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



Before Administrative Judges:
Heleen 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 22, 1986

SERVED MAY 27 1986

MEMORANDUM AND ORDER
(Ruling on Contentions of the Town of Hampton to Revised Radiological Emergency Response Plan and to Compensatory Plan for Town of Hampton, New Hampshire)

On April 14, 1986, the Town of Hampton (TOH) filed with this Board Contentions of the Town of Hampton to Revised Radiological Emergency Response Plan and to Compensatory Plan for the Town of Hampton, New Hampshire. In response to the Board's Order of May 6, 1986 the Town of Hampton addressed on May 13, 1986 the requirements of 10 CFR § 2.714(a)(1) with regard to its contentions of April 14. The Applicants and Staff have responded to the contentions and to Hampton's Memorandum in Support of 'Late-Filed' Contentions on May 19, 1986¹

¹ Applicants' Response to Contentions - April 24, 1986; NRC Staff's Response to Contentions - May 5, 1986; Applicants' Response to Town of Hampton's Support of 'Late-Filed' Contentions - May 5, 1986; NRC Staff's Response to Town of Hampton's Memorandum in Support of 'Late-Filed' Contentions.

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G PDR

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Five Factors of 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.² 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 Town of Hampton has demonstrated good cause for its late filing of contentions of April 14, 1986. These contentions are directed to the

² Commonwealth Edison Co. (Braidwood Station, Units 1 and 2), CLI-86-08, 23 NRC _____ (April 24, 1986).

New Hampshire Compensatory Plan and the revised plan for the Town of Hampton which had not been made available to the Board and parties until March 4, 1986. TOH waited about a month before filing its contentions which does not appear to be a delay. Factor (1) weighs in favor of TOH.

In considering factors two and four together because they are closely related, we find that these also weigh in favor of TOH. There are no other means for TOH to pursue its interest on its own plan nor is there any other party which apparently would pursue Hampton's concerns.

In factor three, the TOH has failed to address what it expects to contribute to this record. The Board directs Hampton to within 15 days after service date of this Order to advise the Board and the parties the identity of the Hampton officials who will offer testimony on the deficiencies in the revised Hampton RERP and the Compensatory Plan. The TOH must demonstrate that these individuals have the special expertise on the subjects which it seeks to raise and to summarize their proposed testimony. We find factor three weights against TOH at this time. We expect Hampton corrections and will not delay our ruling on these supplemental contentions.

Any additional issues will indeed broaden and delay the proceeding. But these contentions generally amplify several of admitted contentions and TOH should not be penalized for matters not under its control.

In summary, a balancing of these five factors favors consideration of those contentions which satisfy other requirements governing admissibility of contentions. Excepted from consideration, however, are Contentions I-III, V, and VII discussed below.

Town of Hampton's ContentionsContentions I-III, V, VII

The Contentions I-III, V, and VII previously filed by the Town of Hampton with this Board on the original Hampton RERP, and bases for same, are hereby alleged and incorporated by reference herein.

Contentions I-III, V and VII merely repeat the same earlier filed contentions. TOH makes no effort to relate the contentions and bases to these new documents. The same factors that we outlined in our Order of April 29, 1986 on these contentions apply to Hampton's new attempt to have these "issues" considered.

Contentions I-III, V, and VII are rejected.

Revised Contention IV

The Revised Hampton RERP and Compensatory Plan fail to provide adequate emergency equipment to support an evacuation in the event of a radiological emergency. 10 CFR § 50.47(b)(8).

Applicants and Staff have no objection. The original version of this contention was admitted by the Board and the substitution of the revised language for the original IV is acceptable.

Revised Contention IV is admitted.

Revised Contention VI

The Revised Hampton RERP fails to demonstrate that local personnel are available to respond and to augment their initial response on a continuous basis in the event of radiological emergency. 10 CFR § 50.47(b)(1).

Applicants and Staff have no objection.

The original version of this contention was admitted by the Board and the substitution of the revised language for the original Hampton VI is acceptable.

Revised Hampton VI is admitted.

Revised Contention VIII

The Revised Hampton RERP and Compensatory Plan fail to provide for adequate emergency facilities to an [six] support [an] emergency response. 10 CFR § 50.47(b)(8).

Applicants do not reargue their objections made to the original of this contention.

NRC Staff does not object except to footnote 1 at page 9 of TOH's Contentions to Revised Radiological Emergency Plan and to the Compensatory Plan for the TOH.

The Board accepts Revised Contention VIII except for TOH's attempt to expand the original basis for this contention. The Staff notes that by the above cited footnote, TOH's attempt has resulted in vagueness and confusion within the scope of the contention. We agree. We say again that the purpose is to frame a contention with sufficient specificity to put the parties on notice as to what to defend against or oppose.

Revised Contention VIII is accepted except for those matters discussed in footnote 1 of page 9 of TOH's Contentions.


Hampton Contention IX

The Town of Hampton hereby joins in and incorporates by reference herein those additional contentions on the New Hampshire Compensatory Plan previously filed by the Seacoast Anti-Pollution League with this Board, and dated April 8, 1986.

Staff opposes because the contention fails to assert any matter not already contained in SAPL Contention earlier considered by the Board. The Staff finds the contention inappropriate for litigation as a separate contention.

The Board finds the contention unacceptable for the same reasons expressed by the Staff. We further comment that Hampton is merely attempting to boot-strap its opposition to matters already placed in issue by another litigant.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland,
this 22nd day of May, 1986