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

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

APPLICANTS' RESPONSE TO OFF-SITE EP CONTENTIONS
SUBMITTED BY SOUTH HAMPTON
(New Hampshire State and Local Plans)

Introduction

Pursuant to this Board's order of January 17, 1986, the Applicants submit this response to the proposed contentions relating to the New Hampshire state and local offsite emergency plans submitted by South Hampton (SHamp). Before turning to the specific contentions proffered by SHamp, however, we set forth some general principles governing the admission and

litigation of contentions relating to offsite emergency planning that we believe may be of assistance to the Board.

General Principles

The function of emergency planning is to effect, under the circumstances that may be presented, aggregate dose savings to the affected population. The emergency planning requirements are not intended to impose new performance or siting criteria on nuclear power plants, and they do not require, as a condition of licensure, a demonstration of absolute assurance of perfect safety. The purpose of emergency planning is to have in place means and methods of coping with emergencies in order to keep offsite effects to as low a level as is reasonably possible given the facilities at hand. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 533 (1983).

The proposition that emergency plans will be judged for adequacy against a certain type of accident, and in particular one involving a prompt offsite release of radioactive effluent, is likewise contrary both to established law and to the fundamental precepts on

which emergency planning is based. The theory upon which the regulations were based is that the planners should consider a spectrum of accidents; the key requirement is that emergency plans be flexible and capable of accomplishing a reduction of adverse effects to the greatest extent reasonably practicable given existing resources. As the Commission has stated:

"Since a range of accidents with widely differing offsite consequences can be postulated, the regulation does not depend on the assumption that a particular type of accident may or will occur. In fact, no specific accident sequences should be specified because each accident could have different consequences both in nature and degree. Although the emergency planning basis is independent of specific accident sequences, a number of accident descriptions were considered in development of the Commission's regulations including the core melt accident release categories of the Ractor Safety Study (WASH-1400)."

San Onofre, supra, 17 NRC at 533.

A corollary is that there is no requirement that emergency plans either directly focus on anyone's notion of the "worst case" accident, or that they demonstrate that, in the event of the "worst case," no member of the public will be affected. "NUREG-0654 does not require an adequate response for the 'worst possible accident' at [a nuclear power plant.] It provides that the worst possible accident be taken into

consideration in the planning basis for the provisions of NUREG-0654." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 888 (1985). See also Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1243-44, aff'd, ALAB-819, 22 NRC 681 (1985). Neither is it either required or appropriate for evacuation time estimates to be based upon the worst possible combination of events. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC 184, 188 (1985) (immediate effectiveness ruling); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1244 (1985), aff'd, ALAB-819, 22 NRC 681 (1985). Worst case scenarios in evacuation time estimates are of no usefulness to decisionmakers, Limerick, LBP-85-14, supra, 21 NRC at 1244, and overly conservative estimates are counterproductive, id. at 1243.¹

¹NUREG-0654 calls for the calculation of evacuation time estimates for at least two scenarios: normal and adverse weather. It is neither required nor feasible

A concomitant principle is that evacuation time estimates are not required to be prepared with absolute precision or to demonstrate that evacuation can be completed within any given period of time. Cincinnati Gas & Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 770 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-730, 17 NRC 1057, 1069 n.13 (1983). NRC regulations do not require that "evacuation could always be one step ahead of the plume." Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-84-29B, 20 NRC 389, 394 (1984). Thus, any contention that NRC regulations require evacuation of the Seabrook plume EPZ or some portion thereof to be completed within some certain time is not a subject for litigation in ASLB proceedings.

to calculate estimates for every possible permutation of conditions. In selecting the adverse scenario for calculation, two criteria are intended: the scenario must be severe enough to give an indication of the sensitivity of the time estimate to adverse conditions, on the one hand, while still of a nature that occurs sufficiently frequently in the area in question to be of usefulness to decisionmakers, on the other. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), LBP-95-27A, 22 NRC 207, 225-26 (1985).

The Commission's emergency planning regulations were not intended to require the adoption of extraordinary measures to deal with perceived inadequacies of local facilities. To quote the Commission again:

"It was never the intent of the regulation to require directly or indirectly that a state and local governments adopt extraordinary measures, such as the construction of additional hospitals or recruitment of substantial additional medical personnel, just to deal with nuclear plant accidents. The emphasis is on prudent risk reduction measures. The regulation does not require dedication of resources to handle every possible accident that can be imagined. The concept of the regulation is that there should be core planning with sufficient planning flexibility to develop a reasonable ad hoc response to those very serious low probability accidents which could affect the general public."

San Onofre, supra, 17 NRC at 533.

The regulatory standards that govern the acceptability of state and local emergency plans are contained in 10 C.F.R. § 50.47 and Part 50, Appendix E. Additional guidance is contained in the emergency planning guidance published by the Staff and FEMA, NUREG-0654. NUREG-0654, however, is not a regulation and does not impose regulatory standards; while the criteria contained therein, if adhered to, will demonstrate compliance with the regulations, emergency planners are free to comply with the regulations by

utilizing methods, means and approaches other than those found in NUREG-0654. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1298-99 (1982); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 709-10, aff'g LBP-85-14, 21 NRC 1219, 1228 (1985).

Findings in the emergency planning area are intended to be predictive in nature. The governing regulation, 10 CFR § 50.47(a)(1), does not require that emergency plans be "final" or have been formally "adopted" so long as the planning process is sufficiently advanced as to permit the Board to have reasonable assurance that there are no barriers to emergency planning implementation or to a satisfactory state of emergency preparedness that cannot feasibly be removed. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-85-13, 22 NRC 1 (1985) (immediate effectiveness ruling); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 834-35 & n.58 (1984); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-04

(1983); Cincinnati Gas & Electric Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 (1983); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-84-28, 20 NRC 129, 131-32 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020, 1028 (1984); s.c., LBP-85-14, 21 NRC 1219, 1230 (1985). Neither is there any requirement of awaiting FEMA findings before hearings are held or findings made. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 79 (1985); Limerick, LBP-85-14, supra, 21 NRC at 1232.

It is well established, both in the records of history and the decisions of this agency, that people tend to behave rationally and to follow instructions during a real emergency. "Documented history of disaster responses shows that evacuations are generally orderly. The historic record indicates that evacuating individuals ordinarily obey traffic officers at traffic control points and traffic access control points. It would be useless to make any other planning assumption." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC

1219, 1254, aff'd, ALAB-819, 22 NRC 681 (1985). Similar historic records show that in a real emergency, public officials and emergency workers tend to do their duties. E.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1273-74, 1290, 1292-95, aff'd, ALAB-819, 22 NRC 681 (1985); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-25-27A, 22 NRC 207, 230 (1985). In light of this record, any proffered contention to the effect that public officials or emergency workers will not perform their assigned duties must, in order to raise a litigable issue, be supported by a particularized basis for asserting that the normal experience doesn't apply in this particular case for some reason particular to Seabrook. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020, 1048 (1984). See also Philadelphia Electric Co. (Limerick Generation Station, Units 1 and 2), CLI-85-15, 22 NRC 184, 187 (1985) (immediate effectiveness review).

In short, the standard by which any emergency plan is to be judged is whether or not it represents the

best efforts of knowledgeable people through the use of reasonably available facilities to reduce to the maximum extent reasonably possible the adverse effects on the public health and safety which will result from offsite releases resulting from a spectrum of accident scenarios. The guiding principles, as recently summarized by a Licensing Board, are thus:

"The purpose of emergency planning is to achieve dose savings to the general public in the event that radioactive material is accidentally released off site. There is no minimum standard of public radiation dose which must be met in emergency planning.

"Absolute protection of the public against all radiation doses cannot be guaranteed and is not required for all possible accident scenarios.

"The emergency response plan should not be developed for any specific preconceived accident sequence. It should instead be framed to cope with a spectrum of accident possibilities including the worst accidents.

"There is no standard time required to be met for evacuation in a radiological emergency. Estimates are necessary to determine accurately the actual time required for evacuation. These estimates are needed to aid in protective action decisionmaking.

"No massive investment of resources (stockpiling of supplies or construction of hospitals) are required for emergency planning. We will apply a practical standard of efficiency of utilization of existing resources (such as roadways

and manpower) in evaluating the acceptability of the evacuation plan."

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 782 (1985).

Response to Specific Contentions

Contention 1

South Hampton Contention No. 1 is:

"The RERP for South Hampton fails to provide 'reasonable assurance' because, contrary to NUREG-0654 A.3, the plan includes no written agreements referring to the concept of operations or signatures of local agencies."

South Hampton's first proposed contention is general in nature. When the volume containing the agreements has been reviewed by South Hampton it should be required to specify the deficiencies it finds, if any.

Contention 2

South Hampton Contention No. 2 is:

"The RERP for South Hampton fails to provide reasonable assurance because, contrary to NUREG-0654 A.4, the town lacks the capacity for twenty-four hour continuous operation for a protracted period."

By this contention South Hampton proposes to litigate the issue of whether "the town lacks the capacity for twenty-four hour continuous operation for a protracted period." However, there are two defects with this contention that prevent its admission. First, it is not clear whether the contention proposes to litigate 24-hour capability before or after the

declaration of emergency; in context it would appear to be the latter. The purported basis, namely that town officials are "part time" and have "other jobs," plainly does not apply to the situation while an emergency is in place, for if either sheltering or evacuation has been directed, the town workers will not have to remain at their "other jobs." Second, the contention, because of its generality, provides no basis for determining that any essential positions would remain uncovered, particularly in view of the fact that the New Hampshire plans assume a minimal number of functions to be performed by local personnel. (South Hampton has a 1985 permanent population of 716 persons and a 1985 peak population (including transients) of 1,789 persons. See South Hampton local plan at I-13.) Furthermore, assuming evacuation was ordered there would be nothing left for the local emergency response workers to do after the town is evacuated (which will not require 24 hours) South Hampton plan at II-31. Absent a clearer delineation of basis, the contention is not admissible.

Contention 3

South Hampton Contention No. 3 is:

"The RERP for South Hampton fails to provide reasonable assurance because, contrary to NUREG-0654 C.4, it contains no letters of agreement from voluntary police officers, voluntary firemen, other emergency workers, school teachers, transportation companies and bus drivers. It also contains no agreements from Midway Excavators and personnel at the Tewksbury Pond Campground."

Like Contention 1, this proposed contention complains about the lack of letters of agreement in the plans. It too, however, refers to letters of agreement from classes of people from whom such letters are not required: police officers, firemen, school teachers, and an amorphous group of "other emergency workers."

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1366 (1985).

On the other hand, bus drivers, transportation companies, "Midway Excavators" and "personnel at Tewksbury Pond Campground" might represent the sort of support organizations from which NUREG-0654 recommends letters of agreement. However, the New Hampshire state plan identifies the companies on which reliance is placed for transportation, identifies those from which letters of agreement have been obtained and states that

the process of obtaining letters from the balance is under way. See New Hampshire Radiological Emergency Response Plan ("NHRERP") Part 4 and Appendix I. There is nothing in the plans to indicate that any barriers exist to the completion of this process, and no basis for concluding that any such barriers exist is stated by South Hampton. In the absence of such a basis, the bare fact that some of the letter have not been obtained yet poses no issue for litigation.

Midway Excavators is the contractor that the town of South Hampton uses for roadway work, since it has not equipment of its own. South Hampton local plan, p. C-3. However, the only sort of highway work likely to be called upon during a radiological emergency involves towing and perhaps plowing of snow, and the NHRERP indicates a surfeit of equipment to perform this function at the state level if necessary. NHRERP Appendix C, pp. C-3 through -5, C-10. The responsibility of the South Hampton Highway Agent is limited to "periodically reassessing the manpower and equipment needs and resources for emergency maintenance of evacuation routes. He will coordinate this with private contractors and the NH Department of Public

Works and Highways." South Hampton local plan p. III-18. "Should the Town's highway resources be insufficient, the Highway Agent may rely on support from the State for maintenance of evacuation routes. A representative of the New Hampshire Department of Public Works and Highways will be available at both the IFO/EOF in Newington and at the State EOC in Concord." South Hampton local plan, p. II-30. "The New Hampshire Department of Public Works and Highways is prepared to use its maintenance equipment, including plows and trucks, and towing equipment to maintain these [evacuation] routes during adverse weather and as unforeseen impediments to evacuation occur." NHRERP at p. 2.6-10. "In the event that a municipal government for whatever reason is unable to fulfill its responsibilities pursuant to a local RERP, the State of New Hampshire will assume and carry out those responsibilities." NHRERP p. 1.1-4. Thus, contrary to the impression created by South Hampton, obtaining resources from Midway Excavators is desirable but not essential to implementation of the South Hampton local plan. In this situation, the bare absence of a letter

of agreement implies no deficiency in the plans and raises no litigable issue.

"Tewksbury Pond Campground" (referred to as Tuxbury Pond Camping Area, Inc. in the South Hampton local plan) is not a source of emergency workers or response; it is a special facility. As a consequence, no letters of agreement are required. Moreover, the South Hampton local plan contains a Special Facilities Emergency Response Plan for Tuxbury, South Hampton local plan pp. F.3-1 through F.3-7, and the proposed basis for this contention suggests no infirmities to this Special Facilities Plan.

Given, therefore, that the planning process seems to be well along for transportation providers, and that no reliance is placed upon Midway Excavators or Tuxbury Pond Campground as essential response providers, there is no basis for South Hampton proposed Contention 3 and it should be excluded.

Contention 4

South Hampton Contention No. 4 is:

"The RERP for South Hampton fails to provide reasonable assurance because, contrary to NUREG-0654 E.5., reliance on a commercial FM radio

station WOKQ, for follow-up information, is inadequate."

South Hampton proposed Contention 4 is based on the premise, stated therein, that reliance for Emergency Broadcast System messages is "exclusively" upon a single FM station. South Hampton is in error; there are at least three radio stations that will be employed for emergency messages, one of which broadcasts in the AM band.² See South Hampton local plan, p. C-13. Since the proposed contention is founded upon a demonstrably false premise, it lacks basis and should be excluded.

Contention 5

South Hampton Contention No. 5 is:

"The RERP for South Hampton fails to provide reasonable assurance because contrary to NUREG-0654 E.7, the plan does not contain draft public messages."

²Perhaps the most common electronic device in the United States is the battery-operated radio receiver, since virtually every automobile in the nation contains at least one. This is the reason why, for over three decades, reliance has been placed on the broadcast radio infrastructure to provide emergency communications in the event of a disaster or civil defense emergency.

Contention 5 challenges the lack of prepared scripts for public information messages emanating from the town. For two reasons, it fails to state a litigable issue. First, under the New Hampshire plans, it is the state, not the towns, that is responsible for deciding what is to be published to the public in the way of instructions during an emergency. Drafts of messages for broadcast to the public are in fact contained in the NHRERP. NHRERP App. B. The only "messages" to the organizations indicated in the proffered basis for this communication will be to pass along the protective action recommendations of the State officials, see Barnard School Special Facilities Emergency Response Plan and Tuxbury Campground Special Facilities Emergency Response Plan, South Hampton local plan App. F, and these require no prepared scripts. South Hampton points to no authority requiring such prepared scripts and the contention should be excluded.

Contention 6

South Hampton Contention No. 6.

"The RERP for South Hampton fails to provide reasonable assurance because, contrary to NUREG-0654 H.3, the town of South Hampton does not have a

EOC capable for use in directing and controlling response functions."

Proposed Contention 6 challenges the adequacy of the South Hampton Emergency Operations Center ("EOC"). This is plainly a litigable topic; however, the basis offered by South Hampton is inadequate to support the admission of the contention in this case.

South Hampton's objections to the designated South Hampton EOC are twofold: First, that the town itself hasn't made the declaration; and second that certain equipment that the plans call for in the EOC is not presently there. As noted above, emergency planning under New Hampshire law is a state function; there is simply no requirement (and certainly not a federal NRC-imposed requirement) that the town be able to override paramount state authority. As for equipment, it is not sufficient basis for admission of a contention that equipment is not presently in place at the time the adequacy of the plans is considered; if the planned-for equipment is adequate, and in the absence of any basis for concluding that the planned-for equipment will not be available prior to the time the plant goes into commercial operation, there is nothing to litigate.

This proposed contention is not framed in terms of any inadequacy in the planned-for equipment and it is, therefore, not admissible.

Contention 7

South Hampton Contention No. 7 is:

"The RERP for South Hampton fails to provide reasonable assurance because contrary to NUREG-0654 J.10.a, there has been no provision made for sheltering residents at the Tewksbury Pond Campground, despite a peak population of 1,500."

Proposed Contention 7 challenges the adequacy of the facilities for sheltering of a specific population, namely that that might be found at the Tewksbury Pond Campground. (The attached basis also challenges the adequacy of sheltering facilities for the public at large, but it does so in such vague terms that it would fail the basis test even if the topic were admissible in general.) If the physical adequacy of sheltering facilities were an admissible topic, this would be an admissible contention.

However, it has been held that surveys of sheltering facilities are not prerequisite to emergency plans. The reason for this is that it would avail emergency decisionmakers not a bit to have such information; in the event of a real emergency, the

shelter vs. evacuation decision will be made on the basis of the nature of the emergency and the potential for a positive net dosage reduction to the population as a whole. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1303-05, aff'd, ALAB-819, 22 NRC 681 (1985). If sheltering facilities are non-existent or inadequate, this will be factored into the decisionmaking equation at that time. There is nothing to be added to the plans that would ameliorate any genuine inadequacy of shelter facilities, and it is not the Commission's intent that the authorization of operating licenses be conditioned upon the construction of new facilities. Given the basis on which this proposed contention is offered, therefore, it is inadmissible.

Contention 8

South Hampton Contention No. 8 is:

"The RERP for South Hampton fails to provide reasonable assurance because, contrary to NUREG-0654 J.10.d. it fails to provide for protection of those persons whose mobility may be impaired due to such factors as institutional or other confinement."

As set forth in the proffered basis therefore, proposed Contention 8 launches a number of challenges.

First, South Hampton contends that the state's assessment of the need for "one special needs vehicle" is "inaccurate in this regard and fails to meet the NUREG criteria." However, there is no basis offered for the assertion of inaccuracy. Next, it is asserted that there is "a significant number of special needs citizen in South Hampton, who are either bedridden or blind or have other disabilities." This may or may not be true, but it is insufficient as a basis for challenging the plans for it is insufficient to demonstrate that the persons in question are in need of special planning over an above what is presently called for in state's plan. "Bedridden" is not the same as "requiring an ambulance," particularly if the person has family members living in the house; the same is true of "blind." "Disabilities" is so vague that nothing can be determined. The stated basis, therefore, is inadequate predicate for the admission of the proposed contention.

Contention 9

South Hampton Contention No. 9 is:

"The South Hampton RERP lacks reasonable assurance because, contrary to NUREG-0654 J.10.h. and J.12., the Nashua Public Works facility will

lack adequate shelter for all potential evacuees, and will lack adequate medical and decontamination facilities."

Proposed Contention 9 is not admissible. First, the stated basis is either too speculative or is just irrelevant on its face. The unsupported assertion that "state DPHS [Department of Public Health Service] may be inaccessible [or] lack necessary personnel" is too speculative. The assertion that South Hampton local personnel have not been trained in DPHS procedures is irrelevant since (i) there is no assertion that reliance is placed on South Hampton local personnel to man the Public Works facility in Nashua, and (ii) whether or not training has in fact been accomplished at the time the adequacy of plans is considered is irrelevant. More fundamentally, however, the proposed contention is not admissible because it raises no issue about the adequacy of the South Hampton local plan. No responsibility is placed upon South Hampton either for the maintenance of the Nashua shelter or for the discharge of state DPHS functions. South Hampton plan at II-32. Since the proposed contention purports to

raise no issue about the state plans, it is inadmissible on its face.

Contention 10

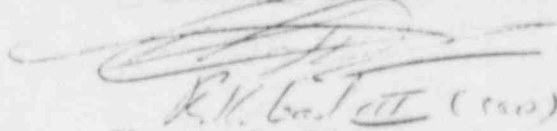
South Hampton Contention No. 10 is:

"The South Hampton RERP fails to provide 'reasonable assurance' in that, contrary to NUREG-0654 O.1. on page 75, local personnel have not received adequate training. This is based on lack of staff to fill positions, lack of equipment, and other considerations."

Proposed Contention 10 asserts that local personnel have not yet been trained. The accomplishment of training is not required to approve the state's emergency plans in the absence of any basis for asserting that a barrier exists to the implementation of training or a deficiency exists in the plans for training. Neither is asserted; moreover, given the limited scope of the responsibilities delegated by the state to South Hampton, and the limited nature of the training required to discharge those responsibilities,

it is unlikely that such a barrier exists. The proposed contention should therefore be excluded.

Respectfully submitted,



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Dated: March 5, 1986

CERTIFICATE OF SERVICE

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I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on March 5, 1986, I made service of the within "Applicants' Response to Off-Site EP Contentions Submitted by South Hampton (New Hampshire State and Local Plans)" by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

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