

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 MAR -7 P12:41

Before the Nuclear Regulatory Commission

OFFICE OF THE  
DOCKETING & RECORDS  
BRANCH

\_\_\_\_\_  
In the Matter of )  
 )  
PUBLIC SERVICE COMPANY )  
OF NEW HAMPSHIRE )  
(Seabrook Station, Units I and II )  
\_\_\_\_\_ )

Docket Nos. 50-443-OL  
50-444-OL

THE STATE OF NEW HAMPSHIRE'S RESPONSE TO CONTENTIONS FILED  
BY NECNP, THE COMMONWEALTH OF MASSACHUSETTS, THE TOWNS OF  
RYE, HAMPTON, SOUTH HAMPTON, KENSINGTON, AND HAMPTON FALLS  
ON THE NEW HAMPSHIRE RADIOLOGICAL EMERGENCY RESPONSE PLAN

Introduction

The State of New Hampshire responds below to certain of the contentions on the New Hampshire Radiological Emergency Response Plan (hereinafter referred to as the NHRERP or State Plan)<sup>1</sup>. The State's response herein pertains primarily to the issues raised by the parties relating to the planning process itself, as opposed to the adequacy of the plan. As to the numerous other issues raised in the contentions filed by the eight parties on February 24, 1986, the State of New Hampshire disputes in many instances erroneous factual allegations and assertions contained in these contentions. At appropriate stages in the litigation of these contentions, the State will detail its further responses.

<sup>1</sup>The New Hampshire Radiological Emergency Response Plan consists of some thirty-eight volumes, nineteen of which include specifically the emergency plans for the localities in the Seabrook EPZ. These volumes are intended as one comprehensive State Plan and must be viewed as such in reviewing the adequacy of State and local radiological emergency planning.

Several of the contentions filed on February 24, 1986 relate to portions of the NHRERP, which had not yet been made available to the parties. See, for instance, NECNP Contention RERP-9, SAPL Contention 14, SAPL Contention 15, SAPL Contention 13. This will advise the Board and parties that the following material has been submitted to FEMA by the State, and has been or will soon be served on the Board and parties:

- New Hampshire Compensatory Plan;
- Additional Letters of Agency to be included in Volume 5 of the NHRERP;
- Volume 6 of the RERP (pertaining to Evacuation Time Estimates);
- Draft public information material.

Town of Hampton Contentions I and II

In these two contentions, the Town of Hampton contends in essence that the planning process failed to comply with state and federal law. In response to these contentions, the State first flatly rejects the suggestion that the State has ignored concerns raised by the Town of Hampton and has failed to cooperate with the Town in developing the NHRERP, including the Town of Hampton local plan.

Moreover, issues relating to the adequacy of the planning process are irrelevant to the issue before this Board as to whether the plan itself satisfies federal requirements. The Town's assertion in Contention I that the planning process was violative in some fashion of FEMA regulations and the Town's allegation in Contention II that the planning process was inconsistent with state law are not litigable issues in this proceeding.

NECNP Contentions RERP-1 and NHLP-1

NECNP asserts in these two related contentions that the NHRERP is inadequate because some municipalities have not approved or adopted the plans, and have refused to participate in testing of the plans. As noted above with regard to the Town of Hampton Contentions I and II, such allegations do not raise issues regarding the adequacy of the plans themselves, but relate only to the way in which the plans were developed. Consequently, these two contentions, in and of themselves, do not raise litigable issues in this proceeding.

In response to NECNP's suggestion that local governments must approve the NHRERP, including their own local plans, the State invites the Board's attention to the case of Vernet, et al. v. Town of Exeter, Rockingham County Superior Court, No. 86-E-06 (February 14, 1986). A copy of the Court's decision in that case is attached hereto as Appendix A. As the Board will note in reviewing that decision, the Court squarely held in that case that there is no state requirement for Town approval of the radiological emergency response plans.

NECNP Contention RERP-8

NECNP in this contention alleges generally that sheltering is not an "adequate protective measure" for Seabrook, and that the NHRERP does not provide "adequate criteria" for the choice of protective measures.

As NECNP correctly points out, however, sheltering is only one of the protective actions available in the event of a radiological emergency at Seabrook Station. It is the adequacy of all protective

measures taken together which is the relevant inquiry of this Board in reviewing the NHRERP. Consequently, NECNP's assertion that sheltering is insufficient does not set forth a litigable issue.

NECNP Contention NHLP-2(e)

In subpart (e) to its contention NHLP-2, NECNP asserts that "each emergency response for organization should be surveyed to determine whether they intend to stay in the EPZ to implement the plan during an emergency". This contention does not state a deficiency in the NHRERP or any of its local plans. Moreover, there is no requirement for each emergency response organization to conduct such a survey. As stated, therefore, this contention does not raise a litigable issue.

NECNP Contention NHLP-3(a)

NECNP concludes in this contention that a dedicated telephone line from Public Service Company to each Town's emergency response organization is required. Insofar as there is no regulatory requirement for such a dedicated telephone line, this contention raises no litigable issue.

NECNP Contention NHLP-3(b)

In this contention NECNP asserts that "[n]otification of any plant malfunction should be mechanically communicated to an offsite entity." Insofar as there is no regulatory requirement for such a mechanical notification system, there is no regulatory basis for this contention.

Contention of Attorney General Francis X. Bellotti Relative to Emergency Planning for the New Hampshire Beach Communities

Attorney General Bellotti has refiled his contentions relative to the Emergency Planning for the New Hampshire Beach Communities, which he initially filed on September 9, 1983. The contention raises generally the issue of the adequacy of sheltering and evacuation as protective actions for the beach area transient population in the Towns of Seabrook, Hampton, North Hampton and Rye. To the extent that Attorney General Bellotti asserts in his contention that the protective actions of evacuation and sheltering must ensure complete protection to the transient beach population under all circumstances, then it sets forth no regulatory basis.

Hampton Falls Contention 1

With regard to Hampton Falls' assertion in its Contention 1 that Town approval is necessary for implementation of the NHRERP, including the Hampton Falls local plan, please refer to the State's response to NECNP Contentions RERP-1 and NHLP-1 above.

Town of Rye Contention 3

To the extent that the Town of Rye asks the Licensing Board in this contention to declare that the local plan for the Town of Rye is void and of no effect, the Town raises no issue which is litigable in this proceeding. As to the Town's assertions relating to the process by which the NHRERP was developed, please refer to the State's response to NECNP Contentions RERP-1 and NHLP-1 and Town of Hampton's Contentions I and II.

Town of Kensington Contention 11

In this contention, the Town of Kensington asserts that its local plan should provide for communications with federal emergency response organizations. Neither of the citations prompted by the Town, however, (10 CFR §50.47, Appendix E, (E)(9)(b) and NUREG 0654 §II, F.l.c. requires such a communications link between the Town and federal emergency response organizations. Consequently, there is no regulatory basis for this contention.

Town of South Hampton Contentions 1 and 3

The Town of South Hampton in these two contentions asserts that the NHRERP is inadequate because it lacks generally letters of agreement with local emergency response agencies and volunteer emergency workers. Insofar as the Town claims that letters of agreement are necessary for individual emergency workers, the contention fails to set forth a regulatory basis.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

STEPHEN E. MERRILL  
ATTORNEY GENERAL

Dated: March 6, 1986

By



George Dana Bisbee  
Assistant Attorney General  
Environmental Protection Bureau  
Office of the Attorney General  
25 Capitol Street  
Concord, NH 03301-6397  
Telephone (603) 271-3678

The State of New Hampshire

ROCKINGHAM, SS.

SUPERIOR COURT

\* \* \* \* \*  
 \*  
 PENNY VERNET, ET AL \*  
 \*  
 v. \*  
 \*  
 TOWN OF EXETER, NEW HAMPSHIRE \*  
 \*  
 \* \* \* \* \*

86-E-06

DECISION

There are two issues presented by this petition.

First, whether the citizens of a town, by vote of the town meeting, may prohibit town officials or agencies from implementing a nuclear emergency response plan prepared by or for the community under the direction of the State Civil Defense Agency. They may not.

Second, whether the citizens may require the selectmen to present any such plan to the town meeting for approval by majority vote. They may.

Under New Hampshire law the Governor is authorized and empowered to prepare a comprehensive plan and program for the civil defense of the state. He is also authorized and empowered to coordinate the preparation of plans and programs for civil defense by the political subdivisions of the state. This authority includes responsibility for studying, planning and implementing a nuclear

emergency response plan which provides adequate protective measures in the event of an emergency at Seabrook. RSA 107, RSA 107-B.

In accordance with the law, the Governor has delegated civil defense authority to the State Civil Defense Agency and its director. RSA 107:3. In the exercise of his responsibilities, the director is required to seek and has sought the cooperation and participation of local units of government. There is no state or federal requirement, however, that the selectmen or the citizens of towns approve nuclear emergency response plans.

Local refusal to cooperate or to approve plans cannot prevent the civil defense director from carrying out his duty to initiate and implement a nuclear emergency response plan. A reasonable interpretation of the relevant statutes and decisions does not support the conclusion that the legislature intended to permit a local unit of government either by vote of the selectmen or vote of the town meeting to defeat the clear purpose of the legislation. Parker-Young Co. v. State, 83 N.H. 551, 557 (1929). The powers conferred by RSA 41:8, RSA 107, RSA 107-B clearly establish a statutory scheme for nuclear emergency response planning which cannot be overridden by a town.

While it is true that in New Hampshire town meetings the voters are sovereigns and their will when duly expressed is supreme, the power of the town meeting is not limitless. Attorney General v. Fulson, 69 N.H. 556, 557 (1899). The town meeting, then, is



without authority to control the selectmen in the exercise of those powers which are specifically conferred on them by the legislature. Moulton v. Beals, 98 N.H. 461, 463 (1954). Town meeting is also without authority to enact any provision which conflicts with state statute. Piper v. Meredith, 110 N.H. 291 (1970).

Authority for civil defense in the towns is conferred by statute upon the selectmen, rendering them "state officers" and not agents or servants of the town in matters of civil defense. As officers of the state they must carry out the state civil defense director's plans. (See Moulton v. Beals, supra.) As agents of the town they must also represent the town in the planning process to the extent that participation does not interfere with their duties as state officers.

Approving radiological emergency plans does not constitute "ordinary business of the town." Rich v. Errol, 51 N.H. 350, 354 (1871). Approval of such plans, therefore, is not within the scope of selectmen authority to "manage the prudential affairs of the town." RSA 41:8; Moulton v. Beals, supra. Nor does state or federal law give authority to selectmen to approve these plans.

Even without a requirement for town approval of the plan, the Nuclear Regulatory Commission and the State Civil Defense Agency do solicit and consider local comment and response to the plans. (Defendant's Exhibit C, letter, New Hampshire Civil Defense Agency to Exeter Town Manager.)

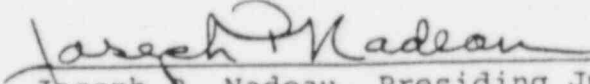
While citizens of a town cannot interfere with the state director's activities, and cannot prohibit selectmen from implementing the director's orders, that restraint does not foreclose them from considering plans at a town meeting. It is not inconsistent with selectmen duties as state officers that they be required to present such plans at town meeting when directed to do so by the voters. Or that they do so on their own initiative.

New Hampshire has an historic tradition of town meeting. From the resolution of local problems to the discussion of national issues, town meeting has served for hundreds of years as an open forum for citizen debate. There may not be in this century an issue for the citizens of Exeter with more impact upon their peace, welfare and interest than the emergency nuclear response plan.

To the extent the state and federal governments place importance on an expression of approval or disapproval of the plan by the town, the citizens of the town may validly seek to provide that expression by vote at the town meeting.

"The Exeter plan is, in fact, going to be the Exeter plan. We are not going to impose anything on Exeter."  
(State Civil Defense Director to the citizens of Exeter, February 15, 1984.)

So ordered.

  
\_\_\_\_\_  
Joseph P. Nadeau, Presiding Justice

Dated: 2-14-86

CERTIFICATE OF SERVICE

I, George Dana Bisbee, one of the attorneys for the Applicant herein, hereby certify that on the 5th day of March, 1986, I made service of the within document by mailing copies thereof, postage prepaid, to:

DOCKETED  
NRC

82 MAR -7 P12:41

Administrative Judge Helen Hoyt  
Chairperson  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

Administrative Judge Sheila Wolfe, Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

OFFICE OF LEGAL  
COUNSEL & SERVICE  
BRANCH

Dr. Emmeth A. Luebke  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

Dr. Jerry Harbour  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555

Philip Ahrens, Esquire  
Assistant Attorney General  
Department of the Attorney General  
State House Station 6  
Augusta, ME 04333

Thomas J. Dignan, Jr., Esquire  
R. K. Gad, III, Esquire  
Ropes & Gray  
225 Franklin Street  
Boston, MA 02110

Jo Ann Shotwell, Esquire  
Assistant Attorney General  
Department of the Attorney General  
One Ashburton Place, 19th Floor  
Boston, MA 02108

Sherwin E. Turk, Esquire  
Deputy Assistant Chief  
Hearing Counsel  
Office of the Executive Counsel  
Director  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Ms. Diana P. Randall  
70 Collins Street  
Seabrook, NH 03874

Robert A. Backus, Esquire  
Backus, Meyer & Solomon  
116 Lowell Street  
P. O. Box 516  
Manchester, NH 03105

Diane Curran, Esquire  
Harmon & Weiss  
20001 S Street, N.W.  
Suite 430  
Washington, DC 20009

Anne Verge, Chairperson  
Board of Selectmen  
Town Hall  
South Hampton, NH 03827

Paul McEachern, Esquire  
Matthew T. Brock, Esquire  
Shaines & McEachern  
25 Maplewood Avenue  
P. O. Box 360  
Portsmouth, NH 03801

Ms. Roberta C. Pevear  
The Town of Hampton Falls  
Drinkwater Road  
Hampton Falls, NH 03844

Mrs. Sandra Gavutis  
The Town of Kensington  
RFD 1  
East Kingston, NH 03827

Senator Gordon J. Humphrey  
U.S. Senate  
Washington, DC 20510  
(Attn: Tom Burack)

Senator Gordon J. Humphrey  
1 Pillsbury Street  
Concord, NH 03301  
(Attn: Herb Boynton)

Mr. Thomas Powers  
Town Manager  
Town of Exeter  
10 Front Street  
Exeter, NH 03833

H. Joseph Flynn  
Assistant General Counsel  
Office of General Counsel  
Federal Emergency Management  
Agency  
500 C Street, S.W.  
Washington, DC 20472

Mr. Patrick McKeon  
Selectmen's Office  
10 Central Road  
Rye, NH 03870

Mr. Calvin A. Canney  
City Manager  
City Hall  
125 Daniel Street  
Portsmouth, NH 03801

Mr. Angie Machiros  
Chairman of the  
Board of Selectmen  
Town of Newbury  
Newbury, MA 01950

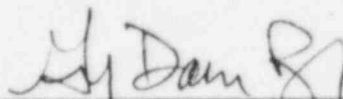
Mr. Richard E. Sullivan  
Mayor  
City Hall  
Newburyport, MA 01950

Town Manager's Office  
Town Hall  
Friend Street  
Amesbury, MA 01913

Brentwood Board of Selectmen  
RFD Dalton Road  
Brentwood, NH 03833

Gary W. Holmes, Esquire  
Holmes & Ells  
47 Winnacunnet Road  
Hampton, NH 03841

Richard A. Hampe, Esquire  
Hampe & McNicholas  
35 Pleasant Street  
Concord, NH 03301

  
George Dana Bisbee