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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of |) | |
| |) | Docket Nos. 50-443 OL-01 |
| PUBLIC SERVICE COMPANY OF |) | 50-444 OL-01 |
| NEW HAMPSHIRE, <u>et al.</u> |) | On-site Emergency Planning |
| |) | and Safety Issues |
| (Seabrook Station, Units 1 and 2) |) | |

NRC STAFF RESPONSE TO AMENDED CONTENTION OF
ATTORNEY GENERAL JAMES M. SHANNON ON
NOTIFICATION SYSTEM FOR MASSACHUSETTS

INTRODUCTION

On April 15, 1988, the Attorney General for the Commonwealth of Massachusetts filed an amendment to its late-filed contention challenging the adequacy of Applicants' program for notifying the populace within the Massachusetts portion of the Seabrook emergency planning zone in the event of an emergency at the Seabrook Station. See Amended Contention Of Attorney General James M. Shannon On Notification System For Massachusetts (April 15, 1988) (hereinafter "Amended Contention"). The amended contention was timely filed by the AG pursuant to ALAB-883 ^{1/}, which, inter alia, directed the Licensing Board to provide the Attorney General a reasonable period in which to submit additional contentions or

1/ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-883, 27 NRC (February 3, 1988). On February 18, 1988, Applicants petitioned the Commission to review ALAB-883; the Commission has yet to act on Applicants' petition, however.

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to amend his admitted to challenge the adequacy of any alternative public notification arrangements proposed by Applicants. Id., slip op. at 19-20.

The AG's amended contention alleges that Applicants' current plan for notifying the Massachusetts portion of the Seabrook emergency planning zone -- the "Vehicular Alert Notification System (VANS)" -- is inadequate and thus fails to comply with the provision of 10 C.F.R. § 50.47(b)(5) and Part 50, Appendix E, § IV(D)(3). Amended Contention at 2. According to the AG, the VANS is inadequate in fourteen separate respects (bases). Amended Contention at 2-6. Additionally, the AG alleges that the "Airborne Alerting System" devised by Applicants to back up the VANS similarly is inadequate and lists five bases for his allegation.

For the reasons set forth below, the Staff does not oppose the admission of the AG's amended contention. The contention satisfies the requirements of 10 C.F.R. § 2.714(b) in that the contention is within the scope of the proceeding and contains at least one proper factual basis. See Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424 (1973). As will be discussed herein, not all of the proffered bases of the amended contention are proper, however. The Licensing Board, therefore, should exclude these bases from litigation.

DISCUSSION

A. Legal Standards

Section 2.714(b) of the Commission's regulations requires that a contention and the bases for it be set forth with reasonable specificity. 10 C.F.R. § 2.714(b). The purpose of the basis and specificity

requirements is to provide general notice to opposing parties as to what they will have to defend against or oppose and to determine whether there is sufficient foundation to warrant further exploration of the contention. E.g. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 34 (1984). To meet this requirement, an intervenor must allege that an applicant has not complied with a specified regulatory requirement or allege with particularity the existence of a substantial safety issue with respect to which the regulations are silent. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982).^{2/} Additionally, an intervenor is required to provide a reasoned explanation or "basis" for its contention. See Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2070-71 (1982). In the following section, the Staff discusses those bases proffered by the AG in support of his contention which do not satisfy these requirements.

2. The AG's Amended Contention

As noted earlier, Applicants propose to notify the residents in the Massachusetts portion of the Seabrook emergency planning zone (EPZ) in the event of an emergency through the use of its Vehicular Alert

^{2/} A contention must be rejected where it (1) represents an attack on statutory or regulatory requirements; (2) seeks to raise an issue beyond the scope of the proceeding; (3) does not relate to the facility in question; or (4) raises an issue which is not concrete or litigable. Seabrook, supra, 16 NRC at 1035.

Notification System ("VANS"). See Enclosure to Letter from George S. Thomas, Vice-President, Public Service Company of New Hampshire to U.S. Nuclear Regulatory Commission (February 26, 1988). The VANS "consists of truckbased sirens that can be dispatched from continuously manned staging areas . . . combined with fixed siren tone coverage from sirens located in New Hampshire near the Massachusetts border." Id. at 2. The VANS "will be backed up by an Airborne Alerting System which essentially consists of an acoustical package carried by a helicopter based at Seabrook Station." Id. In his amended contention, the AG challenges ability of the VANS and the Airborne Alerting System to provide the early notification and clear instruction to the affected population required by 10 C.F.R. § 50.47(b)(5) and Part 50, Appendix E, § (IV(D))(3). The Staff's position on the AG's proffered bases is set forth below.

A. Vehicular Alert Notification System And Overlapping Fixed Siren Coverage

Basis 1: The AG asserts that because of their height, locations, acoustic range and number, the VANS and the New Hampshire fixed sirens do not provide tone or message coverage for essentially 100 percent of the Massachusetts portion of the Seabrook EPZ at the sound pressure level required by FEMA-Rep. 10. The Staff does not challenge the adequacy of this basis.

Basis 2: The AG assert that Applicants are prohibited by local laws from operating the six VANS staging areas and the VANS vehicles. The Staff opposes this basis as the AG has not identified any applicable laws and ordinances which prohibit the use of the VANS in an emergency.

Basis 3: The AG asserts that the VANS staging areas "are physically inaccessible to the VANS equipment." The Staff opposes this basis. The AG does not specify why the VANS staging areas are inaccessible to the VANS equipment.

Basis 4: The AG asserts that the VANS vehicles are inadequate for their intended use. The Staff does not challenge the adequacy of this basis.

Basis 5: The AG asserts that the time needed for driver alert, dispatch, route transit, setup and activation in accordance with NRC regulations will exceed 15 minutes for many of the VANS vehicles in optimum weather conditions. The Staff does not challenge the adequacy of this basis.

Basis 6: The AG asserts that inclement weather conditions will impede extension of the sirens to their operational position, and their rotation, oscillation, and operation. The Staff opposes in this basis for lack of specificity.

Basis 7: The AG asserts that at a "sound level of 134 dBC anyone within 100 feet of the siren during its operation will suffer severe hearing damage." The Staff does not challenge the adequacy of this basis.

Basis 8: The AG asserts that because "of the large size of the intended dispersion angle (60 degrees), sound irregularities will occur within the coverage angles including gaps in sound coverage for certain areas. Moreover, the oscillation of the speaker assembly will cause gaps in coverage when the siren is used in its tone alert mode." The Staff does not challenge the adequacy of this basis.

Basis 9: The AG asserts that listeners in areas where there is an overlap from 2 or more sirens will experience severe echo conditions, rendering any voice message unintelligible. The Staff challenges the adequacy of this basis to the extent it is premised on the assumption that NUREG-0654 requires sirens to have "voice mode" capability. NUREG-0654 imposes no such requirement. See NUREG-0654/FEMA REP-1, Rev. 1 at 43-46 and Appendix 3.

Basis 10: The AG asserts that the VANS does not specify when and under what conditions the tone alert mode or the message mode will be used. The Staff challenges the adequacy of this basis to the extent it is premised on the assumption that NUREG-0654 requires sirens to have "voice mode" capability. NUREG-0654 imposes no such requirement. See NUREG-0654/FEMA REP-1 at 37-39 and Appendix 3.

Basis 11: The AG asserts that insufficient drivers and backup drivers will be stationed at the six VANS staging areas to ensure 24 hour availability of the system. Additionally, the AG asserts that the system will work reliably, if at all, only when each vehicle is manned by at least two persons. The Staff challenges the adequacy of this basis as the AC does not specify why two or more persons are required to operate each VANS vehicle or why personnel should be stationed at the VANS staging areas on a 24 hour basis.

Basis 12: The AG asserts that the system will encounter a substantial failure rate because many drivers will be unwilling to accomplish the assigned tasks during a real emergency. Inasmuch as the this issue (i.e., the willingness of emergency personnel to

perform their assigned duties in the event of an actual emergency) has been litigated in the hearing conducted with respect to the New Hampshire radiological emergency response plan, the Staff opposes this basis in the absence of a showing by the AG that special circumstances exist with respect to the VANS drivers such that the result reached on the issue in the hearings held on the New Hampshire plan is not dispositive of the issue here.

Basis 13: The AG asserts that the VANS system with its airborne system is "extremely expensive" and not in the ordinary course of Applicants' business and thus requires approval of the bankruptcy court. No adequate basis is provided for these statements. Nor is there any support for the statement that the Bankruptcy Court will be called upon or has jurisdiction to rule on issues concerning low power testing. Additionally, the basis calls into question Applicants' financial qualification, a subject beyond the jurisdiction of the Board in the absence of a waiver or exception to 10 C.F.R. § 50.33(f) and 50.57(a)(4). As of this date, the Commission has not granted such a waiver or exception. Consequently, this basis should be rejected because it represents an impermissible collateral attack on the Commission's regulations. See 10 C.F.R. § 2.758(a).

Basis 14: The AG asserts that Applicants "have not identified the equipment to be used for remote activation of the VANS sirens and therefore, no conclusion can be reached concerning the reliability of the equipment." The Staff does challenge the adequacy of this basis.

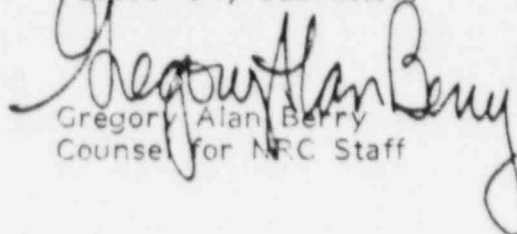
B. Airborne Alert System

The AG also challenges the Applicants' proposed use of the Airborne Alerting System. The AG lists five reasons why the system does not meet regulatory requirements. Assuming arguendo that the reasons proffered by the AG are valid, that fact would not establish the existence of a regulatory violation. The Airborne Alert System is a backup system to the primary VANS system. See Letter From George S. Thomas To U.S. Nuclear Regulatory Commission, supra, at 2. NUREG-0654/FEMA REP-1 "does not require that backup procedures be set forth in emergency plans." Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 67 (1984). All of the AG's challenges to the backup Airborne Alert System, therefore, should be rejected.

CONCLUSION

The Board should issue an order admitting the Attorney General's amended contention in accordance with the views set forth in this response.

Respectfully submitted,


Gregory Alan Berry
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of May 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO AMENDED CONTENTION OF ATTORNEY GENERAL JAMES M. SHANNON ON NOTIFICATION SYSTEM FOR MASSACHUSETTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of May 1988.

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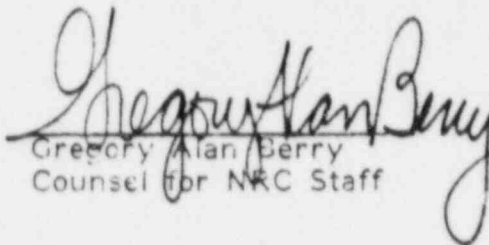
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