



plan. The rule limiting financial considerations is premised on the assumption that "the rate process assures that funds needed for safe operation will be made available to regulated electric utilities." 49 Fed. Reg. 35747, 35750 (Sept. 12, 1984). The rationale of this rule, therefore, turns on the ability of a utility to fund operational safety requirements through rate generation. This rationale fails with respect to the pre-licensing phase, however, since this utility must shoulder the costs of developing and exercising an emergency plan prior to its ability to generate revenues. The assumption underpinning the rule, therefore, is inapplicable with respect to pre-operational emergency planning.

Moreover, consideration of the Applicants' pre-operational ability to fund an adequate emergency plan is critical to this Board's evaluation of the SPMC. The pre-operational burden of emergency planning includes ongoing payments to staff and contractors. These costs are necessarily incurred in order to develop an emergency plan that can be evaluated. The Applicants have been unable to maintain regular payments to some contractors whose services are critical to ensuring an adequate level of preparedness. This brings into question the viability of the SPMC. Consideration of the Applicants' pre-operational financial stability with respect to emergency planning is necessary to ensure that this Board evaluates an actual emergency plan and not a fiction.

Even assuming, arguendo, that the rule is applicable here, the rule and its accompanying statement of considerations, 49 Fed. Reg. 35747 (Sept. 12, 1984), demonstrate that a bankrupt applicant was not anticipated by the Commission in promulgating the regulation. Accordingly, the rule is premised on the assumption that a utility has significant discretion in how to spend its revenues (i.e., on safety maintenance). See 49 Fed. Reg. at 35749. A bankruptcy court adds a new dynamic beyond the control of either the utility or the Commission, however. That Court may exercise significant control over the utility's expenditures, including pre-operational emergency planning. Such expenditures could be prohibited by the court as not in the ordinary course of business. Consequently, proceeding at this stage without examination of how this dynamic could potentially affect the Applicants' ability to dedicate funds to the pre-operational development, maintenance and exercise of an emergency plan could result in a waste of Commission and utility resources.

#### CONTENTION 8

Applicants: Applicants object to Basis B on the grounds that the SPMC does not rely on the participation of local governmental personnel for implementation. This claim is false. Mode 1 of the SPMC does posit State and local governmental participation. If the Applicants persist in their claim, that mode of implementation should be stricken from the SPMC.

Staff: With respect to the Staff's objections to Bases B and C, the Attorney General incorporates by reference his response set forth directly above. The Staff's additional objection to these bases also lacks merit. The Staff's response that state and local authorities will be presumed to utilize the utility plan in the absence of any other plan only serves to emphasize the inadequacy of such a presumed response under the SPMC. In the absence of specific local plans, local officials will essentially have no plans to "generally follow." The presumption relied upon by the Staff is thus of no help here. Further, the SPMC states that the ORO will assist local entities with "appropriate emergency information and exposure control." Plan 2.4-4. The use of the word "appropriate" indicates that the information must be appropriate for the specific community affected. The total absence of planning with respect to specific communities renders ORO incapable of responding in the manner prescribed by its own plan. Planning with respect to specific communities, therefore, is required by law and by the SPMC itself.

#### CONTENTION 9

Applicants and Staff: The question of whether or not the Commission "contemplated that utility personnel would be in command and control of the utility plan" is irrelevant to the issue of the conflict of interest raised by this contention. In providing utilities with the opportunity to submit emergency

plans, the Commission made no determination as to the adequacy of a plan to be implemented entirely by utility personnel. Thus, even if the Commission "contemplated" command and control by utilities, this is not tantamount to a finding of per se adequacy. Rather, the utility plan must be evaluated for adequacy on a case-by-case basis regardless of who will exercise command and control authority. The nature and capacities of entities exercising command and control functions is a factor bearing on adequacy and, therefore, is properly considered at this stage.

Further, the LILCO Appeal Board decision relied upon is inapposite to this case. The Appeal Board did not reverse the Licensing Board on the points cited in the contention. Rather, the Appeal Board found that New York State law eliminated the "delegation" option from the LILCO plan, thereby essentially rendering conflict of interest issues moot. See "Reply of Mass AG to Responses of Staff and Applicants to First Six Contentions" at 38-39. (hereinafter "Reply 1-6"). Here, the ORO maintains that it will carry out all emergency functions and that government participation is entirely unnecessary beyond an initial delegation of authority.

#### CONTENTION 10

Applicants: No objection.

Staff: A regulatory basis for Contention 10 is set forth in §§ 50.47(b)(1) and (2). Those provisions require that: "each principal response organization has staff to respond and

to augment its initial response on a continuous basis" and "adequate staffing to provide initial facility accident response in key functional areas is maintained at all times." A strike, absent contingency arrangements, could result in inadequate staffing for accident responses.

Further, the actual occurrence of a strike at LILCO, a plant in many ways parallel to Seabrook, constitutes a factual basis for the contention that a Seabrook strike is a real possibility. Moreover, the very nature of the SPMC increases the risk of a strike: the Applicants' complete reliance on utility employees for implementation renders emergency planning an ideal bargaining chip. Thus, a strike is not mere speculation, but entirely possible, at Seabrook.

#### CONTENTION 11

Applicants and Staff: The regulatory basis of Contention 11 is set forth in the requirement that a utility plan provide "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." § 50.47(c)(1). Such a finding requires that the individuals developing and implementing the emergency plan, most importantly those in critical command positions, have some regard for the legitimacy of emergency planning. To assume otherwise could result in the incongruous placement of public safety in the hands of an entity which, unabashedly in this case, asserts that the need for emergency planning is

"marginal." How could this attitude not effect the state of emergency preparedness?

In evaluating the adequacy and implementability of an emergency plan, the Commission must necessarily examine the nature of the entity developing and implementing the plan. In examining the entity, the Commission must look beyond the superficial structure of the response organization to the actual capability of the organization to respond. The manifest policies of those directly responsible for emergency planning and response which concern the legitimacy of such planning, bear significantly upon that organization's willingness and ability to carry out such plans. Such policies are a direct reflection of the organization's priorities, its willingness to dedicate resources to emergency planning and its degree of public obligation.

Where protection of the public in a radiological emergency is concerned, regulation is a poor substitute for corporate recognition of the validity of emergency planning. Emergency planning is multi-faceted and ongoing. Consequently, the Commission cannot comprehensively monitor emergency planning at all times, but must rely upon the utility to develop and maintain an adequate emergency plan in good faith. A corporate policy that such plans are unnecessary completely undermines the wisdom of such reliance.

CONTENTION 12

Applicants and Staff: No objection.

CONTENTION 13

Applicants and Staff: No objection.

CONTENTION 14

Applicants: No objection.

Staff: These Contentions should not be consolidated.

Whereas Contention 14 addresses the SPMC communication system as a whole, Contentions 47 and 54 specifically address the issues raised with respect to special populations. Due to the unusual needs of these populations, provisions for such needs should be considered together, rather than piecemeal, to greater ensure that such provisions are comprehensive and complementary. Additionally, Contentions 47 and 54 raise questions separate from the risk of overloaded commercial telephone lines, i.e., the limited availability of communications equipment. Since these contentions are highly specific and raise issues beyond the scope of Contention 14, consolidation is inappropriate.

CONTENTION 15

Applicants and Staff: No objection.

CONTENTION 16

Applicants: No objection.

Staff: The Staff has misread this contention. The failure to obtain FCC approval for use of certain emergency frequencies is the basis for the claim that communications between the ORO

and the State and local response organizations are inadequate. Without FCC approval, the use of these frequencies is prohibited. The Mass AG is not asserting, in the abstract, that the communication systems described in the SPMC must meet FCC standards.

#### CONTENTION 17

Applicants: The Mass AG makes reference to his "Reply 1-6" as to arguments concerning the presumption and illegality. Further, the Attorney General notes that the legal authority issues constitute only a portion of Contention 17. Thus, the Applicants fail to respond to the issues of verification (Basis C), effectiveness of notification by the ORO (Basis D), conflict of interest (Basis E), and the need for clarification of the SPMC with respect to notification (Basis F).

Staff: The Attorney General incorporates by reference his response set forth directly above. Additionally, the Staff asserts that EBS regulations do not limit access to government officials. The regulation the staff cites for support provides, however, that "[o]perations will be conducted in accordance with the provisions of the State EBS Operational Plan." 47 CFR §§ 73.936, 73.937. The Massachusetts Plan was approved by the FCC as containing no inconsistencies with FCC regulation. Accordingly, the Massachusetts Plan is controlling on the issue of who may activate the EBS. Only those parties expressly named by the Massachusetts Plan may therefore activate the system.

Despite the Staff's implication to the contrary, the Applicants cannot rely on § 73.935 as a vehicle for activation of the system. That provision, which enables broadcasters to activate the EES in response to a confirmed emergency, applies only in circumstances, extraordinary even in the context of emergencies, when the normal channels of emergency notification are unavailable or inappropriate. In other words, it provides for ad hoc response in the absence of governmental notification. The Applicants, however, are statutorily required to plan for radiological emergencies in order to avoid ad hoc response. Accordingly, it cannot rely on a narrow grant of authority to a third party, but is bound to plan for emergency notification in compliance with the Massachusetts Plan.

#### CONTENTION 18

Applicants: Contrary to the Applicants' assertions, no contention parallel to Basis E was litigated in the NHRERP proceedings. Even if a litigated contention was facially similar, Basis E should be admitted pending the outcome of the New Hampshire case. To hold otherwise would prematurely remove a valid contention from consideration.

Further, this Board should consider Basis E since the New Hampshire and Massachusetts plans are distinguishable. In New Hampshire, professional emergency workers will implement the plan, thereby decreasing the risk of delay caused by the

collateral concerns of the workers. In contrast, the Massachusetts plan calls for the utilization of amateur emergency personnel who are not trained to respond in emergencies. Consequently, the latter category of personnel, when faced with an emergency situation, may react in a manner in which trained professionals would not, e.g., attempting to contact family members, thereby causing delay in the response.

Staff: In challenging Basis C, the Staff seeks to draw attention away from the real issue, i.e., notification and mobilization of emergency personnel. In using the term "key emergency personnel," the Attorney General sought only to highlight the importance to implementation of notifying such individuals; absent notification of such persons, neither buses nor ambulances will be available. It is entirely unclear what the Staff is referring to with respect to the word "items".

The regulatory basis for Basis D is set forth in §§ 50.47(b)(2), (3), (5) and (8). Those provisions require timely notification and mobilization of emergency assistance resources. Implicit in these requirements is that communication systems be reliable. The SPMC's reliance on one method of notification implies that it believes its present system is fool-proof. When so much is at stake, however, back-up assignments are necessary to provide reasonable assurance that the plan can be implemented despite unexpected circumstances. With regard to Basis E, the decision cited by the Attorney General recognized the value of such provisions in facilitating

emergency response. This would be particularly true in the case of an amateur emergency response staff.

#### CONTENTION 19

Applicants and Staff: Bases A and C address issues distinct from those before the onsite Board. Specifically, Basis A raises issues concerning the coordination of notification between New Hampshire and Massachusetts government officials and the ORO. The synchronization of the New Hampshire sirens with Massachusetts sirens is not before the onsite Board nor could it be. Basis C has nothing to do with onsite issues. Rather, it concerns notification of the public, through coordination with the Federal government, at an off-site wildl. refuge. Basis C is, therefore, beyond the jurisdiction of the onsite Board. The Attorney General concedes that Basis B is within the onsite Board's jurisdiction and consequently withdraws that Basis.

#### CONTENTION 20

Applicants: Applicants response to Basis C is a non-sequitur. Credibility and "command and control" are two separate issues: credibility does not necessarily attach to those in the position of command and control. Even assuming, arguendo, that the ORO could legally direct every aspect of implementation, it nonetheless would lack credibility with the relevant public and this would have an impact on its capacity to manage the response.

Staff: First, Bases C and D have nothing to do with government response. Consequently, the "best efforts" presumption bears no relevance to these bases. Even assuming State and local officials exercise "best efforts" in broadcasting emergency messages, the absence of any method for coordination between the ORO and public officials, see Basis B (unchallenged by Staff or Applicants), will likely result in the broadcast of conflicting information and instructions.

CONTENTION 21

Applicants: Contention 21 should be corrected to include a reference to 10 C.F.R. 50.47(b)(7). Section (b)(7) explicitly refers to dissemination of information to the public.

Staff: In response to the Staff's objection to the admission of Basis B, the Mass AG maintains that there is a requirement for adequate facilities for the media. Basis B simply states that the SPMC's facilities are not adequate in light of the media response expected.

CONTENTION 22

Applicants and Staff: No objection.

CONTENTION 23

Applicants and Staff: No objection.

CONTENTION 24

Applicants: The Applicants' assertion that no evidence should be offered under Basis D (3-5) due to lack of specificity is unfounded. The requirement of specificity, as set forth by the NRC, is that a contention need not plead evidence to provide an adequate basis for an allegation but, rather, that it "show that the issues raised are within the scope of cognizable issues to be considered in an adjudicatory proceeding." In the Matter of Commonwealth Edison Company, 12 NRC 683 at 689 (1980). Clearly, issues pertaining to the content, nature and effect of pre-emergency information is adequately specific for purposes of admissibility. Moreover, as set forth above, the merits of a particular contention are not to be considered at this juncture. Id. at 688.

Staff: The response to the Applicants set forth directly above is incorporated by reference.

The Staff's objection to Basis B, that there exists no requirement to disseminate information to farmers outside the 10 mile EPZ is refuted by 50.47(b)(7) which creates an affirmative obligation to provide adequate protection, by way of adequate information, to the population within the ingestion pathway.

CONTENTION 25

Applicants and Staff: Pursuant to 50.47(c)(2), "the exact size and configuration of the EPZ shall be determined in relation to local emergency response needs and capabilities."

Conditions affecting such needs include "demography, topography, land characteristics, access routes and jurisdictional boundaries." The language of the rule mandates no uniform EPZ for all sites. Indeed, it is the "local emergency response needs and capabilities", or lack thereof, which would require extension of the utility's planning effort.

As such, the case relied on and cited by the Applicants, which "would call for adjustment to the exact size of the EPZ only on the basis of such . . . considerations as avoiding EPZ boundaries that run through the middle of schools or hospitals, or that arbitrarily carve out small portions of governmental jurisdictions" is a misreading of 50.47(c)(2). Long Island Lighting Company (Shoreham) 26 NRC at 395 (1987)(emphasis added). The Mass A.G. notes this for the record.

#### CONTENTION 26

Applicants: The Applicant has totally misread Contention 26. At no point does the Mass AG state or imply that an alternative to evacuation is necessary for all persons. Rather, the "large number of people" with which Contention 26 is concerned are those people who would make up the transient beach population on a given day. Given the language in Bases A and B, this distinction, between "all" people and the beach population, could not be more clear. As such, the language in the ASLB Order cited by Applicant is not relevant and is inapplicable.

Staff: The Staff makes no objection to Basis A insofar as it concerns the range of protective action options for the public. But the Staff objects to that part of the Contention, and Basis B, which concern the issue of sheltering the beach population. As grounds therefore, the Staff has relied on the same language in the same ASLB Order cited by the Applicants. However, the Applicants must meet two interrelated requirements: 1) the SPMC must provide a "range of protective measures" and 2) the protective measures in the SPMC must be "adequate." The logic of the contention is clear: if evacuation is the only protective measure afforded the beach population, then the SPMC: 1) does not provide a "range" and 2) the protective measure that is provided for the beach population -- evacuation -- is not "adequate" for all fast-paced serious accidents in the planning basis. The Staff cannot coherently object to one basis and not to the other.

CONTENTION 27

Applicants: Although the Applicants raise no objection to the actual admission of the contention, they assert that there is no requirement for a study regarding the time frame for sheltering. The Applicants rely on NUREG-0654 in support of this assertion, yet, 10 CFR Part 50, Appendix E § IV clearly requires such a study. NUREG-0654 and 10 CFR Part 50 Appendix E are not mutually exclusive and should be read together.

Staff: The Mass AG clearly does cite to a regulatory requirement for a sheltering time study. The Staff's obscure reference to "dose allocations" is inapposite. Basis E does not raise quantitative dose consequence issues but instead alleges that the decision criteria used in the SPMC, which must include calculations of doses, ingores a significant component of that dose.

CONTENTION 28

Applicants and Staff: The Applicants' and Staff's assertion that there is no regulatory basis for this contention is unfounded. 10 CFR 47.50(b)(10) requires that "a range of protective actions [be] developed for . . . the public." Clearly, those residing in the plume exposure EPZ, regardless of the type of residence in which they dwell, are part of the public. Similarly, NUREG-0654 II.J.10(m) includes as a basis for choosing a protective action, the "expected local protection afforded in residential units or other shelter . . . ." Any adequate sheltering plan would have to identify those shelters (particularly residences) which would not provide any degree of increased protection.

CONTENTION 29

Applicants and Staff: The issues raised in this contention have not been litigated in the NHRERP proceeding. Neither the Applicants nor the Staff identified any admitted and litigated

contentions in that proceeding dealing with the public's response to a non-governmental private emergency response organization. The separate bases state very different and independent grounds for admitting this contention.

#### CONTENTION 30

Applicants: The Applicants' grounds for rejection of this contention are simply that it has no obligation to provide snow removal in a radiological emergency. First, the Applicants misread the contention. Even if localities do have arrangements for snow removal in a non-radiological emergency, they may not have such arrangements for a radiological emergency. Second, it is obvious that there would have been a state obligation to provide snow removal services if a state plan had been submitted. It follows that if snow removal would have been an obligation of the state then, absent a state plan, it becomes the obligation of the utility submitting an emergency response plan.

Staff: The Staff argues that the "best-efforts" assumption in the new rule assures that snow will be effectively removed during an emergency. The Staff is leaping from "realism" into "surrealism." If these governments have made no prior arrangements for snow removal during a radiological emergency, all the "best-efforts" in the world at the time of an emergency will not move snow. The fact that protective action decision-making is not precluded by the absence of snow removal is irrelevant and not challenged by the contention.

CONTENTION 31

Applicants: The Applicants' response is contradictory. On the one hand it rejects the contention as having no basis in any regulation or guidance. On the other hand, it rejects the contention as contravening or "fly[ing] in the face" of that allegedly non-existent guidance. In addition, the Applicants do have an obligation to have effective decision making criteria. However, the contention alleges that the SPMC is not adequate in that regard because of the peculiarities of this site.

Staff: The Staff, without any rational foundation, sees this contention as a challenge to the regulations. For support, the Staff cites Appendix 4 to NUREG-0654 which describes how the evacuation study should display the ETEs. Nothing in Appendix 4 precludes a challenge to a plan based on site-specific meteorology. That sector evacuation is contemplated does not mean it would be adequate at every site.

CONTENTION 32

Applicants and Staff: Regulations and Commission guidance require that time estimates be determined on a case-by-case basis. § 50.47(c) and ALAB 727, 17 NRC 760, 770 (1983). The ETE questions litigated in the NHRERP phase of the hearings were based on entirely different circumstances than those present here. Accordingly, the Attorney General has raised new issues which must be examined to determine the adequacy of the ETE study for the SPMC.

CONTENTION 33

Applicants and Staff: No objection.

CONTENTION 34

Applicants and Staff: In the SPMC, the Applicants have set forth evacuation as one of the protective actions developed in compliance with § 50.47(b)(10). This protective measure will necessarily entail movement of a large number of vehicles causing severe traffic congestion. Inevitably, some vehicles will run out of gas. Therefore, in evaluating the adequacy of evacuation as a protective measure, this Board should consider the effect of a failure to plan for additional supplies of gasoline on the efficacy of that evacuation.

CONTENTION 35

Applicants and Staff: For the same reasons set forth by the Attorney General in response to objections to Contention 34, the determination of whether evacuation is an adequate protective measure in the SPMC necessarily requires examination of the effect of stalled cars on the efficacy of evacuation. Moreover, there is nothing generic about the specific arrangements in a plan for dealing with stalled vehicles and the adequacy of those arrangements.

CONTENTION 36

Applicants and Staff: No Contention similar to Contention 36 was litigated in the NHRERP proceeding. Moreover, the

specific circumstances to be faced by persons within the Massachusetts EPZ based on the characteristics of evacuation routes as they bear upon traffic congestion, were not considered during the NHRERP phase.

The Attorney General does not seek to litigate dose savings requirements in this contention. Rather, the Attorney General seeks to raise issues bearing directly upon the question of whether "adequate protective measures can and will be taken. . . ." § 50.47(c)(1). For example, the Attorney General contends that the enumerated circumstances will make evacuation slower. Further, the Attorney General asserts that disorderliness . . . caused by large numbers of evacuees travelling on foot, rather than sitting in the inevitable traffic jams, will effectively eliminate evacuation as an "adequate protective measure." Such concerns have nothing to do with dose savings, but directly address the basic question of whether evacuation is a viable protective measure in Massachusetts. Accordingly, the Board's adequacy determination must address these questions. Evacuation of even a portion of the summer population would entail movement of a huge number of vehicles through the undisputedly narrow roads characteristic of the beach area. Under such circumstances, it is perfectly reasonable to infer, on the basis of common sense and experience, that prolonged traffic congestion will result. Moreover, deeply felt fear of radiation among the general public is well-known. Contention 36 draws reasonable inferences based on these widely known and

undisputed facts. Consequently, the Staff's assertion that this Contention is speculative is without merit.

#### CONTENTION 37

Applicants and Staff: The Attorney General does not assert in this contention that dose savings must be comparable to that achievable by a state plan. Rather, the Attorney General contends that evacuation as provided for in the SPMC is not an adequate protective measure because an ORO-managed evacuation would be inadequately staffed and poorly conceived. Consequently, it achieves little more than an uncontrolled evacuation would, thereby eliminating it as an adequate protective measure. Information regarding what a state plan would involve in this regard is intended to provide nothing more than a frame of reference. Both the Applicants and the Staff fail to address Basis C. Accurate and easy to follow traffic control plans are absolutely necessary to evacuation as a protective measure. Even assuming a "best efforts" governmental response, the absence of plans that can be followed eliminates evacuation as a viable protective measure.

#### CONTENTION 38

Applicants: The issue of adequate staffing of traffic control posts in Massachusetts has not been litigated in the NHRERP.

Staff: No objection.

CONTENTION 39

Applicants and Staff: As was set forth in the Introduction to Contention 39, the evacuation time estimates contained in the SPMC are different from the ETEs contained in Volume 6 of the NHRERP; so the accuracy of these ETEs for Massachusetts cannot be presumed to have been litigated during the course of the NHRERP litigation. The numbers are simply different. Moreover, the NRC Staff has recognized that a number of bases allege that these SPMC ETEs are inaccurate for reasons "which apply specifically to unique conditions in Massachusetts." The Mass. AG contends that each and every basis alleged in support of Contention 39 describes a separate factor which causes the ETEs for Massachusetts to be inaccurate to a degree which is unique for Massachusetts and that these are not "generic factors" (regarding either traffic flow or human behavior) which have already been litigated. These non-generic, Massachusetts-specific factors are noted briefly below for each basis objected to by the NRC Staff:

B. Returning commuters. The inadequate consideration given to returning commuters was raised in challenging the New Hampshire ETEs, and indeed it is one of the most serious defects of the ETE study conducted by KLD Associates. If the Board finds that despite the substantial evidence the Intervenors have presented on this issue so far, the Applicants have met their burden of proof on this issue, then it will become necessary for the Intervenors to litigate this issue

further with regard to the SPMC. This would not be a "relitigation" of the issue using the same evidence, however. Instead, evidence (neither presented nor relevant in the NHRERP hearings) regarding the specific impact on Massachusetts ETES caused by the returning commuters traveling through Massachusetts EPZ communities and the critical intersections in Massachusetts would be proffered. The Mass AG believes that the impact on the ETES for Massachusetts, due to the effects of returning commuters, is even greater than the impact was on the New Hampshire ETES. Unless the Board finds in a PID on the NHRERP that this aspect of the ETE study needs to be re-done for the Massachusetts as well as the New Hampshire EPZ communities, the issue of the impact of returning commuters on the Massachusetts ETES remains ripe for litigation in the SPMC hearings.

E. ORO traffic controller response when radiation is present. All traffic and access control in New Hampshire is planned to be achieved using state and local police, i.e., professional, full-time, experienced emergency responders. Whatever the Board may find about the non-response rate of such professional emergency responders, the non-response rate of ORO volunteers who are not professional emergency responders is going to be much higher. The non-response rate of ORO's volunteer, non-professional traffic control/access control personnel is a completely separate behavioral issue with no counterpart in the NHRERP litigation.

F. Radiation sickness. ETEs are "to be determined on a case-by-case basis upon a consideration of all relevant conditions prevailing on the specific locality." Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 770 (1983) (emphasis supplied). ETEs are to be realistic appraisals of the minimum period in which, in light of existing local conditions, evacuation could reasonably be accomplished. Id. This basis asserts that a relevant local condition which will affect the ETEs for a wide range of accident sequences is the extent and degree of radiation sickness that will affect the drivers and passengers evacuating the Massachusetts portion of the EPZ. The evidence will show that this is a reasonable and significant factor which needs to be taken into account if decision-makers are to have available to them realistic ETEs for Massachusetts for this wide range of accident sequences. For this site at least, radiation sickness is a significant prevailing local condition which cannot be ignored in an ETE study that seeks to adduce realistic ETEs.

H. Signal timings. The KLD study using IDYNEV does make a generic assumption of sorts about signal timings -- it optimizes them. This means that at intersections which have competing traffic flow entering from more than one direction, the model optimizes the time (the "signal time") which is allocated (as a traffic light would do) to each line of traffic as it proceeds through the intersection. In reality, even when

professional traffic controllers are present (as they would be at some intersections in New Hampshire), optimization of competing traffic flows is rarely achieved. At many intersections in both New Hampshire and Massachusetts no traffic controllers have been assigned at all, and optimization of competing flows through these intersections is extremely unlikely. This much has been litigated. What has not been litigated is how much more poorly unprofessional ORO traffic controllers would perform in optimizing signal timings than professionals would. Thus, we contend that to produce realistic ETES for Massachusetts, the IDYNEV model must be adjusted (1) to assign a realistic much-less-than-optimim signal timing to those intersections in Massachusetts for which no traffic control is to be assigned, and (2) to assign another slightly better, but again, less-than-optimum, signal timing to those intersections at which ORO traffic controllers have been assigned. We concede that the first of these points has been litigated in NHRERP proceedings. The second has not been.

Regarding Point 4: The surveillance plans in the SPMC are different from those in the NHRERP, and the inadequacy of these ORO surveillance measures simply has not been litigated.

Regarding Point 5: The NRC Staff has no objection.

I. Traffic accidents and disabled vehicles. This basis asserts that the ETES are based on the unrealistic assumption that evacuation times will not be delayed at all by traffic accidents or disabled vehicles. Following the basis statement

are five (5) reasons why this assumption is unrealistic. Evidence we intend to submit in each of these areas will be new and will focus on factors that are specific to Massachusetts and the SPMC. For example, more accidents will occur than assumed because of the less than professional manner in which ORO personnel will direct traffic and because of the decreased obedience Massachusetts drivers will exhibit to ORO traffic guides.

K. Discharge headways. Again, while it is true that the KLD ETE study, using the IDYNEV model, made some generic and very optimistic assumptions about the discharge headways, and these were challenged in the NHRERP proceedings, the evidence we intend to present in the NHRERP proceedings will show that at specific critical intersections in Massachusetts the discharge headways are likely to be significantly longer than the study assumed.

L. Effects of adverse weather. As a conceptual matter, because road and other physical conditions vary, weather conditions which are, in NUREG-0654 terms, "severe enough to define the sensitivity" of the ETEs in one location may or may not be "severe enough to define the sensitivity" in another. In fact, the Mass AG believe that adverse weather will have more serious consequences for an evacuation of Plum Island and for the Salisbury Beach area than for Hampton Beach. More severe weather than has been assumed in the ETE study should be used in the adverse weather ETE assessment for these

Massachusetts beach areas in order to realistically "define the sensitivity" of the ETEs for these areas to adverse weather. Further, the capacities of roads, ramps, and intersections in Massachusetts are site-specific, and adverse weather can and does have unique impacts on each of these.

M. Spontaneous evacuation. This is not a "generic" issue. First, in the NHRERP ETE study, the assumption made was that 25% of the population within the EPZ, but outside the Region ordered to evacuate, will spontaneously evacuate, contrary to instructions. Simultaneously, in direct testimony submitted at the NHRERP hearings, the Applicants' witnesses announced that they favored certain "updated representations of voluntary evacuation." Dr. Mileti testified that in his judgment it would be "very conservative" to calculate ETEs using an assumption of 0-25% for "concentric voluntary evacuation" and a "higher probability" for "keyhole voluntary evacuation." At this time, it is not yet clear what percentages for spontaneous evacuation have been assumed in calculating the ETE for the SPMC. If, as we believe, it is the "updated" assumptions which have been used, those new assumptions themselves have not been litigated fully. They were presented as evidence, not NHRERP amendments. We have had no opportunity to conduct discovery on these new assumptions, and we now seek a full opportunity to rebut them with the submission of direct testimony. Of course, if other assumptions about voluntary evacuation are now being utilized

in calculating the SPMC's ETEs, then full litigation of these assumptions is undeniably appropriate.

Second, Basis M was drafted in a manner which is markedly different from the voluntary evacuation contentions litigated for the NHRERP in that those NHRERP contentions addressed only voluntary evacuation inside the EPZ. Basis M, however, is phrased more generally and encompasses voluntary evacuation, both internal and external to the EPZ. The issue of external voluntary evacuation and the extent to which it may cause traffic back-ups inside the EPZ has yet to be litigated.

O. Efficiency of the ORO traffic guides. ORO traffic guides will not be able to move traffic as efficiently as professionals would, yet the ETEs for Massachusetts were calculated without injecting a reduction factor into the model to account for this difference. The ETEs are, therefore, unrealistic and have not taken all the significant site-specific factors into account.

Q. Through vehicles. In calculating the SPMC ETEs, the number of "through vehicles" on the roads in the Massachusetts portion of the EPZ is a site-specific input to IDYNEV, not a generic one. It depends on a variety of factors, including how many vehicles are travelling through the Massachusetts EPZ in the summer of 1988 (a higher number than in 1986), and how fast ORO can establish access control to stop additional through traffic from entering the EPZ. The delayed staffing by ORO of the access control points has clearly not been litigated.

R. Alerting delays. The "planning basis" used in the NHRERP, Rev. 2, Volume 6 ETE study assumed a rapidly escalating accident which moved from an Alert to a General Emergency within 15 minutes and that "the order to evacuate is transmitted to the public 10 minutes after the General Emergency is declared." Volume 6 at 4-1. Assuming that this is still the planning basis for the NHRERP ETEs, and assuming that sirens are fixed in New Hampshire and must be driven or flown to certain "acoustic" locations in Massachusetts, it remains to be seen whether the sirens will sound simultaneously in Massachusetts and New Hampshire. Even if the Massachusetts sirens can sound within the times required by the regulations and FEMA Reg. 10, any lag in sounding the sirens in Massachusetts could mean that the planning basis used for the Massachusetts ETE calculations cannot be achieved. This basis asserts that this lag, even if within regulatory limits for sirens, has consequences for calculating the ETEs which have not been taken into account.

S. Public Confusion from different messages. It is hard to fathom how this could be a generic issue. Litigation in New Hampshire regarding EBS messages focussed entirely on the messages emanating from a single source, the State of New Hampshire. This basis alleges that the public in Massachusetts will likely be hearing two sets of EBS messages, one set from ORO/Massachusetts and one from New Hampshire, as well as messages from officials and the media. The degree of confusion

likely to be engendered and the impact that confusion will have on ETEs is an appropriate issue for litigation.

T. Aberrant driver behavior/bypassing queues. Again, this issue is not generic because the presence of ORO traffic guides in Massachusetts, as opposed to state and local police, will result in more driver disobedience than in New Hampshire. This factor needs to be accounted for in the SPMC ETEs. Also, because the ETEs for Salisbury Beach are longer than for any other beach area, and more driver disobedience and aberrant behavior must be anticipated as the hours of beach area traffic entrapment increase, an even greater degree of such behavior should be anticipated in Massachusetts.

U. Traffic Management Plan/Rt. 110 and I-95. This basis will soon be amended to account for changes in Appendix J to the SPMC introduced by Amendment 5. The traffic management plan has been modified somewhat to avoid use of the grassy median, but it now utilizes a u-turn movement that cannot work and will substantially lengthen ETEs.

W. Vehicles from Seabrook. This is not a basis that was litigated in any NHRERP ETE contention. It is therefore not "generic." It pertains only to the Massachusetts ETEs.

Z. Number of vehicles stalled. Because the traffic queues are longer for Salisbury than for any other beach area, the number of vehicles which can overheat or run out of gas there exceeds the numbers to be expected in New Hampshire. This is not a generic issue.

CC. Drivers taking different routes. Again, we simply have not litigated previously any issues regarding driver behavior in response to ORO traffic guides.

DD. Delays caused by access control. Many of the traffic and access control diagrams in the SMPC have now been modified (see SPMC, Amendment 5); so this too cannot be labelled a generic issue which has been previously litigated. If ORO workers place cones and barricades, as shown in the diagram, impede to returning residents of the Massachusetts EPZ will result which has not been accounted for in the ETE study.

CONTENTION 40

Applicants and Staff: No objection.

CONTENTION 41

Applicants and Staff: When there is no meaningful alternative to evacuation for large numbers of people within the zone of risk, any determination of the adequacy of evacuation as a protective measure must consider the length of the ETE in itself.

CONTENTION 42

Applicants and Staff: Applicants assert that there is no requirement for a "real time" computer-based system to monitor the fluctuation in the beach population. However, Contention 42 is not based on any purported regulatory requirement for

such a computer system. Rather, it concerns the 50.47(b)(10) requirement for the development of a "range of protective actions" and the corresponding NUREG-0654, II, J.8 guidance that "[e]ach licensee's plan shall contain time estimates for evacuation within the plume exposure EPZ" in accordance with Appendix 4. In turn, Appendix 4 makes it clear that development and presentation of the ETEs may be modified "depending on local circumstances." NUREG-0654, Appendix 4, 4-7. The contention alleges with specificity, the site-specific conditions that require information more detailed than that set forth in the SPMC. No contention similar to this one was admitted and litigated during the NHRERP proceeding.

CONTENTION 43

Applicants and Staff: The Mass AG refers to his discussion on the presumption in Reply 1-6.

CONTENTION 44

Applicants and Staff: The Mass AG refers to his discussion on the presumption in Reply 1-6.

CONTENTION 45

Applicants: Applicants' objection, that there is no requirement for security or law enforcement in evacuated areas, is unfounded in light of NUREG-0654, II.J.10.j, which requires adequate "control of access to evacuated areas and

organization[al] responsibilities for such control." Clearly, an adequate evacuation plan will deal with and include provisions for security in evacuated areas. To the extent that this issue is dealt with in the SPMC, it is insufficient and provides no reasonable assurance of adequacy.

Staff: The Staff tacitly accepts the regulatory basis of this contention and hinges its objection on the allegation that the presumed "best-effort" response by local law enforcement agencies will be adequate. As noted, there is no presumption of "adequacy." The Staff fails to see that the real issue is not the "best efforts" of local officials, or lack thereof. Rather, the point is that the plan simply does not provide for adequate law enforcement.

#### CONTENTION 46

Applicants: Contention 46 is very specific regarding the inadequacy of proposed bus routes. There is no obligation to plead evidence in a contention.

The Mass AG has no objection to this contention being combined with contentions filed by other Intervenors.

Staff: No objection.

#### CONTENTION 47

Applicants: Applicants' allegation that evidence bearing on Bases N, Q, R and S(1) should be barred due to the NHRERP litigation is unfounded. First, no contentions or bases like

these were admitted in that proceeding. Second, even if there is some overlap, the Board has not yet ruled on the merits. As such, there should be no issue preclusion at this point. Third, the SPMC is concerned with an entirely different set of circumstances than those which have been previously litigated. Indeed, even if the Board had already made rulings in the NHRERP proceeding, such findings should not be relied upon in this case where there exists no state participation in emergency planning.

Staff: The Staff objects to Bases A, J, L, M and S(2) on the grounds that these bases have no regulatory foundation. Each of these bases pinpoints a particular failing in the SPMC insofar as that plan pertains to the adequate protection of school children. The school children are part of the EPZ population. As such, the same level of protection to be provided to any other member of the population within the EPZ has to be extended to school children. It only makes sense that the various plan provisions for the various segments of the population will, by necessity, have to be addressed to the specific circumstances of each such segment. In short, it is obvious that the adequate protection of school children means that certain things must be done. The bases objected to list those measures which have not been taken or which are clearly inadequate.

Basis J is not vague. It raises the question of the propriety and practicality of including school related information in EBS messages, as set forth in the Plan.

Basis M could not be more specific or clear -- it concerns the timely transportation of school children in the event of a radiological emergency. Moreover, it refers to and incorporates Bases H and I, which the Staff has not objected to.

The Staff's response to Basis K is patently absurd. The Staff appears to believe that a plan is adequate even if school children are not sheltered during a radiological emergency because school officials have not been told, trained or taught how to provide such shelter. Any sheltering plan for school children must be adequate and this requires prior arrangements to insure that these children will be sheltered.

Bases E and G are specific. There is no obligation, at this juncture, to produce or plead evidence.

The response to the Applicants, set forth directly above, insofar as it concerns Bases N, R and S(i) is incorporated by reference.

The Staff has mischaracterized Bases O, P, Q and S(l) as "simply speculation about the behavior of certain individuals." Rather, these Bases deal with reasonable assumptions in light of the expected circumstances concerning the behavior of these individuals.

#### CONTENTION 48

Applicants: No objection

Staff: The Staff has posed no objection to those parts of Basis A alleging the inability of hospitals identified in the SPMC to accommodate patients located in EPZ hospitals.

Objections to the remainder to Basis A, concerning the failure to adequately accommodate or decontaminate, assert a lack of regulatory basis. In support of this claim, the Staff has cited the Policy Statement on "Emergency Planning-Medical Services" at 51 Fed. Reg. 32904. That Policy Statement says, in pertinent part, that the planning standard of 50.47(b)(12) "requires pre-accident arrangements for medical services [beyond the maintenance of treatment facilities] for individuals who might be severely exposed to dangerous levels of off-site radiation following an accident at a nuclear power plant." *Id.* at 32904. The term "pre-accident arrangements" encompasses the adequate protection standard in 50.47(a). By necessity, "adequate protection" includes all injured individuals in the EPZ whether such injury is the direct or the indirect result of a radiological emergency. The policy statement at issue does not dictate a new standard. It reiterates the existing one. Adequate protection must be provided for individuals who become injured during an emergency.

The Staff's opposition to Bases B and C, that "generic matters of human behavior were previously litigated," is unfounded. In reply, the Mass AG refers to and incorporates his reply to the Applicants' position on Contention 47.

The Staff opposes Bases D, E, F, G and H as being "overly vague and lack[ing] basis." Respectively, these bases concern the inadequacy of ambulance services, the inadequacy of sheltering, the inadequacy of ORO's instructions to the

hospitals, the inadequacy of the Generic EPZ Hospital Plan and the inadequacy of the provisions for dispensing KI. These alleged deficiencies are very clear and specific. Moreover, they allege defects in the SPMC as submitted and thus have a clear basis.

CONTENTION 49

Applicants: Applicants raise no objection to this contention. However, the Applicants seek to restrict any evidence to be proffered in support of Basis A because the "generic question of human behavior [has] already [been] fully litigated." Such a restriction is unfounded for the same reasons set forth in the Mass AG's reply to the Applicants response to Contention 47, which is incorporated by reference.

Staff The Staff's response that Contention 49 "lacks basis" fails to take into account the explicit provisions of NUREG-0654 II.J.10(d) and (e). In addition, to assert that this contention lacks basis is to argue that there is no requirement to adequately protect institutionalized people. Such a position obviously contravenes the language and intent of various controlling regulations and guidance.

CONTENTION 50

Applicants: No objection.

Staff: The Staff claims Bases A and E are speculative. In fact, both bases make reference to prior defects in mail surveys of the special needs population. Both Bases B and D are both rooted in alleged defects in the SPMC as submitted. Clearly, these defects run to the adequacy of planning for the special needs population, which is an undisputed regulatory requirement. Basis C is quite specific in alleging that the "Needs Code" in the SPMC is insufficiently specific in identifying the types of functional disabilities.

CONTENTION 51

Applicants: No objection.

Staff: The Staff objects on the grounds that this contention lacks basis. The contention makes specific reference to 50.47(a), (b)(10) and other relevant FEMA guidance documents and clearly raises justiciable issues. In addition, the defects identified in this contention run to the SPMC as submitted.

CONTENTION 52

Applicants and Staff: No objection.

CONTENTION 53

Applicants: No objection

Staff: Staff objects on the grounds of specificity and basis. The contention clearly identifies the issue to be litigated: the adequacy of the pre-emergency information for

those with special needs. Each basis stated sets forth separate defects in the SPMC as submitted.

CONTENTION 54

Applicants: No objection.

Staff: There are regulatory requirements for the preparation of adequate plans for those in special facilities. Staff acknowledges this fact in not objecting to Bases A, D, E, F, H, K, I, L, M and N. Yet, Bases B, C and J are either rooted in specific defects in the SPMC or are entailed by the fact that plans for special facilities must be adequate. Further, Basis G is as specific as it could possibly be.

CONTENTION 55

Applicants: Applicants object to Bases F and G. If Applicants are obligated to plan for the evacuation of those in special facilities, as they are, then those plans must be adequate. If the relocation centers which are chosen are inadequate then the planning is inadequate. Such a specific requirement is entailed by the more general requirement that adequate planning must be provided for the evacuation of those in special facilities. Basis G does not posit that cease and desist orders could or would issue during an emergency. Rather, the illegality of the planned use of the host special facility is an indication of its inherent inadequacy for that purpose.

Staff: Even if a presumption concerning a Red Cross response is entertained, and it should not be here, the issue raised in Basis C is the adequacy of such a response in light of the absence of prior coordination and planning.

Again, an adequate plan must make suitable arrangements for evacuating and relocating those in special facilities. The Staff does not contest this fact. Bases D and E state with precision defects in the SPMC as to this very requirement. If there is a regulatory requirement to accomplish a large task, then there is, as a corollary to that, a requirement to accomplish all of the smaller tasks encompassed by that larger task. The Mass AG has attempted to specify in detail the SPMC's failure to accomplish certain large tasks. It has done so by identifying the smaller tasks not adequately treated in the SPMC. The Staff appears to believe that no component of a clear regulatory requirement, no matter how logically entailed by that requirement or practically necessary for satisfying it, can provide a basis for a contention that expressly puts the larger requirement at issue. This is simply not so.

The Staff objects to Bases H, I and J for lack of basis and specificity. But the SPMC asserts that the Red Cross will perform certain actions and these bases place those assertions squarely in question. As to Bases F and G, again the Staff argues, without support, that the presumption in the new rule bars any issue of state law from being raised in this proceeding. No reasoned basis for this view is offered.

CONTENTION 56

Applicants: This contention does not raise on-site issues but issues intimately connected to the adequacy of the SPMC and it should be litigated.

Staff: Staff appears not to have read the contention. The contention does not challenge the EALs but the PARs and the decision criteria -- related to off-site and not on-site conditions -- on which they are based.

The Mass AG is not offering his views on what "applicable policies ought to be." (Staff's responses at 50). Rather, he is stating with precision the defects and omissions in the decision criteria set forth in the SPMC.

CONTENTION 57

Applicants: The issues raised in this contention are not on-site, but off-site issues.

Staff: Again, this contention clearly sets forth defects in the SPMC. There is both a regulatory and factual basis for this contention. A litigant does not have to plead evidence at this juncture.

CONTENTION 58

Applicants and Staff: The Applicants' and the Staff's response is a non-sequitur. If the Seabrook Station Radiological Plan does not describe the Seabrook Station Short-Term Emergency Director's responsibilities as they are

described in the SPMC, then this is a defect, just as the contention states, in the SPMC.

CONTENTION 59

Applicants and Staff: No objection

CONTENTION 60

The Mass AG withdraws this contention.

CONTENTION 61

Applicants and Staff: No objection.

CONTENTION 62

Applicants: The "lack of coordination" alleged will result, as the contention makes clear, in "inconsistent PARs". Thus, the issues to be litigated concern the adequacy of the working relationship during an emergency of those formulating PARs.

Staff: No objection.

CONTENTION 63

Applicants: No objection.

Staff: Basis B clearly states that adequate public information has not been "prepared or distributed." Thus, Staff has misread or ignored portions of this basis.

Without the identity and location of the food and milk producers, emergency protective measures in the ingestion pathway EPZ will not be taken.

CONTENTION 64

Applicants and Staff: First, because of the bankruptcy of PSNH, all letters of agreement and contracts entered into before January 28, 1988, should be treated as unreliable. Even if the debtor-in-possession assumed these contracts at some later time, it has not yet done so. In light of this uncertainty, it can not be assumed that the suppliers presently intend to honor these agreements. Second, the SPMC specifically, in Mode 1, relies on resources available to the relevant governments. Finally, the impact of the PSNH bankruptcy on the supplier contracts is not barred by the financial qualifications rule.

CONTENTION 65

Applicants and Staff: The Applicants have argued that emergency planning can be adequate at a given site even if large numbers of people cannot be timely evacuated or adequately sheltered. In light of this position, the Applicants may not be heard to argue that the criteria used to evaluate the adequacy of decontamination and monitoring facilities, medical support, and other resources available at an average site should apply to Seabrook. If the Applicants do

not have to establish that the SPMC will prevent or substantially reduce the dose consequences of a radiological accident, they still have to show adequate preparations to handle the health effects of their comparatively ineffective plan.

CONTENTION 66

Applicants and Staff: No objection.

CONTENTION 67

Applicants: Since the filing of Applicants' response, the Haverhill Zoning Board of Appeals has denied the Applicants the use of 145-185 Water Street as a staging area. This contention raises a clearly justiciable issue.

Staff: Again, the Staff ignores reality. The SPMC has designated a Staging Area that cannot be and is not being used as such. In light of this fact, no planning can be done by the ORO based on this location and the SPMC is, therefore, inadequate.

CONTENTION 68

Applicants: The media center selected for the Massachusetts EPZ and set forth in the SPMC is not properly sited. This is not an on-site but an off-site issue, as the regulatory references in the contention make clear. It is also not an event occurring in 1985 but in September 1987, when the SPMC was submitted.

Staff: No objection.

CONTENTION 69

Applicants: No objection.

Staff: The SPMC asserts that the American Red Cross ("ARC") will establish and staff 27 congregate care centers. Yet, no agreement with the ARC to do so has been reached. The fact (or presumption) that ARC as a matter of its "charter and national policy will respond" is irrelevant to determining whether the ARC will perform the specific tasks assigned to it by the SPMC.

The case relied upon and cited by the Staff concerns a letter written by the ARC which, inter alia, was construed to "recognize that the ARC still has an obligation, under its policies and under its charter from Congress, to provide aid to LILCO." Long Island Lighting Co. (Shoreham) 25 NRC 884 at 888 (1987). Based on that letter, the Commission could find nothing to infer that ARC would disavow its general policy. Id.

Here there is no letter. In other words, there is nothing to buttress the Staff's position that, in these circumstances, ARC will and can be able to comply with its own general policy or its obligations as described in the SPMC.

CONTENTION 70

Applicants: Again, the SPMC, specifically in Mode 1, does rely on the state resources.

Staff: To the extent that the Staff argues the effect of the presumption, the Mass AG refers to his Reply 1-6. Further, as noted above, the SPMC does require state resources for implementation. Finally, the contention is not based on the failure of the Applicants to engage in planning with non-participating governments. Instead, it alleges clearly that the SPMC inaccurately describes governmental resources and that these resources are not adequate to handle a radiological emergency at Seabrook, as proposed in Mode 1 of the SPMC.

CONTENTION 71

Applicants and Staff: No objection.

CONTENTION 72

Applicants: No objection.

Staff: The Staff does not object to the contention that an inadequate number of vehicles and drivers has been secured. However, they seek to limit the scope of this contention to "mobility-impaired individuals who have been pre-identified." Such a restriction would ignore those who have been injured during a radiological emergency and as a result are rendered immobile. Obviously, these individuals will also need special transportation.

The Staff's objection to the alleged lack of basis regarding the misrepresentation and omission of facts by the Applicants is unfounded. Again, there is no obligation to

plead evidence at this juncture. Moreover, Basis B specifically alleges in what manner the Applicants misrepresented the circumstances.

CONTENTION 73

Applicants and Staff: No objection.

CONTENTION 74

Applicants: The Applicants have objected to this contention on the grounds that they are simply not responsible for snow removal. The reasoning for this assertion, i.e., "governmental entities will perform those [snow removal] functions that they normally perform absent an emergency", makes no sense. Because the communities involved have not planned for such an emergency, it cannot be assumed that whatever normal arrangements they have made for snow removal will be available in these circumstances.

Staff: No objection.

CONTENTION 75

Applicant: The Applicants do not object to this contention but would not allow the admission of any evidence related to Basis A. In response to this, the Mass AG refers and incorporates his arguments concerning the presumption set forth in Reply 1-6.

Staff: In reply to the Staff's assertion that this contention challenges 50.47(c)(1), the Mass AG refers to and

incorporates the discussion of the presumption set forth in Reply 1-6

Objections to Bases C and D are unfounded because those bases deal respectively, with the effectiveness and timeliness of the FRERP response and the defects in the SPMC in regard to that response. As such, they are directly supportive of the contention and are obviously germane.

Objections to Based E and F are similarly inappropriate. Basis E concerns the actual response (if any) of federal support organizations during a fast-breaking emergency and alleges that the SPMC misstates federal policy. Basis F raises questions about the ability of the ORO to effectively coordinate a federal response, assuming a response even occurs.

Again, no evidence need be produced at this point to support these bases.

#### CONTENTION 76

Applicants and Staff: The Mass AG incorporates by reference his response to the replies of the Applicants and Staff to Contention 65.

#### CONTENTION 77

Applicants: Applicants raise no objection to this contention. Applicant's objection to the admission of any evidence pertaining to Bases F and G appears to be a

typographical error. There is no Basis G and the Applicants' opposition to Basis F has no applicability to Basis F of Contention 77 and is otherwise garbled.

Staff: The Staff raises no objection to this contention but seeks to strike Bases E and F because "Intervenor articulates no reasonable explanation or authority" in support of these bases. The Mass AG reiterates again that evidence need not be produced at this point.

The Staff also claims that matters dealing with the inability to staff an adequate response team, the lack of communication to and among emergency workers, and the possible non-response of emergency workers are somehow "not appropriate matters for litigation." On the contrary, these questions bear directly on the adequacy of the SPMC.

#### CONTENTION 78

Applicants and Staff: No objection.

#### CONTENTION 79

Applicants and Staff: No objection.

#### CONTENTION 80

Applicants: No objection.

Staff: 50.47(b)(15) explicitly requires adequate training for those assisting in an emergency response. The factual issue raised by this contention is the adequacy of the training modules used to meet the (b)(15) requirements. Therefore, this

contention has a regulatory basis and puts all parties on adequate notice of the issues to be litigated.

CONTENTION 81

Applicants and Staff: The Applicants and Staff do not object to this contention. However, they claim that Basis C should be rejected, in light of the presumption. The Mass AG refers to and incorporates his discussion set forth in Reply 1-6.

CONTENTION 82

Applicants and Staff: The Mass AG withdraws Basis A.

CONTENTION 83

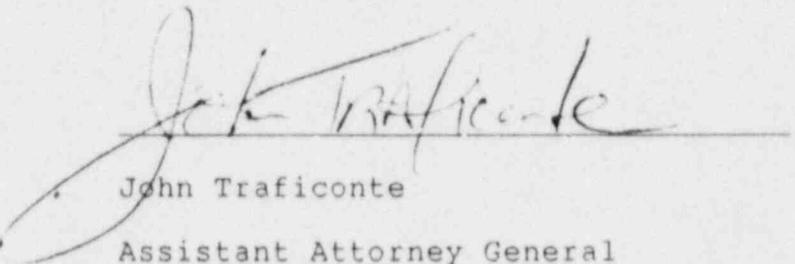
Applicants and Staff: This contention sets forth three distinct issues of human behavior not otherwise litigated and not generic to any emergency response: (1) amateur emergency workers may well respond to an actual emergency in a different way than professionals; (2) the populations in the Massachusetts communities, in the absence of a participating state, also may respond differently; and (3) a possibility for real aberrant and irrational behavior exists in the beach areas because of the long evacuation time and the absence of sheltering. These issues are not speculative and should be litigated.

Respectfully submitted,

JAMES M. SHANNON

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COMMONWEALTH OF MASSACHUSETTS

A handwritten signature in cursive script, reading "John Traficante", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

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DATED: June 22, 1988

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY  
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BRANCH

In the Matter of )  
)  
)  
PUBLIC SERVICE COMPANY OF )  
NEW HAMPSHIRE, ET AL. )  
(Seabrook Station, Units 1 and 2) )  
)  
)

Docket No.(s)  
50-443/444-OL

CERTIFICATE OF SERVICE

I, John Traficonte, hereby certify that on June 22, 1988, I made service of the within Reply of the Massachusetts Attorney General to the Responses of the NRC Staff and the Applicants to Contentions 7 Through 83 filed by the Massachusetts Attorney General, by mailing copies thereof, postage prepaid, by first class mail to; by Federal Express mail as indicated by [\*], or by hand delivery as indicated by [\*\*], to:

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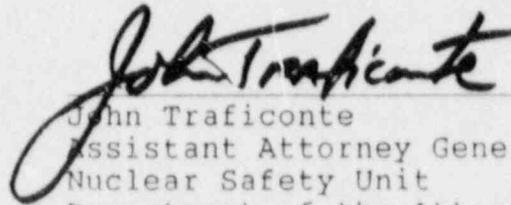
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