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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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before the

OFFICE OF SECRETARY  
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BRANCH

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

PUBLIC SERVICE COMPANY OF )  
NEW HAMPSHIRE et al. )

(Seabrook Station, )  
Units 1 and 2) )

Docket Nos. 50-443-OL  
50-444-OL

(Off-Site EP)

APPLICANTS' RESPONSE TO OFF-SITE EP CONTENTIONS  
SUBMITTED BY HAMPTON FALLS  
(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 Hampton  
Falls (Falls). Before turning to the specific  
contentions proffered by Falls, 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.<sup>1</sup>

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<sup>1</sup>NUREG-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.

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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-85-27A, 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

Hampton Falls Contention No. 1 is:

The Hampton Falls RERP fails to provide reasonable assurance or to comply with 10 C.F.R. § 50.47(a)(2) because it is not a local plan, but is a plan prepared for the town by New Hampshire Civil Defense, or its contractor, and which will not be implemented.

Hampton Falls proposed Contention 1 challenges the adequacy of the local plan for Hampton Falls on the ground that it has been devised and published by the New Hampshire Civil Defense Agency, a state agency, and on the ground that it has not yet been "adopted" by the local officials of the town. Such a contention offers nothing litigable in a NRC operating license proceeding.

Nothing in the regulations of the Commission purports to preempt or supercede the allocation of authority between the state and municipalities effected by the constitution and statutes of the state. In New Hampshire (as in Massachusetts), state law places the responsibility for emergency planning, including emergency planning in respect of nuclear power plants located in the state (or sufficiently proximate to the

state that portions of the state are within the plants plume exposure Emergency Planning Zone) in the state government. In both states, that authority is placed with the state Civil Defense Agency. See our discussion in response to NECNP proposed contention RERP-1.

As a consequence, the local plan for Hampton Falls has been promulgated by the only authority competent under New Hampshire law to promulgate such a plan. Whether or not Hampton Falls officials were offered an opportunity to participate and contribute to the planning -- and whether or not, having been offered such an opportunity the town officials chose not to avail themselves of it -- are not matters either relevant to these proceedings or which this Board is competent to adjudicate or decide. If, by reason of the allocation of authority in the state of New Hampshire or otherwise, the plans fail to meet NRC regulations, then the failure to meet regulations should be cited. The apparent unacceptability to the town of Hampton Falls of the acts of the New Hampshire

legislature, however, does not state an admissible contention. Proposed Contention 1 should be excluded.

Contention 2

Hampton Falls Contention No. 2 is:

The plan designated as Hampton Falls fails to provide reasonable assurance since it cannot provide for continuous 24-hour operation for a protracted period, of local responsibilities, as required by NUREG-0654, A.4.

The local towns in the New Hampshire seacoast area do not rely upon full-time professional officials and employees to meet either their normal municipal obligations or such emergencies as may befall the townspeople. This, of course, is not entirely surprising, since the 1985 resident population of Hampton Falls is only 1,432 people, and the 1985 peak population (including transients) is only 2,708 persons. (Hampton Falls has no beach.) Ultimately, however, the level of municipal manpower is a political decision made by the town (and, to the extent that it has not mandated otherwise, by the state legislature).

Proposed Contention 2 attempts to set up this very rurality as a defect in the emergency plans. However, the attempt fails, for, at the least, there is no demonstration in the statement of basis that any of the

infirmities of the local officials named are not matters that the state officials are not aware of and have not taken into account. (It is a safe assumption that, in the event of a real emergency, concern about town officials abandoning their official posts to report to other employment is not a concern; if either sheltering or evacuation has been ordered, it will take precedence over those other jobs.) In order to have supplied basis for such a contention, Hampton Falls should have identified particular officials upon whom the state plans place reliance and then demonstrated that those particular officials would not be available to perform the function called for in the plans. Hampton Falls has not done this, and the contention therefore fails for lack of basis.

This proposed contention can be analyzed either in terms of whether the indicated Hampton Falls emergency response personnel are capable of being notified on a 24-hours per day basis, or whether the staffing is adequate to permit the personnel to carry out the local emergency response tasks assigned to Hampton Falls. As is reflected in the local plan, the persons to whom the Rockingham County Dispatch Center makes notification

will have either portable two-way radios or pocket pagers; the fact that these people are not employed on a full-time basis, therefore, does not imply on its face an inability to make notification (and the proposed basis adds nothing that would support such an assertion). Viewed, on the other hand, in terms of "staying power" to accomplish the tasks assigned to Hampton Falls, a review of the local plan shows that the state of New Hampshire has assigned minimal duties to the town. If sheltering is the chosen protective action, the duration of the emergency, by definition, will be short. If evacuation is chosen, it simply doesn't take very long for the entire 2000-odd people in Hampton Falls, including transients, to be evacuated. Hampton Falls local plan, p. II-31. Both the contention and the proffered basis, therefore, amount to only a repetition of a claim; they point to no facts that are sufficient to raise a litigable issue about the existence of an "obstacle" to effective emergency planning for the town of Hampton Falls.

(We assume that there is nothing of lasting significance to the assertion that certain of the designated positions have not yet been filled. Under



the plan, it is the responsibility of the Selectmen of Hampton Falls to designate people to fill these positions. Hampton Falls local plan, p. III-2. There is no reason to believe that the selectmen will not do their duty, and less to believe that, should the Selectmen default, the state will not see to it that the minimal duties assigned to Hampton Falls are covered by state-supplied resources. Hampton Falls local plan, p. I-23.)

Finally it should be noted that, if this proposed contention was intended as, or is to be interpreted as, a semi-sub silentio demand that additional employees or officials be provided to the town as a condition precedent to the authorization of an operating license, such a contention is at odds with the Commission's regulations.

### Contention 3

Hampton Falls Contention No. 3 is:

The RERP developed for (not by) the Town of Hampton Falls fails to meet the requirements of 10 C.F.R. § 50.47(a)(1) and § 50.47(b)(8) and NUREG-0654 Planning Standard H, II H. 3. and II H.4. because the location of the Emergency Operations Center (EOC) designated in the Hampton Falls' plan, that is, the Fire Station, is not that recognized by the town as the location of the EOC. The Fire Station is not deemed adequate as an EOC by the

town and therefore it will not be activated and staffed as described in the plan.

The deficiencies with the plan-designated Emergency Operations Center ("EOC") asserted in proposed Contention 3 fall into two categories: one is a reassertion of the proposition that the town has not adopted the local plan published for it by the state Civil Defense Agency, while the other is that certain equipment called for in the plans is not in place. For the reasons set forth above, the former is not a permissible basis for litigation in an NRC operating license proceeding. (We assume, as should the Board, that if the town officials prefer the designation of a superior facility, and if the alternative facility is indeed superior, the New Hampshire Civil Defense Agency would quickly agree to the altered designation. That, however, is not what is asserted in this proposed contention.)

That equipment called for by emergency plans is not, at the time the adequacy of the plans is litigated yet in place is irrelevant to the adequacy of the plans, which is the relevant issue. There is no deadline for the installation of equipment except

perhaps the natural one of being prepared to deal with the potential for an emergency. Such occurs after, not before, the operating license has been authorized; and, in any event, the availability of the called-for equipment is a matter that the Board can and should delegate to the Staff.

On neither basis is proposed Contention 3 admissible; it should be excluded.

#### Contention 4

Hampton Falls Contention No. 4 is:


The Hampton Falls RERP does not adequately meet the requirements of 10 C.F.R. § 50.47(a)(1), § (b)(5), § 50.47(b)(6) and NUREG-0654 planning standard E because there are no mutually agreeable basis for notification of response organizations and much of the communications equipment referred to in the Hampton Falls RERP is nonexistent.

Contention 4 is a challenge to the notification scheme set forth in the New Hampshire state plans. While such has generally and properly been regarded as an acceptable topic for litigation, in the form in which it is offered and supported here, the contention is not admissible.

The Board must start with the proposition that this contention is proposed by one of the parties to the required communications. Yet notably absent from the

contention or the basis offered in support of it is any assertion by Hampton Falls that there is a preferable means of achieving notification, or that Hampton Falls has proposed any alternative means to the state Civil Defense Agency officials and has been rejected. Nor, it is plain from the words contained in the proffered statement of basis, is either the fact. The fact, rather, is that Hampton Falls has determined to withhold approval of the plans, and that includes the designation of notification points; for the reasons set forth with respect to Contention 1, however, such a position raises no litigable issue either under the NRC's regulations nor the laws of the State of New Hampshire. Amounting as it does to just an application of inadmissible proposed Contention 1, Contention 4 should 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 Hampton Falls (New Hampshire State and Local Plans)" 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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