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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'88 OCT 19 P4:17

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE ATTORNEY  
DOCKETING AND RECORDS  
BRANCH

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

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Docket No. 50-443 ( )  
50-444 ( )

Offsite Emergency Planning  
and Safety Issues

NRC STAFF'S MOTION TO COMPEL ANSWERS  
TO INTERROGATORIES AND PRODUCTION  
OF DOCUMENTS BY THE TOWN OF AMESBURY

Pursuant to 10 C.F.R. § 2.740(f), the NRC Staff hereby move that the Town of Amesbury ("TOA") be compelled to answer certain interrogatories and produce certain documents requested in "NRC Staff's First Set of Interrogatories and First Request for Production of Documents to the Towns of Amesbury, Newbury, Salisbury, West Newbury, and Merrimac, and the City of Newburyport" (September 6, 1988) (hereinafter "Staff's Interrogatories"). On September 23, 1988, TOA filed its interrogatory answers and a motion for protective order. TOA produced no documents and objected to virtually every one of the Staff's Interrogatories. While TOA did provide partial answers to the Staff's interrogatories, its responses were often incomplete, evasive, and cryptic. For the reasons set forth below, TOA should be compelled to provide a proper and complete response to the Staff's discovery request.

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1. Motion to Compel Production of Documents at the Office of the General Counsel at the NRC

The NRC Staff prefaced its Interrogatories by asking that documents requested be produced "at the Hearing Division, Office of the General Counsel, Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland."

To this, TOA responded:

TOA objects to the Staff's request that any documents to be produced by TOA must be provided at Staff offices located in Rockville, Maryland. The request is unduly burdensome and costly to TOA, is disruptive of record-keeping maintained by the Town, and could unreasonably compel TOA to transfer documents outside the EPZ. In addition, in view of the great disparity in resources between the Staff and TOA, it is only appropriate that the Staff assume the burden of coming to TOA to inspect any relevant documents of TOA, provided, however, that said inspection is conducted during the discovery period, during normal business hours, at a mutually agreeable time, following reasonable notice to TOA.

The objection is without valid foundation, and TOA should be required to produce responsive documents in accordance with the Staff request. Pursuant to 10 C.F.R. § 2.741(c), document production shall occur at "a reasonable time, place, and manner." There is nothing reasonable in requiring the Staff to travel to TOA, and presumably to every other Intervenor and Governmental entity's many different offices, to inspect relevant documents. Consideration of time and travel expense versus the relative burden on TOA resultant from sending its documents to the Staff in compliance with the subject request weigh overwhelmingly in favor of the request's reasonableness. Indeed, TOA makes no attempt to identify or enumerate the number of documents involved in justification of its objection but, rather, refers in the most general terms to undue burden, cost, and disruption to recordkeeping. Such unsubstantiated and conclusory assertions should be disregarded, and TOA should be compelled

to produce documents at the Staff's offices as indicated. Nonetheless, the Staff notes that it is willing to receive TOA's document production at a central document depository, should the Intervenor and interested State and local governments agree to establish the same.

2. Motion to Compel Answers to Specific Interrogatories

a. Interrogatory 1.

Interrogatory 1 and TOA's response read as follows:

1. Identify and supply each document containing procedures, plans, orders, instructions, directions, and training materials of the Intervenor for any action in the event of:

a) a radiological emergency or disaster stemming from a nuclear plant accident whether the plant is located inside or outside of Massachusetts;

b) other radiological emergencies or disasters;  
and

c) all other "emergencies" or disasters as defined in paragraph 4 of the above definitions.

ANSWER:

1 (a-b). This Interrogatory is objected to as overly broad and unduly burdensome. To the extent the Staff seeks identification or production of documents concerning Intervenor other than TOA, or information on issues beyond TOA's jurisdiction, the Staff should address those inquiries elsewhere. This Interrogatory is also objected to on grounds that, on information and belief, the Staff is already in possession of all planning documents concerning Seabrook Station, which were generated in conjunction with Applicants and the Commonwealth, prior to the vote by the Commonwealth and TOA not to participate further in emergency planning for Seabrook Station. TOA is not in possession of any documents involving radiological emergency planning generated since that date.

1 (c). TOA has not approved any emergency or disaster plan for the Town.

TOA's response fails on several grounds. First, it misreads the Interrogatory, which concerns applicable data pertaining to both radiological emergencies and disasters generally, and is not confined to emergencies involving Seabrook Station. Further, the Interrogatory is not confined to documents generated following the decision of the Commonwealth and TOA not to participate in further emergency planning for Seabrook Station. In addition, subsection (c) requests relevant information and documents regarding all "emergencies," irrespective of whether TOA has approved any emergency or disaster plan. Accordingly, TOA's response to subsection (c) must be considered evasive. Finally, TOA's assertions of overbreadth and undue burdensomeness regarding this Interrogatory must be rejected. A request for documents should not be deemed objectionable solely because there might be some burden attendant to their production. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1155 (1982). In any event, the assertion that undue burden is involved in searching for the defined documents is utterly groundless. With respect to TOA's allegation of overbreadth, it is pertinent to cite the provisions of 10 C.F.R. § 2.740(b)(1):

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . . including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Answers to interrogatories or requests for documents which do not comply with this provision are inadequate. Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737-1738 (1981). Further, a Board may require a party, who has been served with a discovery request

which it believes is overly broad, to explain why the request is too broad and, if feasible, to interpret the request in a reasonable fashion and supply documents (or answer interrogatories) within the realm of reason. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-85-41, 22 NRC 765, 768 (1985). TOA fails to demonstrate in what respect Interrogatory 1 is overly broad. In sum, TOA should be compelled to respond to this Interrogatory in its entirety.

b. Interrogatory 2

Interrogatory 2 and TOA's response read as follows:

2. With regard to each document set out in response to Interrogatory 1, describe the functions in emergencies of any of the following categories of personnel:

- a) State and local police, to include persons employed full or part time, and both private and public security personnel, such as special officers and deputies;
- b) Civil Defense personnel;
- c) Professional or volunteer fire-fighting personnel;
- d) First aid and rescue personnel;
- e) Local support services personnel including Civil Defense/Emergency Service personnel;
- f) Medical support personnel;
- g) Emergency Service personnel;
- h) Health and Environmental Department personnel;
- i) National Guard, Militia or Reserve personnel;
- j) Boards of Education, School Boards or Departments, and teachers;

TOA has failed to provide any response to this interrogatory. For the reasons set forth with regard to TOA's failure to respond to Interrogatories 1 and 2, TOA should be compelled to answer this Interrogatory.

d. Interrogatory 4

Interrogatory 4 and TOA's response read as follows:

4. Identify the Massachusetts Civil Defense agency areas in which the Seabrook plume emergency planning zone (EPZ) is located. Provide the Civil Defense Plans for those areas and for the Commonwealth.

ANSWER:

4. See Answer to Interrogatory 1.

This response is totally unsatisfactory for reasons noted by the Staff relative to TOA's objection to Interrogatory 1. Further, while this interrogatory seeks some information which may also be in the possession of other parties (such as the Mass AG), that is not known to the Staff at this time, and in any event that does not excuse TOA's failure to respond. TOA should be ordered to furnish the information requested.

e. Interrogatory 5

Interrogatory 5 reads as follows:

5. Identify the number of individuals in each of the personnel categories listed in Interrogatory 2(a)-(m), and the number of such personnel: (a) within the 10-mile EPZ plume exposure pathway; (b) from 10 to 25 miles of Seabrook Station; (c) from 25 to 50 miles of Seabrook Station; (d) from 50 to 100 miles of Seabrook Station; and (e) within the Commonwealth of Massachusetts outside the aforementioned areas.

TOA has answered this interrogatory as to the categories of individuals listed in Interrogatory 2(a)-(k). However, with respect to personnel Category 2(l) (individuals obligated to provide assistance

pursuant to agreements to aid between municipalities or other government units, or pursuant to other agreements) and 2(m) (individuals available to provide assistance pursuant to agreements to aid between municipalities or other government units, or pursuant to other agreements) TOA declines to supply the requested information, generally referring to its response to Interrogatory 1. Further, TOA has failed to produce any documents in response to this interrogatory.

TOA's response is inadequate for reasons discussed above regarding TOA's objection to Interrogatory 1. TOA's answer to Interrogatory 5 to the extent it concerns Interrogatories 2(1) and 2(m) and relies on the objections stated in response to Interrogatory 1, should be rejected; and TOA's response to this Interrogatory should be compelled.

f. Interrogatory G.

Interrogatory 6 and TOA's response read as follows:

6. Identify the types and number of the following resources available for use in the event of emergencies pursuant to the documents identified in Interrogatory 1: (a) police vehicles; (b) fire trucks; (c) buses; (d) vans; (e) other vehicles; (f) helicopters and other aircraft; (g) boats; (h) sirens and public notification systems; (i) radios; and (j) all other equipment.

ANSWER:

6. See Answer to Interrogatories 1 and 2.

This blanket reassertion of TOA's earlier objections fails to justify its refusal to supply information that is highly relevant to this proceeding. TOA makes no effort to specify any particular basis for withholding the information requested. Further, while certain equipment was identified in TOA's answer to Interrogatory 7, it is unclear whether

that answer was intended to respond to this Interrogatory as well. TOA should be compelled to respond to interrogatory 6.

g. Interrogatories 8 to 15

Interrogatories 8 to 15, and TOA's responses thereto, read as follows:

8. Identify the number and location of Massachusetts National Guard Units in each of the Intervenor jurisdictions, the number of members of each unit, their distance from the Seabrook plume exposure EPZ, and the number and location of the following resources available for use by the National Guard in emergencies: (a) cars; (b) trucks; (c) vans; (d) helicopters; (e) other means of transportation; and (f) communication facilities, including radios and other means of public notification. Supply the same information for any Militia or Reserve unit in such jurisdiction. (Footnote: If any of the data sought under Interrogatory 8 are withheld on the ground they are classified, please indicate the type of data so withheld.)

ANSWER:

8. See Answer to Interrogatory 1.

9. Identify any plans made for radiological monitoring in the event of a radiological emergency from any cause, including (a) the number and location of personnel trained and available to accomplish such monitoring, and (b) a description and enumeration of radiological monitoring equipment available for use in such an emergency, along with identification of the equipment's location.

ANSWER:

9. See Answer to Interrogatory 1.

10. Identify any provisions made for handling of individuals contaminated in a radiological emergency stemming from any cause, including (a) the number and location of personnel trained and available to assist in decontamination of contaminated individuals, and (b) a description and enumeration of equipment available for use in decontamination, along with identification of the equipment's location.

ANSWER:

10. See Answer to Interrogatory 1.

11. Identify any provisions made by the Massachusetts Department of Agriculture, or other state or local governmental agency, concerning protective measures to be used for the 50-mile ingestion pathway from any nuclear plant, including the methods for protecting the public from consumption of contaminated foodstuffs; and identify any procedures for detecting contamination, for imposing protective measures such as interdiction of food supply, impoundment, or quarantine, and for public notification concerning food contamination and the protective measures to be followed.

ANSWER:

11. See Answer to Interrogatory 1.

12. Identify the number of Massachusetts Civil Defense personnel according to location within the Commonwealth, and identify the amount and location of equipment available for their use to protect the public in the event of an emergency. Set out the training of Civil Defense personnel.

ANSWER:

12. See Answer to Interrogatory 1.

13. Identify the location of stations authorized to broadcast under Federal Emergency Broadcast System (EBS) regulations and the Massachusetts EBS Operational Plan ("Operational Plan"). Provide a copy of the Operational Plan.

ANSWER:

13. See Answer to Interrogatory 1.

14. Identify all documents, agreements and communications dated within the last five years concerning the operation of the EBS. Produce a copy of all such documents, agreements and communications.

ANSWER:

14. See Answer to Interrogatory 1.

15. Identify the provisions of federal or state law which preclude activation of the EBS at the discretion of management of AM, FM, and television stations, in connection with day-to-day emergency situations posing a

threat to the safety of life and property, such as hurricanes, floods, icing conditions, heavy snows, fires, toxic gases, power failures, industrial explosions, and civil disorders.

ANSWER:

15. See Answer to Interrogatories 1 and 18.

TOA has failed to provide any response to these interrogatories. TOA should be compelled to respond to these interrogatories, for the reasons discussed herein regarding TOA's failure to respond to Interrogatories 1 and 18.

h. Interrogatories 17 to 20

Interrogatories 17 to 20, and TOA's responses thereto, read as follows:

17. With respect to each document identified in Interrogatory 1, identify any Federal or state law or regulation pursuant to which each such document was prepared.

ANSWER:

17. See Answer to Interrogatory 18.

18. Identify all Massachusetts statutes and regulations, and all local regulations, ordinances or other provisions, (a) concerning actions to be taken by state or local authorities, or those acting in their behalf, in the event of emergencies, including the preparation of plans for actions to be taken in emergencies; (b) concerning any prohibitions on any such actions or plans; and (c) concerning any prohibitions on any person or organization other than state or local authorities with respect to any such actions or plans.

ANSWER:

18. See Answer to Interrogatory 1. By way of further answer, this Interrogatory is objected to as calling for a legal opinion. The Staff may inspect TOA's ordinances in accordance with the conditions set forth in OBJECTION TO PRODUCTION OF DOCUMENTS, supra.

19. Set out the conditions, including citations to all applicable provisions of state and local laws and regulations, (a) under which state and local authorities may permit private individuals or organizations to take action on their behalf in an emergency; and (b) under which state and local authorities are precluded from authorizing private individuals or organizations from taking action on their behalf in an emergency.

ANSWER:

19. See Answer to Interrogatory 18.

20. Set out examples illustrating the conditions described in Interrogatory 19(a) and (b).

ANSWER:

20. See Answer to Interrogatory 1.

The Staff requests that TOA be compelled to respond to Interrogatories 17 to 20 for the reasons discussed above with respect to TOA's responses to Interrogatory 1. Further, the statutes, regulations, and ordinances referred to in Interrogatories 17 and 18 cannot be so numerous as to make a response to these Interrogatories unduly onerous. The same is true with respect to the conditions and examples requested under Interrogatories 19-20. As regards Interrogatory 18, there is no merit in TOA's assertion that the identification of statutes and regulations which TOA may rely upon in challenging the SPMC's legal authority calls for a "legal opinion." The Staff does not seek TOA's legal conclusions, but only an identification of the bases for the challenge made by TOA to the SPMC. Only after those bases are identified can the Board and other parties determine whether there is merit to the challenge. The answers sought by Interrogatories 17, 19 and 20 likewise seek answers of fact, as to the

legal support relied upon by TOA for challenging the Applicants' emergency planning activities. The issues involved in Interrogatories 17 to 20 are relevant to this proceeding, and TOA should be compelled to respond to them.

f. Interrogatories 21 and 22

Interrogatories 21 and 22 and TOA's responses read as follows:

21. Define what you consider to be "the beach" in the Massachusetts portion of the Seabrook Station EPZ. Set out the geographic boundaries of that "beach" area.

ANSWER:

21. This Interrogatory is objected to as irrelevant and not likely to lead to the discovery of admissible evidence.

22. Using the definition of "the beach" you supplied in answer to Interrogatory 21, provide the following data along with a copy of any study or other document relevant to the following information: (a) the maximum number of cars at the beach on the 10 busiest days within the last five years, along with indication of the time and date of such maxima; (b) the number of cars remaining at the beach following each 1/2-hour interval for the 8 hours after the aforementioned maxima; (c) the number of cars entering and leaving the beach during each 1/2-hour interval within the 8-hour period. If you do not have data for 1/2-hour intervals, supply such data for the periods you have. Indicate whether the foregoing computations were made manually or automatically.

ANSWER:

22. See Answer to Interrogatories 1 and 21. By way of further answer, TOA adopts the statements, testimony, and evidence presented by Intervenor, to the extent applicable, in the NHRERP litigation.

Interrogatories 21 and 22 directly relate to issues raised by the Intervenor in this proceeding, and seek to obtain a proper definition of the issues and areas encompassed by admitted contentions. See Stipulation As To Contentions (September 19, 1988), at 1-4. The test as to whether particular matters are discoverable is one of "general

relevancy." This test will be easily satisfied unless it is clear that the evidence sought can have no possible bearing on the issues.

Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974). Interrogatories 21 and 22 clearly meet the test of "general relevancy." Further, TOA's broad reference to all of the evidence submitted by Intervenors in the NHRERP litigation fails to provide reasonable notice of the particular matters encompassed in this response. TOA's reference to its response to Interrogatory 1 should be rejected, for the reasons discussed concerning TOA's objection to Interrogatory 1. In sum, TOA's responses to Interrogatories 21 and 22 should be compelled.

j. Interrogatories 23 and 24

Interrogatories 23 and 24, and TOA's responses, read as follows:

23. Identify all studies conducted during the last five years concerning improving the movement of traffic in and out of "the beach" area. Provide a copy of all such studies.

ANSWER:

23. TOA has conducted no such studies. See Answer to Interrogatory 1.

24. Identify all studies conducted during the last five years concerning improving the movement of traffic in the event of emergencies within the Seabrook Station EPZ which include estimates of the volume of traffic or the time within which traffic can be evacuated. Provide a copy of all such studies.

ANSWER:

24. None. See Answer to Interrogatories 22 and 23.

TOA has misconstrued Interrogatories 23 and 24, which request identification of "all" studies conducted, not "all studies conducted by TOA." Further, the studies sought are clearly relevant to the issues to be litigated in this proceeding. For these reasons, and for the reasons

discussed above concerning TOA's objections to Interrogatories 1 and 22, TOA should be compelled to respond to these interrogatories.

k. Interrogatory 25

Interrogatory 25, and TOA's response, read as follows:

25. Identify all State and local laws and regulations concerning the following actions to be taken in the event of radiological or other emergencies (see definition 4): (1) guiding traffic; (2) blocking roadways, erecting barriers in roadways, and channeling traffic; (3) posting traffic signs on roadways; (4) removing obstructions from public roadways, including towing private vehicles; (5) activating sirens and directing the broadcast of EBS' messages; (6) making decisions and recommendations to the public concerning protection actions for the ingestion exposure pathways; (8) making decisions and recommendations to the public concerning recovery and reentry; (9) dispensing fuel from tank trucks to automobiles along roadsides; and (10) performing access control at the Emergency Operations Center, the relocation centers, and the EPZ perimeters.

ANSWER:

25. See Answer to Interrogatory 18.

TOA should be compelled to respond to Interrogatory 25, for the reasons set forth in the Staff's motion to compel a response to Interrogatory 18.

l. Interrogatory 26

Interrogatory 26, and TOA's response, are:

26. Identify all studies performed during the last five years concerning the availability and possible use of sirens and other means of emergency communication to the public in the event of emergencies. Provide a copy of all such studies.

ANSWER:

26. TOA has conducted no such studies. TOA adopts, and incorporates by reference all relevant statements, documents, reports, evidence or other information proffered by the Commonwealth concerning sirens and siren contentions for the Seabrook EPZ, with supporting

documentation as detailed previously filed  
in this proceeding. See Answer to Interrogatory 1.

TOA has misconstrued this Interrogatory as it did Interrogatories 23 and 24, to refer only to studies conducted by TOA. Further, TOA and fails to identify the "relevant statements, documents, reports, evidence or other information proffered by the commonwealth", which it cites herein; and TOA's answer therefore fails to provide any reasonable degree of specificity sufficient to inform the Staff of the particular documents referenced by TOA's answer. A response to Interrogatory 26 is merited and should be compelled.

m. Interrogatory 27

Interrogatory 27, and TOA's response are:

27. Identify all sirens or other means of emergency communication in the Seabrook EPZ which can be heard by the general public.

ANSWER:

27. See Answer to Interrogatories 1, 7(h) and 26.

TOA's reference to its answer to Interrogatory 1, again, should be rejected; its reference to Interrogatory 7(h) is perplexing, since no such interrogatory exists; and its reference to its answer to Interrogatory 26 should be rejected for the reasons discussed above in response to TOA's objection to that Interrogatory. Since no valid objection to Interrogatory 27 remains, TOA's response should be compelled.

n. Interrogatory 28

Interrogatory 28, and TOA's response, are as follows:

28. Identify all studies performed by Intervenors during the last five years concerning planning for emergencies. Produce a copy of all such studies.

ANSWER:

28. See Answer to Interrogatory 1.

TOA's refusal to respond to Interrogatory 28 is objectionable for the reasons stated by the Staff with regard to Interrogatory 1. A response to Interrogatory 28 should be compelled.

SUMMARY

TOA has failed to provide satisfactory responses to virtually all of the Staff's interrogatories, thus precluding the discovery of potentially critical facts in this proceeding. Given the rebuttable nature of the presumption inherent in the "realism rule", production of this information is of vital importance for this litigation as to the adequacy of the SFNC. TOA's unsupported allegations of burdensomeness, overbreadth, and irrelevancy should be rejected, and TOA should be compelled to respond to the Interrogatories identified herein.

Respectfully submitted,

*Stephen A. Bergquist*

Stephen A. Bergquist  
Counsel for NPC Staff

Dated at Rockville, Maryland  
this 11th day of October, 1988

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OCT 19 P4:17

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PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443 OL  
50-444 OL  
Off-site Emergency Planning

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS BY THE TOWN OF AMESBURY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of October 1988:

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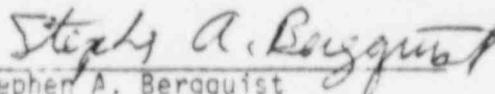
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