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June 22, 1988

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UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of	)	
	)	
Public Service Company of	)	
New Hampshire, et al.	)	Docket Nos. 50-443 OL
	)	50-444 OL
(Seabrook Station, Units 1 & 2)	)	OFFSITE EMERGENCY
	)	PLANNING
	)	

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S  
REPLY TO APPLICANTS' AND NRC STAFF'S  
RESPONSES TO NECNP'S CONTENTIONS ON SPMC

Introduction

The New England Coalition on Nuclear Pollution ("NECNP") hereby replies to Applicants' and the NRC Staff's responses to NECNP's contentions on the SPMC. Our arguments with respect to each contention are presented below. In addition, NECNP supports and adopts the "Reply of the Massachusetts Attorney General to the Responses of the NRC Staff and the Applicants to the First Six Contentions Filed by the Massachusetts Attorney General," which addresses in great detail many of the legal issues raised by NECNP's contentions.

Contention 1

This contention asserts that "Due to the unique features of the Seabrook Emergency Planning Zone ('EPZ'), adequate emergency planning for the Seabrook is inherently impossible. Therefore Applicants cannot satisfy 10 CFR § 50.47(a)." The basis of the contention lists a number of factors, including the high beach

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population, limited roadways, lack of shelter, and lengthy evacuation times, which combine to prevent the undertaking of an adequate emergency response for Seabrook.

Both Applicants and the NRC Staff oppose this contention, on the ground that the Commission has ruled that there is no minimum dose savings that must be achieved by emergency planning. Obviously, the NRC has a great deal of discretion with respect to the way it measures the adequacy of emergency planning. However, neither the emergency planning rule nor the Atomic Energy Act given the Commission the discretion to avoid taking any objective measurement of adequacy. That measurement must be taken against some articulated standard of risk avoidance, not a shifting standard of what is achievable under the circumstances.

As discussed in NECNP's contentions at page 1-2, the Staff, on behalf of the Commission, has stated in a federal court that the impossibility of achieving adequate emergency planning is open to challenge in a licensing proceeding under the new rule. That statement carries the assumption that there exists an intrinsic standard of adequacy that may not be met in every case. The NRC cannot take away in this licensing proceeding what it has pledged in federal court. NECNP has presented a contention with a factual basis to show that an "adequate" level of protection cannot possibly be achieved in an emergency at Seabrook, because huge numbers of people would remain unprotected during an accident at Seabrook. The contention should be admitted for litigation.

Contention 2

This contention charges that "Applicants have failed to identify those portions of the SPMC for which they invoke the provisions of 10 CFR § 50.47(c)(1)." As basis for this contention, NECNP asserts that Applicants have failed to identify "those elements" of regulatory compliance "for which state and local non-participation makes compliance infeasible" and the specific measures that are "designed to compensate for any deficiencies resulting from state and/or local nonparticipation." 10 CFR § 50.47(c)(1)(iii)(A),(B). Moreover, for those elements of § 50.47(b) with which they do not comply, Applicants have not shown that the noncompliance "is wholly or substantially the result of the non-participation of state and/or local governments." § 50.47(c)(1)(ii). In short, it is impossible to determine the standard[s] which Applicants seek to fulfill through submission of the SPMC. Absent a specific identification of what portions of the plan are addressed to what standards, Applicants have not satisfied the requirements for invoking the provisions of § 50.47(c).

Applicants and the NRC Staff oppose this contention on the ground that the regulations imposes no duty to identify the portions of the plan for which Applicants invoke 10 CFR § 50.47(c)(1). Applicants and Staff ignore the specific steps set forth in the rule for the identification of the reasons for non-compliance with the planning standards in § 50.47(b); and for

identification of the specific deficiencies that compensatory measures are designed to address.

The need for such specificity is clear. "By their very nature, "compensatory" measures are discreet actions necessary to overcome specific deficiencies in a system that is essentially whole and adequate. One can understand the Applicants' wish to generalize away these deficiencies without specifically identifying either the deficiencies or the measures designed to overcome them. However, the rule was designed to prevent such vagueness. The parties are entitled to know exactly what standards Applicants are attempting to address, and what portions of the plan are intended to satisfy each specific standard. To require any less would not only violate the regulations, but would turn the litigation into a pointless muddle.

### Contention 3

This contention asserts that "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."

Both the Applicants and the Staff oppose this contention, on the ground that it must be presumed under the rule that Massachusetts will follow the SPMC. According to Applicants, the

presumption can only be rebutted by Massachusetts' submittal of its own plan. As discussed in Massachusetts' reply brief regarding its contentions, however, the NRC's Solicitor General has expressly stated to the U.S. Court of Appeals that this is not the only means by which the presumption can be rebutted. NECNP intends to rebut the presumption by showing that the SPMC is not capable of effective implementation by the Commonwealth of Massachusetts during an emergency. The contention contains adequate assertions of factual basis to support it -- namely the lack of specific procedures or provisions for the Massachusetts government. It should be admitted.

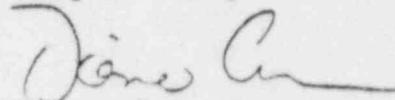
Contention 4

This contention asserts that "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. Moreover, to the extent that it 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."

Applicants and NRC Staff characterize this contention as a challenge to the rule. As with Contention 3, the presumption that the state government will follow the utility plan can be rebutted by evidence other than the submittal of a state plan.

Here, NECNP has made an initial showing, adequate for purposes of admitting a contention, that Mode 2 does not provide the basis for a workable response to an accident. The NRC may not use the presumption to wave away legitimately raised criticisms regarding the barriers to implementation posed by state law and the cumbersome and confusing character of Applicants' proposal to integrate a utility-state response. The contention should be admitted.

Respectfully submitted,

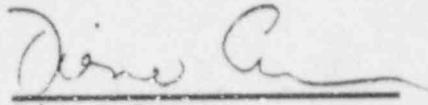


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June 22, 1988

CERTIFICATE OF SERVICE

I certify that on June 22, 1988, copies of the foregoing pleading were served by hand, overnight mail, or first-class mail on all parties to this proceeding, as designated on the attached service list



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