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

Before Administrative Judges:
Helen F. Hoyt, Chairperson
Emmeth A. Luebke
Jerry Harbour



In the Matter of)	Docket Nos. 50-443-0L
)	50-444-0L
PUBLIC SERVICE COMPANY)	(ASLBP No. 82-471-02-0L)
OF NEW HAMPSHIRE, <u>et al.</u>)	(Offsite Emergency Planning)
(Seabrook Station, Units 1 and 2))	May 21, 1986

MEMORANDUM AND ORDER
(Ruling on Late-filed Contentions of
Seacoast Anti-Pollution League)

1. On April 8, 1986 Seacoast Anti-Pollution League's Third Supplemental Petition for Leave to Intervene was filed in which this intervenor submitted Contentions 8A, Redrafted SAPL Contentions Nos. 15 and 23, SAPL Contentions No. 26, No. 27, No. 28, No. 29 and No. 30. SAPL maintains that No. 8A has been filed because "substantially different manpower arrangements are contemplated for the New Hampshire Compensatory Plan." SAPL's Petition at 2.

2. Applicants' Response to Seacoast Anti-Pollution League's Third Supplemental Petition for Leave to Intervene was filed April 18, 1986. Applicants responded to each of the contentions and raised the fact that no showing of any kind had been made by SAPL in conformity with the factors in 10 CFR § 2.714(a)(1) "requiring that an intervenor must satisfy late intervention standards."

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3. NRC Staff Response to SAPL's Third Supplemental Petition for Leave to Intervene was filed on April 28, 1986 and responded to the contentions and also raised the late-filed criteria of § 2.714(a)(1) requirement which SAPL had not met. The Staff also cited Commonwealth Edison Co. (Braidwood Station, Units 1 and 2), CLI-86-08, 23 NRC ____ (Slip op. at 11-12) issued by the Commission only four days before on April 24, 1986.

4. By our Order of May 2, 1986, the Board directed "SAPL discussion of the late-filed criteria only" to be submitted by May 9, 1986. Since this discussion had not been included in the original pleading of April 8, 1986, Applicants and Staff were permitted responses by May 16, 1986.

5. SAPL's Response to Board Order of May 2 and Motion for Leave to Respond to Applicants' and Staff's Responses to SAPL's Third Supplemental Petition for Leave to Intervene was received by the Board May 9, 1986. Applicants' Response Pursuant to Board Order of May 2, 1986 to SAPL's Discussion of the Late-filed Criteria and NRC Staff's Response to "SAPL's Response to Board Order of May 2 and Motion for Leave to Respond to Applicants and Staff's Responses to SAPL's Third Supplemental Petition for Leave to Intervene" were received by the Board on May 16, 1986. Both Applicants and Staff responded to late-filing criteria. Staff also responded to SAPL's request that it be permitted to respond to Staff's and Applicants' responses to its supplemental contentions. On the latter issue, NRC Staff had no objection to SAPL's request but submitted that the admissibility of SAPL's supplemental

contentions should be evaluated based upon the form and language of those contentions as they were originally filed by SAPL on April 8, 1986 and that SAPL's instant attempt to revise certain of its contentions should be rejected.

6. The Board agrees in part with the NRC Staff's position. Accordingly, only so much of SAPL's Response (dated May 8, 1986) to our Order of May 2 as is contained on pages 1-3 dealing with its discussion of the standards for late-filed contention in 10 CFR § 2.714(a)(1) will be considered by this Board. We specifically reject all of SAPL's May 8 response as is contained on pages 4-12 and have not considered that part of the response in ruling on SAPL's late-filed contentions. We deny SAPL's request for leave to answer the responses and objections to SAPL's Third Supplemental Petition for Leave to Intervene filed by the Applicants on April 18, 1986 and by the Staff on April 28, 1986. We find that each party has stated its position clearly and to provide for another round of replies would not enhance SAPL's position and could be prejudicial to Applicants and Staff.

The Five Factors in 10 CFR § 2.714(a)(1)

10 CFR § 2.714(a)(1) provides that, with respect to untimely filings, the following five factors should be balanced:

- (1) good cause, if any, for failure to file on time;
- (2) the availability of other means whereby the petitioner's interest will be protected;
- (3) the extent to which the petitioner's participation may be reasonably expected to assist in developing a sound record;

- (4) the extent to which the petitioner's interest will be represented by existing parties;
- (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The Commission discussed these five factors most recently in its Braidwood decision, supra. With respect to the first factor enumerated above, "good cause", the Commission noted as follows (slip op. at 2):

It is well established in our case law that this first factor is a crucial element in the analysis of whether a late-filed contention should be admitted. If the proponent of a contention fails to satisfy this element of the test, it must make a "compelling" showing with respect to the other four factors. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 66 (1983); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725 (1982).

The Board finds that the first of the five factors clearly weighs in favor of SAPL. Applicants concede that there was a lack of documents for all of the newly proffered contentions except Nos. 29-30. The NRC Staff finds that this intervenor has been diligent in filing its supplemental contentions after the additional emergency planning materials were made available. Indeed, the Staff is correct in believing that our January 1986 order requiring that contentions would be filed in February 1986 was not intended to apply to the emergency planning materials which had not yet been made available to the Board and parties. (See fn. 6, page 3, NRC Staff Response, May 15, 1986.)

The second and fourth factors are conceded by Applicants and Staff as weighing in favor of SAPL. The Board agrees. SAPL's interests do on occasion coincide with those of other parties but SAPL, in this instant,

has no other means available to protect its interests apart from its participation in this proceeding. SAPL is certainly capable of representing these interests and there is no reason why SAPL need rely on other intervening parties or that other parties can and will represent SAPL's interests.

The third factor does not weigh in SAPL's favor. This intervenor has not demonstrated that it has special expertise on the subjects it seeks to raise. Mississippi Power & Light Co., (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). SAPL does not identify the "local officials" nor make any attempt to establish their qualification(s) to address the issue SAPL wants to raise. The "expects" and "hopes" of SAPL are not appropriate substitutes for sound evidentiary contributions clearly identified. The third factor weighs against the admission of SAPL's supplemental contentions.

The fifth factor of whether admission will broaden and delay the proceeding must be answered in the affirmative as to broadening the proceeding. But as the Staff points out, "any delay which may be caused by the admission of any of these contentions most appropriately should be attributed to the Applicants and State's failure to provide the subject emergency planning materials to this Board and parties at an earlier date." We view this factor as favoring SAPL.

In summary, a balancing of the five factors specified in 10 CFR § 2.714(a)(1) supports admission of those SAPL supplemental contentions as specified below.

SAPL's ContentionsSAPL Contention 8A

The New Hampshire Compensatory Plan fails to meet the requirements that there be adequate manpower and 24 hour per day emergency response, including 24 hour per day manning of communications links, as required by 10 CFR § 50.47(a)(1), § 50.47(b)(1), NUREG-0654 II.A.1.e., II.A.4., and II.F.1.a.

Neither Applicants nor Staff oppose this contention although Applicants state that the contention should be limited to the basis stated. We agree. However, we believe that letters of agreement from individual bus drivers employed by the bus companies are not required, only that there be a demonstration that the companies supplying the buses have sufficient drivers to operate the needed buses. SAPL Contention 8A is admitted.

Redrafted Contention 15

The letters of agreement that have been submitted by the N.H. Civil Defense Agency in Volume 5 of the State plan fail to meet the requirements of 10 CFR § 50.47(a)(1), § 50.47(b)(1), § 50.47(b)(3), § 50.47(b)(12), Appendix E. II.B. and NUREG-0654 II.A.3., II.C.4., and II.P.4. because they do not demonstrate that adequate arrangements for requesting and effectively using assistance resources have been made, that the emergency responsibilities of the various supporting organizations have been specifically established, that each principal organization has staff to respond or to augment its initial response on a continuous basis, or that agreements are being reviewed and certified to be current on an annual basis as is required.

SAPL lists five bases for this contention:

- (a) Some of the letters of agreement are not signed.
- (b) No letters of agreement with 17 New Hampshire local communities and with the host communities.

(c) New Hampshire State Police Compact is not current (dated 6/69).

(d) No letters of agreement with School Administrative Units, school teachers, owners of towing companies, day care centers, nursing homes, Rockingham County Dispatch and bus drivers.

(e) SAPL cannot locate in Volume 5 agreements with FAA Concord Flight Service or NE Telephone.

(f) Letters of agreement with hospitals not listed in New Hampshire State Plan are included and SAPL believes they are extraneous.

(g) "Many" letters of agreement are "too non-specific."

(h) Letters of agreement with bus companies provide no assurance that bus drivers will be available to drive buses into the EPZ.

(i) Letters of agreement with ambulance companies do not provide the number of ambulances with drivers that will be supplied. SAPL complains "most if not all ambulance companies are a minimum of one hour's drive from the EPZ.

Applicants urge rejection of all bases.

Staff does not oppose admission of bases (a), (c), (d)--limited to towing companies and the Rockingham County Dispatch, (e) and (i). Staff opposes the rest.

The Board agrees that bases (a), (c), (d)--as limited to towing companies and the Rockingham County Dispatch, (e) and (i) should be admitted. We reject basis (b) because SAPL has not specified which additional organizations it believes should be covered by letters of agreement. In basis (d) it is apparent that SAPL labors under the belief that letters of agreement are required with local communities or

host communities. In addition, SAPL has not identified which organizations, if any, should be required to execute agreements. Basis (d), except for those already admitted parts, fails because there is no provision requiring such agreements with the named groups who are recipients of services. Letters of agreement are required of providers of specific services. The other organizations or individuals are not identified. Basis (f) has been rejected before¹ and is again on the same ground that it contravenes the Commission's Policy Statement "Emergency Planning," 50 Fed. Reg. 20892 (May 21, 1985). Basis (g) lacks specificity and is overbroad. SAPL has not shared with us why it believes "film badges" will not be timely provided. Basis (h) we find redundant and is rejected.

SAPL Contention 23

The New Hampshire State and local RERP's and the New Hampshire Compensatory Plan do not meet the requirements of 10 CFR § 50.47(a)(1), § 50.47(b)(7) and NUREG-0654 II.G.1 and its subsections because the samples of draft materials that have been prepared fail to disseminate adequate educational information on radiation hazards from nuclear plants and an adequate description of the protective measures that should be taken, and, in the case of the New Hampshire Compensatory Plan, appropriate contacts for additional information.

Asserted bases for this contention are included in six separate paragraphs. They allege (a) that the public should be informed of the

¹ NECNP Contention RERP-11. The Board finds that filing contentions on bases previously rejected is a waste of parties resources and is
(Footnote Continued)

distinction between ionizing and non-ionizing radiation; (b) that information on phenomena of overpressure, hydrogen burn, direct heating, and steam explosions that can challenge integrity of the containment, and on containment bypass accidents should be included in the public information materials; (c) that failure to mention dangerous incidents at Browns Ferry, Ginna and Davis-Besse renders the statement provided in the public information materials, "Across the country, nuclear power plants have been operated safely," a gratuitous public relations statement; (d) that the materials do not instruct the reader to take shelter in the basement or in interior rooms away from windows;² (e) that the materials will not suffice for the New Hampshire Compensatory Plan because people are instructed to call the local emergency operations center (EOC), but if the communities are not participating, the local EOCs will not be activated; and (f) prearranged bus routes are not set out in the public information materials for the use of non-auto owning individuals under the New Hampshire Compensatory Plan.

The Applicants oppose admission of this contention, but fail to provide adequate grounds for their objection. The Staff does not oppose admission, but notes that it does not necessarily agree with SAPL's

(Footnote Continued)

frivolous conduct not worthy of the efforts required to respond by serious parties and this Board.

² SAPL objects to an illustration of a woman and child standing near a window, but fails to indicate that the woman is closing the window as instructions advise her to do.

views as to the adequacy of the Applicants' informational material (Staff Response, at 5).

The Board cannot find in SAPL's proffered bases any assertion rising to the level of a deficiency in compliance with the agency's regulations or NUREG-0654 II.G.1. The first two bases (a and b, above) give SAPL's views that complex discussions of health physics and accident analyses should be included in the public information materials. The plain wording of 10 CFR § 50.47(b)(7) and NUREG-0654 II.G.1 clearly do not require such discussions, and in the Board's view would be inappropriate to the "notice" intent of this rule. The third allegation is simply a characterization of a statement as gratuitous, and the fourth, while offering a good suggestion, provides nothing litigable. The fifth basis (e) presumes that correct telephone numbers for persons to call for special help cannot be provided for residents of non-participating communities, or that somehow the local EOC telephone numbers are required to be included in the New Hampshire Compensatory Plan. Again no litigable assertion can be discerned. The sixth basis, also vaguely related to the Compensatory Plan, alleges that there must be some mechanism by which certain bus routes can be disseminated to the public, but we cannot discern which routes are referred to by SAPL. There is no information to indicate that the routes will be different according to whether the community is participating in the emergency planning, or not. Nor does SAPL so allege.

SAPL Contention 23 is rejected as being only a statement of what SAPL believes policy ought to be, and overly vague and not providing the requisite specificity of basis.

SAPL Contention 26

The New Hampshire Compensatory Plan, "Appendix L", fails to meet the requirements of 10 CFR § 50.47(a)(1) and § 50.47(6)(1) [sic], and NUREG-0654 II.A.1 and its subsections a, b, c, and e and NUREG-F.1.a. and F.1.e. in that it fails to set out with sufficient clarity, which State and local organizations are to be part of the overall response effort, the concept of operations for each organization and suborganization and the relationship of each organization to the overall response effort. Interrelationships are not illustrated in block diagrams and an overall 24 hour per day response, including manning of communications links, is not demonstrated.

SAPL wants information in other parts of the plan repeated in those volumes dealing with the New Hampshire Compensatory Plan.

Applicants oppose; so does Staff.

We reject SAPL 26 on same grounds as suggested by Staff--it lacks basis, is speculative and fails to set forth an appropriate issue for litigation. We also comment that the basis of this contention reveals a refusal on the part of the framers to try to understand serious documents and to cast doubts on the documents by describing them as "overly nebulous." We remind SAPL, and other intervenors, that the State of New Hampshire officials have repeatedly indicated a willingness to educate the public where there are questions concerning state documents. SAPL Contention 26 is rejected.

SAPL Contention 27

The New Hampshire Compensatory Plan fails to meet the requirements of 10 CFR § 50.47(a)(1), § 50.47(b)(10) and NUREG-0654 J.10.d. because the plan to run buses around preassigned routes will not provide an adequate means for protecting many of those persons whose mobility is impaired due to lack of automobiles and/or lack of physical health.

SAPL alleges that persons without automobiles in a municipality may not be able to get to local staging points activated by Rockingham County Sheriff's deputies.

Applicants and Staff oppose.

The Board agrees that SAPL has not provided any basis for its belief that persons may not be able to get to staging areas. Indeed, if persons fall in the category of physically handicapped or special needs population provisions for their transport from the EPZ, such transport is provided elsewhere in the plan. SAPL 27 is rejected.

SAPL Contention 28

The New Hampshire Compensatory Plans fails to meet the requirements of 10 CFR § 50.47(a)(1), § 50.47(b)(3), § 50.47(a)(10) [sic] and NUREG-0654 II.J.10.a. because it does not contain maps of local staging areas or bus routes for 12 of the 17 EPZ communities, the lack of which could seriously impair or extinguish the capability to implement an evacuation of those communities under the Compensatory Plan's provisions. Further, a number of maps that are provided are unclear and/or inaccurate and would be difficult for drivers unfamiliar with the area to use effectively.

SAPL recites a series of errors or omissions in the New Hampshire Compensatory Plans in that certain maps are not provided for those 12 of 17 communities who we find do not require the New Hampshire Compensatory Plan to provide services because they have their own plans. SAPL also complains that names on roads for Rye are illegible and the schools of

Head Start, Peek-a-Boo Nursery and the Montessori Early Learning Center, all in Hampton, are inadequate for an unspecified reason.

Applicants oppose; Staff does not.

The Board rejects SAPL Contention 28. There is no requirement that maps of the 12 cooperating towns need be included in a compensatory plan which is for those five communities in the EPZ not cooperating in emergency planning. Only maps of staging areas for these uncooperating towns need to be provided and in fact are contained in the Compensatory Plans. The State of New Hampshire should provide clearer copies of the maps. Legibility of maps is not, however, a litigable issue.

SAPL Contention 29

The revisions of the Seabrook and Hampton RERP's fail to meet the requirements of 10 CFR § 50.47(a)(1), § 50.47(b)(1) and NUREG-0654 II.A.1 and its subsections because each organization and suborganization having an operational role has not specified its relationship to the total effort and each response organization does not have the staff to respond and and to augment its initial response on a continuous basis.

SAPL Contention 30

The revisions of the Seabrook and Hampton RERP's fail to meet the requirements of 10 CFR § 50.57(a)(1), § 50.47(b)(10) and NUREG-0654 II.J.9 and II.J.10.m. because the protective action of sheltering is not being provided for beach area populations and the protective actions contemplated in these plan revisions will not be practicable for the full spectrum of accident conditions that must be planned for according to the regulatory requirements.

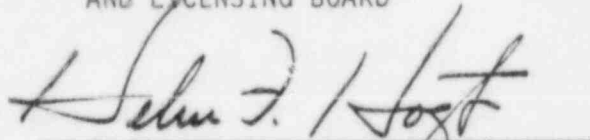
Applicants oppose; Staff does not oppose SAPL Contention 29 and SAPL Contention 30 to the extent the latter asserts that adequate plans

and provisions for sheltering the coastal beach populations have not been provided.

The Board agrees with Applicants that neither of these contentions were ones that could not have been made until the revisions in the two local plans for Seabrook and Hampton were made. The revisions of these plans consisted of inserting the provisions for pre-evacuation of the beach areas at an earlier stage. The Board will accept for litigation only those late-filed issues which were not known prior to the filing of the late documents. The issues raised here clearly do not fall into that category. Indeed, similar contentions were submitted earlier by other parties to this proceeding, and have been ruled on by this Board.

SAPL Contention 29 and 30 are rejected.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 21st day of May, 1986.