



Reconsideration and Clarification of Contention Rulings

MAG 1 through 5 are legal contentions which cannot be litigated factually and cannot support discovery. Tr. 14388-90.

MAG 11. The Board's previous ruling (Part I at 32) remains unchanged. The averment that Applicants consider emergency planning for a 10-mile Seabrook EPZ unnecessary for safety, even if true, does not support a contention that the utility plan is therefore inadequate.

MAG 19. Applicants would have no objection to MAG 19, Basis C if it were understood to raise a letter-of-agreement issue. But counsel for the Attorney General acknowledges that the contention was not intended as such. Tr. 14416-17. Therefore the Board's previous ruling stands. Part I at 39.

MAG 20. The Board's ruling on MAG 20 should have excluded Bases C and D, not "B and C" as stated in Part I at 40. Tr. 14393

MAG 36. The Board has again considered the Attorney General's request that Basis A of MAG 36 be read in light of the other bases. The Board's ruling stated at the prehearing conference stands. Tr. 14425.

MAG 37. The Attorney General withdraws from MAG 37 the sentence, "With additional manpower and intelligent plan revisions some feasible dose reduction could be achieved." Tr. 14426.

The Board had originally rejected a portion of MAG 37 together with Bases A and B on the ground that they attempt to draw a comparison between the SPMC and a plan with Commonwealth participation. Part I at 60. Counsel for the Attorney General requested the Board to reconsider, arguing that the reference to Massachusetts participation was simply an incidental reference to an "evidentiary fact that went to the issue of adequacy." Tr. 14449. On one hand, we do not see that counsel's argument about the evidence helps his position, because such evidence would not be relevant in that the SPMC may not be compared with a theoretical plan with state participation. On the other hand, the contention and respective bases do not, in so many words, allege that the SPMC is inadequate because it is not as effective as a plan with full Massachusetts' participation. In that the contention and Bases A and B would be acceptable without the reference to Massachusetts participation, and because the latter concept is neatly severable, we accept counsel's representation that Bases A and B were intended to stand alone without relying on a comparison between the SPMC and a plan with Massachusetts participation. The Board therefore accepts Bases A and B except for the final sentence of each. This ruling depends very heavily upon the professional representation of counsel for the Attorney General.

MAG 39. The parties agreed to confer on whether the issue that would be raised by Basis M, spontaneous

evacuation, has already been litigated. The Board clarified that it did not believe there was a foundation for MAG 39, Basis F, because of the time scale involved in comparing evacuation times with the time for the onset of radiation illness. Tr. 14468. The Board ruled that Basis O to Contention 39 does not raise an issue of differing public perceptions of uniformed and non-uniformed traffic guides. Tr. 14584-85.

MAG 55. Basis G of MAG 55 is also excluded. Tr. 14399. Therefore Basis F and Basis G have both been excluded. Part I at 82 (excludes F).

MAG 56. The Attorney General requests reconsideration of the Board's rejection of Basis A for MAG 56 with the argument that predetermined PARs are necessarily offsite considerations. Tr. 14474. We have considered counsel's arguments, reviewed once again the 8 sub-bases for Bases A, and the relevant provisions of NUREG-0654. We remain in the view that Basis A is fundamentally an onsite consideration. In essence, through Basis A, the Attorney General is seeking a more conservative scheme of Emergency Action Levels--an onsite consideration.

MAG 58 is withdrawn. Tr. 14486.

MAG 83, limited to Basis A.2., is accepted. Tr. 14404. The contention must be redrafted to reflect the limitation. Tr. 14407-08. Other aspects of MAG 83 remain rejected. Tr. 14495.

NECNP 1. The Board has considered again the argument by counsel for NECNP that the emergency planning regulations require that planning must achieve some significant dose reductions over no planning. Tr. 14516. Our original ruling stands. Part I at 108-10.

SAPL 1. The Board took under advisement SAPL's request to reconsider SAPL Contention 1 in light of its acceptance of MAG Contention 59. Our evaluation of the nexus between the two contentions, as stated at the conference, remains our view. The acceptance of MAG 59 by the Board does not provide a basis for reversing our determination to reject SAPL 1. Tr. 14530-41.

TOA 5. Counsel for the Town of Amesbury argued that the basis for TOA Contention 5 should be read to mean, "... that even if it is determined at some point after an emergency is declared, and for example, evacuations ordered, that for whatever reason, evacuation is no longer the preferable PAR to maximize dose [reduction], there are no procedures, personnel, [or] any other implementing characteristics in the plan to shift from one [PAR] to another." Such a basis would provide support for the contention. As promised, the Board has carefully reread the very wordy and wide-ranging basis to TOA Contention 5. Contrary to counsel's argument, the basis seems to allege that when a PAR is changed from evacuation to another recommendation, the change cannot be achieved. The basis

does not explain the regulatory significance of such a state of affairs. The original ruling stands. Part II at 17.

CON 1 and 2. Counsel for the City of Newburyport corrected the Board's understanding of its first two contentions and agreed to work out a rewording in the negotiation process. Tr. 14565.

TON 1. Counsel for the Town of Newbury and counsel for Applicants agreed to a modification of TON Contention 1. Tr. 14572. Counsel also requested the Board to reread some of the bases for Contention 1 to infer that they allege that non-uniformed traffic guides will not succeed as well as uniformed guides. Tr. 14576, 14585, 14625. We have examined counsel's citations and do not agree that they raise an issue of the comparative effectiveness of uniformed and non-uniformed traffic guides.

Counsel also requested the Board to consider its snow-removal allegation in the sense that the SPMC is deficient unless it has a contingency plan for a scenario where snow begins after an evacuation has begun, traffic cannot be moved, and the snow cannot be removed. We have taken the recommendation under advisement, and find no reason to believe that such a contingency plan would have any benefit over an ad hoc approach to such improbable events.

TON 4. We reconsidered our rejection of TON 4, but our original rejection stands.

TON 9. The first sentence of the basis for Town of Newbury Contention 9 is accepted as a contention substituting for TON 9 as originally submitted. The Board's original ruling rejecting TON 9 in its entirety is therefore superseded. Part II at 37.

TOS 9. Counsel for the Town of Salisbury and the Board accepted a rewording offered by the Applicants for TOS Contention 9. Tr. 14620, 14624. The contention is therefore accepted, thus reversing our earlier ruling. Part II at 46.

Haverhill's EPZ Contention. The renewed request by counsel for the City of Haverhill to be included in the Plume Exposure EPZ (Tr. 14506-13) is denied for the reasons set forth in the original determination. Part II at 19-20

#### Management of Contentions

Contentions which are no longer genuinely in dispute or have the good-faith support of the respective Intervenors must be withdrawn or appropriately modified. In due course, the Board will call upon the Intervenors to reaffirm their support of their contentions. Tr. 14296.

The Applicants have extended an invitation to the Intervenors' technical advisors to discuss with the utility's technical advisors any contention for the purpose of possibly satisfying Intervenors' concerns. No contact with Applicants' legal counsel is required. The Board

supports this approach and ruled that such discussions are not to be used as evidence that the respective Intervenor does not fully support its contention. Tr. 14297-98. This ruling, however, does not require the exclusion of evidence merely because it was disclosed in the course of the discussion among the technical advisors. Federal Rule of Evidence 408.

The parties are under a continuing obligation, during the contention consolidation process, through discovery, and into the hearing, to informally resolve disputes and to satisfy Intervenor's concerns. For example the issue presented in many contentions is whether or not the SPMC relies upon the participation of local government officials. The parties are required to work toward a stipulation and either resolve the dispute or propose an issue appropriate for litigation. Tr. 14634-42.

Contentions must be consolidated and redrafted to reflect the Board's rulings and the law of the case. The NRC Staff will chair the contention consolidation process. Each party is required to participate in the contention consolidation process. Tr. 14299-300. Redrafted and consolidated contentions shall be submitted to the Board by stipulation among all parties if possible. Tr. 14303. The Massachusetts Attorney General shall serve as chair of the Intervenor's in redrafting and consolidating contentions. Tr. 14305.

The Massachusetts Attorney General will serve as chair of the Intervenors for the purposes of designating lead intervenors for particular issues and for procedural matters. Tr. 14300-01.

#### Order of Proof

Notwithstanding the Board's rulings concerning burdens of proceeding with the evidence and the presumptions of the emergency planning rule, the Applicants may carry their burden of proof in the manner they have chosen -- Applicants' prima facie case on all issues first, followed by the other parties. Tr. 14359-82.

The Board has indicated throughout its discussions of the emergency planning rule that the Applicants must first demonstrate that their plan is adequate and can be followed by the governments before they earn the presumption that the governments will follow the plan. However it was not our intention to require that the case be heard and decided in discrete stages. For example, it may be that, for scheduling and organizational reasons, evidence relating to a rebuttal of the presumption may be presented before Applicants present evidence entitling them to the presumption. The motion of the Mass AG, SAPL and NECNP to hear the case in stages is denied. Motion for Adoption of an Agenda, August 1, 1988.

There is pending before the Board, Applicants' August 5 motion for referral of the Board's rulings on the permissible rebuttals to the "follow-the-utility-plan" presumption. In particular the Applicants seek a referral of our ruling that the legal authority contentions are permissible rebuttals, urging instead that the Intervenor can rebut the presumption only by coming forward with a government plan. Pending our decision whether to refer the rulings and any appellate decision setting aside our rulings, we shall proceed in accordance with our stated view of the emergency planning rule and proceed toward hearing on the legal-authority issue.

Also pending is the Intervenor's motion to forebear addressing the legal-authority issues (MAG Contention 6) and to accept instead the declaratory judgment of the Massachusetts Courts. Motion for Agenda, supra, at 6-8. For now we deny that aspect of the motion which would have us suspend the litigation of the legal-authority issue pending a state-court judgment. We shall proceed with the legal-authority issue as with any other issue. The Board expects that the the entire matter may be properly briefed and considered in connection with Applicants' forthcoming summary disposition motion -- provided of course that the matter survives Applicants' motion for referral.

#### Another Housekeeping Matter

The Board discussed several housekeeping matters during the conference. Agenda, Item 7. We invited the parties to send any express mail to the three members of the Board in one envelope as a cost and effort-saving measure. We misstated. The parties are invited to send Board communications in one express-mail envelope. But, within the express mail envelope, the copies to the respective Board members should be in separate envelopes or otherwise clearly and separately addressed. In addition, two copies of every filing to the Board should be sent to the Chairman.

#### Schedule

The following schedule of prehearing events was approved at the conference:

8/15/88            Submission to the Board of a stipulation of consolidated and conformed contentions. This was an approximate target date that has since passed. Differences of opinion should be submitted to the Board for ruling. Tr. 14655.

9/2/88            FEMA has committed to producing the final report on the exercise of the authority assuming that the States

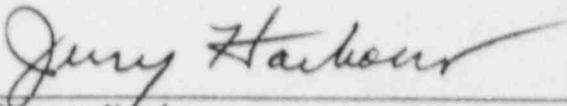
of New Hampshire and Maine respond within one week to the draft FEMA report. Tr.14658.

- 9/05/88           Intervenors will designate Lead  
Intervenors soon after labor day.
- 9/21/88           Filing of exercise contentions or 7 working  
days after the final report is served if  
final report is delayed. Responses to  
contentions and replies would also be  
delayed.
- 9/28/88           Applicants' responses to the contentions.
- 10/3/88           Staffs' responses to the contentions.
- 10/11/88          Intervenors' replies to responses.
- 10/XX/88          Board will issue an Order and open discovery  
on exercise contentions.
- 11/15/88          Discovery on the SPMC closes.  
Possibly discovery on the exercise will close  
too.

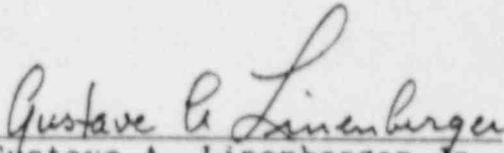
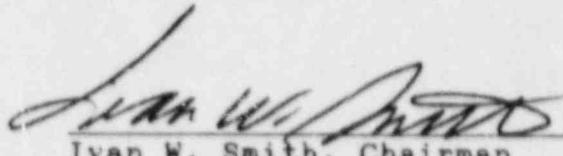
Discovery

Discovery on all SPMC issues is authorized. 10 CFR  
2.740

ATOMIC SAFETY AND LICENSING BOARD



Jerry Harbour  
ADMINISTRATIVE JUDGE

  
Gustave A. Linenberger, Jr.  
ADMINISTRATIVE JUDGE

Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland  
August 19, 1988

LB 8/3/88

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

(Seabrook Station, ) Offsite Emergency  
 ) Planning  
Units 1 and 2) )  
\_\_\_\_\_) August 3, 1988

PREHEARING CONFERENCE AGENDA  
(Informal)

1. Appearances and introductions.
2. Preliminary matters raised by parties.
3. Entertain requests to excuse limited participants.  
(May require taking housekeeping matters out of order.)
  - A. Excused participants usually must accept proceeding as it develops during their absence.
4. Contention management.
  - A. Parties must withdraw contentions not genuinely in dispute, e.g., satisfied by response.
  - B. Consolidation of contentions. Allocate responsibilities for identifying similar contentions. NRC Staff lead again?
  - C. Contentions and bases must be redrafted to reflect Board rulings and consolidations.
  - D. Redrafted and consolidated contentions by stipulation or agreement if possible.

5. Reconsideration of contention rulings.
  - A. Arguments on Board's legal interpretation of emergency planning rule.
  - B. Discussion of order of proof. Part I at 17-18.
  - C. Requests for clarification.
  - D. Arguments heard in order of rulings: Applicants, Mass AG, etc., Staff, Applicants. Time limits.
6. Designation of Lead Intervenors.
  - A. For particular issues.
  - B. For procedural matters (e.g., telephone conferences).
7. Housekeeping matters.
  - A. Need for revised service list. Eliminate names of non-participants.
  - B. Format of pleadings: Name of pleader and date of pleading on face page. Simple descriptive title. Phone number and address of signer on signature page.
  - C. Do not ignore deadlines. Do not assume extensions. Seek agreement of parties for time extension.
  - D. Express mail or hand delivery to Board. Three copies to chairman. Fourth Floor, 4350 East West Highway, Bethesda, MD 20814.
  - E. Facsimile transmission to Board: Primary (301) 492-7285; Secondary (301) 492-5061.

- F. Telephone conferences. Active and passive participants. Procedural lead intervenors. Minimize use of speaker phones.
- G. Electronic submission of large documents.
- 8. Applicants' July 1 Motion for Schedule.