

September 19, 1988

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

_____ )		
In the Matter of )		
PUBLIC SERVICE COMPANY OF )		
NEW HAMPSHIRE, et al. )	Docket Nos. 50-443-OL	
(Seabrook Station, Units 1 and 2) )	50-444-OL	
_____ )	(Off-site Emergency	
	Planning Issues)	

STIPULATION AS TO CONTENTIONS

Set forth below is the final wording of contentions<sup>1</sup> on the SPMC portion of this proceeding. By entering into this stipulation, no party waives any objection it may have to evidence which may be offered. In particular, and without limitation of the foregoing, parties reserve the right to object on the basis of prior board orders to evidence when, as and if offered.

<sup>1</sup> The Board will note that wording of two contentions, JI 7 and JI 8, is in dispute and calls for Board resolution.

8809260119 880919  
PDR ADOCK 05000443  
G PDR

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## I. EVACUATION PROCESS

### A. Inaccurate and Unrealistic ETES

#### JI 1 [MAG 32]

##### Contention

No evacuation time estimate study has been done to assess what the realistic evacuation times would be in the Massachusetts portion of the EPZ in light of the special difficulties, circumstances, and delays in conducting an evacuation in Massachusetts under the SPMC. The Final Report of the KLD Evacuation Time Estimate Study and Traffic Management Plan Update, completed in August 1986, did not take into account these special circumstances, difficulties, and delays. A new evacuation time estimate study needs to be conducted before the SPMC can meet the requirements of 10 C.F.R. 50.47(a)(1), 50.47(b)(10), NUREG 0654, Rev. 1, Supp. 1, Section II.J.10.e, and Appendix 4 of NUREG 0654, Rev. 1.

#### JI 2 [MAG 39; TOA 4K; MAG 47T]

##### Contention

The evacuation time estimates contained in the SPMC, Pro-2.5 at Attachment 4, are too unrealistic to form the basis of adequate protective action decision-making. Realistic ETES would be much longer. The SPMC, therefore, does not meet the requirements of 10 CFR § 50.47(a)(1), § 50.47(b)(10), NUREG 0654, Rev. 1, Supp. 1, II.J.10.1, and NUREG 0654, Appendix 4.

##### Basis

#### A. [MAG 39C, D, I, N, O, P]

Orderly and efficient traffic flow will not be maintained due to the inadequacies in planning for the use of traffic control personnel and for the removal of road blockages by tow trucks.

#### B. [MAG 39J, FF, K]

The ETES are based on incorrect assumptions concerning the number of cars that will flow through roads, intersections and ramps in Massachusetts.



C. [MAG 39S]

The ETEs fail to account for the delays that will result from the confusion among the public caused by hearing different emergency messages from different sources.

D. [MAG 39U; TOA 4K]

The ETEs are based on a traffic management plan that overestimates the traffic flow rate through the intersection at Route 110/I-95/Elm Street in Amesbury.

[Note: Litigation of this matter is limited to those matters not already litigated in the NHRERP phase.]

E. [MAG 39W, X, Y]

The ETEs are based on an undercount of the number of vehicles evacuating from and through the Massachusetts portion of the EPZ.

F. [MAG 39AA]

The ETEs are based on the implicit assumption that in implementing the traffic management plan the placement of cones and barricades will not actually block vehicles with legitimate reasons to travel against or across the flow of evacuation traffic. In fact, if the traffic management plan is implemented according to the diagrams in Appendix J and cones and barricades are placed as shown, these vehicles will be blocked at many intersections.

G. [MAG 39BB]

The ETEs were calculated using an irrelevant "planning basis" which assumed that the public is notified to clear the beaches at the Alert level, that a General Emergency occurs 15 minutes later, and that the order to evacuate is transmitted to the public 10 minutes after the General Emergency is declared. This "planning basis" has no relationship to the SPMC.

H. [MAG 39DD]

The ETEs are based on the unrealistic assumption that the implementation of access control will not significantly delay or impede returning commuters as they travel back into the EPZ to residences in one of the six Massachusetts communities.

I. [MAG 39EE; MAG 47T]

Because there are no special population evacuation times in the SPMC, the ETEs in the SPMC appear to be based on the unrealistic assumption that the evacuation of the transport dependent population and those in special facilities and schools will take no longer than the evacuation times calculated for evacuees using private automobiles.

JI 3 [MAG 42]

Contention

The SPMC does not provide protective action decision-makers with sufficiently realistic ETEs for the Massachusetts EP2 population for a wide range of times and conditions in the summer months. Only one pre-determined ETE is provided for a summer weekend with good weather, despite the fact that ETEs for such occasions vary dramatically as the size of the beach population (a factor to which the ETEs are highly sensitive) rises and falls. These beach population changes are substantial and occur from hour to hour, day to day, and week to week. Absent a real-time, computer-based system to monitor the size of the beach population and compute real-time ETEs, the SPMC is deficient, because there is no reasonable assurance that adequate protective measures can and will be taken as required by 10 CFR § 50.47(a)(1).

[Note: ". . . with respect to the proposed real-time, computer-based, data-collection, ETE-calculation system, the Attorney General has the burden of proceeding with evidence that such a system has material benefit and is practical." Memorandum and Order - Part I, dated 7/22/88, at 67.]

B. Traffic Management Plan

JI 4 [MAG 37; MAG 38; TON 1.] CON 1; CON 2; CON 6;  
TOA 4B(1), (2); TOA 4J; TOA 4O; TOS 6; TOS 9;  
TOS 17; TOWN 7.2C; TOWN 8.3, .4, .5, .6]

Contention

The evacuation plan contained in the SPMC is so poorly designed and so inadequately staffed that, even if State and local officials are assumed to make a best efforts response, there is no reasonable assurance that either the permanent residents or the transients can or will be evacuated as efficiently as possible, therefore, the SPMC does not provide reasonable assurance that adequate protective measures can and will be taken, and it fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(c)(1), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.

Basis

A. The number of traffic control personnel relied upon by the SPMC is inadequate.

B. Insufficient capacity-enhancing measures and other poorly conceived traffic control strategies are utilized by the SPMC's traffic management plan. The SPMC has not adequately addressed the problems that will occur during an evacuation in the event that the Gillis Bridge is closed to traffic in order to facilitate the passage of boats.

C. The traffic control diagrams contained in the SPMC are not sufficiently clear to allow the SPMC's traffic management plan to be implemented.

JI 5 [MAG 73D, E; TOWN 8.2; TON 5]

Contention

The method utilized by the SPMC for surveillance and removal of road blockages is not adequate to ensure that road blockages will be identified and removed promptly enough and the communications procedures for dispatching tow vehicles once blockages have been spotted are too cumbersome and ineffective.

JI 6 [TOS 13]

Contention

The SPMC fails to provide assurances that adequate measures can and will be taken to protect the public in the Town of Salisbury because the Utility's plan fails to provide for protective measures for possibly hundreds of commercial and pleasure boaters on the Merrimac River all or great numbers of whom may be confined to the river basin by frequently occurring conditions of wind and tide, without adequate dockage and transportation ashore.

C. Transit Dependent

JI 7 [CON 3; CON 4; TON 1; TOS 4; TOS 5;  
TOS 14; TOWN 7.2A, B, D; TOWN 8.1; CON 7; TOS 18]

Contention

No adequate planning has been done for the transit dependent population because the bus routes proposed will not expedite the evacuation of this population.

[As proposed by Intervenors]

No adequate planning has been done for the transit dependent population because the bus routes proposed for Newbury, Newburyport, West Newbury and Salisbury as particularized in their contentions as filed, will not expedite the evacuation of this population.

[As proposed by Applicants; concurred in by Staff]

JI 8 [TOWN 8.10; SAPL 6; TOS 19]

#### Contention

No adequate planning has been done for the transit dependent population because the present plans call for the transit dependent to wait undetermined lengths of time outdoors thereby running the risk of increasing radiation dose and exposure to the elements.

[As proposed by Intervenor]

No adequate planning has been done for the transit dependent population in West Newbury and Salisbury because the plans call for the transit dependent to wait undetermined lengths of time outdoors thereby running the risk of increasing radiation dose and exposure to the elements.

[As proposed by Applicants; concurred in by Staff]

## II. PERSONNEL AND TRAINING

### JI 9 [MAG 10]

#### Contention

No provisions is made in the SPMC for procedures to be employed in the event of a strike or other form of job action affecting the availability of the emergency personnel relied on to adequately staff and maintain the NHY ORO. In the absence of such procedures, this utility plan does not provide reasonable assurance that adequate protective measures can and will be taken. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), 21 NRC 644, 888 (1985).

### JI 10 [MAG 75]

#### Contention

The SPMC fails to provide adequate arrangements for requesting and effectively using Federal assistance resources and does not comply with 50.47(b)(3) and NUREG 0654, II. C. 1.a, b. and c.

#### Basis

A. The SPMC simply asserts that the Federal government will respond to an emergency when a "regulated entity such as Seabrook Station, requests Federal support, or when Federal agencies must respond to meet their statutory responsibilities." Plan 2.3-1. However, the SPMC points to no legal authority to support these claims. There is no indication in the SPMC whether any of the 12 Federal agencies participating in the FRERP "must respond to meet their statutory responsibilities."

B. The SPMC also asserts that federal agencies will respond directly "in accordance with established plans and procedures or preexisting relationships." Plan 2.3-1. The SPMC then makes reference to three Federal agencies, the U.S. Coast Guard, the Federal Aviation Administration and the Department of the Interior ("DOI"). The SPMC, however, fails to reference either established plans or procedures or any preexisting relationships pursuant to which these agencies would respond to a Seabrook emergency in the manner relied upon in the SPMC. Moreover, the FRERP indicates that DOI is to coordinate its emergency response with State and local governments 50 Fed. Reg. 46562.

C. Lessons learned from exercises of the FRERP conducted at the Zion nuclear facility in June, 1987,

indicate that responsible emergency organizations (there the State and local governments) should meet and plan adequate interfaces with the NRC to insure effective use of FRERP Federal assistance. No such provisions for meetings between the NRC and the ORO are contemplated by the SPMC.

D. The Lessons learned from the exercise of the FRERP conducted at the Zion facility in June 1987 indicate that the estimate of 3 to 8 hours for a federal response at Plan 2.3-2 is totally unrealistic and that 24 to 48 hours would be more reasonable.

E. Some of the responsibilities attributed to federal agencies at Plan § 2.3.3 exceeded both the FRERP and the policy of these individual agencies. Some of the federal support options identified would be available only in light of a Presidential Disaster Declaration which FEMA has resisted in the past for radiological emergencies.

F. The ORO is totally unprepared to effectively interface with these Federal agencies in the event of an actual emergency. Monitoring and dose assessment information provided to the NRC by the Department of Energy during the Zion exercise of the FRERP in June 1987 overwhelmed the capacities of the NRC. The SPMC has no procedures for effectively integrating this Federal resource into the ORO's response. The SPMC does not provide the practical information needed to assess whether communication links and other forms of interface between ORO and the Federal agencies will even be possible during an emergency. See NUREG 0654 II.C.1.c.

#### JI 11 [MAG 77]

##### Contention

The SPMC fails to provide for the adequate or continuous staffing of ORO personnel to maintain or sustain an emergency response. For these reasons, the SPMC fails to meet the standards set forth at 50.47(b)(1), (2), and (5), and the regulatory guidance established by NUREG 0654 II. A.1.e.4., B, and E.2.

#### JI 12 [MAG 78]

##### Contention

There is no reasonable assurance that there will be adequate second shift manpower capability for certain evacuation-specific positions. Therefore, the SPMC fails to comply with 10 CFR 50.47(a), 50.47(b)(1), 50.47(b)(15) and NUREG 0654, Rev. 1, Supp. 1, II.A.4. and II.0.



JI 13 [MAG 79; MAG 81D]

Contention

The prerequisite experience required for qualification to hold numerous critical ORO positions, and the training provided by the SPMC for these positions, is inadequate to provide reasonable assurance that ORO can and will implement adequate protective measures in the event of a radiological emergency at Seabrook Station. Therefore the SPMC fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(14), 50.47(b)(15), NUREG 0654, Rev. 1, Supp. 1, II.A, II.N, II.O.1 and II.O.4.

JI 14 [MAG 80; TOA 4.C, H]

Contention

The SPMC provides inadequate training to members of ORO, and the State and local governments employees and other organizations who may have to respond in an ad hoc fashion to an emergency are not receiving any training at all on SPMC procedures. There is no reasonable assurance that the bus drivers who purportedly have agreed to respond to an emergency at Seabrook in fact have sufficient experience or training to perform this function. The SPMC therefore violates 10 CFR 50.47(a)(1), 50.47(b)(15), and NUREG 0654, Rev. 1, Supp. 1, II.O.

Basis

A review of the ORO training modules and information received from those who have received ORO training indicates that the training is entirely too general in nature, is much too brief, is not well done, and does not qualify ORO staffers to perform their jobs under the difficult and confusing circumstances that will prevail in the event of a serious radiological emergency at Seabrook Station.

JI 15 [MAG 83]

Contention

ORO emergency workers will be liable for damages resulting from their actions and the SPMC does not discuss at all what, if any, provisions or agreements for indemnification exist. [As a result, the emergency response by ORO workers is unpredictable]. Moreover, although state emergency workers are indemnified by the Commonwealth pursuant to statute, the SPMC is silent on the relationship,

if any, between authorization of police powers and indemnification for ORO workers.

[Note: The burden of proceeding with the evidence on this contention is upon the Massachusetts Attorney General. See Memorandum and Order - Part I, dated 7/22/88, at 107.]



### III. PAR GENERATION

#### JI 16 [MAG 82; MAG 81]

##### Contention

Provisions in the SPMC for radiological monitoring are inadequate. The SPMC fails to provide reasonable assurance that adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency are in use or could be used and, therefore, does not comply with 10 CFR §§ 50.47(b) (2), (4), (8), (9) and (10), and 10 CFR Part 50, Appendix E, IV, B., E., 2.

#### JI 17 [MAG 26]

##### Contention

The SPMC fails to provide a range of protective actions for the public within the Seabrook plume exposure EPZ. No choice of protective actions is set forth in the SPMC for large numbers of people. Thus, the SPMC does not meet the standards set forth at 50.47(b)(10) and NUREG 0654 II.J.9, 10.m. and does not provide reasonable assurance that adequate protective measures can and will be taken. 50.47(a)(1).

##### Basis

A. The SPMC does not provide an alternative to evacuation for the beach areas in the Massachusetts portions of the EPZ. Evacuation alone does not constitute a range of protective measures. Secondary mitigating measures, including decontamination, are not protective "measures" or "actions" under 50.47(b)(10). In fact, the Commission itself has identified "appropriate protective measures" as evacuation or sheltering. 10 C.F.R. § 100.3(b).

B. In the absence of sheltering for the transient beach populations, the SPMC does not provide adequate protective measures under 50.47(a)(1) because for all fast-paced serious accidents that produce offsite consequences in less time than the transient beach populations can effect an evacuation, those populations have no adequate protection from severe radiological doses. Substantial portions of the beach population are entrapped by the traffic congestion generated by an order to evacuate and cannot remove themselves from areas close-in to the plant for many hours.

JI 18 [MAG 27; TON 9; MAG 56]

Contention

The SPMC does not establish or describe coherent decision criteria to be used by emergency decision-makers in formulating an appropriate PAR and otherwise fails to provide guidelines for the choice of protective actions consistent with federal policy. The SPMC's decision-making criteria for selecting a sheltering as opposed to an evacuation PAR is inadequate and inaccurate, and, therefore, fails to meet the planning standards set forth at 50.47(b)(10) and NUREG 0654 II.J.10.m. and Appendix E, IV, A.4. As a result, the SPMC fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. 50.47(a)(1).

JI 19 [MAG 31; MAG 56 F]

Contention

The SPMC, in conjunction with the NHRERP, allows and encourages decision-makers to call for an evacuation of EPZ by sectors (S, SW, NE, SE, N), even within 5 miles, depending on which way the wind is blowing. This is a deficiency in violation of 10 C.F.R. 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J. Because wind-shifts in the area of the plant are so frequent, and because the phenomena of seabreezes at this site makes actual direction of plume travel difficult to predict, if an evacuation is required for any segment, there should always be a 360° evacuation out to the distance necessary. The sudden 180° wind shift during the course of a serious hazardous materials fire at Seabrook, New Hampshire in March 1988 demonstrates the folly of evacuating by sectors rather than by 360° increments. Instead, the SPMC's procedures direct decision-makers first to determine the wind direction and, if conditions warrant an evacuation, to evacuate (beyond two miles) only the downwind sectors. See IP 2.5, Attachments 1, 2, 3 and 6. For this plant site, the normal potential results of high and low wind speeds as shown on Attachment 6 to IP 2.5 simply are not reliable.

JI 20 [MAG 33]

Contention

Even if there were an appropriate ETE study accompanying the SPMC, the SPMC's procedures do not instruct ORO workers to refer to it at all, let alone describe how to use it to adjust an ETE contained in the table in Attachment 4 of IP 2.5. Absent such procedures, the SPMC fails to assure that

the ETEs used by protective action decision-makers can or will be adequately adjusted to account for conditions that vary from those assumed in the ETE study.

JI 21 [MAG 40; TON 6]

Contention

In making the choice of protective actions during an emergency, it is extremely important for the decision-makers to have ready access to maps which accurately show the population distribution around the nuclear facility. The SPMC fails to include such maps. NUREG 0654, Rev. 1, Supp. 1, Section II.J.10 states: "The off site response organization's plans to implement protective measures for the plume exposure pathway shall include: . . . (5) Maps showing population distribution around the nuclear facility. This shall be by evacuation areas (licensees shall also present the information in a sector format)." Absent such maps, the SPMC fails to comply with 10 C.F.R. 50.47(a)(1), 50.47(b)(10), and NUREG 0654, Rev. 1, Supp. 1, Section II.J.10.b.

JI 22 [MAG 43]

Contention

Because the SPMC's evacuation time estimates have been rejected by State and local officials as totally unrealistic and unreliable, in the event of an emergency at Seabrook Station, Massachusetts State and local decision-makers will always reject any immediate implementation of ORO's protective action recommendations based on those ETEs. As a result, and because those decision makers have no alternative set of ETEs available to them, State and local decision-makers will make an ad hoc judgment regarding what protective actions are likely to maximize dose reductions. However, there is no reasonable assurance that adequate protective measures can or will be taken through such an ad hoc decision-making process. Therefore, the SPMC does not meet the requirements of 10 CFR 50.47(a)(1), (b)(10), (c)(10), and NUREG 0654, Supp. 1, Sections II.J.10.1 and 10.m.

JI 23 [MAG 59; TOA 2.B]

Contention

The decision criteria described in the SPMC are not coordinated with those set forth in the NHRERP. Thus, the possibility exists for delayed and conflicting PARs being formulated, transmitted and recommended to the relevant State governments. The SPMC has no adequate procedures to prevent

this and therefore does not meet the planning standards set forth at 50.47(b)(1) and (10) and the guidance of NUREG 0654 II.A. and J.

JI 24 [TOA 2.A]

Contention

Assuming the Commonwealth and EPZ municipalities would delegate authority to NHY to perform governmental emergency response functions, see, SPMC Plan, p. 3.1-2, an assumption the Town of Amesbury denies, the anticipated protracted delay in obtaining this authority under emergency conditions would preclude prompt public notification or a timely public emergency response. See, NUREG-0654 II.E.6 and NUREG-0654 Appendix 3(b)(2)(a). For example, following NHY notification to the Commonwealth of an emergency, NHY must explain its own capabilities, and brief the Commonwealth on the emergency. PROCEDURES 2.14, p. 5. The Commonwealth, under the SPMC, then is required to assess its protective action response (PAR) capabilities and, if inadequate, purportedly may authorize NHY to implement police powers to provide assistance. Id; SPMC Plan, p. 3.1-2. The cumulative effect of these delays, briefings, multiple notifications, and communications through numerous lines of authority, will result in substantial delay in public notification and in timely PARs by the public, even if it is assumed that police power authority ultimately may be delegated by the Commonwealth and EPZ towns.

JI 25 [MAG 61]

Contention

Only a small handful of ORO personnel appear to be trained and qualified to make protective action recommendations, Pro-2.5 at 3, and only one individual is designated as having the responsibility to "formulate" these PARs - the Radiological Health Advisor ("RHA"). The RHA will not assume his responsibilities until arrival at the EOC and that arrival will be delayed because the RHAs live and work too far from EOC and will have to transit the EPZ to reach it. Pro-1.2 at 4, Appendix H at A.4. As a result, the SPMC does not meet the standards set forth at 50.47(b)(1), (2), (3) and (10); Appendix E, IV.A.4 and the guidance set forth in NUREG 0654 II.A.2; B; C and J.

## Contention

The SPMC fails to meet the planning standards set forth at 50.47(b)(1), (3), (9) and (10) and the planning guidance of NUREG 0654 II.A., C., I. and J.11; FEMA Guidance Memorandum IN-1 and FEMA REP-2, REP-12 and WINCO-1012 because the provisions, procedures and planning for the 50-mile ingestion pathway emergency planning zone are not adequate.

## Basis

A. The SPMC makes no provision whatever for the prompt notification of the appropriate officials and agencies at both the State and local levels concerning the need for protective measures for the ingestion pathway EPZ. The SPMC does not identify the appropriate officials by title and agency and has failed to meet the requirements set forth in 10 CFR Part 50, Appendix E, IV, D. 1.

B. Adequate public information for the ingestion pathway EPZ has not been prepared.

C. The SPMC provides inadequate information as to the identity and location of food and milk producers and processors.

D. Sampling procedures in the SPMC are inadequate and field samples will not be adequately gathered, recorded or tested thereby making timely and effective ingestion pathway PARs impossible.

E. The SPMC ignores the family farm as a producer (and consumer) of milk. The number and location of such farms in the 50-mile zone are not identified. The SPMC does not establish prior to an emergency how and when food produced in the 50-mile zone is transported for processing and/or marketing.

F. The Sample Collection Teams are not adequately trained and the SPMC states that no experience is required for these positions. Plan 2.1-8. In fact, persons should be sought who reside within 20 miles of the plant, are familiar with the local areas and are already experienced in sampling procedures.



#### IV. COMMUNICATIONS/NOTIFICATION

##### JI 27 [MAG 8; TOA 4.B(3)]

#### Contention

At an organizational level, the SPMC fails to adequately establish and define the relationships between the ORO and other organizations which are expected and relied upon to perform emergency response activities. Further, the SPMC does not adequately provide for effective coordination of effort between or clearly delineate the primary responsibilities of these other organizations and the ORO. As such, the SPMC does not meet the planning standards set forth at 50.47(d)(1), (2), (3), (5) and (6); 10 CFR Part 50, Appendix E, IV, A.6, 7, 8; and the planning guidance set forth in NUREG 0654 II. A.1.b., c, 2.a., b, 3; B.6, 9; C.5 (Supp. 1); E.1; and F.1.

#### Basis

A. The SPMC creates nine liaison positions staffed by ORO personnel, one local EOC liaison for each Massachusetts town and three State liaisons, one for the State EOC, one for the Area 1 EOC and one for the Massachusetts Department of Public Health. The function and role of these liaison personnel is left completely undefined. There is no procedure in the SPMC to insure that these liaison personnel are themselves knowledgeable about the SPMC so that they could intelligibly respond to inquiries concerning its structure and function, or otherwise "advise and assist state and local officials in implementing" portions of the SPMC. NUREG 0654, Supp 1, II.C.5. Moreover, there is no portion of the SPMC which would provide any indication to a local governmental official of the actual role to be performed by specific local organizations. The liaisons fail to establish any organizational or communicational link between the ORO and the local organization which are relied upon to perform certain emergency activities. See Plan, Table 2.0-1.

B. The SPMC states that "law enforcement, fire and rescue needs and snow removal agencies are expected to be within local capabilities supported by mutual aid agreements and it is assumed that in an emergency, these agencies [sic] will continue to carry out their normal emergency functions." Plan 2.4-3, -4. The ORO will assist these "agencies" with "appropriate emergency information and exposure control." Plan 2.4-4.

1. There is no basis for the assumption in the SPMC that local capabilities will be augmented or supported by "mutual aid agreements." Obviously, other EPZ towns will not

be able to provide such assistance and no prior arrangements or procedures are set forth in the SPMC to enable non-EPZ towns to identify the need for resources or to penetrate the EPZ access control to supply such resources. Thus, there is only an assumed coordination of effort described by the SPMC.

2. What is needed during a radiological emergency is something different from "normal emergency functions." The particular problems of security, public health, timely evacuation and emergency-specific rescue needs in addition to the overall scope and extent of the emergency response make the SPMC's reliance on business as usual totally inadequate. Because the SPMC has not even adequately identified the emergency responsibilities of police, fire and rescue agencies during a radiological emergency, it certainly has not assigned or established them adequately. See 50.47 (b)(1). Moreover, the SPMC would be of absolutely no assistance to local emergency workers or officials at the time of an emergency if they desire to participate in an ad hoc fashion.

C. The SPMC totally lacks local plans that are specific to the six Massachusetts communities and totally ignores the particular established routines existing in these communities for response to emergencies. Thus, no effective ad hoc relationship will develop between the ORO and the local communities making effective emergency response on the basis of the SPMC impossible.

D. There is no procedure for the notification of supporting organizations concerning which mix of authorization -- as to activity and jurisdiction -- is to be implemented by the ORO. As a result, none of the supporting organizations will be informed as to who has control and command over any particular portion of the response. Further there is no delineated relationship between ORO personnel and non-ORO employees of support organizations as to issues of control and command, responsibility and liability.

E. The SPMC does not detail how a delegation of authority during an emergency would actually take place. No verification procedures are set forth that would insure that the specific content of state authorization is understood and verified. Further, no verification procedure exists as to the identity of those giving and receiving such authorization.

F. The SPMC does not detail what emergency response activities can be implemented or what mitigating actions will be taken for those activities for which no authorization is forthcoming from the State. The SPMC does not indicate how the ORO will modulate and specify its response to accord with

the specific authorization mix --as to activity and jurisdiction-- that results at the time of an emergency. See Pro-2.14, Attachments 7 and 8.

G. The SPMC fails to indicate that effective planning has been done to coordinate the ORO and the SPMC with the state of New Hampshire's emergency response organizations. In fact, the SPMC does not even indicate that necessary New Hampshire personnel have read the SPMC or been trained with it. See App C, pages C-1a-1d.

JI 28 [MAG 12]

Contention

Communication systems relied on for the mobilization of ORO personnel and the activation of the EOC are not adequate because no back-up personnel will be contacted by these systems and critical positions are filled with only one designated person per shift.

JI 29 [MAG 13]

Contention

The SPMC fails to meet the standards set forth in 10 CFR Part 50, Appendix E, IV.E.9 and 50.47(b)(6) and (8) because there is no indication that the off-site communication systems relied upon for emergency communications with emergency response personnel have a back-up power source.

JI 30 [MAG 14; CON 5]

Contention

The SPMC relies too heavily on commercial telephone links for critical and essential emergency communications. Because commercial telephone lines will be and should be assumed to be overloaded shortly after the onset of an accident at Seabrook, no essential emergency communications should be based in the first instance on commercial telephone communications. As such the SPMC fails to meet the planning standards set forth at 50.47 (b)(6) and planning guidance of NUREG 0654 II F.

JI 31 [MAG 15]

Contention

The SPMC fails to meet the standards of 50.47 (b)(6) because there is no provision for an effective horizontal or lateral network of communications directly linking emergency



field personnel with each other. As a result, all communications must be first vertically transmitted, processed and recommunicated leading to delay, miscommunication and gaps in the communications network. The failure to provide a lateral communications system is a defect in the SPMC which will affect traffic management and evacuation, security, timely response to emergencies-within the emergency and otherwise result in a wooden and ineffective emergency response. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-88-2 at 50 et seq. (February 1, 1988).

JI 32 [MAG 16]

Contention

The SPMC fails to meet the planning standards set forth at 10 CFR Part 50, Appendix E, IV, E. c., 50.47 (b)(6) and NUREG 0654, II.F.1 (Supp. 1), because there is no provision for adequate communications with State and local response organizations or EOCs, or with other private response organizations, because the ORO has no access to emergency radio frequencies used by State and local agencies and no alternative to those means of communication.

JI 33 [MAG 17]

Contention

Federal EBS regulations and the Massachusetts EBS Operational Plan ("Operational Plan"), which governs operation of the EBS in Massachusetts, makes no provision for third party activation as envisioned by the drafters of the SPMC. Rather, such provisions were designed to provide solely for government activation. Absent amendment of the Operational Plan to expressly provide for authorization of ORO, activation by parties other than the government officials expressly named in the Massachusetts Operational Plan is therefore inconsistent with both Federal and State EBS design. The plan, therefore, inadequately provides for notification through the EBS system and does not meet the planning standards set forth at 50.47 (b)(5) and (7) and the planning guidance of NUREG 0654, II.E.5.

Basis

A. Insufficient provisions exist for verification of the Massachusetts Governor's authorization of ORO to activate and broadcast over the EBS. For example, no procedure provides that a government official will contact the EBS station to verify authorization. Instead, the EBS station must rely entirely on the word of the ORO staff or person

purporting to be ORO staff. Thus, activation by only authorized individuals is not assured.

B. In notifying the public of an emergency, NHY would have to choose the level of urgency appropriate for public notification in light of the circumstances. NHY has a vested interest in promoting public perception that the plant is safe. Consequently, in the event of a radiological incident, NHY has an interest in minimizing the public perception that the plant is a source of danger. NHY will thus be faced with the conflicting interests of minimizing the public perception of danger and notifying the public in suitably urgent terms. The Governor of Massachusetts, whose primary interest is public protection, will not be faced with such competing considerations and is therefore the appropriate source of public notification.

JI 34 [MAG 18; TON 12; TOWN 3]

Contention

The SPMC fails to meet the planning standards set forth at 50.47 (b)(5) and the guidance provided in NUREG 0654, II. E. 1., E.2 and F.1 because the notification and mobilization of response organizations and personnel is not adequate.

Basis

A. Appendix G describes the procedures to be followed by the NHY Offsite Response EOC Contact Point in the event of an accident. See also Plan 3.2-1 - 3.2-6. These procedures are far too complicated and time-consuming to be performed effectively by one individual. The only prerequisite for this position is experience as a security guard which is totally inappropriate for this highly stressful, complicated and pivotal position.

B. Key ORO personnel apparently have no car phones or other means of communication during their mobilization period. In light of the distance traveled to get to the EOC by these personnel and the absence of trained and experienced 24-hour staff, this delay means that the ORO may not be functioning during the critical periods of an emergency.

C. The SPMC provides no adequate means of alerting, notifying and mobilizing key emergency personnel such as bus drivers, ambulance drivers and others. The SPMC simply leaves this function to the contracting employers, but provides no detail on who, how and when such notification will take place. This fails to meet the standard set forth at NUREG 0654, II.E.2.

D. Many of the private organizations and contractors expected to play emergency roles under the SPMC are not themselves notified unless and until those ORO personnel responsible for such notification are first alerted and mobilized and arrive at the EOC. No procedures exist for back-up assignments in the event ORO personnel with notification responsibilities is delayed or does not arrive.

E. The SPMC provides no assurance that State and local government employees and those providing contract services to the State and local governments (such as snow removal companies, private ambulances, and the like) will be adequately notified of an accident at Seabrook.

#### JI 35 [MAG 20]

### Contention

The emergency messages to be utilized by the ORO in the event of an emergency at Seabrook are inadequate and will not be effective in communicating necessary information to the public. As a result, the SPMC does not meet the planning standards set forth at 50.47(b)(1), (5) and (6) and the guidance provided by NUREG 0654 at II E.3, 4, 5, 6, 7, and 8, and F.1.

### Basis

A. The messages prepared by the ORO are overly long, misleading, confusing, self-contradictory, impossible to either broadcast or receive in the time available and ignore important characteristics of the recipient public in Massachusetts and its response to a radiological emergency at Seabrook.

B. The SPMC makes no provision and provides no procedure for coordinating emergency messages with participating and non-participating State and local governments as required by NUREG 0654, II.B.7.d. and Supp. 1, II.E.8.

C. The messages do not adequately address the issue of their source and do not explain who and what is controlling and directing the emergency response. There is no discussion in the messages of the emergency relationship between ORO and the state and/or local governments. See NUREG 0654, Supp. 1, II E.7.

D. The SPMC provides no adequate procedures for insuring that the emergency messages broadcast to the public correlate with the messages and information provided to the media by the NHY ORO and other officials.

E. The pre-established messages set forth in the SPMC at Pro-2.13, Attachments 2-24, may be altered or modified by the Public Notification Coordinator. Pro-2.13 at 8. No guidance or training is provided this individual on the essential components of an effective emergency message. As a result, the messages(s) actually broadcast may be less effective than those set forth in the SPMC.

JI 36 [MAG 21]

Contention

The SPMC does not provide adequate procedures for coordination with the news media, and therefore does not meet the planning standards of 10 C.F.R. 50.47(b)(7) and (8). No adequate procedures for coordinating the activities of the public information staff at the EOC and the personnel at the Media Center are provided. Adequate procedures also do not exist for the coordination of the activities of Media relations representatives who will be communicating directly with the press by telephone.

JI 37 [MAG 22]

Contention

The SPMC fails to provide adequate information and access to information at the time of an emergency to those State and local governments which are not participating in emergency planning. While New Hampshire response officials will have access to the Emergency Operations Facility ("EOF") and the Emergency Operations Center ("EOC"), officials from the Commonwealth will not be permitted at these locations (assuming they could be reached in a timely fashion.) As a result, no coordination of response, including coordination of public notification and communication will occur and the planning standards set forth at 50.47(b)(1), (2), (3), (5), (6), (7) and (8) and the corresponding criteria set forth in NUREG 0654 have not been met.

JI 38 [MAG 23; TOS 16]

Contention

The SPMC provides inadequate procedures for rumor control during an emergency and fails to meet the standards set forth in 50.47(b)(7) and NUREG 0654 II G.4.

JI 39 [MAG 24; MAG 53]

Contention

The information to be made available to the public pursuant to the SPMC prior to an emergency does not meet the regulatory standards as set forth at 50.47 (b)(7), NUREG 0654 II. G. and 10 CFR Part 50, Appendix E, IV. D.2.

JI 40 [MAG 52]

Contention

The SPMC does not contain an appropriate or timely alert and notification system for residents who have special notification needs. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(5), 50.47(b)(7), 50.47(b)(10), and NUREG 0654, Rev., 1, Supp. 1, II.E, II.G, and II.J.

V. LEGAL ISSUES

JI 41 [MAG 1]

Contention

State and local officials responsible for emergency preparedness and response in Massachusetts have no intention of implementing or following the SPMC in the event of a radiological emergency at Seabrook. Based on its determination that no adequate planning is possible at this site, the Commonwealth will not participate in any tests, drills, exercises, training or otherwise engage in any planning for such an emergency. State and local officials will respond to any Seabrook emergency on an ad hoc basis in light of the resources, personnel and expertise then available. In light of this considered governmental position, the SPMC is irrelevant to this licensing proceeding. No emergency plan exists that meets the planning standards of 50.47(b) and further provides a basis for the finding of "reasonable assurance that adequate protective measures can and will be taken." 10 CFR 50.47(a) (emphasis supplied).

JI 42 [MAG 3]

Contention

Assuming arguendo that at some future time there is record support for the application of 10 CFR 50.47(c)(1) to the litigation of the SPMC, the permissive presumption set forth at 50.47(c)(iii) should not be applied to the SPMC. As a result, although this Board might assume that State and local governments will exercise their best efforts to protect the health and safety of the public at the time of the emergency, no presumption should be entertained that those officials "would generally follow the utility plan." In reality, as noted in Contention 1, these officials would respond to an emergency on an ad hoc basis. Such an incomplete and uncertain state of emergency preparedness cannot support a finding of adequacy under 10 CFR 50.47(a), (b), (c)(1).

JI 43 [MAG 4]

Contention

Assuming arguendo that at some future time there is record support for the application of 10 CFR 50.47(c)(1) to the litigation of the SPMC, and this Board presumes that the relevant governments will "generally follow" that plan, that presumption will either be rebutted or its evidentiary



significance eliminated by the Commonwealth. As a result, there would exist two evidentiary possibilities, neither of which could provide a basis for the requisite finding of "reasonable assurance that adequate protective measures can and will be taken":

1. Once the presumption is rebutted, the Board will find that the relevant governments will not "generally follow" the SPMC. As noted, in reality, the actual response of these governments would be ad hoc.

2. Once the presumption is rebutted, the Board will be unable to determine with an degree of certainty whether or not the relevant governments will "generally follow" the SPMC. (The governments will establish in the record that they will respond to an emergency on an ad hoc basis but will not "generally follow" the SPMC. Without benefit of the presumption, the Applicant will no doubt aver that the governments' response will result in the implementation of the utility plan.) The uncertainty surrounding this dispositive issue - whether the SPMC will be implemented - will make it impossible to find reasonable assurance that adequate protective measures "will" be taken.

#### JI 44A [MAG 6]

#### Contention

The SPMC contemplates an unlawful delegation of the police powers of the Commonwealth by State and/or local officials to an unincorporated association or organization itself formed and maintained by a division of a bankrupt foreign corporation not licensed to do business in the Commonwealth. Activities envisioned for this entity are ultra vires under the relevant states' corporation laws. As a debtor-in-possession, PSNH's activities outside the ordinary course of business -- such as being the unlawful delegatee of the police powers of a sovereign state -- require prior approval of the bankruptcy court having jurisdiction over the debtor's estate. Without such approval these activities are not permitted under the Bankruptcy Code. As a corporation not licensed to do business in Massachusetts, PSNH and its division NHY are not authorized to engage in the contemplated activities - i.e., act as the delegatee of the police powers of Massachusetts. In sum, the SPMC can not be "generally follow(ed)" by the relevant governments because it contemplates an unlawful delegation of power to an apparent entity behind which operates a corporation not licensed to engage in the contemplated activities in Massachusetts and not authorized to do so by the court which now supervises it. Further, the activities

themselves are ultra vires under the laws of New Hampshire and Massachusetts.

### Basis

A.1. In a section of the Plan entitled "Authority", the Applicant provides a completely cursory and misleading description of the legal basis on which the NHY-ORO is to be authorized to perform identified emergency activities. Plan 1.2 -1 to -3. After describing certain sections of the Civil Defense Act ("CDA"), Massachusetts Special Laws c. 31, the Plan states:

The administrative authority of the Governor [under the CDA] may be delegated to the MCDA/OEP [Massachusetts Civil Defense Agency/Office of Emergency Preparedness] Director. The Director may subdelegate such authority as provided. Section 4 of the Commonwealth of Massachusetts Radiological Emergency Response Plan [RERP], Appendix 3 to Hazard Specific Supplement No. 6, specifies the responsibilities delegated to the MCDA/OEP and others. Plan 1.2-2 (emphasis added)

Neither the CDA nor the Massachusetts RERP provide any basis whatsoever for a delegation of the police powers by the Governor or his "designee" to a foreign private corporation. See Plan 3.1-1.<sup>24</sup> [start footnote 24] The SPMC claims at various points that the Governor, his "designee", the Director MCDA/OEP, the Director's senior duty officer, or the duty officer who happens to be at the Framingham EOC at the time, all could authorize the NHY-ORO to implement the SPMC. See Plan 3.1-1; Pro-2.14, at 5. No support is offered for these claims. [end footnote]

2. The Applicant acknowledges throughout the SPMC that the NHY-ORO can not legally implement the SPMC on its own. For example, at Pro-2.14 Attachment 7 page 27, there is a list of seven emergency response actions which the Applicant acknowledges cannot be implemented without prior authorization from the Governor:

- 1) Activating the Prompt Notification System and broadcast of EBS messages;
- 2) Making recommendations for protective actions to the public;
- 3) Making Ingestion Pathway Protective Action recommendations to the public;



- 4) Making recommendations for recovery and reentry to the public;
- 5) Directing traffic and blocking roadways;
- 6) Performing access control; and
- 7) Removing obstructions from roadways, including towing private vehicles without owner permission.<sup>25</sup> In addition, there are other police powers not listed by the Applicant which the governments would have to delegate unlawfully to NHY-ORO if the SPMC were to be successfully implemented;
- 8) Command and control over the emergency response;
- 9) Contemporaneous planning and response to contingencies as they arise during an emergency;
- 10) Authority to direct and control State and local personnel engaged in emergency response;
- 11) Authority to request federal assistance pursuant to the FRERP;
- 12) Authority to communicate the views of the relevant governments to the public and to third parties;
- 13) Control over all offsite field monitoring, sample collection and accident assessment;
- 14) Power to make actual decisions that result in protective action recommendations for the two planning zones and for reentry and recovery;
- 15) Authority to identify areas of danger and determine that they are areas from which the public should be excluded;
- 16) Authority to secure and protect private property during the period of an emergency;
- 17) Authority to coordinate and implement the evacuation of all governmental buildings and facilities;
- 18) Power to exercise control over individuals whose behavior during an emergency puts others at immediate risk of harm or impedes the implementation of protective measures; and

- 19) Power to control and regulate the food, milk and water pathways within 36 hours of an emergency.

To the extent that the Applicant denies that these powers need to be delegated to the NHY-ORO, the Commonwealth contends that absent such powers the NHY-ORO could not successfully implement the SPMC and that no finding that adequate protective measures will be taken can be made. Activities that are likely going to be required for successful implementation of the SPMC during an emergency -- such as controlling individual instances of deviant behavior -- even if not detailed and set forth in the paper plan, must be assumed to be within the power of the NHY-ORO or otherwise in an actual emergency it will be unable to successfully implement its plan.

All of these enumerated powers make clear that what is contemplated, if the SPMC is to be successfully implemented, is a fundamental transfer of the police power of Massachusetts to the NHY-ORO. However, the constitutional, statutory and case law of Massachusetts make clear that not only may private parties not unilaterally exercise such police powers, but these powers are exclusively reserved to the state and its subdivisions and may not be delegated to private parties. Opinion of the Justices, 105 N.E.2d 565, 566 (1952) (citing the Massachusetts Constitution Declaration of Rights, Art. 30, part 2, c. 1, sections 1, 4; Amends. 2, 70); Civil Defense Act, § 4, Special Laws c. 31 (legislature has delegated police powers to Governor to prepare for and respond to radiological emergency). [start footnote 25] This list essentially tracks the 10 Legal Contentions filed by Intervenor in the Shoreham proceeding in 1983. The list also appears in NUREG 0654, Rev. 1, Supp. 1 ("Supp. 1") at II. A.2.a. The SPMC does not state the applicable Massachusetts law that reserved these functions to State and local governments as required by Supp. 1. Id. [end footnote]

3. Without an express authorization of the police powers, the NHY-ORO simply cannot implement the SPMC. Further, if the relevant governments were assumed to implement the SPMC, not by express delegation of authority, but by following the directives of NHY-ORO personnel who advised, directed and guided the emergency response, such emergency response puppetry would constitute a de facto delegation of authority to the NHY-ORO.

B. As a debtor-in-possession, PSNH's activities outside the ordinary course of business require prior approval of the Bankruptcy Court supervising the debtor's estate. 11 U.S.C. § 363(b)(1). No such approval has as yet been obtained or even sought by PSNH and/or NHY. Thus, the statement made at Plan 3.1-1 that "[t]he NHY Offsite Response Director has been

authorized by the President of New Hampshire Yankee to commit the resources of the Company (money, manpower, facilities, and equipment) through the NHY [ORO], to respond in the Commonwealth of Massachusetts to protect the public . . ." begs the question. Such "use" of the property of the estate of the bankrupt can not be effectively authorized without prior Bankruptcy Court approval. See also App. C, letter from Edward A. Brown dated September 9, 1987. That such activities would be outside the ordinary course if established, inter alia, by the fact that PSNH and/or NHY would require prior legal authorization to engage in them.

C. PSNH is a foreign corporation as defined at M.G.L. c. 181, § 1 and the activities contemplated in the SPMC - both at the planning phase and at the implementation phase - constitute doing business in the Commonwealth under M.G.L. c. 181, § 3.<sup>26</sup> As such, PSNH is statutorily required to file a certificate or report of condition with the Secretary of State pursuant to M.G.L. c. 181, § 4 identifying those activities in which it is engaged in the Commonwealth. (It should be noted that foreign corporations are prohibited from all activities also prohibited to domestic corporations under the laws of the Commonwealth. M.G.L. c. 181, § 2) PSNH has not filed such a certificate. As a result of this failure PSNH is subject to fine, is disabled from maintaining any action in the courts of the Commonwealth and may be enjoined and restrained from further activities in the Commonwealth. In short, the present activities of PSNH with regard to emergency planning are not presently authorized by law. [start footnote 26] To the extent New Hampshire Yankee is functioning only as a "managing agent" for the Seabrook Owners then its pledge of its own resources is suspect. Moreover, even as a "managing agent" NHY is "doing business" under c. 181, § 3. Finally, the Seabrook Owners individually are "doing business" in the Commonwealth as a "principal" with a managing agent. Yet, three of these owners are not authorized to do business in the Commonwealth. Together these three own 50% of Seabrook. [end footnote]

[Note: The Massachusetts Attorney General has the burden of proceeding with the evidence in support of this contention.]

#### JI 44B [NECNP 4]

#### Contention

To the extent that Mode 2 of the SPMC contemplates the substitution of Applicants for state and local governments in carrying out an emergency response, it violates the emergency planning rule and Massachusetts state law.

## Basis

The SPMC contemplates that under "Mode 2," Applicants will "assume responsibility on behalf of the State/locals (upon authorization by the State) for implementation of the entire emergency response or integrating specific portions thereof." SPMC at 3.1-2. To the extent that Mode 2 contemplates the substitution of Applicants for state and local governments in carrying out an emergency response, it violates the emergency planning rule and Massachusetts state law. Mode 2 conflicts with the basic premise of the amendments to § 50.47(c)(1), which acknowledges that a utility is without legal authority to exercise the police powers that inhere in state governments. Indeed, as the Commonwealth of Massachusetts points out in its Contention 6, Applicants cannot lawfully be authorized to exercise the state's police powers.

[Note: The burden of proceeding with the evidence on this contention is the Intervenors'.]

## VI. PROTECTIVE ACTIONS FOR PARTICULAR POPULATIONS

### JI 45 [MAG 47; TOWN 7.3]

#### Contention

The SPMC fails to offer reasonable assurance that adequate protective measures can and will be taken in a timely fashion for schools and day care centers. Thus, it fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(b)(14), 50.47(b)(15), 50.47(c)(1); NUREG 0654, Rev. 1, Supp. 1, II.J, II.N and II.O; and NUREG 0654, Rev. 1, Appendix 4.

### JI 46 [MAG 48; SAPL 5; SAPL 7]

#### Contention

The SPMC fails to provide reasonable assurance that adequate protective measures can and will be implemented for all those persons who are patients in the two hospitals within the Massachusetts EPZ and for those who become injured during the emergency, from radiation contamination/exposure. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(b)(12) and NUREG 0654, Rev. 1, Supp. 1, II.J.10.d, 10.e, 10.g; and II.L.

### JI 47 [MAG 49]

#### Contention

There is no reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook Station for institutionalized persons (e.g., patients in medical facilities) who cannot be evacuated. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10) and NUREG 0654, Supp. 1, II.J.9, II.J.10.d, and II.J.10.e.

### JI 48 [MAG 50]

#### Contention

The SPMC is deficient because it has not identified all or even most of the special needs resident population, has not sufficiently assured the security of acquired information about special needs individuals, has not adequately determined the specific assistance needed by identified individuals to cope with a radiological emergency, has not identified other individuals and organizations capable of assisting and the type of assistance required, and has no adequate procedures for assuring that this data is

periodically validated. Thus, the SPMC does not comply with 10 CFR 50.47(a)(1), 50.47(b)(7), 50.47(b)(10), 50.47(c)(1), and NUREG--0654, Rev. 1, Supp. 1, Sections II.G and II.J.

JI 49 [MAG 51; TON 3]

Contention

The SPMC's provisions for assisting the special needs resident population in taking protective actions are grossly deficient and provide no reasonable assurance that adequate protective measures can and will be taken by this population. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(10), 50.47(c)(1) or NUREG 0654, Rev. 1, Supp. 1, Section J, and FEMA Guidance Memorandum 24 (Radiological Emergency Preparedness for Handicapped Persons.)

JI 50 [MAG 54; TON 10; SAPL 11; SAPL 7; TOA 4D(2)]

Contention

The SPMC fails to identify all of the special facilities which exist in the EPZ. Even for those facilities which have been identified, there is not reasonable assurance that protective measures can and will be implemented in a timely and effective manner. Thus, the people in special facilities will not be adequately protected in the event of an emergency, and the SPMC, therefore, fails to comply with 10 CFR § 50.47(a)(1), 50.47(b)(3), 50.47(b)(8), 50.47(b)(10) and NUREG 0654, Supp. 1, II.A.3, II.C.4, II.J.10.d, II.J.10.e and II.J.10.g.



## VII. EVACUATION EQUIPMENT AND FACILITIES

### JI 51 [MAG 55; SAPL 7]

#### Contention

The SPMC proposes that individuals who have been evacuated from special facilities will be relocated to a single "host special facility". This special host facility contains a large auditorium, an arena, and miscellaneous space on two floors. The SPMC's plans for use of this facility do not provide reasonable assurance that it will be available in a timely fashion in the event of an emergency or that, even if available, it will be adequate for use as a special needs congregate care center, or that the care available will be adequate for the number and kind of special needs individuals to be sent there. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(3), 50.47(b)(8), 50.47(b)(10), and NUREG 0654, Supp. 1, II A.3, II C.4, II J.10.d., and II J.10.g.

### JI 52 [MAG 66; MAG 68]

#### Contention

The facilities identified in the SPMC as the Emergency Operations Facility, ("EOF"), the Emergency Operations Center ("EOC") and the Media Center are inadequate for the purposes required. As a result, the SPMC fails to meet the planning standards set forth at 50.47(b)(7), (8); NUREG 0654 II.G., H.2., 3 and 4 and Appendix E, IV, E, 8.

#### Basis

A. The EOF and EOC should not be housed in the same building. No provision is set forth in the SPMC for back-up power in the event of the loss of power to these facilities. Such loss of power would affect both facilities simultaneously.

B. The EOC and the Media Center are not accessible to Massachusetts State or local government officials during an emergency at Seabrook. The EOC is located at Newington, New Hampshire, approximately 15 miles north of Seabrook Station on the New Hampshire-Maine border. Interstate 95 passes within two miles of the station and the other two north-south secondary roads fall within the EPZ 10-mile arc. Personnel from Massachusetts would be placed at maximum risk while trying to transit the EPZ to reach the EOC. Additionally, New Hampshire authorities may be in the process of evacuation and enforce access control which would prevent Massachusetts

local authority representatives from transiting the EPZ to reach the EOC.

JI 53 [MAG 67, SAPL 2]

Contention

The facility identified as a staging area located in Haverhill at 145-185 Water Street is not now available to the ORO for this purpose and no other facility has been identified. The City of Haverhill on February 26, 1988 issued a Cease and Desist Order as to all uses of the premises as a Staging Area based on violations of the City of Haverhill Zoning Code, § 255.13. In April, 1988, the Superior Court of the Commonwealth entered a temporary restraining order prohibiting any further use of these premises for the purpose. In light of the function and role of the Staging Area in the SPMC, the absence of any identified lawful location for such a facility makes the effective implementation of the SPMC impossible and the SPMC fails to meet the standards set forth at 50.47 (b)(3), (8), (10) and NUREG 0654 II J.10.g, k and H.4.

JI 54 [MAG 69]

Contention

The SPMC relies upon the American Red Cross to establish and operate all 27 congregate care centers and the host special facility, yet it does not contain any kind of written agreement with the American Red Cross which identifies the emergency measures to be provided in Massachusetts and the mutually acceptable criteria for their implementation.

Because it is the policy of the American Red Cross to engage in planning for nuclear power plant disasters only in concert with governmental planning efforts, the American Red Cross has undertaken no planning for its response in Massachusetts to a disaster at Seabrook Station. It has therefore not entered into any agreement of any kind with NHY or the Joint Owners to provide any services. In the event of an emergency at Seabrook Station, the American Red Cross response would be at best ad hoc. Such a response does not provide reasonable assurance that any of the congregate care centers or the host special facility will be operated by the American Red Cross or that, if the Red Cross does act to establish mass care centers in Massachusetts, it can be done in a timely fashion. The SPMC therefore fails to comply with 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(8), 50.47(c)(1) and NUREG 0654, Rev. 1, Supp. 1, II.A.3, II.C.5, and II.H.4.



JI 55 [MAG 71; MAG 72; MAG 73; TOA 4A, H;  
SAPL 11; TOA 1B; TON 2A; TOWN 9.1, 3]

Contention

The SPMC fails to provide reasonable assurance that an adequate number of buses, ambulances, wheelchair vans, vans, tow trucks, drivers and road crews can and will respond in a timely fashion. Therefore, the SPMC violates 10 CFR 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(10), 50.47(c)(1) and NUREG 0654, Rev. 1, Supp. 1, II.A.3., II.C.4., II.C.5. and II.J.10.

JI 56 [SAPL 3]

Contention

The SPMC fails to provide reasonable assurance that adequate procedures, personnel, equipment and facilities for radiological monitoring and decontamination of general public evacuees, emergency workers and special facility evacuees (e.g. nursing home residents) have been established. Therefore, the requirements of 10 CFR §50.47(a)(1), §50.47(b)(8), §50.47(b)(10), §50.47(b)(11) and NUREG - 0654, Rev. 1, Supp. 1 II.H.4, II.J.10.d, II.J.12, II, K.5.a and K.5.b. have not been met.

JI 57 [SAPL 4]

Contention

The SPMC fails to provide adequate means for the handling and disposal of contaminated waste water and contaminated materials, contrary to the requirements of 10 CFR §50.47(a)(1), §50.47(b)(9) §50.47(b)(11) and NUREG - 0654 II.I.8. and k.5.b.

JI 58 [TOA 1A]

Contention

The SPMC fails to demonstrate that each principal response organization has staff to respond and to augment its initial response on a continuous basis, fails to provide for an adequate number of available manned emergency vehicles, in violation of 10 CFR § 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(6), 50.45(b)(8), NUREG-0654-FEMA-REP-1, REV. 1 (hereinafter "NUREG-0654") II.A.1.e, II.A.3, II.A.4, II.C.4, and II.F.1.a. Contrary to Applicants' assertions of "formalized agreements" demonstrating a commitment to provide certain emergency response resources, see SPMC Plan, p. 1.1-2, many Letters of Agreement (LOAs) with service providers

are specifically identified only as a "proposed contract," rather than a binding agreement. Additional Letters of Agreement are due to expire, by their express terms, on or before September 1, 1988, or even before completion of litigation on the SPMC before the Licensing Board. There is no reasonable assurance that the Letters of Agreement proffered by New Hampshire Yankee (NHY) represent binding commitments by the purported service providers or that the personnel relied upon in the SPMC will in fact be available in the event of an actual emergency at Seabrook Station.

JI 59 [MAG 64]

Contention

The SPMC fails to meet the planning standards set forth at 50.47(b)(1), (8) and (9) and the guidance of NUREG 0654 II.A.3. because there is no assurance that resources relied on in the SPMC will be adequate at the time of an emergency.

Basis

A. .1 letters of agreement and contracts entered into before January 28, 1988, the date on which PSNH filed for bankruptcy, are prima facie unreliable.

1. These contracts are executory under 11 U.S.C. § 365(a) and the debtor-in-possession, with Court approval, may assume or reject them. Either these contracts run between private suppliers and NHY -- a division of the bankrupt -- or the Seabrook Owners (with NHY functioning as "managing agent"). In the latter case, the 35% Lead Owner is a debtor-in-possession and its obligations under these agreements is individual up to its proportionate ownership share. To date, the Bankruptcy Court has not granted the bankrupt the necessary approval.

JI 60 [TON 2B; TOS 15; TOWN 8.12]

Contention

The SPMC fails to adequately identify the emergency equipment available for use in implementing the plan. The SPMC thus fails to provide a reasonable assurance that adequate equipment is provided and maintained as required by NUREG-0654, Rev. 1, Supp. 1, II.H. The SPMC fails to identify the equipment available for use in discouraging or encouraging direction of traffic flows. The number and location of cones, barricades and other control devices are not adequately set forth in the SPMC. Their availability for timely use is not described. This contention is confined to the towns of Newbury, Salisbury and West Newbury.

## VIII. COORDINATION OF GOVERNMENTAL RESOURCES AND RESPONSE

### JI 61 [NECNP 3]

#### Contention

Applicants have not met the requirements of 10 CFR § 50.47(a)(1) to provide a "reasonable assurance that adequate protective measures can and will be taken in the event of a Radiological emergency" at Seabrook because they have failed to show what emergency response measures will be taken by the Massachusetts state and local governments in the event that Mode 1 of the SPMC is followed. Section 50.47(c)(1)(iii)(B) contains the presumptions that a) "state and local government officials will exercise their best efforts to protect the health and safety of the public", and b) where an applicant's inability to comply with § 50.47(b) results wholly or partially from the nonparticipation of state and local governments, that in the event of an actual Radiological emergency state and local officials would "generally follow" the utility plan. The SPMC establishes two alternative "modes" for the Massachusetts state and local governments to follow. Mode 1, contemplates that Applicants will provide only resources -- i.e. equipment, buses, ambulances, personnel, etc. -- to the state and/or local governments. SPMC at 3.1-2. Aside from broadly describing the emergency response functions of each state agency, however [SPMC, § 2.2], the SPMC does not contain any blueprint for state and local government agencies to follow in undertaking primary responsibility for the emergency response. The plan describes emergency response functions for the New Hampshire Offsite Response Organization ("ORO") rather than state or local governments. The means by which the state and local governments are thus presumed to "follow" the SPMC in Mode 1 consists only of using Applicants' resources in carrying out an ad hoc response. The mere provision of resources to support an unplanned emergency response does not adequately compensate for the state and local governments' lack of preparedness to respond to an accident at Seabrook.

### JI 62 [NECNP 4; TOA 2B; TON 11b]

To the extent that the SPMC contemplates integration of the utility's functions with state and local emergency response functions, it does not compensate adequately for the lack of preparedness of state and local officials to respond to a Radiological emergency at Seabrook.

The SPMC does not provide a mechanism by which the state and local governments can swiftly and efficiently interact with ORO officials to mount a timely and adequate response to

an accident. This results from the cumbersome communication and coordination problems created by the parallel existence of government and ORO emergency response organizations. Each counterpart of the state and local response organization must take the time-consuming steps of communicating and coordinating its efforts with a counterpart in the ORO organization. For each function, the parties must take the time-consuming steps of agreeing on divisions of responsibilities and all of the accompanying logistics, including communication and sharing of equipment and personnel. To the extent that the state and local governments might assume responsibility for an accident response under Mode 2, there are no guidelines in the SPMC that are designed for state and local governments to follow. The Implementing Procedures for the SPMC are addressed to the management of the emergency response by the ORO, not state and local governments. There is simply no plan for the governments to follow.

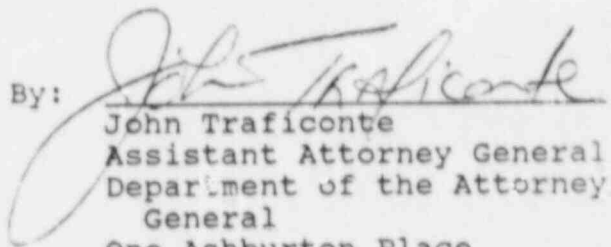
Contention

The SPMC fails to provide adequate arrangements for requesting and effectively using assistance and resources that are purportedly available to the State and local governments. Plan 5.3-1. Adequate emergency facilities and equipment are not provided and maintained by State and local governments for an emergency at Seabrook. Thus the SPMC has not met 50.47(b)(3) and (8) and a reasonable assurance finding under 50.47(a) cannot be made.

Respectfully submitted,


COMMONWEALTH OF MASSACHUSETTS  
AND ALL OTHER INTERVENORS

By:

  
John Traficante  
Assistant Attorney General  
Department of the Attorney  
General  
One Ashburton Place  
Boston, MA 02108


APPLICANTS

By:

  
Thomas G. Dignan, Jr.  
Ropes & Gray  
225 Franklin Street  
Boston, MA 02110

NRC STAFF

By:

  
Elaine I. Chan  
U.S. Nuclear Regulatory  
Commission  
Office of General Counsel  
Washington, DC 20555