

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

before the  
ATOMIC SAFETY AND LICENSING BOARD

'88 SEP 19 P3:37

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

RESPONSE OF EDWARD A. THOMAS TO APPLICANT'S REPLY  
TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF  
LAW AND THE NRC STAFF'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Edward A. Thomas, Chief of the Natural and Technological Hazards Division of FEMA Region 1, hereby responds to the Applicant's Reply to Proposed Findings of Fact and Conclusions of Law of Other Parties on Shelter Contentions and the NRC Staff's Proposed Findings of Fact and Conclusions of Law with Respect to Sheltering Issues, filed with the Atomic Safety and Licensing Board on August 31, 1988 and August 26, 1988, respectively. The Applicant's Reply and various portions of the NRC Staff's Proposed Findings constitute an untimely and unwarranted attack on Mr. Thomas' integrity and credibility and should be disregarded by the Board.

On June 14 and 15, 1988, Mr. Thomas testified before the Board in response to a subpoena duces tecum issued by the Board on behalf of the Intervenors in this action. In accordance

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with Judge Smith's suggestion and specifically because Mr. Thomas' professionalism and credibility had been attacked during the course of prior proceedings before the Board, Mr. Thomas was represented by independent counsel at the June, 1988 hearings. In recognition of the importance to Mr. Thomas of having the opportunity to come before the Board with independent representation, Judge Smith stated the following at the outset of Mr. Thomas' testimony:

It is simply the Board's feeling of fairness when a person in the exercise of his responsibilities comes to the hearing and testifies, should be able to do so and come out of it satisfactorily so. It was just a question of fairness and practicality . . . . There is just no other way available to Mr. Thomas in which he can have any redress, if any, if he feels any is needed.

Tr., 13368-69.

Mr. Thomas testified for nearly two full days on direct examination by Mr. Oleskey, counsel for the Commonwealth of Massachusetts. In connection with this testimony, Mr. Thomas produced voluminous documents relating to the evolution of FEMA's evaluation of plans to shelter and/or evacuate the Seabrook beach population. Mr. Thomas openly recounted the history of his involvement on behalf of FEMA in emergency preparedness planning issues at Seabrook and responded candidly to very pointed questions by the Board with respect to his prior testimony concerning the beach population issues. The Board permitted Mr. Thomas' testimony not only to provide him with the opportunity to respond to the prior attacks on his credibility, but also to ventilate the development of FEMA's position in the

case, as the Board explicitly recognized "an overriding need to bring the whole story out." Tr., 13766, 13768.

Although Mr. Thomas came before the Board to fully elucidate his involvement in the formulation of FEMA's position, counsel for both the Applicant and the NRC Staff neglected to use this opportunity to cross-examine Mr. Thomas on the credibility issues they now raise. Instead, months after Mr. Thomas was before the Board, the Applicant and the NRC Staff are attacking his credibility, which is otherwise unchallenged on the record. This belated attempt by the Applicant and the NRC Staff to impugn Mr. Thomas' professionalism and integrity when he is no longer before the Board to defend himself on the record is, at best, a disingenuous way to handle the issue. It is like shooting someone in the back at long distance. The Applicant and the NRC Staff each had an opportunity long ago to test Mr. Thomas' veracity, at a time when Mr. Thomas could have responded before the Board.

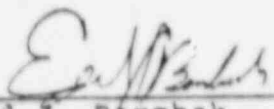
Mr. Thomas' testimony revealed a long history of personalized attacks and attempted intimidation, particularly by representative of the Applicant, during the course of these proceedings. This final attack on him is much more than a public official should have to withstand as a result of doing his job. The Applicant's Reply and certain portions of the NRC Staff's Proposed Findings completely undermine the Board's painstaking efforts to have these credibility issues presented

once and for all while Mr. Thomas was on the witness stand and represented by independent counsel.

Finally, while Mr. Thomas vehemently disagrees with the characterization of his testimony presented by the Applicant and the NRC Staff, he is prepared to stand by his live testimony before the Board. In the event that the Board is inclined to specifically review each of the Applicant's and the NRC Staff's contentions with respect to Mr. Thomas' testimony, however, point by point responses are appended hereto as Attachments A and B.

For the reasons set forth above, Mr. Thomas requests this Board to disregard those portions of the Applicant's Reply and the NRC Staff's Proposed Findings which request the Board to discredit his testimony in making its findings of fact and rulings of law.

By his attorneys,  
SUGAFMAN, ROGERS, BARSHAK & COHEN, PC

By:   
Edward J. Barshak

By:   
Christine M. Netski

33 Union Street  
Boston, Massachusetts 02108-2406  
(617) 227-3030

DATED: *September 15, 1988*

SPECIFIC RESPONSES TO THE CONTENTIONS SET FORTH  
IN THE APPLICANT'S REPLY TO PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW OF OTHER PARTIES  
ON SHELTER CONTENTIONS

1. The Applicant asserts that the previous position of the Federal Emergency Management Agency ("FEMA") concerning the protection of the beach population near Seabrook is the "previous position of Edward A. Thomas." Applicant's Reply to Proposed Findings of Fact and Conclusions of Law of Other Parties on Shelter Contentions ("Applicant's Reply"), p. 2. To the contrary, Mr. Thomas has continuously endorsed the former FEMA position. See, e.g., Tr., 13551, 13829, 13830, 13846 and 13847. To the extent that there is any uncertainty in the record as to whether Mr. Thomas continued to support FEMA's previous findings with respect to the adequacy of the State of New Hampshire's plans to protect the beach population near Seabrook, such uncertainty exists only by virtue of counsel for the Applicant's failure to "clarify" this issue on cross-examination, as directed by the Board. Tr., 13551-52.

2. The Applicant asserts that "no witness adopted (the previous FEMA position) or attempted to defend it on cross-examination . . . ." Applicant's Reply, p. 2. There is no basis for the allegation that no witness adopted or attempted to defend the position formerly presented by FEMA concerning the protection of the beach population near Seabrook. While the Applicant is correct that the previous position was admitted for a limited purpose, Tr., 12862, nevertheless, it was endorsed as

correct by Mr. Thomas on at least two occasions in his testimony, as referenced above.

3. The Applicant contends that "[Mr.] Thomas does not purport to have a technical background or technical expertise and so would not have been competent to sponsor the testimony even if it had been offered." Applicant's Reply, p. 3. The Applicant misstates the testimony it cites in support of this allegation. The cited testimony clearly states "that Mr. Thomas and FEMA (do not) have specialized technical expertise about nuclear power plants, or releases following accidents, or risk probabilities . . ." Tr., 12136-37 (emphasis added). However, Mr. Thomas was accepted as an expert witness by the Board and the parties, and, in fact, counsel for the Applicant was provided an opportunity to conduct "a voir dire," Tr., 3094, lines 15-16, and at that time specifically stated that there was no intention to challenge the credentials of Mr. Thomas. Tr., 3096, lines 23-25.

4. The Applicant states that "Thomas himself partially recanted his position." Applicant's Reply, p. 2. The Applicant misconstrues the record, however, since Mr. Thomas clearly testified that his "recant" involved the issue of whether NUREG 0654 elements J.9 and J.10m were met and did not apply to FEMA's former position or his own position with respect to whether the "reasonable assurance" standard was met for the beach population. See, e.g., Tr., 13829-30. In any case, the testimony clearly reveals that Mr. Thomas fully recanted his recant. Tr. 13841.

5. The Applicant states that Mr. Thomas's testimony "on all points is not to be credited." Applicant's Reply, p. 3-4. For the reasons set forth below, this contention is wholly without support. The Applicant sets forth six purported "examples" of Mr. Thomas's lack of credibility. Applicant's Reply, p. 3-4.

a. "Concurrence of the RAC"

The Applicant alleges that Mr. Thomas is not credible, in part, because "Thomas' 'collegial process' testimony, written in advance and offered into evidence as true, presented the FEMA position as though it had been concurred in and supported by the RAC." This assertion by the Applicant misstates the testimony given by Mr. Thomas on October 7, 1987, November 4, 1987 and June 14-15, 1988.

Contrary to the Applicant's assertion, FEMA's prefiled testimony reads as follows:

FEMA considers its statements about the transient beach population to largely involve matters of policy.

The positions which FEMA has taken on the NH RERP, and the contentions which this Atomic Safety and Licensing Board have admitted were arrived at through a collegial process of review by FEMA's Regional Office in Boston, consultation with FEMA's Regional Assistance Committee (RAC) and Argonne National Laboratory, and review by FEMA's State and Local Programs and Support Directorate in Washington, D.C.

Post Tr., 3088, p. 2, 4. Nowhere in either of the pertinent sections does FEMA's prefiled testimony state that the RAC concurred in or supported the FEMA testimony. To the extent



that there was confusion in anyone's mind that FEMA (or Mr. Thomas) claimed that the RAC supported or concurred in FEMA's prefiled testimony, such confusion should have been resolved as a result of Mr. Thomas' testimony during the first voir dire on October 7, 1988:

Q. Did that NRC member, at that meeting, express disagreement with the position that FEMA had taken?

A. (Thomas) Yes, sir.

Q. Did any other member of the RAC express disagreement with the FEMA Position?

A. (Thomas) I am thinking.

Q. Take your time.

The witness (Thomas): I have to answer your question as being no . . . There were a lot of very pointed questions directed at FEMA. Disagreement, I would have to say, no. But there certainly were - I don't want the accused of misleading you - There certainly were a number of RAC members who had a lot of questions in their mind that they felt needed to be resolved before they would endorse that position.

Tr., 3124-25 (emphasis added). This matter was further discussed during Mr. Thomas' testimony of November 4, 1988. in the following exchange:

Q. My question to you is, sir, is it your testimony under oath, before this Board, that when you left the RAC meeting that we have been discussing, you had no way of knowing whether or not a majority of the RAC agreed with your position?

A. (Thomas) No, that is not my testimony.

\* \* \* \* \*

Q. Mr. Thomas, my question is very simple.



Is it your testimony to this Board, that when you walked out of that RAC meeting, you, Ed Thomas, had no idea whether or not the majority of the RAC agreed with your position?

- A. (Thomas) I thought that I had already answered that, no, this is not my testimony.

\* \* \* \* \*

- Q. My question to you, sir, is, are you telling this Board, that when you walked out of that RAC meeting, you had no means of knowing whether or not, in fact, that day, a majority of the RAC agreed with the position that FEMA was taking?

JUDGE SMITH: Whether you believe that that question is a fair one or not, answer it, if you can. And FEMA will have all the opportunity that they want to explain why that is not the proper question to be asked. But nevertheless, for right now, answer it, if you can.

THE WITNESS (Thomas): Your Honor, perhaps I am missing something. I thought I had already answered that question twice.

JUDGE SMITH: Just try yes, or no, and then see if that might satisfy somebody.

MR. OLESVEY: He did, Your Honor, he said, no, twice.

JUDGE SMITH: Is that fact, is that the answer?

THE WITNESS (Thomas): Could I expound on it?

Let me say that no, that is not my testimony. Rather, instead, what I am saying is that I had a sense, and I had thought that I had said this, I had a sense that the majority of the RAC had at least a lot of questions on the FEMA position. Certainly a majority of the members who were present there that day.

And the direct response to Mr. Dignan's question is, no, it is not my testimony that I did not know whether or not a majority of the people agreed with us. It was quite clear to me, that a majority of the people did not agree with the FEMA position.

As I said, at least they thought that they needed a lot more information. (emphasis added).

JUDGE SMITH: Okay, if you have answered that way before, then you are entitled to an apology. I just simply did not hear it before.

Q. Except that you have a non-agreement with a majority of the RAC and a disagreement with the NRC, is that correct?

A. (Thomas) I think that is a fair characterization.

Q. And yet, you are still going to come in here, and present that as the position of FEMA, in a few days, even though you know that you have non-agreement with a majority of the RAC, and disagreement with the NRC, is that correct?

A. (Thomas) Yes.

Tr., 5118, 5120, 5121-23, 5126-27 (emphasis added). As the transcript clearly indicates, by the end of this series of questions and answers, even the Applicant's attorney was able to understand the matter sufficiently so as to state: "You know that you have non-agreement with a majority of the RAC and disagreement with the NRC . . ." Tr., 5127.

The Applicant also states that "Thomas presented testimony as to the "collegial process of the RAC." However, Thomas clearly testified that the RAC was just one part of the collegium:

Q. The members of the collegium referred to in your phrase 'collegial process' if I hear you correctly are more than simply the RAC members.

A. (Thomas) That is correct.

Tr., 3104.

In addition, while the Applicant's statement that "Thomas presented testimony" is technically correct, it represents an effort to unjustifiably personalize Mr. Thomas' role as a

witness. It is uncontroverted that Mr. Thomas was testifying at this point on behalf of FEMA. Tr., 3147. In addition, it is extraordinarily unfair to "single out" Mr. Thomas with respect to any misunderstandings that arose from testimony which was prefiled under the signature of counsel for FEMA, Tr., 3084, and which was joined by two other FEMA witnesses, Bruce J. Swiren and Edward A. Tanzman. The Applicant also states that Mr. Thomas ignored the expertise of the RAC on the beach shelter issue. This statement misconstrues the uncontroverted testimony that FEMA, as an agency, had reached the conclusions it had with respect to the protection of the beach population at Seabrook with full knowledge of the objection of the NRC and the lack of concurrence by the RAC. Tr., 12847-95. \*

The Applicant states as further support for its argument that Mr. Thomas is not a credible witness that Mr. Thomas sent a letter to the State of New Hampshire which "failed to disclose the lack of RAC backing for his position . . . ." Applicant's Reply, p. 5. The Applicant fails to note that: (1) Mr. Thomas testified that his expectation and belief were, as of June, 1987, that the RAC would endorse the FEMA position with minimal discussion, Tr., 13581-13582; (2) The letter in question was sent June 14, 1987, nearly two months before FEMA knew as a result of the July 30, 1987 RAC meeting that several members of the Region I RAC (not just the NRC) did not support the FEMA position that there was no reasonable assurance that the beach

population would be adequately protected in the event of an accident at Seabrook; and (3) It is uncontroverted that the views stated in the letter Mr. Thomas signed were exhaustively reviewed throughout FEMA and represented an official FEMA position, not a position personal to Mr. Thomas, see, e.g., Tr., 12862-65.

Finally, the Applicant accuses Mr. Thomas of "finally admitting" on June 14, 1988 that he had known that the RAC was "not with us on this one," prior to the prefiling of testimony by FEMA and prior to Mr. Thomas's voir dire in October, 1987. As indicated above, Mr. Thomas testified in October, 1987 regarding the lack of agreement among the RAC members on this issue, as of the July 30, 1987 RAC meeting. Tr., 3125. On November 4, 1987, Mr. Thomas also testified: "It was quite clear to me that a majority of the people (i.e., the RAC) did not agree with the FEMA position." Tr., 5123. Finally, Mr. Thomas stated on June 14 and 15, 1988 that: (1) He had requested that FEMA fully explain this issue in the prefiled testimony; (2) FEMA intended to fully disclose all relevant factors, including the status of the RAC involvement in FEMA's testimony, bearing on the adequacy of the protection of the beach population when the agency actually presented the testimony, Tr., 13629-30; and (3) There was no intent by FEMA or Mr. Thomas to deceive anyone in this regard since FEMA, through Mr. Thomas, disclosed the lack of RAC support for its position when the issue was first addressed in October, 1987. Tr., 3125.

b. "Significance of the Seabrook Containment"

The Applicant states that Mr. Thomas testified at Tr., 3114 that the RAC relied "very, very heavily on certain information provided by the NRC about Seabrook containmant features." The Applicant then asserts that, based on the testimony of Dr. Bores and Mr. Lazarus of the NRC, "in fact the RAC did not rely on that (containment) information." Applicant's Reply, p. 5-6.

A review of the transcript reveals that the Applicant has completely misinterpreted Mr. Thomas' testimony in this regard:

- Q. What input did the RAC as the RAC have to the position that FEMA has on sheltering?
- A. Unfortunately, following that meeting, a part of the input which we had relied upon very, very heavily, was withdrawn by the agency involved. And, in essence, we were running out of time to comply with Judge Hoyt's request that we provide a position on the beach population -- on all issues that were in contention.

Therefore, we took the input that we did have available to us at that time which was an amended letter form the agency involved that had withdrawn a chunk that we had used to reach a collegial result in the RAC, FEMA took all the input data, including the new input from the RAC member, and prepared another position which the agency adopted.

Tr., 3113-3115. When read in context, it is clear that the "we" that Mr. Thomas referred to is not the RAC, but FEMA. Furthermore, Mr. Thomas in fact gave uncontroverted testimony elsewhere in the transcript concerning the importance to FEMA and to him that the NRC had at one time provided information on the Seabrook containment.

c. "The July 31, 1987 (sic) RAC Meeting"

Once again, the Applicant alleges that Mr. Thomas recalled no vote or show of hands at the July 30, 1987 meeting. However, Mr. Thomas testified at length about his recollection and his conversations with others about this meeting, see, e.g., Tr., 13578-13601, and his testimony in this regard was not even addressed on cross-examination by counsel for the Applicant. In fact, the Board ruled: "[W]e have just heard enough about the vote matter . . . It is causing anguish of people that is not deserved because of the facts and we don't want to hear any more. That is our ruling. The record is closed on it." Tr., 13601.

d. "Input of the RAC on Thomas' Position"

The Applicant states the following in its Reply:

Mr. Thomas testified to the effect that the RAC did not discuss the specific wording of the Thomas position before June 4, 1987, but that the issue had been extensively discussed, and that he had the benefit of discussions with individual RAC members before his position was first filed. In fact, the issue had been extensively discussed, but the RAC's position favored Applicants. After the publication of the Thomas position on June 4, 1987, Thomas once again had the benefit of knowing that the RAC disagreed with his position, but again he disregarded it.

Applicant's Reply, p. 7, 8 (citations omitted).

The Applicant again distorts the record in an attempt to indicate that Mr. Thomas somehow failed to disclose that the RAC did not support FEMA's prefiled testimony. In fact, as shown earlier, Mr. Thomas testified in October, 1987 when first asked about this matter that, at the April, 1987 meeting, the RAC had



developed a position generally favorable to the Applicant. Mr. Thomas also testified that, even after the NRC information on containment was withdrawn, the RAC did not support the FEMA response to contentions which became the FEMA prefiled testimony.

Furthermore, Mr. Thomas extensively testified as to how FEMA developed the prefiled testimony on this matter. See, e.g., Tr., 13621-13622. At the end of that portion of Mr. Thomas' testimony, Judge Smith stated: "I got it . . . I'm long since trying to beat up on you, Mr. Thomas." Tr., 13633. Judge Harbour had also observed earlier concerning this matter: "I think we are beating a dead horse." Tr., 13631.

The record clearly shows there is no basis for the Applicant's attempt to imply that Mr. Thomas or FEMA attempted to mislead the Board as to the input from the RAC with respect to FEMA's response to contentions or its prefiled testimony.

e. "Reasonable Assurance"

The Applicant states the following in its Reply:

Thomas testified that the difference between the RAC's position and the Thomas position was the NRC's withdrawing of the containment features, information. In fact, the difference between the RAC's view and Thomas did not have to do with any withdrawn information at all, but with Thomas' version of the meaning of "reasonable assurance." Thomas disagreed with the NRC on the meaning of "reasonable assurance."

Applicant's Reply, p. 8 (citations omitted).

Once more, the Applicant attempts to impugn Mr. Thomas' credibility based upon a distortion of the record. Further, as demonstrated above, Mr. Thomas testified that the information



provided on the Seabrook containment, including times to release, was important to him and to FEMA in developing FEMA's position. Tr., 3159-3162. Dr. Bores and Mr. Thomas both testified as to what other RAC members thought about the impact of the Seabrook containment on the concept of "reasonable assurance." See, e.g., Tr., 11926-28. There is no basis for the Applicant's assertion that Mr. Thomas' testimony should be discredited when Mr. Thomas truthfully recounted what he believed to have been important to his fellow RAC members.

f. "Seabrook as a Special Case"

Finally, the Applicant states that Mr. Thomas testified that "a specific section of FEMA REP-3 described Seabrook as a 'special case' and that he had been greatly influenced by that supposed description." Applicants Reply, p. 8 (emphasis added). The Applicant then accuses Mr. Thomas of mischaracterizing FEMA REP-3. In fact, Mr. Thomas Testified as follows on this issue:

- Q. Would you indicate what aspects of REP-3 have been useful to you and relied upon by you in performing your duties as Chief of your division since 1981?
- A. The thing which had struck me most of all about this when I read it and as I read it again was, Seabrook of the 12 sites that we at FEMA had been asked to look at was considered a special case. And special recommendations were made with respect to Seabrook. The statement that Seabrook is a special case is located on page 10 of the document in paragraph, that has the letter "C".

And other things that struck me were on page 46, talking about the behavior of drivers caught in congestion within direct sight of Seabrook can only be guessed at, at this time.

And the other thing that struck me was that we were making specific recommendations on page 48 in the paragraph numbered eight with respect to looking at the behavior of drivers on the beach within sight of Seabrook, looking at sequential evacuation, sheltering the population, and building supplemental an evacuation, only ramps onto I-95.

That -- those thoughts made an impact on me, a very great impact, and that impact has continued right through to this day.

Tr., 13384-85 (emphasis added). As Mr. Thomas' testimony clearly reveals, the allegation that Mr. Thomas mischaracterized REP 3 is as totally without merit.

Ironically, despite the Applicant's attack on Mr. Thomas' credibility in its Reply, the Applicant has relied on affidavits and testimony of Mr. Thomas on various issues throughout the licensing proceedings.

SPECIFIC RESPONSES TO THE CONTENTIONS SET FORTH IN NRC  
STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
WITH RESPECT TO SHELTER ISSUES

1. The NRC Staff asserts that Mr. Thomas' allegation that the NRC's Executive Director for Operations had threatened to "wage war" with FEMA if FEMA did not change its position on beach shelter issues was refuted by FEMA officials who were at the relevant meeting. NRC Staff's Proposed Findings, p. 21-2, n.4. Mr. Thomas' factual account of what he was told is supported by the testimony of William Cumming, the FEMA official who was at the meeting and who recounted the incident to Mr. Thomas. Tr., 13974.

2. The NRC Staff also states that while Mr. Thomas "at first failed to disclose fully that the RAC disagreed with FEMA's initial position on beach shelter issues (citations omitted), he ultimately conceded the point . . ." NRC Staff's Proposed Findings, p. 23, n.7. As indicated at length in Attachment A to the Response of Edward A. Thomas to Applicant's Reply to Proposed Findings of Fact and Conclusions of Law and the NRC Staff's Proposed Findings of Fact and Conclusions of Law, Mr. Thomas has consistently testified since as early as October, 1987 that the RAC did not concur with FEMA's position with respect to the adequacy of the protection of the beach population.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

before the

'88 SEP 19 P3:37

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SELECTMEN  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

PUBLIC SERVICE COMPANY OF )  
NEW HAMPSHIRE, et al )

(Seabrook Station, Units 1 and 2) )

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Motion of Edward A. Thomas for Leave to File a Response to the Applicant's Reply to Proposed Findings of Fact and Conclusions of Law and the NRC Staff's Proposed Findings of Fact and Conclusions of Law and the Response of Edward A. Thomas to Applicant's Reply to Proposed Findings of Fact and Conclusions of Law and the NRC Staff's Proposed Findings of Fact and Conclusions of Law have been served, by mail, on this 15th day of September, 1988, to the following:

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. NRC  
Washington, D.C 20555

Docketing and Service  
U.S. NRC  
Washington, D.C. 20555

Mrs. Anne E. Goddman  
Board of Selectmen  
13-15 New Market Road  
Durham, NH 03842

William S. Lord, Selectman  
Town Hall -- Friend Street  
Amesbury, MA 01913

Jane Doughty  
SAPL  
5 Market Street  
Portsmouth, NH 03801

Stanley W. Knowles  
Board of Selectmen  
PO Box 710  
North Hampton, NH 03826

Richard E. Sullivan, Mayor  
City Hall  
Newburyport, MA 01950

Senator Gordon J. Humphrey  
U.S. Senate  
Washington, D.C. 20510  
Attn: Tom Burack

Senator Gordon J. Humphrey  
1 Eagle Square, Ste 507  
Concord, NH 03301

Judith H. Mizner, Esq.  
Silvergate, Gertner, et al  
89 Broad Street  
Boston, MA 02110

Phillip Ahrens, Esq.  
Asst. Attorney General  
State House, Station #6  
Augusta, ME 04333

Robert A. Backus, Esq.  
Backus, Meyer & Solomon  
111 Lowell Street  
Manchester, NH 03105

Mr. Angie Machiros, Chairman  
Town of Newbury  
Town Hall  
25 High Road  
Newbury, MA 01951

George Dana Bisbee, Esq.  
Geoffrey M. Huntington, Esq.  
Office of the Attorney General  
State House Annex  
Concord, NH 03301

Richard A. Hampe, Esq.  
Hampe and McNicholas  
35 Pleasant Street  
Concord, NH 03301

Carol S. Sneider, Esq.  
Asst. Attorney General  
One Ashburton Place, 19th Fl.  
Boston, MA 02108

J.P. Nadeau  
Town of Rye  
155 Washington Road  
Rye, NH 03870

Alfred V. Sargent, Chairman  
Board of Selectmen  
Town of Salisbury, MA 01950

Selectmen of Northampton  
Northampton, NH 03826

Michael Santosuosso, Chairman  
Board of Selectmen  
Jewell Street, RFD #2  
South Hampton, NH 03842

Rep. Robert C. Pevear  
Drinkwater Road  
Hampton Falls, NH 03844

Thomas G. Dignan, Esq.  
R.K. Gad II, Esq.  
Ropes & Gray  
225 Franklin Street  
Boston, MA 02110

Sherwin E. Turk, Esq.  
Office of General Counsel  
U.S. NRC  
Washington, D.C. 20555

H. Joseph Flynn, Esq.  
Office of General Counsel  
FEMA  
500 C Street, S.W.  
Washington, D.C. 20472

Allen Lampert  
Civil Defense Director  
Town of Brentwood  
Exeter, NH 03833

Gary W. Holmes, Esq.  
Holmes & Ellis  
47 Winnacunnent Road  
Hampton, NH 03842

William Armstrong  
Civil Defense Director  
10 Front Street  
Exeter, NH 03833

Calvin A. Canney  
City Manager  
City Hall  
126 Daniel Street  
Portsmouth, NH 03801

Matthew T. Brock, Esq.  
Shaines & McEachern  
PO Box 360  
Maplewood Avenue  
Portsmouth, NH 03801

Sandra Gavutis  
RFD 1 Box 1154  
East Kensington, NH 03827

Charles P. Graham, Esq.  
McKay, Murphy & Graham  
100 Main Street  
Amesbury, MA 01913

Ellen Weiss, Esq.  
Diane Curran, Esq.  
Harmon & Weiss  
2001 S Street, N.W.  
Washington, D.C. 20009-1125

Robert R. Pierce, Esq.  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

  
\_\_\_\_\_  
Christine M. Netski