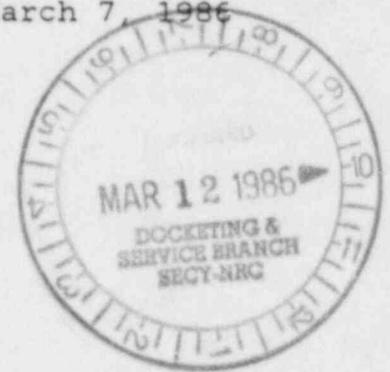


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Dated: March 7, 1986

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.)
)
(Seabrook Station, Units 1 and 2)
)
)

Docket Nos. 50-443-OL
50-444-OL
Off-site Emergency
Planning Issues

APPLICANTS' ANSWER TO MOTION OF
THE TOWN OF HAMPTON FOR FILING
CONTENTIONS ON EVACUATION TIME STUDY

Introduction

Under date of February 19, 1986, the Town of Hampton (Hampton), has filed a "Motion to Extend Deadline for Filing Contentions on Evacuation Time Study" ("Hampton Motion"). The Hampton Motion recites that there is currently under preparation "an updated and amended Evacuation Time Study", Hampton Motion #3, in connection with the New Hampshire Radiological Emergency Response Plan (NHRERP). The motion recites that the updated study has not yet been provided to Hampton and requests that the Board now issue an order giving Hampton 30 days from the date upon which it receives

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the update study to propound contentions in connection therewith. For the reasons set forth below the motion should be denied.

Background

In connection with the August, 1983, hearings the applicants submitted Evacuation Time Estimates (ETE's) which were fully litigated in those hearing sessions. A decision as to whether these ETE's are reasonable is sub judice the "on site" Licensing Board in this proceeding.

ARGUMENT

The motion should be denied for two separate and distinct reasons.

A. THERE IS NO RIGHT TO LITIGATE
STATE SPONSORED ETE's IN NRC
OPERATING LICENSE PROCEEDINGS

NRC regulations require preparation of ETEs only by Applicants for operating licenses. "The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distance within the plume exposure pathway EPZ for transient and permanent populations." 10 C.F.R. Part 50, App. E, § IV (introductory paragraph). ETEs are not mentioned in 10 C.F.R. § 50.47. As noted above, such ETEs were prepared in connection with the Applicants' radiological emergency response plans and determined by this Board to be an on-site

emergency planning issue, and the Applicants' ETEs were litigated in the August, 1983, hearings. While New Hampshire may determine to employ its own ETEs, this Board is limited to litigation of matters required by the Commission's regulations; in any respect in which the state determines to go beyond the requirements of the Commission's regulations the plans present no litigable issue. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 829-33 (1984).

The requirement that Applicants prepare and submit ETEs is mirrored in the Staff/FEMA guidance document, NUREG-0654, Rev. 1, Criterion J-8. While the apparent assumption was the state and local plans would employ the Applicant's ETEs (or such portion of them that was relevant) in the plans for state and local action, see id., Criterion J-10(1) (see also the letter of Paul J. Cahill, then Director of the Massachusetts Civil Defense Agency, incorporated into the Applicants' ETEs, introduced into evidence in these proceedings as Ex. 2, following Tr. 1016 (8/17/83): "MCDA will incorporate the results [of these ETEs] in the Massachusetts radiological emergency response plan, after Federal officials have had an opportunity to review them. The results will be made available to local emergency response officials."), there is nothing that constrains New Hampshire to use one set of ETEs over another. Any contention that ETEs must be litigated twice must of

necessity rely on NUREG-0654 as supplying such a requirement. NUREG-0654 does not on its face purport to state what is litigable and what is not. This is not surprising because it is well-established that NUREG-0654, which has never been promulgated as regulation, imposes no regulatory requirements. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1298-99 (1982) rev'd in part other grounds, CLI-83-22, 18 NRC 299 (1983); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 710, affirming LBP-85-14, 21 NRC 1219, 1228 (1985). Even more plainly, NUREG-0654 must yield to the duly promulgated regulation where the regulation expressly addresses a topic. Thus, prescindng entirely from whether the various ETES differ, the only set that is fair game for litigation in these proceedings is the set that has already been litigated.

B. EVEN ASSUMING A RIGHT TO LITIGATE
THE UPDATED STATE STUDIES, THERE IS
NO RIGHT TO A FIXED 30-DAY PERIOD TO
FORMULATE CONTENTIONS

Under NRC practice the original deadline for filing contentions derives from the notice of hearing. Thereafter, any contentions which are filed must meet the so-called late filing criteria. 10 CFR §§ 2.714(a)(1), 2.714(d); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). In this proceeding this

Board, without objection from any party, adopted a practice whereby the obligation and right to file contentions would be triggered by the filing with FEMA and distribution of the State and local emergency plans. Adoption of this practice is not equivalent to the conferring of an unfettered right to file further contentions any time additions or corrections are made to the plans. Rather the rule should, and must, be that if a party deems that a subsequently filed document provides a basis for a late-filed contention with respect to New Hampshire emergency planning, that party must make a filing pursuant to the NRC late filing rules. A new clock should not be started every time a change or addition is made to evolving emergency plans.

CONCLUSION

The motion should be denied.

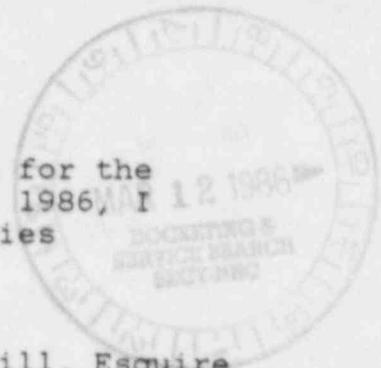
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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on March 7, 1986, I made service of the within document by mailing copies thereof, postage prepaid, to:



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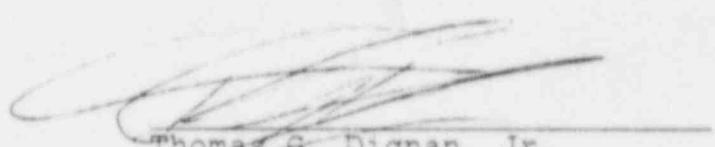
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