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Filed: March 5, 1986

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

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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 MASSACHUSETTS ATTORNEY GENERAL  
(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  
Massachusetts Attorney General (MassAG). Before  
turning to the contention proffered by MassAG, however,  
we set forth some general principles governing the

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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

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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).

completed within some certain time is not a subject for litigation in ASLB proceedings.

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

MassAG Contention No. 1 is:

"The draft radiological emergency response plans for the Towns of Seabrook, Hampton, North Hampton, and Rye do not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Seabrook Station, as required by 10 C.F.R. § 50.47(a)(1), because in the event of a severe accident on a summer weekend some or all of the beach area transient populations within those communities cannot under many plausible meteorological conditions be protected by means of evacuation even from early death and because there are not adequate plans or provisions for sheltering the beach area transients within those communities."

The Massachusetts Attorney General ("MassAG") has filed just a single contention on the New Hampshire state and local emergency plans. Stripped of its rhetoric, that contention urges that the requisite assurance cannot be found because no form of evacuation and no form of sheltering are feasible for the so-called beach population, at least given existing resources, and therefore the emergency plans fail to meet some unquantified safety performance standard. See MassAG Contention, Ex. A, p. 2. The nature of the contention is made even clearer by the basis proffered in support thereof, namely that as shown by an as yet

undisclosed<sup>2</sup> study performed at the request of MassAG, in the event of certain accident scenarios there will be physical injury to persons within two miles of the plant even if everything contained in the New Hampshire emergency plans functions perfectly. E.g., id. at 3, 12-13.

Prescinding from the obvious deficiencies in the undisclosed study,<sup>3</sup> it is clear from the authorities reviewed above that MassAG has not proffered a litigable contention. At bottom, MassAG is not

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<sup>2</sup>MassAG has yet to make of this study available to anyone, including the New Hampshire civil defense and emergency planning officials. Putting aside the inference that one tends to draw from MassAG's apparent unwillingness to subject its study to peer and other review, it would be, we submit, manifestly unfair to permit MassAG to use the study for the purpose of challenging the New Hampshire officials' efforts. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-84-28, 20 NRC 129, 131 (1984) ("[Emergency planning] is not a game. If there are problems the intervenors know of, those problems should be remedied. It is not appropriate to lie in wait, stalking the plan like prey in the jungle.").

<sup>3</sup>See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-85-35, 22 NRC 514, 524 (1985).

challenging the adequacy of the emergency plans as such; rather MassAG is challenging the acceptability of siting Seabrook Station where it is. This challenge takes the form of an implicit assertion that, in order for the operating license to issue, it must be demonstrated that no potential for injury to the general public exists, coupled with the explicit assertion that this standard cannot be met at Seabrook. In particular, goes the contention, the study shows that potentially harmful radiation will, under the worst case, reach the beach within a given amount of time and, therefore, the evacuation plans must demonstrate the ability to evacuate everyone from the beach in less time. The fatal flaw in MassAG's proposed contention, however, is that the NRC regulations contain no such performance criteria, and the proposed contention therefore offers no litigable issue.

It is noteworthy that MassAG offers not a single selection from the now-healthy NRC jurisprudence on emergency planning litigation in support of its proposed contention. This failure, we submit, follows from the fact that no such authority exists. To the

contrary, the cases cited in the discussion above make it clear that there is no NRC requirement of assurance of perfect safety, no NRC requirement that any particular level of safety be demonstrated, either in general or given any particular accident scenario, and no NRC requirement that evacuation be capable of completion within any given period of time.\*

In addition, the inadmissibility of the proposed MassAG contention is plain from the nature of what would be litigated if the contention were admitted. MassAG would contend that in the event of given

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\*That this is so makes perfect sense when it is recalled that the Commission did not repeal 10 C.F.R., Part 100 when it promulgated the present version of 10 C.F.R., Part 50, Appendix E. Appendix E requires that emergency plans exist to deal with the existing site "as is," while Part 100 sets the limit on those sites that are acceptable. Part 100 fixes the type and magnitude of accidents for which the siting analysis must be made; Part 50, Appendix E requires consideration of all possible scenarios regardless of their remote possibility, as an exercise of the Commission's defense in depth philosophy. MassAG's attempt to transmute Appendix E into the siting criteria that the Commission never intended founders on two shoals: first, Appendix E contains no quantified performance criteria (in stark contrast to Part 100), and second, MassAG's reading of Appendix E would relegate Part 100 into vestigial uselessness.

accident scenarios, radiological injury would occur on the beach. The Applicants, on the other hand, would present their own studies to demonstrate that no such result is possible. When all the effort was through, the Board would have engaged in a massive consequences study; no such study is relevant to emergency planning issues in operating license proceedings.

Finally, the inadmissibility of the proposed MassAG contention is apparent from a consideration of the relief that MassAG seeks. Though MassAG's pleading demures on the point, the manifest relief sought by MassAG is denial of the operating license, permanently, because the plant has been sited too close to the beach. Such relief is not within the power of this Board to grant; the only siting criteria for nuclear power plants are those contained in 10 C.F.R. Part 100, and it has already been determined that Seabrook meets those criteria.<sup>5</sup>

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<sup>5</sup>Arguably MassAG seeks a different remedy, namely an order of this Board requiring the construction of new shelter facilities at the beach (or conditioning authorization of the operating license upon the



MassAG has decided not to challenge the New Hampshire plans in its contention. It seeks no improvement in the plans; it makes no contention that the plans should be altered. MassAG has contented itself, rather, with the offer of a contention that is a fundamental challenge to the Commission's emergency planning regulations. That offer should and must be rejected, and MassAG should be excluded from the litigation of the New Hampshire plans.<sup>6</sup>

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construction of such facilities). It is well established, however, that the Commission regulations do not require such extreme measures as the construction of new facilities in order to meet the emergency planning requirements. Even under this more limited view of MassAG's goal, therefore, it is plain that the contention is not admissible. San Onofre, supra, 17 NRC at 533.

<sup>6</sup>Rejection of this contention would be consistent with this Board's ruling on old-MassAG Contention V, which was an analogous assertion. See ASLB Memorandum and Order at 19 (8/30/83).

Conclusion

For the foregoing reasons the proposed MassAG contention respecting the New Hampshire state and local emergency plans 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<sup>86</sup> MAR -6 P3:35  
the Applicants herein, hereby certify that on March 5,  
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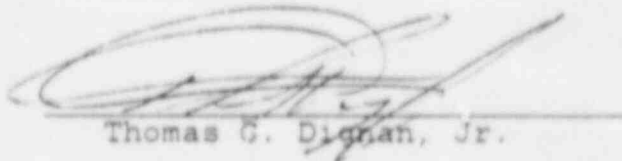
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