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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before Administrative Judges:  
Ivan W. Smith, Chairperson  
Gustave A. Linenberger, Jr.  
Dr. Jerry Harbour

In the Matter of	)	June 22, 1988
PUBLIC SERVICE COMPANY OF	)	Docket Nos. 50-443-OL
NEW HAMPSHIRE, et al,	)	50-444-OL
(Seabrook Station, Units 1 and 2)	)	Off-Site Emergency
	)	Planning

TOWN OF AMESBURY  
REPLY TO NRC STAFF AND APPLICANTS' RESPONSES  
TO TOWN OF AMESBURY CONTENTIONS  
ON THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES (SPMC)

NOW COMES the Town of Amesbury (TOA) and replies to the NRC Staff and Applicants' responses to those contentions previously filed by TOA on the Seabrook Plan for Massachusetts Communities (SPMC) under date of April 13, 1988.<sup>1</sup>

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See, NRC STAFF'S RESPONSE TO CONTENTIONS FILED BY TOWNS OF AMESBURY, NEWBURY, SALISBURY AND WEST NEWBURY, THE CITIES OF HAVERHILL AND NEWBURYPORT AND BY THE MASSACHUSETTS ATTORNEY GENERAL, NECNP AND SAPL, dated May 27, 1988, (hereinafter Staff Response); and APPLICANTS' RESPONSES TO INTERVENORS' CONTENTIONS ON THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES (SPMC), dated April 26, 1988, (hereinafter Applicants' Response).

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TOA generally concurs in those standards for contention admissibility identified by the NRC Staff. See, Staff Response, pp. 1-7. In its response to certain TOA contentions, however, the Staff has misapplied the articulated standards and thereby seeks to exclude certain TOA contentions that raise significant safety concerns and material inadequacies in the SPMC.

Similarly, Applicants request exclusion of virtually every TOA contention and basis by, improperly and prematurely, attempting to litigate the merits of TOA's contentions.

In ruling on contention admissibility, however, this Board should not determine the merits of proffered contentions, Staff Response, pp. 3-4, citing, inter alia, Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-183, 7 AEC 210, 216 (1974), require that contentions detail the supporting evidence, Staff Response, p.4, citing Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973), or, prematurely, consider whether the proffered contentions are true, Staff Response, p.4, citing Washington Public Power Supply System (WPPSS Nuclear Power Project No. 1), ALAB-722, 17 NRC 546, 551 Note 5 (1983) citing Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980). Accordingly, this Board, therefore, should reject efforts by Staff and Applicants to proceed beyond the face of the pleadings to prematurely litigate the substantive merits of TOA contentions.

By way of further reply, TOA states:

1. TOA CONTENTION NO. 1

The SPMC fails to demonstrate that each principal response organization has staff to respond and to augment its initial response on a continuous basis, fails to provide for an adequate number of available manned emergency vehicles, and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, in violation of 10 CFR §50.47(a)(1), 50.47(b)(3), 50.47(b)(6), 50.47(b)(8), NUREG-0654-FEMA-REP-1, REV. 1 II.A.1.e, II.A.3, II.A.4, II.C.4, and II.F.1.a.

TOA RESPONSE

In substance, TOA No. 1 alleges:

(1) that many Letters of Agreement (LOAs) proffered in support of the SPMC are facially inadequate;

(2) that many emergency personnel deemed "available" under the LOAs will not in fact respond to an actual emergency;

(3) that the SPMC, as structured, will likely result in accidents and delays, even to those who actually do attempt to respond.

The Staff generally does not oppose admission of TOA No. 1, except to the extent the contention purportedly engages in "speculation" that evacuating traffic, accidents, or identification

checks may impede those emergency personnel attempting to respond.<sup>2</sup> This Board should reject the Staff's efforts to prematurely reach the substantive merits of the contention or to summarily dispose of these material issues of fact.

The Staff further seeks exclusion of these traffic related issues, as do Applicants, on grounds these matters previously have been litigated. Staff Response, p. 67. This is inaccurate. The SPMC provisions mandating traffic queues, SPMC PLAN, p.3.6-14, the traffic related safety concerns posed by inadequate traffic control devices on evacuation routes, and the unrealistic staff assignments established by the SPMC, have never been litigated for the Massachusetts portion of the EPZ.

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Claiming a lack of specificity, the Staff objects to that portion of each TOA contention which states ". . . and otherwise fails to provide reasonable assurance." This provision in each TOA contention, however, should be understood as anticipating efforts by the Staff and Applicants to improperly limit TOA to litigating only those examples of SPMC deficiencies specifically identified in TOA contentions. That limitation is contrary to law. See, Staff Response, pp. 4-5 "Similarly, the admissibility of a contention is not to be determined based upon the completeness of the facts offered in support of the contention; rather, following its admission, all parties will have an opportunity to develop their positions as to the merits of the contention with additional factual data gained through utilization of the discovery process."

The apparent reliance of the Staff and Applicants upon prior litigation of ETE issues, therefore, is misplaced.<sup>3</sup>

In addition, Applicants admit that LOAs must "provide assurance" that the resources identified in LOAs will in fact be available in an emergency. See, Applicants' Response, pp. 170-171. TOA No. 1 denies that the SPMC, and specifically the proffered LOAs, provide this assurance. This basic issue of fact must be resolved through litigation on the merits.<sup>4</sup>

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Indeed, this Board previously denied TOA the opportunity to raise similar traffic related issues through contentions filed by TOA in the NHRERP proceedings. See, MEMORANDUM AND ORDER, ASLBP 82-471-02-OL, July 16, 1987: "Because this Board currently has no Massachusetts emergency response plans before it, and because the eventual outcome of Massachusetts state and local policies of non-participation/non-implementation in emergency planning must be resolved eventually on some other basis, the issues framed by TOA, which clearly deal with current deficiencies in Massachusetts emergency planning, are not ripe for litigation at this time." Id. at pp. 4-5. See also, MEMORANDUM AND ORDER, May 18, 1987: "The Board agrees with the Staff's objections, and even if TOA met the late filing requirements of Section 2.714(a), which it does not, none of the TOA's contentions is admissible . . . TOA's contentions go to alleged deficiencies in Massachusetts planning, not to the sufficiency of the KLD ETE as it applies to planning for a range of protective actions expressed in the New Hampshire emergency plans." Id. at p. 7.

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As recognized by the Staff, the facial validity of LOAs, and "the actual availability of individuals to perform emergency services and how they will be located, notified and deployed are proper subjects for litigation in this proceeding." Staff Response, pp. 66-67.

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## 2. TOA CONTENTION NO. 2

The SPMC fails to establish a system for disseminating to the public appropriate information to respond to an emergency, fails to establish the administrative and physical means for providing prompt instructions to the public, fails to demonstrate that there is an adequate legal basis for the actions to be taken by emergency response personnel and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, in violation of 10 CFR §50.47(a)(1), 50.47(b)(1), 50.47(b)(5), NUREG-0654 II.A.2.b, II.E.5 and II.E.6.

### TOA RESPONSE

This contention, in substance, argues that the decision-making process set forth in the SPMC will result in unreasonable delay, and will preclude prompt notification or implementation of protective action recommendations (PARs) by the public. As alleged, this process is cumbersome and invites delay, regardless of, and even assuming, the "best efforts" by state and local officials and utility employees. On this issue, the Staff's claim that Basis A, contravenes the "best efforts" presumption of 10 CFR §50.47(c)(1)(iii) therefore is irrelevant.

To the extent Basis A additionally argues that TOA's emergency response will be "ad hoc", and the SPMC will not be implemented, the best efforts presumption of 10 CFR §50.47(c)(1)(iii) still presently provides no basis for exclusion. As referenced in Basis A, the timing, coordination, and logistical barriers to implementation of the SPMC, as a practical matter, will preclude TOA from following the SPMC in an actual emergency. TOA therefore is entitled to an opportunity

to rebut the regulatory presumption, through litigation on the merits.<sup>5</sup>

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TOA asserts that, as a matter of law under 10 CFR §50.47(c)(1)(iii), and of due process, the Staff's referenced presumption that local governments in an emergency will use their "best efforts," including following the utility plan, provides no basis to exclude TOA's contentions, until TOA is provided a full and fair opportunity to rebut this presumption through discovery and litigation. The cited regulation itself provides that "this presumption may be rebutted," which necessarily requires that opportunity for rebuttal be allowed. Indeed, at oral argument before the Court of Appeals on June 8, 1988, NRC Solicitor Briggs, in substance, conceded that the presumption could be rebutted, depending upon the particular facts of the case, and that local governments were not limited to rebutting the presumption only by proffer of an alternative emergency plan.

"Judge Breyer: I didn't say what was necessary. What I said is, what happens if they show they won't follow the plan? Forget what's necessary to show it. I'm saying suppose they show it. How what I read here is it says it may be presumed that they will generally follow the plan. However, this presumption may be rebutted by, for example, and then they give one example. Now, as I read that, I thought that's an example for whatever reasons they come up if they show they won't follow it, then they've shown it and the presumption goes away. Am I right? Care they've said no, that isn't so, what they're worried about is that you will not allow them to show and even if they do show they won't follow the plan, the Commission will still grant, say that there is an adequate plan. Now, I want to know what this rule is, I mean does it or does it not allow them to rebut this?

Solicitor Briggs: It certainly allows them to make those kind of arguments.

Judge Breyer: You mean if they make it and they show it, do they win?

Solicitor Briggs: If they show that they will not follow the plan, if they convincingly show that the presumption has no basis in fact then it seems to me it would be patently arbitrary and capricious to apply a presumption that will not be sound.

Judge Breyer: So, in other words, you're saying, and I'm going to hold you to this in a sense, that if they show they will not follow the plan and that's shown convincingly, they win.

The Staff does not oppose admission of Basis B.

Basis C claims that ad hoc EBS messages will prove inadequate to appropriately shape and direct an emergency response by the public. As grounds for exclusion, the Staff baldly claims "there is no averment that such messages will be used." Staff Response, p. 68. The Staff is incorrect and ignores the express reference in Basis C to

(Footnote Continued)

Solicitor Briggs: But the question . . . that's correct.

Judge Breyer: That's correct.

Solicitor Briggs: That's correct, Your Honor. But the question is, how can they show . . .

Judge Breyer: Well, I don't know . . .

Solicitor Briggs: . . . and that is a case-by-case question."

See, Exhibit 4 to 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, dated June 20, 1988 (MASS AG Reply).

Accordingly, the facts alleged in TOA No. 2 provide a valid basis for litigating whether the regulatory presumption, as applied to TOA, should be rebutted in this case. As further support that the cited regulation provides no lawful basis for exclusion of TOA's contentions, prior to discovery or litigation on the merits, TOA relies upon and incorporates by reference MASS AG Reply.





the SPMC provisions that mandate preparation and use of ad hoc EBS messages during an actual emergency. PROCEDURES 2.13, p. 7.<sup>6</sup> It is also disingenuous for the Staff to dismiss, as "speculative", those problems associated with inadequate EBS messages, including, shadow evacuation, aberrant driver behavior, and role conflict, in view of the Staff's unflagging support for Dr. Mileti's claims, expressed in litigation on the NHRERP, that EBS messages serve as primary determinants of human response to an emergency.

Applicants similarly rely upon the presumption in 10 CFR §50.47(c)(1)(iii), as grounds for exclusion of TOA No. 2. Applicants thereby misread the cited regulation, which provides no bar to the threshold admissibility of any contention proffered by TOA. See, N.5, supra.

Applicants further argue the merits of the "ad hoc preparation" of EBS messages under the SPMC. That argument is premature and should be rejected. Alabama Power Co., supra, 7 AEC 210, 216 (1974).

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"5.1.10 Upon direction from the NHY offsite director to draft an EBS message, complete the following steps.

A. Using Attachments 3 through 24, prepare and complete the most appropriate EBS message."

3. TOA CONTENTION NO. 3

The SPMC fails to make adequate provisions for prompt communications among principle response organizations, emergency personnel and the public, fails to specifically establish the emergency responsibilities of the various supporting organizations, and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook Station in violation of 10 CFR §50.47(a)(1), 50.47(b)(1), 50.47(b)(6), NUREG-0654 II.A and II.F.

TOA RESPONSE

The Staff does not oppose TOA No. 3 as to "the listed examples of the conflict resulting from a lack of coordinated planning and emergency response training . . . (and) possible conflicting protective actions for the beach populations. Staff Response, pp. 68-69. TOA, however, should not be limited to litigating only identified representative examples of conflicts in PARs, where additional evidence may be gained through the discovery process. See, N.2, supra.

To the extent the Staff and Applicants seek to exclude TOA No. 3 on grounds the contention contravenes 10 CFR §50.47(c)(1)(iii), see Staff Response, p. 68, that argument should be rejected. See, N.5, supra.

The balance of Applicants' response seeks to litigate the merits of TOA No. 3 where, for example, Applicants allege "divergent views (between the governors), need not be in conflict." Applicants' Response, p. 176. Even assuming the responses "need not be in conflict," certainly inconsistent or uncoordinated PARs, arising from these divergent views, may indeed conflict, to render the SPMC

inadequate to protect the public. Further, having attempted to prematurely argue the merits of TOA No. 3, Applicants thereby refute their own claim that TOA No. 3 lacks "particularity." See, Applicants' Response, p. 176.

#### 4. TOA CONTENTION NO. 4

The SPMC fails to provide for adequate personnel or resources to implement the SPMC, including a comprehensive traffic management plan, fails to provide for appropriate means of relocation for the public, and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook Station in violation of 10 CFR §50.47(a)(1), 50.47(b)(1), 50.47(b)(8), 50.47(b)(10), NUREG-0654 II.A and II.J.10.

#### TOA RESPONSE

TOA hereby responds to specific bases set forth in TOA No. 4 as follows:

A. The Staff does not oppose admission of Basis A except those claims of "bus deployment delays" since, argues the Staff, there is no allegation that these delays would significantly affect ETE. Whether Basis A expressly references ETE is irrelevant, since no such reference is required to present a litigable issue. Impediments to a prompt response, by properly staffed emergency vehicles, both contravene the regulations and regulatory guidance cited by TOA in support of TOA No. 4, and otherwise argue that these impediments fail to provide reasonable assurance that adequate protective measures can and will be implemented.

Predictably, Applicants seeks exclusion of virtually all of

the 17 separate bases proffered in support of TOA No. 4. On Basis A, Applicants prematurely argue that basis is untrue. Applicants' Response, p. 182. Applicants further improperly characterize Basis A, claiming the referenced sections in the SPMC merely "check specific resources at the time of an emergency." Applicants' Response, p. 182. On its face, however, the SPMC indicates available resources will not be known, and indeed no deployments of resources will be made, until drivers have been contacted and identified as available at the time of emergency. Applicants finally do not even address the second sub-basis which references the unduly cumbersome, time-consuming procedure, adopted in the SPMC, of identifying an entire pool of available buses and drivers before any emergency response assignments can be made. These provisions are the antithesis of a timely and planned response and are proper subjects for litigation.

B. Basis B, in substance, alleges there will not be adequate traffic control guides to staff the appropriate traffic control points within TOA during an emergency. The Staff prematurely argues the truth of these assertions, claiming that TOA police will not be relied upon in an emergency response. Even if not premature,

the Staff's position is inaccurate.<sup>7</sup> Similarly, the Staff's claim that it is "speculative" whether TOA will require more than 16 traffic guides again seeks to improperly litigate the merits of the contention. The referenced basis specifically states that the Chief of Police for the Town of Amesbury has expressly recommended that additional traffic control guides be provided for an adequate emergency response and that these recommendations have been rejected in the present SPMC.<sup>8</sup> As framed, Basis B clearly articulates the

<sup>7</sup> See, SPMC Plan, pp. 2.2-1. 2.2-5

## "2.2 STATE/LOCAL ORGANIZATION

### 2.2.1 Introduction

This section provides an outline of the organizations in the Commonwealth of Massachusetts capable of providing responsive actions following a radiological emergency at Seabrook Station. As discussed previously, it is assumed that these organizations will attempt to fulfill their responsibilities to protect the public in an actual emergency. . . .

### 2.2.6 Local Response

Each EPZ and host community involved in emergency response can operate its own EOC which can serve as command and control headquarters of local emergency response activities, including maintaining a Communications Center to all local field units, the Area I EOC, and the State EOC. Local Civil Defense Directors for each municipality can communicate with the Commonwealth of Massachusetts Civil Defense Agency to coordinate resource support during an emergency. Emergency response vehicles and equipment resources such as police and fire department vehicles, and traffic and access control equipment are also available in each of the local EPZ and host communities."

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This recommendation was made prior to TOA's withdrawal from the planning process. The SPMC's wholesale rejection of this recommendation provides additional evidence that input from EPZ towns has been often ignored by NHY.

issue of traffic guides to be litigated. Specific intersections may be identified through discovery, as there is no requirement for contention admissibility that this evidence be detailed in the basis. See, N.2, Supra.

Applicants generally echo the Staff's position and, for reasons stated, that position should be rejected. Of significance, however, is Applicants' recognition that under the SPMC "governmental agencies only are called upon to do what they would be required to do every day in the absence of an emergency at Seabrook. SPMC 2.2.1." Applicants' Response, p. 183. By implication, Applicants reject the Staff's assertion, previously cited, that TOA police will not be relied upon to provide traffic control in a radiological emergency.

C. Applicants and Staff generally do not oppose admission of Basis C, but improperly seek to limit that basis only to the issue of inadequate training of traffic guides. On its face, Basis C raises the overall issue of inadequate training and experience to perform emergency response functions by NHY employees. Efforts to limit the scope of this basis only to the stated example of NHY traffic guides are improper and should be rejected. See, N.2, supra.

D. The Staff apparently does not oppose admission of that portion of Basis D alleging a lack of adequate procedures or plans to implement PARs for special needs facilities. Staff Response, p. 71. The Staff claims, however, that allegations concerning a lack of personnel to perform emergency response functions at special needs facilities does not present a litigable issue since "there is no

requirement that the SPMC provide personnel to perform their duties." Staff Response, p. 70. Whatever the "requirement" alluded to by the Staff, it is clear that the SPMC must ensure there are adequate personnel designated, assigned, and available to implement protective action responses for those requiring assistance. 10 CFR §50.47(b)(1).

For this reason, Applicants' assertion that "there is no requirement for any automatic provision of such additional staff" Applicants' Response, p. 183, similarly misses the mark. The plans, procedures and personnel necessary to provide adequate protection for special needs populations represents a key issue in emergency planning, is fairly raised by Basis D, and should be admitted for litigation.

E. Although the Staff opposes admission of Basis E as "overly vague," TOA suggests that it is the Staff that is vague in identifying the reasons for its objection. Both the Staff and Applicants do not even consider most of the basis which specifically references Appendix F, within the SPMC, that identifies certain "supporting plans" for special facilities. The adequacy of these special facilities plans clearly are a proper subject for litigation and any vagaries in TOA's stated basis arise from the lack of coherence, or even availability to Intervenors, of many of these special facilities plans. In addition, the Staff's statement that special facilities employees are "not considered emergency workers" is irrelevant. The issue is whether there are adequate personnel, however designated, to assist special facilities populations to

respond to an emergency. 10 CFR §50.47(b)(1). (Cited in TOA No. 4).

Applicants' res judicata argument is similarly flawed. To the extent Basis E presents an issue of human behavior that special facilities employees may not carry out emergency response functions, it is irrelevant that these issues, generally, were previously litigated concerning the New Hampshire plans. It is a matter of record that the NHRERP is a plan advanced, supported, and approved by the State of New Hampshire. In contrast the SPMC is proffered by a private utility and that plan has been specifically disavowed by the Commonwealth as inadequate. In addition, many of these generic plans differ markedly from such plans addressed in the NHRERP litigation, including a conspicuous absence of implementing procedures. Finally, as alleged, many of these general plans have never even been made available to Intervenors for review. Under these circumstances, there is an inadequate identity of issues between the NHRERP and the SPMC concerning emergency planning for special needs populations. The issue of the adequacy of response of special facilities employees within the Commonwealth, therefore, should not be barred by principles of res judicata. See, Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-79-27, 10 NRC 563, 566 (1979).

F. For reasons stated in TOA's reply to Staff and Applicants' Responses to Basis E, Basis F should be admitted for litigation. In addition, to the extent Applicants support their objection to Basis F by citation to §50.47(c)(1)(iii), that reliance is improper. See, TOA Response re: TOA Contention No. 2 and N.5,

supra.

G. The Staff and Applicants oppose admission of Basis G on grounds that basis purportedly violates the presumption in 10 CFR §50.47(c)(1)(iii). That argument is without merit. See, N.5, supra.

To the extent Applicants additionally rely upon principles of res judicata to exclude litigation of human behavior and role conflict issues, see Applicants' Response, p. 185, those arguments should be rejected. See, TOA Reply re: TOA Contention 4, Basis E.

H. The Staff does not oppose admission of that portion of the basis concerning a lack of experience, training or availability of bus drivers to perform emergency response functions. Staff Response, pp. 71-72. To the extent the Staff relies upon principles of res judicata, again the factual predicate concerning utility plans for the Commonwealth lacks the requisite identity of issues necessary for application of the doctrine. See, TOA Reply re: TOA Contention 4, Basis E. To the extent it can be discerned, Applicants' response represents an improper effort to litigate the merits of Basis H and should be rejected.

I. The Staff improperly opposes Basis I as purportedly contravening the "best efforts" presumption set forth in 10 CFR §50.47(c)(1)(iii). In addition, Applicants, again, prematurely argue the substantive merits, and dispute the truth, of Basis I. Both arguments provide no grounds for exclusion.

On the merits, however, Applicants offer a selective and inaccurate characterization of Basis I. On its face, and as

referenced in Basis I, the SPMC assumes mutual aid agreements now in force will provide personnel to assist in an emergency. Precisely because the emergency must be assumed to extend beyond individual local borders, however, these additional resources will likely not be available and Applicants offer no argument to the contrary. Whether this reduction in resources, to a level below that typically available to respond to more localized emergencies, would prove inadequate for an emergency at Seabrook again presents an issue of fact for litigation.

J. The Staff generally does not oppose admission of Basis J. Staff Response, p. 72.

Applicants apparently do not contest the admissibility of the referenced examples in Basis J detailing inadequacies in the TOA traffic management plan. Applicants, however, improperly attempt to limit litigation on this issue to only the proffered examples. See, N.2, supra.

K. The Staff premises its opposition to Basis K solely on grounds this matter has previously been litigated. Whatever relevance it may have to ETE, Basis K additionally raises significant safety concerns involving a primary evacuation route, which have never been considered in the NHRERP litigation. Applicants' claim that Basis K should be rejected as "lacking basis" is refuted by the specific traffic management problems and safety concerns detailed in that basis.

L. The Staff does not oppose admission of Basis L. While

not objecting in toto to Basis L, Applicants' efforts to unduly restrict the scope of this basis for litigation should be rejected. See, N.2, supra.

M. The Staff does not oppose admission of Basis M. While not objecting in toto to Basis M, Applicants' efforts to unduly restrict of the scope of this basis for litigation should be rejected. See, N.2, supra.

N. The Staff opposes Basis N on grounds "it lacks basis." Staff Response, p. 73. In fact, the Staff improperly seeks to litigate the merits of the contention which asserts that Route 110, without shoulders, medians, and lane reductions, requires additional traffic control to address significant traffic hazards. As recognized by the Staff, whether these assertions are true should await litigation on the merits. Staff Response, p.4.

Applicants' reliance upon principles of res judicata, as grounds for exclusion of these safety related issues, is improper. See, TOA Reply re: TOA Contention 4, Basis K.

O. The Staff opposes, as "speculative," the assertion that NHY traffic guides will not be familiar with local areas. The Staff thereby improperly seeks to attack the merits of the proffered basis and prematurely litigate the truth of the allegations contained therein. See, Staff Response, p.4.

Applicants do not oppose admission of Basis O.

P. The Staff opposes Basis P on grounds that violations of the TOA zoning ordinance are beyond the scope of this proceeding. TOA

suggests that violations of local law, which reasonably impact upon the efficacy of the SPMC, must properly be considered by this Board in determining the plan's overall adequacy. In addition, the Staff and Applicants' reliance upon §50.47(c)(1)(iii), is again misplaced. See, N.5, supra. The Staff's reading of "best efforts" in an actual emergency is irrelevant as to whether a plan, in anticipation of that emergency, comports with all applicable laws.<sup>9</sup>

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It is of note that in recent argument before the Court of Appeals on the presumption in §50.47(c)(1)(iii), Solicitor Briggs of the NRC did not dispute Judge Breyer's statement indicating local law may support a Town's efforts to rebut the regulatory presumption that Towns will follow the utility plan. Without more, Basis P provides a litigable issue for resolution by the Board.

"Judge Breyer: The point is suppose they get up and they say you have presumed we will follow the utility plan.

Solicitor Briggs: That's right.

Judge Breyer: I will tell you right now we won't and here is why. First, the utilities haven't taken into account that those streets freeze up in the winter. Second, the utilities have not taken into account that the bridge is always up and in order to get the bridge down what you have to do is call some people who work under certain rules and we can't get them there and the third thing they haven't taken account is the laws in five towns which show that you can't call them up on the phone and therefore, the people won't be in the right place. And the fourth thing is and the fifth thing is and the sixth thing is and they show you convincingly that they will not follow the utility plan, indeed, legally they can't because of all those rules and regulations and at that point lets suppose any reasonable person, I'm assuming this hypothetically, any reasonable person would conclude they're right. They won't follow. Okay, what happens under this rule?

Q. Staff and Applicants generally oppose Basis Q, as purportedly lacking basis or factual support. The basic goal of emergency planning, however, is the achievement of maximum dose savings in a radiological emergency. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760-770 (1983). Basis Q argues that, based upon the previously referenced deficiencies in TOA No. 4, the SPMC will fail to meet this "basic goal." The accuracy of this assertion of fact must be tested through litigation on the merits.

(Footnote continued)

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Judge Breyer: . . . Cause they've then said no, that isn't so, what they're worried about is that you will not allow them to show and even if they do show they won't follow the plan, the Commission will still grant, say that there is an adequate plan. Now, I want to know what this rule is, I mean does it or does it not allow them to rebut this?

Solicitor Briggs: It certainly allows them to make those kind of arguments."

MASS AG Reply, Exhibit 4, pp. 4-5.

5. TOA CONTENTION NO. 5

The SPMC fails to provide reasonably adequate methods for assessing and monitoring actual or potential offsite consequences of a radiological emergency, fails to establish adequate guidelines for the choice of protective actions during an emergency, fails to provide adequate bases for the choice of recommended protective actions and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, in violation of 10 CFR §50.47(a)(1), 50.47(b)(9), 50.47(b)(10), and NUREG-0654 II.I., II.J.P and II.J.10.

TOA RESPONSE

The Staff opposes admission of TOA No. 5 on grounds the contention lacks a "technical basis." The Staff further argues that TOA No. 5 somehow challenges the Commission's regulations for prompt public notification, while, conversely, Applicants claim "TOA certainly does not tie its speculation about dose projections to any possible violation of a regulation."

Both allegations are without merit. It is not, as suggested by Staff and Applicants, that information on PARs should be withheld from the public pending field measurements that will allow a more accurate determination of the appropriate PAR. See, SPMC Plan, p.3.4-3; PROCEDURES 2.2, p.3. Rather, the SPMC is deficient for failing to provide an adequate plan whereby, once more accurate information becomes available, and the most appropriate PAR determined, an alternative PAR can be implemented if necessary for the achievement of maximum dose savings. See, Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760-770 (1983).

Accordingly, contrary to the SPMC's claim that PARs will be recommended that provide the greatest dose savings, see, PROCEDURES 2.5, p.6, the SPMC fails to provide any plan or implementing procedures for modification or alteration of PARs. Similarly, the SPMC's claim that field data "may form the basis for protective action recommendations to the public" is inaccurate and untrue. PROCEDURES 2.2, p.3.

TOA No. 5 therefore challenges the fundamental premise articulated by the SPMC itself that PARs will be recommended that provide the greatest dose savings. See PROCEDURES 2.5, p.6. TOA No. 5 further argues that the SPMC fails to achieve the "basic goal of emergency planning (which) is . . . the achievement of maximum dose savings in a radiological emergency." Cincinnati Gas & Electric Co., supra.<sup>10</sup>

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See also, 45 Fed.Reg. 55402 (1980) "Emergency plans must be developed that will have the flexibility to ensure response to a wide spectrum of accidents." The SPMC presently fails to provide this flexibility to modify, if appropriate, the PAR.

6. TOA CONTENTION NO. 6

The SPMC fails to provide for a range of protective actions for the public, including the beach population, and otherwise fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of an actual emergency in violation of 10 CFR §50.47(a)(1), 50.47(b)(10), and NUREG-0654 II.J.9, II.J.10.

TOA RESPONSE

The Staff objects to admission of TOA No. 6 on grounds, inter alia, that the contention fails to provide "any basis for its conclusion that there are not shelters available which would provide meaningful dose savings." Staff Response, p. 76. Again, the Staff proceeds, prematurely, to argue the merits and to dispute the truth of TOA No. 6 rather than appropriately addressing these issues through the discovery and litigation process. The Staff further improperly characterizes TOA No. 6 as asserting that emergency procedures will not be implemented or the public will not respond. Even assuming the public would attempt to promptly respond to a PAR, however, TOA No. 6 claims the constraints of the Seabrook site would preclude either option as an effective PAR, or as a means to reduce dose to the public, particularly the beach population. Finally, the Staff presents its view of the legal significance of a "range of protective actions" yet ignores the issues of fact raised by TOA No. 6 that either PAR, evacuation or shelter, fails to achieve maximum dose savings for a significant portion of the public. The SPMC thereby contravenes this "basic goal" of emergency planning. Cincinnati Gas & Electric Co., supra.

Applicants similarly mischaracterize TOA No. 6 as asserting a

requirement that there is some minimum dose savings or minimum ETE that must be achieved. On its face, however, TOA No. 6 makes no such assertion. Rather, the SPMC fails to offer a PAR that will provide, overall, reasonable assurance of adequate protection to the public, particularly the beach population. In addition, to the extent TOA No. 6 may assert that more or different shelter be provided, that assertion apparently comports with present NRC views on emergency planning.<sup>11</sup>

Respectfully submitted,

TOWN OF AMESBURY  
By Its Attorneys  
SHAINES & McEACHERN  
Professional Association

By

  
Paul McEachern

Dated: June 22, 1988

By

  
Matthew T. Brock

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See, Letter of Edward S. Christenbury, Director and Chief Hearing Counsel, NRC, to Spence W. Perry, Acting General Counsel, Federal Emergency Management Agency, June 18, 1986 "Secondly, his (Dignan) memorandum states that emergency planning is intended to limit any adverse health effects to as low a level as reasonably possible, 'given the facilities at hand' (Id.) possibly implying that additional facilities will never be required to be built or installed to satisfy NRC emergency planning regulations. In support of this statement, Mr. Dignan cites the San Onofre decision, supra. However, that decision provides only limited support for this conclusion. There, the Commission addressed only the issue of whether additional hospital construction should be undertaken and concluded that such extraordinary measures are not required." Id. at pp. 3-4.

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CERTIFICATE OF SERVICE

I, Matthew T. Brock, one of the attorneys for the Town of Amesbury herein, hereby certify that on June 22, 1988, I made service of the foregoing document, TOWN OF AMESBURY REPLY TO NRC STAFF AND APPLICANTS' RESPONSES TO TOWN OF AMESBURY'S CONTENTIONS ON THE SEABROOK PLAN FOR MASSACHUSETTS COMMUNITIES, by depositing copies thereof in the United States Mail, first class postage prepaid for delivery (or, where indicated, by Express Mail, prepaid) addressed to:

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