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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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BRANCH

before the

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 RYE
(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 Rye (Rye).
Before turning to the specific contentions proffered by
Rye, however, we set forth some general principles
governing the admission and litigation of contentions

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

General Principles

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

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

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

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

San Onofre, supra, 17 NRC at 533.

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

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

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

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

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-85-27A, 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

Rye has proposed four contentions, all restricted to the local plan for Rye. Two of the four proposed contentions, however, attempt litigation of non-litigable subjects, while the other two are lacking in the particularized basis requisite to the admission of an issue for litigation. For these reasons, all four Rye proposed contentions should be excluded.

Contention 1

Rye Contention No. 1 is:

"The Draft Radiological Emergency Response Plan for the Town of Rye does 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 19 C.F.R. § 50.47(a)(1), because in the event of an accident that would release a radioactive plume on Rye, the plan fails to reasonably recognize or provide for typical situations of increased transient population and traffic conditions in Rye between May 1 and September 1 every year, when Rye's beach and shore roads are jammed with people and traffic that frequently moves at a snail's pace; and because the plan fails to reasonably recognize or provide for typical situations of hazardous driving conditions in and all around Rye between December 1 and April 15 every year, when the width of roadways are narrowed by snow, icy conditions can occur instantaneously, fog can reduce visibility to inches, and traffic predictably moves at a snail's pace."

Contention 1 appears to be a contention regarding the evacuation time estimates ("ETEs") contained in the New Hampshire state plan. It should be excluded, in the first instance, because all that the NRC regulations require is the preparation of ETEs by Applicants; such ETEs were prepared in connection with the Applicants radiological emergency response plans and were litigated in the August, 1983 hearings. See discussion in response to NECNP proposed Contention RERP-9. While New Hampshire may determine to employ its own ETEs, this Board is limited to litigation of matters relating to 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).

Prescinding from this limitation, the "basis" offered in support of the proposed contention are so devoid of specification that the proposed contention could not be admitted even if state-sponsored ETEs were litigable as a general proposition. The first basis asserts only that the state plan is required to

"contain identification of and means of dealing with potential impediments (e.g., seasonal impassibility of roads)" and that the plans are required to contain "contingency evacuation routes." The first part, assuming it implies that the construction of roadways might be required before an operating license could be authorized for Seabrook Station, is flatly contrary to Commission authority, as set forth above. If it means that ETEs are required to deal with conditions under which roadways become impassible, i.e., an extreme adverse or "worst case" scenario, it is contrary to established authority. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1244 (1985). If it means that some other "adverse weather" scenario should have been chosen instead of the one contained in the ETEs, it is also a non-litigable issue, since ETEs are not required to assess every possible permutation nor is their purpose to provide concrete times for all possible scenarios. In any event the proposed bases offers not a hint of the scenario that Rye contends should have been considered. As for the second prong of the first basis, there is no regulatory requirement that state

emergency plans contain "contingency evacuation routes." Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 65 (1984).

The second proposed basis, though difficult to fathom, appears to be challenging the value employed in the state ETEs as an average occupancy rate for evacuating vehicles. (As has been held before, it is number of cars, not number of people, that is the important criterion for vehicular evacuation ETEs. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-85-27A, 22 NRC 207, 216 (1985).) However, all that the basis tells us is that the actual occupancy of different automobiles will differ, a proposition that is both a truism and inherently recognized in the state's use of an average value. As a basis for contending that the average value employed by the state is erroneous, the proffered assertions are so devoid of any specifics as to leave nothing to litigate.

The third proffered basis asserts, apparently, that the state plans must afford Rye with a means of evacuating rapidly in "any possible emergency." The

law is plainly to the contrary. Thus the proffer offers nothing admissible.

The fourth proffered basis is simply a restatement of the proposition that ETEs are required to consider and account for such congestion as may result on the local roadways. It does not contain any assertion that the ETEs do not do so, and therefore it, too, offers nothing litigable.

A more fundamental problem with this proposed contention, however, is the fact that the Rye local plan, simply does not need to contain ETEs. Rye does not have any responsibilities that involve the ETEs. (Under the New Hampshire law and scheme ETEs are used by state officials for the purpose of making protective action recommendations. See Rye local plan, p. II-24: "The Governor of New Hampshire has ultimate responsibility and will make the final decision in consultation with the Director, NHCDA, and the Director, DPHAS, on recommended protective action.") Any proposed contention about ETEs is, therefore, irrelevant to consideration of any local New Hampshire Plans.

Contention 2

Rye Contention No. 2 is:

The proposed Radiological Emergency Response Plan for Rye is unworkable because of the lack of provisions for any means of protecting the safety of Rye's special needs populations. Rye has at least four (4) major special needs groups, not including special needs people living at home, for which no provisions are made in the plan; and, while the plan attempts to make provision for Rye's special needs facilities (5 schools), nevertheless, those provisions are inadequate particularly with regard to transportation and sheltering.

Rye's second proposed contention asserts that the state plans have overlooked four "special needs" populations within the town of Rye for whom special plans are required. Those populations are: the residents of the Isles of Shoals, the Rannie Webster nursing and elderly home, the "commercial fishing industry," and transient pleasure boaters.

Three of these supposed "special needs" groups are nothing other than subsets of the general population. The residents of the Isles of Shoals, a group of islands lying off the coast of New Hampshire, and more than 10 miles from Seabrook Station, are outside the Seabrook plume EPZ. Transient pleasure boaters is not a population unique to Rye or for which Rye has any responsibility; the state plans provide for

notification of transient boaters via the United States Coast Guard and there is nothing in the proffered basis supporting any assertion that those provisions are inadequate or could be improved upon. The "commercial fishing industry," assuming it refers to those employed in this business while they are ashore as opposed to at sea, is indistinguishable from the general public of which it forms a part.

With respect to the "Rannie Webster nursing and elderly home," it may be that the state has overlooked an institution. See Rye local plan, p. II-29. If so, there is no reason to believe that, now that this potential omission has been called to its attention, the state will include the home in the appropriate enumeration. However, it does not necessarily follow that any special plans are required for this home, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1326-27 (1985), and even if New Hampshire decides to prepare a special plan, there is no reason to believe any obstacle exists. See Rye local Plan, App. E. The proffered contention is devoid of any basis for asserting a litigable issue.

Insofar as Rye offers the bald assertion that "[t]ransportation and sheltering provisions for all of Rye's school children are unconscionable and unacceptable," the statement fails to supply any basis for litigation.

Finally, Rye points to the absence of letters of agreement from bus drivers and teachers. Teachers have never been the sort of support organization from whom letters of agreement have been required, at least in part because (assuming that school is in session) the teachers are already at school, and in part because the historical record shows that in emergencies teachers have seen to the well-being of their students. E.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1291-95 (1985). The assertion regarding letters of agreement with bus drivers might rise to the level of a litigable contention if Rye had offered any basis for concluding (1) that the state plans rely upon whatever group of bus drivers (which is not stated in the proposed contention) Rye has in mind and (2) that those drivers for some particular reason cannot be counted on to respond during a real emergency at the school. The

mere absence of letters of agreement does not present a litigable contention.

Contention 3

Rye Contention No. 3 is:

"The proposed plan for Rye violates the most basic state and federal constitutional rights of all its citizens and was prepared contrary to the State of New Hampshire's enabling statutes.

"Selectmen sworn to the duties of their offices are required to uphold the constitution of his State and that of this great country of America. One half of the first twelve articles of New Hampshire's constitution speak in one fashion or another to every member of a communities right to be protected by it, in the enjoyment of his life, liberty, and property. Those constitutional "rights" are not considered to have been "bestowed" by those provisions, but rather are recognized as "among the natural and inherent rights of all humankind." Furthermore, New Hampshire's enabling Legislation requires that emergency response plans be prepared in cooperation with the local communities knowledgeable participation - and even if that had been done, such legislation is subsequent and subordinate to constitutional rights and is rightfully limited thereby. For these reasons the entire emergency response plan proposed for Rye is invalid and should be declared void and of no effect."

Stripped of its rhetoric, Contention 3 offered by Rye proposes to litigate either the assertion that some federal requirement has been violated because the town itself has not adopted the state-issued local plan dealing with the town of Rye, or that state-officials

have violated New Hampshire law in preparing and adopting a plan to cover the town. Since there is no federal requirement that towns must adopt the plans that apply to them (indeed, formal adoption of any plans is not a requirement), and since it is plain from the very statutes referred to by Rye that emergency planning in New Hampshire (as it is also in Massachusetts) is a state function and not a shared state and local function, the proffered contention is not admissible.

Contention 4

Rye Contention No. 4 is:

"The emergency response plan proposed for Rye makes no provisions for adequate protective measures that would reasonably assure the health, welfare and safety of all Rye citizens who may be exposed to radioactive releases emanating from the Seabrook Station in situations not regarded as major disasters requiring evacuation, or in situations of major disaster where evacuation procedures are activated but which for any reasons are either not sufficiently implemented or are prevented from expected completion. Rye has no hospitalization or decontamination facilities and is served solely by a small, voluntary ambulance corp which does not have sufficient equipment or medical aid supplies that would be necessary to render emergency medical treatment to any more than a handful of people."

While the wording of this proposed contention is cloudy, it appears to be asserting that some

requirement that Rye have hospitals located within its borders for the operating license to be issued. As we pointed out above, there is no requirement that hospitals exist (or, if they do not exist, be constructed) in Rye. The information contained in the Rye local plan at p. II-39 complies with the requirements applicable to "contaminated/injured" persons (see Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC 184, 186 (1985)), and, insofar as the proffered basis refers to KI, State decisions regarding distribution of KI are not litigable (Union Electric Co. (Callaway Plant, Unit 3), ALAB-754, 18 NRC 1333 (1983)). The proposed contention, therefore, 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 Rye (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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