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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

before the

ATOMIC SAFETY AND LICENSING BOARD

_____)		
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 TOWN OF 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 Town of
Hampton (Hampton). Before turning to the specific
contentions proffered by Hampton, however, we set forth
some general principles governing the admission and

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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 1 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 it is not a 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-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 regulations 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 awarding 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, LBP-25-27A, 22 NRC 207, 230 (1985). In light of this record, any proffered contention to the effect that public officials or emergency workders 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 case.

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 Contention No. 1 is:

"The State of New Hampshire violated FEMA regulations by denying the Town of Hampton the opportunity to prepare its own Radiological Emergency Response Plan (RERP), by failing to engage in integrated emergency planning with affected local units of government, and by failing to address substantial safety concerns raised by town officials on the inadequacy of the Hampton RERP prepared by the State. NUREG - 0654/FEMA - REP - 1, Rev. 1, pgs. 19 - 24 (hereinafter NUREG)."

There is no FEMA regulation of the type described. NUREG-0654, as noted earlier, supra at 6, is not a regulation and imposes no regulatory standards. Moreover, the issue of who does the planning for the state and local entities is controlled, not by federal law, but by state law. NRC regulations do not purport to dictate which entity or entities within a state accomplish the planning task; indeed, the regulations recognize that local governmental authority throughout the nation varies widely. Even assuming that in fact the State should, under state law, have accorded some rights to Hampton which it did not, that is not an

issue within the jurisdiction or competence of this Board. If Hampton is dissatisfied with the treatment being accorded it by the State of which it is a political subdivision, its forum for redress of its grievance the courts of New Hampshire not the hearing boards of this, or any other, Federal Agency. The contention should be excluded.

Contention 2

Hampton Contention No. 2 is:

"The State of New Hampshire violated State law by denying the Town of Hampton the right to prepare and submit its own RERP to FEMA and by denying the Town any substantial input into the Hampton RERP prepared by the State. New Hampshire Revised Statutes Annotated, 107 - B(1)."

This is simply a direct statement of Hampton's alleged grievance with the State of New Hampshire articulated in Contention No. 1. It is inadmissible for the same reasons as expressed in our discussion of that contention.

Contention 3

Hampton Contention No. 3 is:

"The Evacuation Time Study for the Hampton RERP is based upon faulty assumptions and inaccurate factual data and thereby fails to provide reasonable assurance that adequate protective actions can be implemented, or that adequate facilities and equipment will be provided,

in the event of radiological emergency. 10 CFR, Section 50.47(8), (10)."

This contention should be excluded. All that the NRC regulations require is the preparation of ETEs by Applicants. "The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distance within the plume exposure pathway EPZ for transient and permanent populations." 10 C.F.R. Part 50, App. E, § IV (introductory paragraph). ETEs are not mentioned in 10 C.F.R. § 50.47. Such ETEs were prepared in connection with the Applicants radiological emergency response plans and determined by this Board to be an on-site emergency planning issue, and the Applicants' ETEs were litigated in the August, 1983 hearings. While New Hampshire may determine to employ its own ETEs, this Board is limited to litigation of matters required by the Commission's regulations; in any respect in which the state determines to go beyond the requirements of the Commission's regulations the plans present no litigable issue. See Pacific Gas and

Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 829-33 (1984).

The requirement that Applicants prepare and submit ETEs is mirrored in the Staff/FEMA guidance document, NUREG-0654, Rev. 1, Criterion J-8. While the apparent assumption was the state and local plans would employ the Applicant's ETEs (or such portion of them that was relevant) in the plans for state and local action, see id., Criterion J-10(1) (see also the letter of Paul J. Cahill, then Director of the Massachusetts Civil Defense Agency, incorporated into the Applicants' ETEs, introduced into evidence in these proceedings as Ex. 2, following Tr. 1016 (8/17/83): "MCDA will incorporate the results [of these ETEs] in the Massachusetts radiological emergency response plan, after Federal officials have had an opportunity to review them. The results will be made available to local emergency response officials."), there is nothing that constrains New Hampshire to use one set of ETEs over another. Any contention that ETEs must be litigated twice must of necessity rely on NUREG-0654 as supplying such a requirement; it is well-established, however, that NUREG-0654, which has never been promulgated as

regulation, imposes no regulatory requirements. Even more plainly, NUREG-0654 must yield to the duly promulgated regulation where the regulation expressly addresses a topic. Thus, prescinding entirely from whether the various ETEs differ, the only set is fair game for litigation in these proceedings is the set that has already been litigated.

Contention 4

Hampton Contention 4 is:

"The Hampton RERP fails to provide adequate emergency equipment to support an evacuation in the event of radiological emergency. 10 CFR, Section 50.47(8)."

Applicants have no objection to the admission of this contention.

Contention 5

Hampton Contention 5 is:

"The Hampton RERP fails to provide reasonable assurance that evacuation procedures appropriate to the locale can be implemented in the event of radiological emergency. 10 CFR, Section 50.47(10)."

Four bases are asserted for this contention. The first is that the roads are inadequate. There is no requirement that new roads be constructed or roads

rebuilt because of the existence of a nuclear power plant. San Onofre, supra, 17 NRC at 533.

The second two bases are arguments that the roads will be blocked by large numbers of people in an evacuation. This is simply one aspect of Evacuation Time Estimates which have already been litigated in this proceeding.

The final basis is that alternate "evacuation centers" i.e., host communities should be included because it may be required under certain meteorological conditions. There is no regulatory requirement that such alternates be included in the plan.

The contention should be excluded.

Contention 6

Hampton Contention 6 is:

"The Hampton RERP fails to demonstrate that local personnel are available to respond and to augment their initial response on a continuous basis in the event of radiological emergency. 10 CFR, Section 50.47(b)(1)."

Applicants have no objection to the admission of this contention.

Contention 7

Hampton contention 7 is:

"Hampton RERP exercises are inadequate to permit a reasonable evaluation of major portions of the Town of Hampton's emergency response capabilities. 10 CFR, Section 50.47(14)."

There is no adequate basis stated for this contention. "Approval" of the plan by local officials is not required. And, there is no basis for the assertion that State officials cannot protect those in the town if local officials are unwilling to do their duty.

Contention 8

Hampton Contention 8 is:

"The Hampton RERP fails to provide for adequate emergency facilities to support an emergency response. 10 CFR, Section 50.47(8)."

A review of the basis for this general-in-nature contention shows that in reality it is a contention that it must be demonstrated that there will be no radiological injury even from an extremely unlikely rapid release accident. As set forth in the discussion

of general principles, above, this is not the requirement of the regulations. The contention 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 ^{DOWN} of 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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