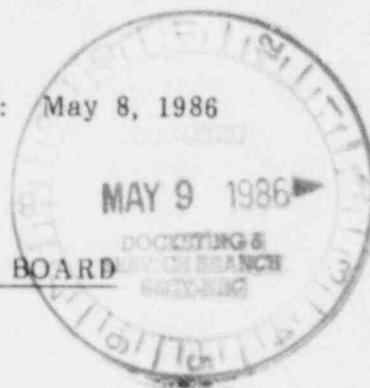


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Filed: May 8, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the matter of:

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al

Docket Nos. 50-443 OL
50-444 OL

(Seabrook Station, Units 1 and 2

SAPL'S RESPONSE TO BOARD ORDER OF MAY 2
AND MOTION FOR LEAVE TO RESPOND TO APPLICANTS'
AND STAFF'S RESPONSES TO SAPL'S THIRD
SUPPLEMENTAL PETITION FOR LEAVE TO INTERVENE

NOW COMES the Seacoast Anti-Pollution League and responds to the Board Order of May 2, and requests leave to answer the responses and objections to SAPL's Third Supplemental Petition for Leave to Intervene filed by the Applicants on April 18, 1986 and by the Staff on April 28, 1986.¹

For purposes of achieving economy of time to avoid any delay of this proceeding, SAPL's responses are provided along with its motion. Further, SAPL has had no indication from the Board as to whether or not there will be another prehearing conference at which SAPL could respond.

The Applicants and Staff assert inter alia that SAPL must satisfy the standards for the late-filed contentions set forth in 10 C.F.R. §2.714 (a)(1). SAPL did not consider its contentions late-filed, insofar as they were filed just one month following receipt of the subject emergency planning documents that the Applicants had transmitted to the Board and parties. At the prehearing conference on March 26, 1986 SAPL recommended that the practice of having a definite date for contentions be continued

1. SAPL received the Board's Order of May 2 on May 7, and notes that this means the Board's Order allows SAPL only two days to meet its deadline for response.

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(See Tr. 2340-41) and had no response from the Board following that recommendation to indicate that it had been discarded up until yesterday, May 7, 1986, at which time the Board's Order of May 2, 1986 was received. In view of this Order, SAPL will proceed to explain why its contentions do indeed meet the five-part test at §2.714 (a)(1).

A. Good cause, if any, for failure to file on time.

SAPL did not, earlier than a month before, have the information required to file the contentions that were filed on April 8, 1986. SAPL had no prior way of knowing about the contents and provisions set forth in the N.H. Compensatory Plan or that there would even be revisions to the Seabrook and Hampton RERP's.

Further, SAPL did earlier (on February 21, 1986) file contentions pointing to the non-existence of letters of agreement and public information material. (Contentions No. 15 and 23 respectively.) Now that their existence has been made evident to SAPL, the contentions have been timely redrafted to reflect the specific deficiencies of those materials.

Therefore, SAPL is able to show good cause because the prior public unavailability of the subject documents made it impossible for any more specific contentions to have been asserted at an earlier date.

B. Availability of other means to protect petitioner's interest.

SAPL has available no other means to protect its interests in these contentions.

C. Extent to which petitioners can contribute to development of a sound record.

SAPL expects to bring local officials and other personnel depended upon in the emergency response effort to testify as to the difficulties of fulfilling obligations to protect public health and safety with State personnel under the schemes proposed in the N.H. Compensatory Plan, and with State and/or local personnel with regard to the revisions of the Hampton and Seabrook RERP's. SAPL also hopes to bring testimony as to the inadequacy of the public information materials. SAPL's witness on this latter

subject is expected to be Dr. Donald Herzberg, a physician trained in diagnostic radiology and nuclear medicine who practices at the Dartmouth-Hitchcock Medical Center in Hanover, N.H. SAPL also intends to conduct cross-examination of witnesses brought by other parties.

D. The extent to which other parties will represent petitioner's interest.

No other parties have raised the contentions with respect to the New Hampshire Compensatory Plan, letters of agreement and public information materials and revised RERP's for Hampton and Seabrook that SAPL has raised, save the Town of Hampton, which has joined in SAPL's contentions filed April 8, 1986². The Town of Hampton's interests are focused on the Town of Hampton alone, however, whereas SAPL's concerns focus more widely on the adequacy of the plans for all of the towns within the Seabrook EPZ. The Town of Hampton, therefore, would not represent this Petitioner's interests, except, perhaps, in regard to SAPL's Contentions No. 28 and 29 as they apply to the revised RERP for Hampton.

E. Broadening and delay of the proceeding.

In SAPL's estimation, no significant broadening or delay of the proceeding will result from litigation of these contentions. The issues concerning whether or not the New Hampshire Compensatory Plan can work, whether the letters of agreement and public information materials are adequate and whether the revisions to the Seabrook and Hampton RERP's are sufficient to protect the public health and safety are matters of tremendous public importance. SAPL does not believe that the requisite finding of reasonable assurance could possibly be arrived at absent an examination of the issues raised in SAPL's April 8, 1986, contentions.

2. See "Contentions of the Town of Hampton to Revised Radiological Emergency Response Plan and to Compensatory Plan for the Town of Hampton, New Hampshire" filed April 14, 1986 at page 10.

SAPL Contention 8A

SAPL notes that neither the Applicants nor Staff had any objection to the admission of Contention 8A save the Applicants' objection that SAPL has not addressed the late-filing criteria of 10 C.F.R §2.714(a)(1) and the Staff's position that SAPL should be required to address those criteria. SAPL has now addressed those criteria above and holds that this contention ought therefore be admitted.

Redrafted Contention No. 15.

The Applicants oppose all of SAPL's Redrafted Contention No. 15 and the Staff opposes it in part, specifically, as it relies on basis items (b), (f), (g) and (h), and also basis item (d) insofar as it extends beyond consideration of towing companies and the Rockingham County Dispatch.

The basis of the Applicants' objection is summarized in the Applicants' generalized statement that SAPL's Redrafted Contention No. 15 "quarrels with details and demands a degree of commitment not required." SAPL would respond that a reasonable amount of attention to detail is a sine qua non in the fashioning of an adequate emergency response plan. As evidenced by the letters of agreement, too many essential details have been left unattended in the planning effort. The letters of agreement fail to support a finding that adequate arrangements have been made for requesting and effectively using assistance resources, that all supporting organizations have specifically established emergency responsibilities, that each principal response organization is adequately staffed to respond and

to sustain a response or that agreements are being reviewed and certified annually.

Further, the Applicants seek to deny the level of commitment that is required of support organizations having a response role in the EPZ. For an example, the Applicants claim that no agreements are necessary with municipalities in the EPZ or with host communities because the plan is "New Hampshire's plan." To the extent that "New Hampshire's plan" relies upon actions by local and host communities (and it does so rely), agreements must be in place to provide reasonable assurance that those actions can and will be taken.

The Staff raises the concern that SAPL did not specifically state which key organizations SAPL believes should be covered by letters of agreement in basis item (b). The organizations were for the most part named in the other basis items in SAPL's Redrafted Contention No. 15 (see, for example, basis item (d).) To eschew redundancy, however, SAPL will withdraw the words "organizations and" from the first sentence of basis item (b) and will instead add "and II.A.3" to the final sentence of basis item (d). SAPL must respectfully disagree with the Staff's assertion that no reason is given to support SAPL's belief that letters of agreement with local and host communities are required. SAPL did cite the evaluation criteria at NUREG-0654 II.A.3. SAPL believes that the letters of agreements with those communities should be signed by the governing bodies of those communities. (See also SAPL's response to Applicant's in paragraph 3 of this section above.)

SAPL must disagree with the Staff, too, in its assertion that day care centers, nursing homes, schools, and school administrative

units are simply "recipients" rather than "providers" of assistance. Under the plans, those institutions are given the primary responsibility for arranging and supervising the sheltering or evacuation of students and patients. For this reason, letters of agreement are required. Teachers and bus drivers must agree to perform their functions or the letters of agreement with schools and bus companies will serve to effect nothing. The evaluation criteria at NUREG-0654 clearly state that "Each organization shall identify nuclear and other facilities, organizations or individuals which can be relied upon in an emergency to provide assistance." (emphasis added) It goes on to state that the assistance shall be identified and supported by letters of agreement.

To achieve the greater specificity which the Staff asks, SAPL will revise basis item (d) to remove the generalized reference to "other organizations or individuals". Rephrased basis item (d) is as follows:

d) There are no letters of agreement with School Administrative Units, Schools, teachers, owners of towing companies (other than the unsigned postdated agreement with the New Hampshire Towing Association mentioned above), day care centers, nursing homes, Rockingham County Dispatch, bus drivers, licensed waste disposal companies, doctors, nurses, day care providers and nursing home workers as required by NUREG-0654 II.C.4. and II.A.3.

The Staff opposes basis item (f) because it is the Staff's view that this basis item contravenes the Commission's recent policy statement with respect to 10 C.F.R. §50.47 (b)(12). SAPL must again respectfully disagree with the Staff. As set forth in the Commission's Statement of Policy in response to the Guard decision, it is reasonable for contentions to go to issues which could have been litigated before the Court's decision in Guard v. NRC. See Statement of Policy,

"Emergency Planning," 50 Fed. Reg. 20892 (May 21, 1985), at 20894. The adequacy of letters of agreement is, in SAPL's view, such an issue. It is allowable to litigate whether or not the hospitals and medical facilities listed are appropriately supported by letters of agreement.

The Staff assails SAPL's basis item (g) for being overbroad and lacking in specificity. It is on that very basis which SAPL finds fault with the NHRERP letters of agreement. Though SAPL did mention the Memorandum of Understanding between the USAF and the State of New Hampshire in basis item (a), SAPL stated only at that point that it was an example of an agreement that was neither signed nor dated. The very important additional point SAPL makes in basis item (g) is that the "agreement" makes no reference to an accident at Seabrook and fails to refer to a concept of operations, the emergency measures to be provided, the mutually acceptable criteria for the implementation or the arrangements for exchange of information, as NUREG-0654 II.A.3 states ought to be provided. Any agreement which fails to provide the above-cited information does not reasonably assure that adequate protective measures can and will be taken. SAPL's assertion concerning the letter of agreement with R.S. Landauer Company is based on the fact that there is no showing or indication that film badges will be provided in a timely fashion. It is commonplace that a week or weeks go by before material orders are received from companies. In the event of a radiological emergency, that would not be adequate.

SAPL will agree to withdraw basis item (h) if it is agreed that SAPL can litigate the adequacy of the letters of agreement for bus companies in the context of Contention 8A.

Redrafted Contention No. 23.

SAPL notes that the Staff does not oppose the admission of Redrafted Contention No. 23. The Staff's views in regard to the adequacy of the Applicants' informational material are not necessarily in agreement with SAPL's and will be set forth during subsequent litigation. In response to the Applicants, SAPL would state that it is not seeking to have the public information calendar be a "propaganda statement" for SAPL's particular view of the safety of nuclear power, as the Applicants allege. Neither, however, should the public information relative to emergency planning be a vehicle for unfounded public relations statements by any party. Statements in the public information must not be misleading. Members of the public should be clearly informed about the facts related to exposure to ionizing radiation, including the fact that it can cause injury and death. In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station Unit 1), 22 NRC 410, at 429 (1985). The public information should also give adequate instructions as to appropriate protective measures which could lessen exposure to radiation. The public information materials supplied to the parties in this proceeding fail to give adequate instructions.

The Applicants' suggestion that the problem of lack of information consistent with the N.H. Compensatory Plan can be handled by a license condition is a deft attempt to avoid the question of

whether there in fact are adequate alternate preparations. That is a matter that is appropriate for litigation in this proceeding.

Contention No. 26.

The Applicants oppose SAPL Contention No. 26 because Applicants allege that it lacks specificity and seeks repetition of parts of the plans provided in other volumes. The Staff opposes SAPL's contention because the Staff alleges that it lacks basis, is speculative and fails to set forth an appropriate issue for litigation.

The above statements by Applicants and Staff are not correct. The New Hampshire Compensatory Plan lacks a sound conceptual foundation, as was pointed out with ample specificity in SAPL's Contention No. 26. There is no evidence that Local Liaisons have contacts to provide them with information relative to the status of response needs in the local communities nor that they will be available to perform their functions on a 24 hour per day basis. The performance of the Local Liaisons is essential to the success of the New Hampshire Compensatory Plan and whether or not they have adequate means to carry out their functions is clearly a litigable issue.

SAPL is not attempting to require that information in other parts of the plan be repeated, as the Applicants allege, but rather is asserting that there ought to be internal consistency and conceptual clarity in the applicable parts of the plans.

The Staff asserts that SAPL's concerns as to the bus drivers' availability to respond at night is wholly speculative. It is not. SAPL has been informed that at least certain of the bus companies being relied upon to provide buses and drivers do not operate on a

24 hour per day basis. Further, it has been stated by a FEMA official that buses had difficulty finding their way to their appropriate destinations in the EPZ during the February 26, 1986 graded drill conducted during the day. It is quite reasonable to expect that the buses might have even greater difficulty at night. Whether or not the deployment of buses to and from a staging area in Brentwood at night is a practicable solution to the transportation problems associated with an evacuation of the EPZ is a litigable issue.

SAPL raises a somewhat different point in mentioning the lack of participation by School Superintendents, Principals and special facility operators in this contention than when this same lack of participation was mentioned in the context of Contention 8A. In Contention 8A, the lack of participation by these personnel was indicative of the inadequacy of manpower under the New Hampshire Compensatory Plan. In this Contention, it is indicative of a flaw in the concept of operations set forth in the New Hampshire Compensatory Plan.

SAPL will concede that an error was made in the matter of the existence of Attachment 11-A. It is in the New Hampshire Compensatory Plan at p.11-6. However, SAPL still believes that it is a serious problem with the concept of operations that the IFO Controller does not order the Local Liaisons to establish communications with the EPZ communicites until after the IFO Controller arrives at the IFO. That could potentially result in significant delay of implementation of the New Hampshire Compensatory Plan.

Contention No. 27.

SAPL notes that the Staff does not oppose this contention. In response to the Applicant's objection to this contention, SAPL asserts that persons need not be infirm to be unable to stand outdoors for very much time in typical New England winter weather waiting for a bus to travel along a prearranged route. The State's survey did not inquire of individuals whether or not they felt physically capable of walking to a prearranged bus route of indeterminate distance from their home and then standing outside until a bus could arrive. If the survey had asked that, it is likely that many people who may not consider themselves infirm for normal day to day activities would have indicated that they were not physically able to do that. The Applicants do not cite any accident consequence analysis as basis for their statement that an evacuation would not be needed on days when windchill is a potential problem.

Contention No. 28.

SAPL notes that the Staff does not oppose the admission of Contention 28. The Applicants appear to concede in their objection the defects in the plans noted in SAPL's Contention No. 28. Since these are the plans which have been offered in support of the Applicants' license application, they therefore ought to be in a state sufficient to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook. They are not. There is no assurance that the towns other than the five for which maps are provided will indeed participate in the implementation of their local plans. The Towns of Exeter and North Hampton, for example, did not

participate in the February 26 graded FEMA exercise. It is not for the Applicants to decide whether this matter and/or the matters regarding legibility and map errors are matters to be disposed of through staff review. SAPL holds that they are matters that go to the issue of whether or not the plans are adequate and are therefore litigable.

Contention Nos. 29 and 30.

SAPL notes that the Staff does not oppose the admission of this contention to the extent it asserts that adequate plans and provisions for sheltering the coastal beach population have not been provided. This is what this contention does assert. Of course, it is an underlying premise of this contention that some demonstration of sheltering capability is a prerequisite to a finding that, insofar as the transient and permanent population of the beaches are concerned, adequate protective measures can and will be taken. In response to the Applicants, SAPL replies that the bases for SAPL's Contentions No. 20 and 30 very specifically address the revisions made in the Hampton and Seabrook RERP's, which were supplied by the Applicants to NRC on March 4 and 5, 1986 and served on all parties thereafter. If the Applicants wish to stipulate that the revisions of the Hampton and Seabrook RERP's fail to effect any improvements in the adequacy of the planning for those two communities above and beyond what appeared in the original versions of the plans (on which contentions were due on Feb. 24, 1986), SAPL will withdraw these two contentions.

Respectfully submitted,

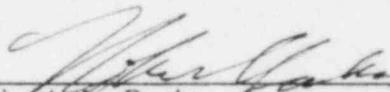
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May 8, 1986

I hereby certify that copies of the foregoing have been sent to all persons on the attached service list, by first class postage prepaid mail and by Federal Express as indicated by an *.



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