the EPZ population, are entitled to adequate protection and that special consideration may be appropriate. However, we do not accept the AG's premise that all population groups in an EPZ must receive the same level of protection. Reply at 35.

Staff also objects to Basis K, relating to sheltering of school children, on the ground that there is no requirement that schools be informed how to shelter children. We accept the basis to the extent that it would require consideration of the sheltering option for school children, but we do not accept the implication in the contention, and the express statement in the AG's Reply, that there is any regulatory requirement for "prior arrangements to insure that these children will be sheltered." Reply at 36. That aspect of the basis seems to preordain sheltering as the protective action for school children to the exclusion of other protective actions.

Contrary to the Staff's objections, Bases J, E, and G are sufficiently specific to provide a foundation for discovery. As the AG replies, there is no obligation now to produce or plead evidence.

The Staff recommends that Bases C and D be consolidated with similar allegations pertaining to telephone communications set out in MAG Contention 14. This is a sound proposal, and is accepted.

Basis U, filed separately on May 13, 1988, alleges that the plan has inadequate procedures for implementing dismissal or cancellation of schools and for early evacuation of school children. Since the basis was submitted after the time scheduled for filing contentions on the SPMC, the Mass AG asserted that Basis U was a response to the later-filed Amendment 4 of the SPMC. Both the Applicants and Staff object on the ground of lateness and on other grounds, including vagueness. The Attorney General did not regard the filing as late and, therefore, did not address the five factors to be addressed when considering late-filed contentions. 10 C.F.R. 2.714(a)(1). Nor did he reply to the objections to this basis. We cannot determine from the basis why it depended upon Amendment 4. Certainly the perceived inadequacy predated Amendment 4. In any event, we agree with the Applicants and Staff that the basis is lacking in specificity. The basis does not allege that there are no procedures for the respective protective

actions. Rather, without explanation, it states that the procedures are inadequate. Basis U is rejected.

MAG Contention 47 is accepted except for Bases N, Q, R, S.1, and U. Bases C and D are consolidated with MAG Contention 14.

MAG Contention No. 48

The SPMC fails to provide reasonable assurance that adequate protective measures can and will be implemented for all those persons who are patients in the two hospitals within the Massachusetts EPZ and for those who become injured during the emergency, either from natural causes such as automobile accidents or from radiation contamination/exposure. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(b)(12) and NUREG 0654, Rev. 1, Supp. 1, II.J.10.d, 10.e, 10.g; and II.I.

The Applicants do not object to MAG Contention 48 provided that the issue of the treatment of contaminated injured be limited to whether or not the hospitals capable of such treatment have been listed. Mass AG did not dispute this limitation. Therefore we accept the limitation. However, see our discussion of Contention 76, infra.

The Staff argues that the regulations do not require special arrangements for injured, non-contaminated individuals. Mass AG asserts in its reply that any person injured during an emergency is entitled to protection in the form of hospital treatment. The AG goes too far. This is a hospital-facilities contention appropriately addressing the evacuation and relocation of patients already hospitalized

within the EPZ, and the treatment of radiologically contaminated and injured persons. Persons injured but not contaminated during, say, an evacuation may be entitled to appropriate radiological protective actions to achieve dose savings, but, once evacuated, the matter is no longer a radiological consideration. We are aware of no regulatory requirement for the post-emergency care of non-contaminated injured persons.

Staff objects to Bases B and C as generic human-behavior contentions, already litigated. Mass AG reasserts its losing argument on that issue advanced in support of Contention 47. However, we do not agree with the Staff that Basis B is a human behavior contention. The major thrust of that basis is inadequate preparation for the two named hospitals. It is accepted under that interpretation.

On the other hand, Basis C is a typical role-abandonment or role-conflict contention of the type rejected in Contention 47. It is rejected here for the same reasons.

The Board disagrees with the Staff's complaint that Bases D, E, F, G, and H are vague and lacking in basis. Those bases are accepted.

MAG Contention No. 49

There is no reasonable assurance that adequate protective measures can and will be taken in the event of a

radiological emergency at Seabrook Station for institutionalized persons (e.g., patients in medical facilities) who cannot be evacuated. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10) and NUREG 0654, Supp. 1, II.J.9, II.J.10.d, and II.J.10.e.

The Applicants and Staff object to the portion of Basis A pertaining to role conflict. We agree -- again based upon the explanation set out under MAG Contention 47. Staff repeats once more its objection that there are no particular regulatory requirements for certain perceived inadequacies. Our ruling again is that the Staff's concept of regulatory requirements is too narrow. The bases have sufficient relevancy to broader regulatory requirements to be justiciable.

MAG Contention No. 50

The SPMC is deficient because it has not identified all or even most of the special needs resident population, has not sufficiently assured the security of acquired information about special needs individuals, has not adequately determined all the factors needed by individuals identified to cope with a radiological emergency, has not identified other individuals and organizations capable of assisting and the type of assistance required, and has no adequate procedures for assuring that this data is periodically validated. Thus, the SPMC does not comply with 10 CFR 50.47(a)(1), 50.47(b)(7), 50.47(b)(10), 50.47(c)(1), and NUREG--0654, Rev. 1, Supp. 1, Sections II.G and II.J.

Applicants do not object to MAG Contention 50. The Board accepts the contention over the Staff's objections relating to basis and regulatory requirements.

MAG Contention No. 51

The SPMC's provisions for assisting the special needs resident population in taking protective actions are grossly deficient and provide no reasonable assurance that adequate protective measures can and will be taken by this population. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(c)(1) or NUREG 0654, Rev. 1, Supp. 1, Section J, and FEMA Guidance Memorandum 24 (Radiological Emergency Preparedness for Handicapped Persons.)

Applicants do not object. The Staff objects to each of the bases because of the references to the FEMA Guidance Memorandum. Staff's objection is a quibble; the same contentions are justiciable under NRC regulations and NUREG 0654, which, in fact, are cited in the contention. MAG Contention 51 is accepted.

MAG Contention No. 52

The SPMC does not contain an appropriate or timely alert and notification system for residents who have special notification needs. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(5), 50.47(b)(7), 50.47(b)(10), and NUREG 0654, Rev., 1, Supp. 1, II.E, II.G, and II.J.

There are no objections to MAG Contention 52. It is accepted.

MAG Contention No. 53

The SPMC does not provide for adequate pre-emergency public information to establish the preparedness needed to adequately meet the special needs of persons with handicaps during a radiological emergency. The SPMC therefore fails to comply with 10 C.F.R. 50.47(a)(1), 50.47(b)(7),

50.47(b)(10), 50.47(c)(1), and NUREG 0654, Rev. 1, Supp. 1, Sections II.G and II.J.

The Applicants do not object to the contention or its bases. The Staff objects to all of them. The Board accepts the contention but not Basis B which alleges that many of the handicapped persons will discard public education materials because of their opposition to Seabrook. This "basis" is a naked assertion, itself without basis.

MAG Contention No. 54

The SPMC plans to minimize initial radiation exposure for those in special facilities through the implementation of a PAR to shelter or evacuate. See Plan 3.5.3; Pro-2.7, Attachment 3. Other than hospitals, these special facilities include nursing homes, homes for the mentally retarded, elderly housing projects, and the like. The SPMC specifies that Special Population Liaisons from NHY's ORO will telephone each special facility listed in Appendix M to relay the recommendations to shelter or evacuate. See generally Pro-1.10; Pro-2.7; Appendix M. Sheltering is to be implemented by the special facility staff without ORO support. Evacuation is to be assisted by the ORO to the extent that special facilities need transportation assistance. The plan, however, fails to identify all of the special facilities which exist in the EPZ. Even for those facilities which have been identified, there is not reasonable assurance that either sheltering or evacuation can and will be implemented in a timely manner or in a manner that allows all those in special facilities with handicaps, especially those whose movement is impaired, to take advantage of these protective responses. Thus, the people in special facilities will not be adequately protected in the event of an emergency, and the SPMC, therefore, fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(3), 50.47(b)(8), 50.47(b)(10) and NUREG 0654, Supp. 1, II.A.3, II.C.4, II.J.10.d, II.J.10.e and II.J.10.g.

Applicants do not object to any portion of Contention 54. The Board does not agree with the Staff's

"no-regulatory-foundation" objection to Bases B, C, and J. Contrary to Staff's objection to Basis G, that basis is very specific. Accordingly, the Board accepts Contention 54 with all its bases.

MAG Contention No. 55

The SPMC proposes that individuals who have been evacuated from special facilities will be relocated to a single "host special facility" (the name of which is known to the Attorney General but cannot be made public pursuant to the Board's protective order). See Appendix M, at M-148 (which indicates one such facility).1[sic] This special host facility contains a large auditorium, an arena, and miscellaneous space on two floors. The SPMC's plans for use of this facility do not provide reasonable assurance that this facility will be ready and available in a timely fashion in the event of an emergency or that, even if ready and available, it will be adequate or even lawful for use as a congregate care center for the number and kind of special needs individuals to be sent there. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(3), 50.47(b)(8), 50.47(b)(10), and NUREG 0654, Supp. 1, II A.3, II C.4, II J.10.d., and II J.10.g.

1[sic] On p. M-151, the number of host special facilities is listed as "2", but the accompanying text ("Source/Basis") refers in the singular to "the special needs congregate care center." A single host special facility is identified in the Appendix M package of "proprietary information" received under the protective order. Thus, we presume that the reference to "2" on p. M-151 is either an error or an indication that NHY ORO is looking for, but has yet to find, another facility.

Applicants would accept the contention but state that they oppose bases F and G. Basis F alleges that relocation facilities do not meet the letter of a "host" of state and federal laws designed to protect handicapped persons and that the Mass AG would likely seek an injunction on that

aspect of the plan regardless of the participation of other state and local officials. The Attorney General's threat is inconsistent with the conclusive presumption of the emergency planning rule that officials will exercise their best efforts to protect the population entrusted to their care. The suggestion that the codes pertaining to the design of accommodations for handicapped persons would be literally applied during an actual emergency is also inconsistent with the "best efforts" presumption. Moreover we view with suspicion and reject convenient assertions by the AG, a party to the proceeding, that his own predicted actions provide a basis supporting its litigative position.

Applicants have mistakenly read the threat of the Attorney General's injunction into Basis G. As noted above, it is a part of F. However, Staff's objection that Basis F has no basis is valid. In this case, although the basis provides an example of the legal reasons why the facility is not usable as a host facility (maximum permitted occupancy exceeded), the specifics of this and other, unlisted restrictions of that nature are wanting. They are, presumably, already known to the Commonwealth's lawyers. Again, the suggestion that the legal occupancy limit of a facility needed in an actual radiological emergency would be literally applied to the detriment of the public, is not consistent with the presumption that officials will employ

their best efforts in protecting their charges. Contention 55 except for Basis F is accepted.

MAG Contention No. 56

The SPMC does not establish or describe coherent decision criteria to be used by emergency decision-makers in formulating an appropriate protective action recommendation ("PAR") and otherwise fails to provide guidelines for the choice of protective actions consistent with federal policy. Thus, the SPMC does not meet the planning standards set forth at 50.47(b)(10) and NUREG 0654 II.J.10.m. and Appendix E, IV, A.4 and does not provide reasonable assurance that adequate protective measures can and will be taken. 50.47(a)(1).

The Applicants oppose Contention 56 on the ground that it is an onsite issue not within the jurisdiction of this Board. No further explanation was offered. Response at 107. The Staff opposes the contention for similar reasons, citing to the Board's attention 10 C.F.R. 50.47(b)(4), NUREG-0654, Sec. II.D.3., and the Seabrook Onsite Board's decision in LBP-87-10, 25 NRC 177. Response at 50.

It is evident from the Staff's response that it has blurred the distinction between Emergency Action Levels (EALs) which are, indeed, onsite matters, and Protective Action Recommendations (PARs) which, the Board rules, are offsite matters. The distinction is a narrow, and perhaps somewhat arbitrary one. EALs are immediately next to the onsite/offsite interface on the onsite side. PARs are immediately next to the interface on the offsite side. Together they span the interface.

EALs are a part of the Emergency Classification System under Section II.D. of NUREG-0654, and ar in response to Sec. 50.47(b)(4). Sec. II.D.1. assigns to the licensee the primary responsibility for classifying EALs as set out in Appendix 1 which, in turn, pertains to plant conditions and factors affecting plant conditions, including effluent levels -- clearly onsite considerations. Under Sec. II.D.2, state and local officials establish EALs consistent with the facility licensee's EAL scheme, again a reference back to Appendix 1 and plant conditions.

Sec. II.D.4. is exactly at the onsite/offsite interface in that it assigns to state and local governments the responsibility to have procedures in place for emergency actions consistent with emergency action recommendations recommended by the licensee.

Protective actions, compared to emergency action, find their home in 10 C.F.R. 50.47(b)(10) which requires a range of protective actions for the plume EPZ -- an offsite matter.

Similarly NUREG-0654, Section II.J. provides for the protective response actions for the plume exposure pathway EPZ. Section II.J.7. sets the licensee's duty to establish a mechanism, including EALs, for recommending protective actions, to the appropriate state and local government authorities. Section II.J.10.m. requires that both the licensee and government organizations have plans to

implement protective measures for the plume exposure EPZ. The plans must state the basis for the choice of recommended protective actions from the plume exposure including offsite choices such as sheltering and evacuation.

MAG Contention 56 challenges the quality of the decision criteria to be used in the formulation of appropriate PARs. The question is, does the contention stop on the onsite side of the interface, does it start at the offsite side, or does it span the interface?

Basis A attacks the use of predetermined PARs for the General Emergency level which, according to the Mass AG, are inappropriate for the Seabrook site. Portions of Basis A speak of the offsite significance of the predetermined PARs and would therefore seem to be appropriately an offsite matter. But at the heart of all of the examples under Basis A, is the allegation that the predetermined PARs are inappropriately based upon within-containment monitored radiation levels. Since effluent parameters are a part of the plant status consideration within the dominion of the plant licensee in setting EALs, the Staff is correct that Basis A, at least, is fundamentally an onsite matter. Staff Response at 50, citing 10 C.F.R. 50.47(b)(4). See also NUREG-0654, Appendix 1, 1-17 (monitored effluent levels as example of initiating condition for General Emergency).

Bases B through F, however, do not rest on predetermined PARs or in-plant effluent monitoring. They

are independent, somewhat vague, challenges to the criteria used for Protective Action Recommendations, which, as we have explained, is an offsite consideration within our jurisdiction. True, because PARs depend in part upon onsite EALs, Bases B through F may have onsite implications. But there can be no void between the jurisdiction of the onsite and offsite Seabrook Boards. Contention 56 with Bases B through F are accepted.

On May 13, 1988 the Mass AG added to Contention 56 Bases G and H relating to alleged inconsistencies and inadequacies of the sheltering option for the transient beach population in the SPMC. Applications respond that the Attorney General misreads the SPMC in that sheltering is not one of the PARs for the transient beach population. Normally this response would be treated as raising a factual issue. But Applicants urge the Board to reject the bases because the error is so basic. In his reply to the responses to Contention 56 the Mass AG makes no reference to Bases G and H. Consequently the Board deems those bases to be withdrawn.

MAG Contention No. 57

PAR decision-making is over reliant on computer-generated dose assessment and the SPMC does not provide for a shift to, or demonstrate a capability to rapidly incorporate, real-time dose monitoring information as soon as possible after a release as recent federal guidance recommends. In addition, the default values used to assess doses (see Pro-2.2, at 36) underestimate the potential ratio

of iodine to noble gases. In severe accident releases the values could be much greater and the default values would, therefore, result in incorrect dose projections. Thus, the SPMC does not meet the planning standard set forth at 50.47(b)(10).

Both the Staff and Applicants object to Contention 57 on the ground that it is an onsite matter, referring to the similar objection to MAG Contention 56. However the Board rules that the issue seemingly raised by the contention is an offsite consideration. It refers to projected doses to the offsite population as contrasted with effluent monitoring as a plant-status guideline. It relates to generally offsite protective responses. See e.g., NUREG-0654, II.J.7. and 9.

The Staff objects on the additional grounds that the contention lacks factual or regulatory basis. The Board agrees with the Staff and rejects Contention 57.

MAG Contention No. 58

Under some circumstances the Seabrook Station Short-Term Emergency Director is responsible for initial decision-making and contacting the Governor of Massachusetts. Pro-2.14 at 3. However, his position and job description were created before the SPMC was formulated and the SPMC does not indicate whether this responsibility and the requisite knowledge and training have been incorporated into the Seabrook Station Radiological Plan. For this reason, the SPMC fails to meet the planning standards set forth at 50.47(b)(1), (2), (3) and (10) and the guidance of NUREG 0654 IIA., B., B. [sic], C. and J.

The Applicants object on the ground that the contention is an onsite matter. Since it has elements of both aspects

the Board accepts the contention. The Staff's objection that the contention is contradicted by the SPMC raises a factual issue of the merits of the contention. As the Board noted at the beginning of this order, we do not research the SPMC to resolve factual disputes and we do not rule on the factual merits of well based contentions. However, where a factual response to a contention demonstrates to the sponsoring intervenor that the contention lacks merit, it should be withdrawn. The AG's factual reply to the Staff's factual response indicates that the contention is factually trivial in any event. Reply at 42-43. The Attorney General should reconsider this contention.

MAG Contention No. 59

The decision criteria described in the SPMC are not coordinated with those set forth in the NHRERP. Thus, the possibility exists for conflicting PARs being formulated, transmitted and recommended to the relevant State governments. The SPMC has no adequate procedures to prevent this and therefore does not meet the planning standards set forth at 50.47(b)(1) and (10) and the guidance of NUREG 0654 II.A. and J.

The Board accepts Contention 59 which is not opposed.

MAG Contention No. 60

The Attorney General withdraws MAG Contention 60. Reply at 43.

MAG Contention No. 61

Only a small handful of ORO personnel appear to be trained and qualified to make protective action recommendations, Pro-2.5 at 3, and only one individual is designated as having the responsibility to "formulate" these PARs - the Radiological Health Advisor ("RHA"). The RHA will not assume his responsibilities until arrival at the EOC and that arrival will be delayed because the RHAs live and work too far from EOC and will have to transit the EPZ to reach it. Pro-1.2 at 4, Appendix H at A.4. As a result, the SPMC does not meet the standards set forth at 50.47(b)(1), (2), (3) and (10); Appendix E, IV.A.4 and the guidance set forth in NUREG 0654 II.A.2; B; C and J.

There are no objections. Therefore Contention 61 is received.

MAG Contention No. 62

There is a lack of coordination between the EOF, the Seabrook Station Response Manager and those at the EOC who are responsible for formulating PARs. Pro-2.5. As a result, inconsistent PARs may be formulated and the SPMC does not meet planning standards 50.47(b)(1), (2), (3) and (10) and the guidance set forth in NUREG 0654 II.A.2; B; C and J.

The Staff has no objection. Applicants, however, complain that "lack of coordination" is too vague to give fair notice of the issue to be litigated. True, the allegation cannot yet go to hearing, but it gives the other parties enough information to discover the evidentiary basis for the allegation. Contention 62 is accepted.

MAG Contention No. 63

The SPMC fails to meet the planning standards set forth at 50.47(b)(1), (3), (9) and (10) and the planning guidance of NUREG 0654 II. A., C., I. and J.11; FEMA Guidance Memorandum IN-1 and FEMA REP-2, REP-12 and WINCO-1012 because the provisions, procedures and planning for the 50-mile ingestion pathway emergency planning zone are not adequate.

Applicants have no objection to any part of the contention. Staff, however, objects to Bases B and C as having no factual or regulatory basis. Staff explains that there is no regulatory requirement that advance public information be distributed throughout the ingestion pathway EPZ as implied in Basis B. Mass AG responds that the basis states that the information has not been prepared or distributed. We infer from his reply that the Mass AG does not dispute the Staff's claim that there is no requirement that such information be actually distributed. Therefore we limit the basis to an issue of preparing the public information. The Board accepts the Mass AG's defense of his Basis C. Reply at 43-44.

Resources
(MAG Contentions 64 - 79)

MAG Contention No. 64

The SPMC fails to meet the planning standards set forth at 50.47(b)(1), (8) and (9) and the guidance of NUREG 0654 II.A.3. because there is no assurance that resources relied on in the SPMC will be adequate at the time of an emergency.

Basis A for the contentions alleges that the agreement letters and contracts are prima facie unreliable because, 1) the Bankruptcy Court may approve their rejection by a debtor-in-possession, and, 2) because funds might not be available to support the contracts.

Applicants oppose the entire contention because, with respect to Basis A.1., there is no issue to litigate unless and until the Court orders disavowal of the contracts. As we stated at the outset, the Board harbors doubts about the merits of the issue of whether the Bankruptcy Court will negate Applicants' authority in emergency planning, but we continue to resist prejudging this issue. Applicants' objection, however, rests on the speculative nature of Basis A.1. in that the Bankruptcy Court has not yet directed a disavowal of the contracts. In a judgement call, we give the AG the benefit of the doubt, and regard the contention as predictive, not speculative. This is consistent with the predictive nature of emergency planning litigation in general. Our ruling in favor of the AG, however, carries with it a weighty burden of proving by a preponderance of the reliable, probative and substantial evidence that his prediction of a court disavowal of contracts has merit.

Basis A.2. alleging that funds will not be available to meet obligations arising out of the contracts is plainly and simply a financial qualification issue barred by NRC regulations. 10 C.F.R. § 104(c)(4), 50.33(f), 50.57(a)(4).

The fact that the AG would extend the financial issue to specific applications does not save it.

Basis B is objected to by the Applicants who state that SPMC, Sec. 2.2.1, provides that the SPMC does not depend upon any governmental resources for implementation. The Attorney General disagrees and, in reply, alludes to Mode 1 of the plan. Basis B as originally submitted provided no specifics for the AG's theory. The sparse explanation submitted with the AG's reply would require the Board to research the SPMC for its support. This is the AG's responsibility, not ours. Basis B is rejected as non-specific. Contention 64 with Basis A.1 only is accepted.

MAG Contention No. 65

The SPMC fails to meet the planning standards set forth at 50.47(b)(1), (8), (9), (12) and (13) and the corresponding guidance of NUREG 0654 because adequate resources including personnel, facilities and equipment have not been secured to adequately respond to a radiological emergency at Seabrook Station. As a result, there is no reasonable assurance that adequate protective measures can and will be taken. 50.47(a)(1).

As a basis for the contention the AG argues that certain post-exposure protective actions, e.g., decontamination, monitoring, transportation of contaminated injured and other post-exposure services relating to the care of contaminated or injured persons do not prevent, in the first instance, large doses to all or most of the beach

population. No one disputes this truism. That is not the purpose of post-exposure services.

Also, his argument goes, initial protective measures will not substantially reduce life-threatening doses for all or most of the beach population. Applicants challenge this unsupported allegation. But, as a planning basis, it can be assumed that some will be exposed. That is exactly why there are post-exposure planning requirements.

The basis concludes that the Applicants, having failed to prevent health effects to a large population, must plan to handle the health consequences. Applicants argue that there is no support for the allegation that a large population will be contaminated, and that, in any event, there is no regulatory requirement to demonstrate an ability to treat a large number of radiologically-injured persons. The AG has not explained the regulatory basis for this assertion and we can find none.

We have also considered the AG's reply that the Applicants may not be heard to argue that the evaluation criteria for post-contamination resources at an average site should not apply to Seabrook. Reply at 44. This is a mischaracterization of Applicants' answer. Answer at 113. The Contention is rejected.

MAG Contention No. 66

The facilities identified in the SPMC as the Emergency Operations Facility ("EOF") and the Emergency Operations Center ("EOC") are inadequate for the purposes required. As a result, the SPMC fails to meet the planning standards set forth at 50.47(b)(8); NUREG 0654 II.H.2. and 3 and Appendix E, IV, E, 8.

There are no objections to Contention 66. It is accepted.

MAG Contention No. 67

The facility identified as a staging area located in Haverhill at 145-185 Water Street is not now available to the ORO for this purpose and no other facility has been identified. The City of Haverhill on February 26, 1988 issued a Cease and Desist Order as to all uses of the premises as a Staging Area based on violations of the City of Haverhill Zoning Code, Sec. 255.13. In April, 1988, the Superior Court of the Commonwealth entered a temporary restraining order prohibiting any further use of these premises for the purpose. In light of the function and role of the Staging Area in the SPMC, the absence of any identified lawful location for such a facility makes the effective implementation of the SPMC impossible and the SPMC fails to meet the standards set forth at 50.47 (b)(8) and NUREG 0654 II H.4.

Applicants answer that the contention is not factually correct but could become so. Mass AG replies that in fact it has since become so. Therefore there is a litigable dispute as to the factual merits. The contention is not opposed by the Applicants on other grounds.

The NRC Staff raises an interesting and potentially important issue in its objection to the contention. It urges that it be rejected on the ground that it is a

challenge to the conclusive "best effort" presumption of the planning rule.

The Board does not accept the Staff's recommendation that the contention be rejected under the pres[illegible]s of the planning rule because, in part, the Appli[illegible]e elected to meet the issue on its factual merits. Since the Applicants have the ultimate burden of proof and have much at stake we defer to their judgement. The contention is accepted.

However, if the issue should ripen for summary consideration by the Board, we might entertain a well pleaded and supported motion which raises issues such as:

Whether a quasi-legislative body such as the City of Haverhill Zoning Board of Appeals is a body of government officials subject to the presumption that state and local officials will exercise their best efforts to protect their citizens in an actual emergency.

May the presumption, or one like it, apply before, but in real anticipation of, an emergency where the facility is actually licensed and operating?

Where legislative action fully within the discretion of the officials, for example, the repeal of legislation specifically targeted against licensing, would be in the best interests of the public safety, may it be presumed that the official will take that action?

MAG Contention No. 68

The Media Center located at the Town Hall, Newington, New Hampshire is improperly sited and timely access by Massachusetts State and local public information personnel would be impossible because to reach that location in a timely fashion the entire Seabrook 10-mile plume exposure EPZ would have to be crossed. Thus, the standards set forth in 50.47(b)(7) and (8) and NUREG 0654 II. G. and H.4 have not been met.

For the reasons set forth in our rulings on MAG Contention 56, the media-center contention raises an offsite issue. There appears to be a factual dispute on the merits of the contention. It is accepted over the Applicants' objection.

MAG Contention No. 69

The SPMC relies upon the American Red Cross to establish and operate all 27 congregate care centers and the host special facility, yet it does not contain any kind of written agreement with the American Red Cross which identifies the emergency measures to be provided in Massachusetts and the mutually acceptable criteria for their implementation. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(8), 50.47(c)(1) and NUREG 0654, Rev. 1, Supp. 1, II.A.3, II.C.5, and II.H.4.

Applicants do not oppose MAG Contention 69. The Staff opposes on the ground that the Commission has previously held in another proceeding that the American Red Cross will respond to an emergency because of its charter and policy. Despite the high authority for its position, the objection

is a premature challenge to the factual merits of the contention. MAG Contention 69 is accepted.

MAG Contention No. 70

The SPMC fails to provide adequate arrangements for requesting and effectively using assistance and resources that are purportedly available to the State and local governments. Plan 5.3-1.+O

The SPMC claims that State and local emergency facilities are described for informational purposes only and that implementation of the utility plan does not rely on these facilities. Plan 5.3-1. This is doubly incorrect. First, only if the SPMC were to be implemented in Mode 2 with ORO authorized to perform the entire response would these State and local facilities not be relied upon expressly for plan implementation. Second, even in that Mode, the existence of adequately staffed and mobilized local EOCs is assumed. Plan 2.1-21, -22.

Adequate emergency facilities and equipment are not provided and maintained by State and local governments for an emergency at Seabrook. Thus the SPMC has not met 50.47(b)(3) and (8) and a reasonable assurance finding under 50.47(a) cannot be made.

Applicants' objection to Contention 70 challenges the factual accuracy of the contention. Mass AG's reply, together with the specifics set out in the bases, joins a factual issue suitable for litigation.

The Staff objects in part on the ground that there is no regulatory requirement that the utility engage in emergency planning with non-participating government entities as is implied in Basis D. We agree with the Staff's sentiment, but we accept Basis D to the extent that it raises a question of State Police readiness and their

expected response in a radiological emergency. MAG Contention 70 with all bases is accepted.

MAG Contention No. 71

The SPMC fails to provide reasonable assurance that an adequate number of buses, vans and drivers can and will respond in a timely fashion to evacuate hospitals, special facilities, schools, day care/nurseries and the remaining transit-dependent or mobility-impaired population. Therefore, the SPMC violates 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(10), 50.47(c)(1) and NUREG 0654, Rev. 1, Supp. 1, II.A.3., II.C.4., II.C.5. and II.J.10.

MAG Contention 71 is accepted without objection.

MAG Contention No. 72

The SPMC fails to provide reasonable assurance that an adequate number of ambulances, wheelchair vans, and drivers can and will respond in a timely fashion to evacuate all those who reasonably may need transport by ambulance or wheelchair van during a radiological emergency. Therefore, the SPMC violates 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(10), 50.47(b)(12), and NUREG 0654, Rev. 1, Supp. 1, II.A.3, II.C.4, II.J.10(d), II.J.10(g), and II.L.4.

Applicants do not oppose Contention 72. The Staff would exclude from litigation that aspect of the bases which would require transportation for persons sustaining non-radiological injuries during an emergency, because, according to the Staff, neither the regulations nor NUREG-0654 require it. The AG's defense of the contention, asserts that injured persons may be rendered immobile, apparently fitting into the special-needs population

requiring special transportation from the EPZ. We agree with the Staff. The respective part of Basis A is rejected. The contention with the balance of the bases is accepted.

MAG Contention No. 73

The SPMC fails to provide reasonable assurance that an adequate number of tow trucks and drivers can and will respond in a timely and adequate fashion on a 24-hour basis to clear disabled vehicles from evacuation routes. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(10) and NUREG 0654, Rev. 1, Supp. 1, II.A.3, II.C.4, II.C.5, and II.J.10.K.

MAG Contention 73 is accepted without objection.

MAG Contention No. 74

The SPMC contains no provision for snow removal on the evacuation routes. Therefore, the SPMC violates 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, II.A.3, II.C.4, II.C.5, and II.J.10.k.

The Board finds that there are no redeeming differences between this contention and MAG Contention 30, rejected above. Accordingly, MAG Contention 74 is rejected.

MAG Contention No. 75

The SPMC fails to provide adequate arrangements for requesting and effectively using Federal assistance resources and does not comply with 50.47(b)(3) and NUREG 0654, II. C. 1.a, b. and c.

Basis A.1. for Contention 75 acknowledges the applicability of the Federal Emergency Response Plan

(FRERP), but would place into issue whether state and local governments would request the Federal assistance available under the FRERP. Under the "best efforts" conclusive presumption of the emergency planning regulation, it must be presumed that the state and local governments would request any needed Federal assistance. Staff and Applicants' objection to the basis is well founded on that ground and Basis A.1. is not accepted.

Basis A.2. is a factual allegation that there is no indication whether any of the 12 Federal agencies participating in the FRERP "must respond to meet their statutory responsibilities." We interpret the allegation to mean that it is not clear that the respective Federal agencies must, under their Federal responsibilities, respond under the FRERP. If the allegation is meant to charge that the FRERP agencies would not meet their statutory responsibilities, it would be rejected because of the evidentiary presumption that they will respond as required by law. We assume the former intention, and accept the basis with that understanding. The Staff's analysis of the FRERP provisions, is, in effect, a challenge to the factual merits of the basis and cannot, at this juncture, defeat it.

Contrary to the Staff's objection, Bases C and D are not rendered irrelevant simply because the lessons learned, as alleged in the bases, were learned at Zion.

The Staff objects to Bases E and F on the ground of vagueness. While Basis E is not as informative as one might wish, it is not too vague to be admitted. Basis F is sufficiently specific.

MAG Contention 75, except for Basis A.1., is accepted.

MAG Contention No. 76

The SPMC fails to meet the planning standard set forth at 50.47(b)(12) and the guidance of NUREG 0654 II.L. because it fails to provide adequate arrangements for medical services for the contaminated injured individuals. In light of the candid acknowledgement by the Applicant that emergency planning at Seabrook does not provide any particular level of protection to the summer beach populations in the event of a serious fast-paced accident, the SPMC should provide sufficient medical services to treat and care for those who were neither able to shelter or evacuate and as a result suffer contamination injury. As the Atomic Safety and Licensing Appeal Board has stated: "Thus, for a serious nuclear accident to result in the hospitalization of large numbers of people, not only must an already unlikely accident be serious [sic], but also the emergency response to protect the public must be ineffectual." Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), 16 NRC 127, 138 (1982).

Applicants oppose the contention on the ground that NUREG-0654, II.L.3., sets the only relevant requirement, i.e., listing the hospitals in the area capable of dealing with the contaminated and injured.

The Staff points out that the Commission has enlarged the guidance on medical services for contaminated injured persons beyond NUREG-0654 to require more than a simple listing of facilities, citing the Commission's Statement of

Policy an Emergency Standard 10 C.F.R. 50.47(b)(12), 51 Fed. Reg. 32904-5, September 17, 1986. Staff's Answer at

The contention, however, seems to demand something more than the requirements of Planning Standard (12), the respective provisions of NUREG-0654, or even the policy statement. Any doubts about this were removed by the AG's Reply (at 49) where his losing response to the objections to Contention 65 were incorporated by reference. Similarly, the Board incorporates by reference our reason for rejecting MAG Contention 65. MAG Contention 76 is therefore rejected.

MAG Contention No. 77

The SPMC fails to provide for the adequate or continuous staffing of ORO personnel to maintain or sustain an emergency response. For these reasons, the SPMC fails to meet the standards set forth at 50.47(b)(1), (2), and (5), and the regulatory guidance established by NUREG 0654 II. A.1.e.4., B, and E.2.

The Applicants and Staff do not oppose MAG Contention 77 except for Bases E and F. Basis E postulates that the Applicants' employees who volunteered to staff the offsite Response Organization will show up late in an emergency to avoid danger; the employees believe that a serious radiological emergency at Seabrook is very unlikely -- therefore they do not have a real commitment to respond; and that the employees do not have as great an incentive to respond as would, for example, a Salisbury police officer (who, incidentally, must be presumed to respond).

Basis F alleges that the more competent employees of New Hampshire Yankee and PSNH have already left or soon will leave, an inference to be drawn in part because many do not answer their telephones. They leave Applicants' employ because of the company's "precarious financial condition." The allegation continues with the charge that, over time, worker competence and qualifications will decline as the better-qualified employees leave.

We are to conclude from Bases E and F, it seems, that the Offsite Response Organization will be eventually under-staffed with tardy, craven, poorly motivated, incompetent, underqualified, financially-insecure, NHY/PSNH employees who can, however, be reached by telephone.

Applicants object, saying the the contention is a financial qualification charge, which it is not, and a human-behavior issue which has already been litigated, which it also is not.

We are more persuaded by the Staff's objection that Bases E and F are speculations about the values and beliefs of utility company employees. We go further. The bases are unprovable, unfounded libels. Bases E and F are rejected.

MAG Contention No. 78

There is no reasonable assurance that there will be adequate second shift manpower capability for certain evacuation-specific positions. Therefore, the SPMC fails to comply with 10 CFR 50.47(a), 50.47(b)(1), 50.47(b)(15) and NUREG 0654, Rev. 1, Supp. 1, II.A.4. and II.0.

There being no objections to MAG Contention 78, it is accepted.

MAG Contention No. 79

The prerequisite experience required for qualification to hold numerous critical ORO positions, and the training provided by the SPMC for these positions, is inadequate to provide reasonable assurance that ORO can and will implement adequate protective measures in the event of a radiological emergency at Seabrook Station. Therefore the SPMC fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(14), 50.47(b)(15), NUREG 0654, Rev. 1, Supp. 1, II.A, II.N, II.O.1 and II.O.4.

There are no objections to MAG Contention 79. It is accepted.

Training
(MAG Contention 80)

MAG Contention No. 80

The SPMC provides inadequate training to members of ORO, and the State and local governments [sic] employees and other organizations who may have to respond in an ad hoc fashion to an emergency are not receiving any training at all on SPMC procedures. The SPMC therefore violates 10 CFR 50.47(a)(1), 50.47(b)(15), and NUREG 0654, Rev. 1, Supp. 1, II.O.

Applicants do not object to the contention, but the Staff would have the Board limit its scope. The basis for the contention alleges in part that state and local officials and other responders have not received a copy of the SPMC, therefore have no knowledge of it. The Staff says give them a copy or litigate the failure, but don't litigate

a contention which would require training of state and local officials who refuse to be trained.

The Mass AG replies, however, that the thrust of the contention is the quality of the training. Since the Applicants must demonstrate that their plan meets the planning standards except for the non-participation of the governments, the Board will accept the basis. But we delete from the basis the irrelevant statement that the state and local government officials have not received and will not receive training on the SPMC.

Accident Detection, Assessment and Prediction
(MAG Contentions 81 - 82)

MAG Contention No. 81

Provisions in the SPMC for radiological monitoring are inadequate. As a result, the SPMC fails to meet the planning standards set forth at 50.47(b)(9); NUREG 0654 II. I and Appendix E, IV, E, 2.

Applicants and Staff object to Basis C, but would accept the balance of the contention. We agree. Basis C postulates that Federal agencies will not enter a state to implement the Federal monitoring program in the absence of a request from state or local officials. We have already ruled with respect to MAG Contention 75 supra, that the conclusive presumption is that, in exercising their best efforts, the governments will call for Federal assistance if required. Furthermore, we do not really believe the

Attorney General of Massachusetts would ask this Board to find that, in an actual radiological emergency, Commonwealth officials would refuse to call for Federal assistance if it were required to protect their citizens. The Board therefore calls upon the Attorney General to give very careful reconsideration to this and other contentions bringing into question whether Commonwealth governments would refuse to act in an actual radiological emergency.

MAG Contention No. 82

The SPMC fails to provide reasonable assurance that adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency are in use or could be used and, therefore, does not comply with 10 CFR 50.47(b)(2), (4), (8), (9) and (10), and 10 CFR Part 50, Appendix E, IV, B.

The Attorney General withdraws Basis A in the face of objections by Applicants and Staff that it raises an onsite issue. As modified by tne withdrawal, MAG Contention 82 is accepted.

Human Behavior
(MAG Contention 83)

MAG Contention No. 83

The SPMC fails to recognize three distinct and unique aspects of human behavior during a radiological emergency at Seabrock which will pervade the response to such an emergency by ORO personnel and the public. As a result, the SPMC does not meet the planning standards set forth at 50.47(b) and does not support a predictive finding that

adequate protective measures can and will be taken pursuant to 50.47(a)(1).

The Applicants and Staff object to all aspects of Contention 83, particular the human-behavior allegations, which, they assert, have already been litigated. In his Reply, the AG undertakes to distinguish this contention from the issues already litigated.

Basis A.1-3. is similar to Bases E and F for MAG Contention 77, which we rejected as libelous, unfounded and unprovable. Basis A.1. questions the commitment of the Applicants' employees to respond to an emergency, because, as we understand the assertion, they have a mind set, and see no economic incentive for their employer. The basis precludes any altruistic motivation, even while it purports to assume that the employees might have a genuine commitment. We found Basis A.1. internally inconsistent and hard to understand. But the portions of it we think we understand are incapable of being proved or disproved in this adjudication.

Basis A.2. alleges that the Offisite Response Organization workers will be liable for damages resulting from their actions, and presumably, their response will be affected by this knowledge. Neither Applicants nor Staff directly answered this allegation. Again we forebear from prejudging the merits of the contention which, at the outset, seems weak, and difficult to prove. But we accept

the basis and place the burden of proceeding with the evidence upon the Attorney General.

Basis A.3. is a role-conflict allegation much like those already litigated, and is rejected on that ground.

Basis B asserts that the Massachusetts population in the EPZ have had a lengthy struggle against Seabrook thus they form an "anticipatory disaster subculture" preventing the formation of a "therapeutic community." In short, the basis alleges that instead of an organized, altruistic, community-oriented response, an "emergency would result in increased social conflict...". This issue was thoroughly considered in the New Hampshire phase of the hearing with full AG participation.

Not so, according to the Attorney General, who replies that Massachusetts people are different because of the non-participation of the Commonwealth in emergency planning. Reply at 51. Fortunately for the Attorney General, this explanation has no foundation. If accepted, this contention would have placed upon the Commonwealth the awkward burden of proving that its own non-participation in emergency planning for Seabrook has materially contributed to "an anticipatory disaster subculture" prone to "increased social conflict" and unlikely to form a "therapeutic community."

Similarly, Basis C alleges that, in the event of a severe, fast breaking accident at Seabrook a large number of individuals will engage in "severe, aberrant, and irrational

behavior." Again similar issues have already been litigated, and again we will spare the Attorney General the burden of proving that Commonwealth non-participation has contributed to a similar, but exacerbated situation for the Massachusetts beach population. Reply at 51. MAG Contention 83 is rejected.

III. CONTENTIONS OF NEW ENGLAND COALITION ON NUCLEAR POLLUTION (NECNP)

NECNP's four contentions nearly parallel the initial six contentions of the Mass AG. They raise fundamental legal and threshold issues. NECNP seeks a preliminary ruling, through our ruling on NECNP Contentions 1 and 2, on those fundamental issues. Without such a ruling, according to NECNP, it will be reduced to "taking shots in the dark" and its right to a rational and meaningful proceeding will be abridged. Contentions at 3.

NECNP Contention No. 1

Due to the unique features of the Seabrook Emergency Planning Zone ("EPZ"), adequate emergency planning for the Seabrook EPZ is inherently impossible. Therefore Applicants cannot satisfy 10 CFR 50.47(a).

Through Contention 1, NECNP requests us to rule at the threshold whether it may litigate an allegation that emergency planning for the Seabrook EPZ is inherently impossible. Our ruling is likely to be unsatisfactory to

NECNP because we do not have a complete answer. The matter is not now squarely before us.

Applicants and the Staff challenge the bases for the contention. They are correct in their analysis. As we explained at the beginning of this order, and several times throughout our rulings on the Mass AG's contentions, there are no requirements that an emergency plan achieve a preset minimum dose savings or a minimum evacuation time, and that the basic goal of emergency planning is to achieve maximum dose savings. Therefore NECNP Contention 1, as a factual contention, must be rejected because its bases are not founded in the emergency planning regulations.

Neither the Applicants nor the Staff argue that we must reject the contention, as a contention, outright as a matter of NRC law. No party has brought to our attention any Commission decision, statement of consideration for a rule or proposed rule, or statement of policy which would foreclose a well based contention that emergency planning for a site is inherently impossible.

In the Statement of Considerations for the new emergency planning rule, the Commission left open for case-by-case evaluation whether a plan meets the regulatory standard of "adequate protective measures." 52 Fed. Reg. 42084. In the Notice of Proposed Rule for off-site emergency planning, preceding the recent amendment, the Commission stated that for each license application, the

Commission would be obligated to determine that there is reasonable assurance that the public health and safety will be adequately protected. "If the Commission, for whatever reason, cannot find that the statutory standard has been met, then the license cannot be issued. (Underlining added). 52 Fed. Reg. 6980, 6981 (March 6, 1987).

It is the Board's view that the Commission left open the possibility that, as a matter of law, a particular radiological emergency plan may not meet the regulatory standards because of the characteristics of the site. Although it may seem to Intervenors to be an incongruity, other than to reject the factual bases for NECNP Contention 1, we have no opinion as to what might be an adequate factual basis for such a contention -- if an adequate basis exists. Nor would it be appropriate for the Board to speculate on one.

NECNP Contention No. 2

Applicants have failed to identify those portions of the SPMC for which they invoke the provisions of 10 CFR 50.47(c)(1).

NECNP Contention 2 does not propose a factually litigable issue, nor does it purport to. It is procedural in nature, very similar to Mass AG Contentions 2 and 3. NECNP Contention 2 is rejected for the same reasons we rejected Mass AG Contention 2. However, the Board's

assignment of evidentiary burdens, as explained in accepting Mass AG Contention 3, would appear to provide the guidance sought by NECNP's Contention 2.

NECNP Contention No. 3

Applicants have not met the requirements of 10 CFR 50.47(a)(1) to provide a "reasonable assurance that adequate protective measures can and will be taken in the event of a Radiological emergency" at Seabrook because they have failed to show what emergency response measures will be taken by the Massachusetts state and local governments in the event that Mode 1 of the SPMC is followed.

The operative part of NECNP Contention 3 is the factual allegation in the basis that Mode 1 of the SPMC itself provides for no more that an ad hoc response by unprepared State and local governments, assuming that the governments will exercise their best efforts, and even assuming that they would attempt to follow the utility plan. Stated another way, Mode 1 is inadequate because it does not tell the governments how they could respond to that mode, and the governments would not be prepared to follow it in any event. Thus the quality of the response is brought into issue, not the presumption of the response.

Applicants respond first by challenging the factual interpretation of Mode 1 which challenge raises a litigable factual issue, and, second, by misreading the contention as an impermissible rebuttal to the presumption that the governments will follow the plan. The contention is not a

rebuttal, but a direct attack alleging that the plan cannot be followed. We accept NECNP Contention 3. Moreover, since NECNP has called its position an attempt to rebut the "follow-the-utility-plan" presumption, by showing that the plan is incapable of effective implementation, NECNP wins more than it sought. The burden of proceeding with the evidence on the contention must be shouldered by Applicants as a part of their case-in-chief.

NECNP Contention No. 4

To the extent that Mode 2 of the SPMC contemplates the substitution of Applicants for state and local governments in carrying out an emergency response, it violates the emergency planning rule and Massachusetts state law. Moreover, to the extent that it contemplates integration of the utility's functions with state and local emergency response functions, it does not compensate adequately for the lack of preparedness of state and local officials to respond to a Radiological emergency at Seabrook.

The first paragraph of the basis is similar to Mass AG Contention 6 which alleges legal impediments to the implementation of the SPMC. Such allegations are permissible rebuttals to the "follow-the-utility-plan" presumption. The Board accepts the first basis and consolidates it with Mass AG Contention 6, noting again that the burden of proceeding with the evidence in support of the rebuttal rests with the Intervenors.

The second paragraph of the basis is to Mode 2 of the SPMC what Contention 3 is to Mode 1. It challenges the

implementability of the plan and, contrary to the arguments of Applicants and Staff, it does not challenge the presumption of the rule. The second basis is accepted.

The third paragraph of the basis, in that it alleges that Mode 2 does not provide a plan for the local governments to follow, is accepted as a factual challenge to Applicants' plan.

However, the allegation in the third paragraph that local governments have a responsibility to retain police power for the protection of their citizens is ambiguous. If it means that the governments may not delegate police power as a matter of law, it is rejected as a duplication the legal-impediment contention already accepted. If it means that the governments, as a matter of policy, will not delegate police power, it is rejected as inconsistent with the presumptions that the governments will exercise their best efforts and follow the utility plan. And if it means that the best efforts by local governments to protect their citizens in a radiological emergency is to retain police power, the allegation is rejected because it is not specific. In all cases the allegation is rejected. Contention 4, as supported by the remaining bases, is accepted.

IV. CONTENTIONS OF SEACOAST ANTI-POLLUTION LEAGUE (SAPL)

SAPL Contention No. 1

Contrary to the requirements of 10 CFR 50.47(a)(1), 10 CFR Part 50 Appendix E, Sections IV.A.8. and IV.D.3. and NUREG - 0654, Rev. 1, Supp. 1, II.A.2.a. and b., II.A.3, II.E.1. and 3. and NUREG - 0654, Rev. 1 I.E., the responsibilities, authorities and concept of operations between the NHY-ORO, State of New Hampshire and the Commonwealth of Massachusetts in ordering any protective action have not been sufficiently defined nor set forth in advance in any written agreement to ensure a prompt and adequate emergency response. Further, the Implementing Procedures for coordination of response are inefficient and inadequate.

Applicants and the Staff both object on the grounds that there is no regulatory requirement that there needs to be a resolution in the SPMC as to how the governors of the two states would resolve differences of opinion on what protective actions to take in the event of notification of an emergency. The Staff further avers lack of basis and specificity for the assertions that any controversy would exist between the respective governors, or that implementing procedures are inefficient and inadequate. The Staff regards this latter statement of basis as overly broad, and asserts that any potential delays and circuitous communications alleged in the basis are at least the indirect result of lack of participation by the state and local agencies. Applicants' Response at 156; Staff's Response at 122-23.

In its answer, SAPL indicates that there is a regulatory basis for definition of authorities and responsibilities of state officials in deciding on and controlling appropriate corrective actions, citing 10 C.F.R. Part 50, Appendix E, at IV A.8. and IV D.3. As to the Staff's claim of broadness and lack of specificity concerning circuitous communications, SAPL points to its basis statement to claim that the Staff's assertion does not make sense, because a non-participating state agency is called prior to the non-participating governor's office. Reply at 2-3. In this Board's view, SAPL's argument here only reinforces Staff's objection of broadness and lack of specificity by its failure to indicate why, if true, this procedure would have any effect on notification time.

We agree with the positions of the Applicants and Staff, as summarized above; SAPL Contention 1 is rejected.

SAPL Contention No. 2

The SPMC fails to provide reasonable assurance of an adequate protective response because the staging area in Haver[illegible]l (see Figure 5.2-3) for buses designated in the plans will not be available for use. Therefore, there is no available location designated in the SPMC at which buses can be coordinated and staged to pick up transit dependent, special needs and special facilities populations in the 6 Massachusetts communities. Effective use of assistance resources is therefore not reasonably assured and the SPMC therefore fails to meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(3), 50.47(b)(10) and NUREG - 0654, Rev. 1, Supp. 1, II.J.10.g and II.J.10.k.

This contention alleges a constraint on the use of certain property in the City of Haverhill as a staging area resulting from legal actions taken by the city.

Applicants state that on April 7, 1988 the Temporary Restraining Order expired by its terms, and the Superior Court Department of the Massachusetts Trial Court denied a request by the Plaintiff for a Preliminary Injunction, and that the Plaintiff thereafter withdrew the suit. Applicants indicate that ongoing proceedings before the Zoning Board of Appeals could result in Haverhill again attempting to preclude use of the contemplated staging area, but there is no present basis for the contention, and urge rejection of the contention. Response at 157.

The Staff points out that the Licensing Board has no jurisdiction over local zoning laws, and that, while such zoning might prohibit the general use of an area for a particular purpose, such an area might not be used in a manner contrary to general zoning in an emergency, particularly when local officials are using "best efforts" to protect their citizens. SAPL has made no assertion that, since the area may not be available for a drill, it will not be available in an actual emergency. Response at 123-24.

SAPL responds that the Board of Zoning Appeals has now denied the Applicants' request to use the staging area and the matter is under appeal by Applicants in Superior Court.

Hence, claims SAPL, the current status is that the staging area is not available [for use during drills and exercises]. SAPL "would argue that the area will not be available for drills and exercises and that, therefore, any use of the area in an emergency would be an ad hoc response, if it could be used at all." SAPL Reply at 4.

As in MAG Contention 67, supra, the Applicants raise a factual dispute over the correctness of the basis for this contention. Accordingly, we admit SAPL Contention 2 for litigation (cf. our ruling on SAPL Contention 6, infra).

SAPL Contention No. 3

The SPMC fails to provide reasonable assurance that adequate personnel, equipment and facilities for radiological monitoring and decontamination of general public evacuees, emergency workers and special facility evacuees (e.g., nursing home residents) have been established. Furthermore, the definition of "contamination" is 600 cpm above normal background radiation in the SPMC, which allows a greater level of contamination of Massachusetts residents to remain unaddressed while New Hampshire residents are decontaminated at 100 cpm under the NHRERP. Therefore, the requirements of 10 CFR 50.47(a)(1), 50.47(b)(8), 50.47(b)(10), 50.47(b)(11) and NUREG - 0654, Rev. 1, Supp. 1 II.H.4, II.J.10.d, II.J.12, II, K.5.a and K.5.b. have not been met.

The Applicants do not object to the first sentence of the contention. In effect, the Staff would urge that the contention is admissible only to the extent it calls into question the adequacy and dispatch of the monitoring trailers to North Andover, Beverly and Haverhill, and that

it lacks sufficient specificity concerning the availability of other resources.

The Applicants aver that the balance of the contention, which is based on the theory that there is some requirement that the allowable contamination for Massachusetts must be the same as for New Hampshire, has no regulatory basis and should be rejected. Applicants also assert, and the Staff apparently agrees, that there is no regulatory time requirement for decontamination of evacuees. (The Staff assertion is "there is no regulatory requirement which calls for the decontamination of general public evacuees.") Applicants' Response at 159; Staff Response at 124-25.

SAPL replies to Applicants averral of absence of regulatory requirement for identical contamination levels by citing the requirement (in Section 50.47(a)) for reasonable assurance of "adequate" public protection. However, nothing in the contention or its bases points to any standard to support a claim that the level of contamination provided in the SPMC is inadequate for determining which persons may require decontamination, or why differences between the criterion values in the two states would indicate inadequacy. (We do not, nor should we, address the dispute over whether the values in the two states is a result of the use of different radiation detection instruments.) SAPL's reliance on the general requirement of 10 C.F.R. 50.47(a)(1) fails. Reply at 5.

SAPL's interpretation of Section 50.47(b)(10) claiming regulatory support for the theory that since radiological monitoring should be accomplished within 12 hours, according to guidance provided in NUREG-0654, at J.12, then radiological decontamination should also be completed within the same time frame, also fails. NUREG-0654 is a guidance document; hence the "12 hours" cannot be said to be a regulatory requirement for completion of monitoring. A fortiori, it cannot be said to be the requirement for completion of decontamination.

The potential availability of the staging area at Haverhill, again alleged here, is addressed, supra, in our ruling on MAG Contention 67 and SAPL Contention 2.

SAPL Contention 3 is admitted in part, as limited to the adequacy and dispatch of the trailers to the staging areas at North Andover, Beverly, and Haverhill, Massachusetts. The balance of the contention is rejected for the reasons cited above.

SAPL Contention No. 4

The SPMC fails to provide adequate means for the handling and disposal of contaminated waste water and contaminated materials, contrary to the requirements of 10 CFR 50.47(a)(1), 50.47(b)(9), 50.47(b)(11) and NUREG-0654 II.I.8. and k.5.b.

The Applicants do not oppose admission of this contention. Response at 160. The Staff does not oppose its

admission "to the extent detailed in its 'basis' dealing with waste water from showers at a [sic] reception centers and EWF trailers." Response at 125.

SAPL Contention 4 is admitted.

SAPL Contention No. 5

The SPMC fails to meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(12) and NUREG-0654, Rev. 1, Supp. 1, II L.1, 3 and 4 because the hospitals identified in the SPMC are not sufficient to evaluate radiation exposure and uptake, are not adequately prepared to handle contaminated individuals and are not adequately prepared to handle contami ated injured persons. Further, there are not adequate arrangements in the SPMC for transporting victims of radiological accidents to medical support facilities.

The Applicants do not object to admission of this contention. Response at 161.

The Staff opposes admission of this contention for its failure to state why the planning for contaminated injured individuals does not meet the criteria set out in the Commission's Policy Statement on "Emergency Planning-Medical Services" (51 Fed. Reg. 32904, September 17, 1986)); i.e., the contention lacks basis and specificity. Response at 125-26.

In its reply to the Staff, SAPL cites four requirements for satisfactory medical arrangements set out on the following page of the Policy Statement (supra, at 32905) and states that the basis for its contention clearly sets forth that the requirements have not been met. Reply at 7-8.

SAPL Contention 5 is admitted.

SAPL Contention No. 6

The SPMC fails to meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(3), 50.47(b)(10) and NUREG - 0654 Rev. 1 Supp. 1. II.J.10.C and J.10 g. because the method of picking up evacuees along predesignated bus routes, transporting them to transfer points and then busing them to reception centers as described in the SPMC is not a practicable means of providing adequate public protection.

The Applicants do not object to admission of this contention except to the extent that it alleges unavailability of Transfer Points as a result of local zoning ordinances. Until and unless courts of the Commonwealth of Massachusetts rule that zoning properly prohibits the designation of the Transfer Points, the governing presumption (from 10 C.F.R. 50.47(c)(1)(iii)(B), which is not rebuttable) is that government officials will act to protect their citizens and would not issue a cease and desist order to persons dispatching buses to rescue persons during an emergency. Response at 162.

The Staff objects to the contention in its entirety. It agrees with the Applicants with respect to the local zoning issue, and asserts further that the contention does not indicate with specificity why the bus routes are insufficient, nor that it points to any requirement for maps.

SAPL replies that Applicants do not object, except to litigation of the zoning issue. With regard to the other Staff objections, SAPL states that the length of the bus routes are matters related to the evacuation time estimates (ETEs), and that the burden is upon the Applicants to show that the routes are a practical solution to provide adequately for the needs of transport-dependent individuals. SAPL avers that FEMA requires that adequate maps be provided for the bus drivers in New Hampshire. SAPL Reply at 8-9.

We agree here with the Applicants' response (at 162) on the matter of the issue of local zoning ordinances with respect to Transfer Points during an emergency, and that aspect of the basis is not admitted for litigation. (See, supra, MAG Contention 67, and SAPL Contentions 2 and 3.) SAPL's reference in its Reply to a relationship between length of unspecified bus routes and ETEs is not present in its original contention or basis and cannot be used here to raise a new matter.

SAPL Contention 6 is admitted to the extent that it challenges the practicality of the procedure of picking up evacuees along predesignated bus routes, transporting them to transfer points and then busing them to reception centers, as described in the SPMC.

SAPL Contention No. 7

The SPMC fails to provide reasonable assurance of adequate public protection because there are no plans and no specific designations of host facilities to which each special facility is to evacuate and no personnel specified to effect the appropriate protective actions for those facilities. Further, the lack of plans for the Amesbury schools affects students from So. Hampton, N.H. who attend Amesbury High School. Therefore, the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10) and NUREG - 0654 II J.10.d and Article [sic] XIV of the U.S. Constitution are not met.

Applicants do not object to this contention except for that part referring to South Hampton, New Hampshire students who may attend High School in Amesbury, Massachusetts and to the Fourteenth Amendment to the United States Constitution. There is no unequal protection, according to the Applicants, since the SPMC is a private, not state, action, and all students attending school in Amesbury are being treated the same.

The Staff agrees with the Applicants, saying that there is no basis for the assertion that Hampton students attending high school in Amesbury would not receive the same protection offered to other students and transients in the Massachusetts portion of the EPZ.

SAPL apparently misreads Applicants' and Staff's objection to its "equal protection" assertion, stating that it is the "citizens of the State of New Hampshire who are not receiving equal protection," as if it believes Applicants and Staff assert otherwise. Even so, SAPL's

conclusionary argument "[a]s long as the presumption that state governments will participate in an emergency response is the legal interpretation applied, any laws applying to said states must be construed as being in force" does not provide a basis for its "equal protection" assertion. The statement fails to address the private nature of the SPMC or to show how the students differ from other nonresidents who might happen to be in Massachusetts at the time of an emergency.

SAPL Contention 7 is admitted except for the second sentence and the references to the Fourteenth Amendment of the U. S. Constitution as a basis.

SAPL Contention No. 8

The area of planning of the plume exposure Emergency Planning Zone (EPZ) under the SPMC is not of sufficient extent to provide reasonable assurance of adequate public protection because it excludes the City of Haverhill, Massachusetts which is a significant population center through which a major evacuation route I 495, traverses. Therefore, the requirements of 10 CFR 50.47(a)(1) and 50.47(c)(2) have not been met.

The Applicants oppose admission on the grounds that the only reasons given for proposing an enlargement of the plume exposure EPZ are safety reasons and it is settled that contentions seeking adjustment of an EPZ of "about 10 miles in radius" for safety reasons constitute impermissible challenges to the Commission's regulations (Long Island

Lighting Co. (Shoreham Nuclear Power Station, Unit 1, CLI-87-12, 26 NRC 383, 395 (1987)). Response at 165-66.

Similarly, the Staff objects on the grounds that the contention seeks to require matters not required by regulation and because it lacks specificity and basis. Since the contention fails to articulate that the portion of the town located within or within close proximity of the 10-mile limit should be based on any specific demographic, topographic, access or jurisdictional consideration, the attempt to expand the EPZ significantly beyond 10 miles is an impermissible challenge to the Commission's regulations. Response at 127.

SAPL replies that instead of challenging the regulations this contention simply points out that in accordance with 10 C.F.R. 50.47(c)(2) the EPZ should be expanded to encompass the City of Haverhill in a fashion directly analogous to the inclusion of the City of Portsmouth in the New Hampshire portion of the EPZ. Reply at 11.

SAPL's claim of "direct analogy," based entirely on the passage of Interstate Highway I-95 through Portsmouth and Haverhill, is insufficient as a basis for this contention. We agree with the Applicants' and the Staff's reasoning and find that SAPL Contention 8 constitutes an impermissible challenge to the Commission's regulations, and it is rejected. CLI-87-12, 26 NRC 383, 395 (1987), supra.

SAPL Contention No. 9

The SPMC fails to provide reasonable assurance of adequate public alerting and notification because there are no longer fixed sirens in the Massachusetts portion of the EPZ, the Vehicular Alert and Notification System (VANS) for the Massachusetts portion of the EPZ is impractical in certain weather and accident scenarios, and it will not provide the required public alerting within a 15 minute time span. Further, the means by which transients in the Parker River National Wildlife Refuge on Plum Island are to be notified by the U.S. Dept. of Interior are not specified. Therefore, the requirements of 10 CFR 50.47(a)(1), 50.47(b)(5) and 10 CFR Part 50 Appendix E, Section IV D.3 and NUREG-0654, Rev. 1, Supp. 1, II, E.6 have not been met.

The Applicants and Staff oppose admission of this contention on the grounds that the matters alleged are outside the jurisdiction of this Board, and come under the jurisdiction of the onsite safety and emergency planning Board. Applicants' Response at 167; Staff's Response at 128.

In its Reply (at 11-12) SAPL "conditionally waives this contention unless the proposed NRC rule change on low power requirements somehow removes this issue from the jurisdiction of the onsite Board," and seeks to "reserve[s] the right, in that eventuality to litigate this contention before this [offsite] Board."

Admission of SAPL Contention 9 is denied on the ground that it is outside the jurisdiction of this Board.

SAPL Contention No. 10

The SPMC fails to provide reasonable assurance of adequate public protection because the SPMC does not address the situation where evacuees in the beach areas will be trapped in traffic for hours without an option to take shelter or implement any other realistic measures to protect themselves. The SPMC therefore does not meet the requirements of 10 CFR 50.47(a)(1), 50.47(b)(10) and NUREG-0654, Rev. 1, Supp. 1, at J.9 and II J. 10 d., g, k and m.

The Applicants urge rejection on the grounds of absence of regulatory requirement for addressing the alleged deficiencies proffered in the contention and its bases. They assert that it is not clear what is being contended and offer their understanding of possible alternative thrusts, for neither of which they find regulatory support. First, they state the contention may be read to say that because there will be traffic congestion and no shelter, some minimum required dose savings requirement will not be met. Applicants then provide several familiar citations to support the position that there is no requirement that Applicants demonstrate that preset minimum dose savings can and will be achieved in all circumstances. Second, Applicants say that the basis may be read to assert that there must exist a shelter option for all beachgoers, for which there is no requirement in the regulations or applicable law, citing this Board's Memorandum and Order (Ruling on Contentions and Establishing Date and Location for a Hearing) (April 29, 1986) at 43-45. Finally,

Applicants state they would have no objection to a contention to the effect that the SPMC should be modified to recommend beach closure or other precautionary action at the Alert level. Response at 168-69.

On the last point, however, the Staff objects to the assertion on the basis that the NHY-ORO will not recommend early precautionary actions on the ground that there is no requirement that precautionary measures be taken. Staff points to the question of different treatment of transients in this regard in the two states, but repeats its position that there is no regulatory basis requiring precautionary actions.

The Staff opposes admission of the other parts of the contention on the grounds that they lack basis and specificity, and that the balance is overly vague in the issue it seeks to raise. Staff's objections in this regard are similar to those of the Applicants, and Staff further adds that the contention characterizes evacuees waiting in their cars in traffic tie-ups as mobility-impaired persons, per NUREG-0654, II.J.10.d, as cited by SAPL. Lack of mobility of evacuees in cars is temporary, and does not characterize such evacuees as the class of mobility impaired persons entitled to special treatment as covered by section II.J.10.d of NUREG-0654. In summary, the Staff says the contention has no proper basis and appears to question

Commission regulatory requirements, and it must be rejected. Response at 128-29.

In reply, SAPL does not claim that there is some minimum dose standard that will not be met. It maintains that the contention states in essence that there is no viable protective option for the evacuees in the beach area because they can neither evacuate nor take shelter (emphasis added). SAPL states that the conditions in the beach area preclude any reasonable person from arriving at a conclusion that there is reasonable assurance of adequate public protection in the event of radiological emergency as NRC regulations require; i.e., there is no viable protective action strategy in the beach areas. Reply at 12-13.

We essentially agree with the Staff. Persons in automobiles queued up during an evacuation are a common consideration of large evacuations. As a class, those persons potentially in queues in the Seabrook area would be like those in other evacuations, they would be evacuating, contrary to SAPL's assertion that they cannot evacuate. They clearly are not "mobility-impaired" persons contemplated in NUREG-0654, II.J.10.d. Thus, the gravamen of SAPL's contention must be either that evacuation is impossible or, that because of the relatively long time required for evacuation of the beach population in the Seabrook area under certain unlikely but possible conditions, significant dose reductions cannot be attained

for persons queued up in automobiles. The latter construction would require some minimum dose reduction standard, but SAPL claims that no such requirement is imbedded in its contention. Discounting that, and any imbedded requirement for sheltering of all beachgoers, as interpreted from the contention by the Applicants, SAPL's contention lacks any regulatory basis or necessary specificity (or it challenges the Commission's regulations if it asserts that evacuation is impossible). Accordingly, SAPL Contention 10 is rejected. However, MAG Contention 26, supra, is very similar to SAPL Contention 10. We interpreted MAG Content' 26 to mean that, without a sheltering option, maximum savings may not be provided by evacuation alone. SAPL may, if it chooses, participate in the litigation of MAG Contention 26.

SAPL Contention No. 11
(Originally submitted as SAPL Contention 10)

The SPMC Amendment 4 fails to provide reasonable assurance that there will be adequate means of relocation for special facility populations in the 6 Massachusetts communities because numbers of buses for those special facilities have been drastically reduced. There are no compensating measures to make up for the reduction in bus numbers to assure reasonably the safety of the residents of the facilities.

Therefore, the requirements of 10 C.F.R. 50.47(a)(1), 50.47(b)(10), and NUREG-0654, FEMA-REP-1, Rev. 1, Supp. 1, J.10d and J.10g have not been met.

This contention was late-filed on May 13, 1988 following receipt of SPMC Amendment 4 on or about April 15, 1988. SAPL addressed the late filing criteria of 10 C.F.R. 2.714(a). We have reviewed those factors and find that, on balance, they weigh in favor of entertaining the contention.

Neither the Applicants nor the Staff oppose admission of this contention. Applicants' Response (May 25, 1988) at 2; Staff's Response (May 31, 1988) at 1.

SAPL Contention 11 is admitted.

V. ORDER

Discovery on the contentions accepted by Part I of this Order may comence immediately. Where there is a bona fide need for clarification or further Board guidance as to

particular isues, parties may defer discovery responses until the prehearing conference scheduled for August 3 and 4, 1988.

ATOMIC SAFETY AND LICENSING BOARD

Jerry Harbour
ADMINISTRATIVE JUDGE

Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE

Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

July 22, 1988