

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'88 OCT 19 P4:11

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE  
DOCKETING AND SERVICE  
BRANCH

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

Docket Nos. 50-443 OL-01  
50-444 OL-01  
On-site Emergency Planning  
and Safety Issues

NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF THE MASSACHUSETTS ATTORNEY  
GENERAL'S AMENDED CONTENTION ON NOTIFICATION SYSTEM

INTRODUCTION

On September 17, 1988, Applicants filed a "Motion For Summary Disposition Of The Massachusetts Attorney General's Amended Contention On Notification System" pursuant to 10 C.F.R. § 50.49. The NRC Staff supports Applicants' motion. A review of the record confirms that there are no genuine issues as to any material facts with respect to the Attorney General's amended contention on the alert notification system for the Massachusetts portion of the Seabrook emergency planning zone (EPZ). Further, the record demonstrates that the description of Applicants' "Vehicular Alert Notification System" or "VANS" indicates that means have been established to provide early notification to the affected population in the Massachusetts portion of the Seabrook EPZ. Consequently, Applicants are, as a matter of law, entitled to a favorable and summary disposition of the Attorney General's amended alert notification system contention.

8810240299 881012  
PDR ADDCK 05000443  
G PDR

DS07

BACKGROUND

The procedural history surrounding the litigation of the Attorney General's amended contention on alert notification systems for the Massachusetts portion of the Seabrook EPZ is described in detail by the Appeal Board in Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-883, 27 NRC 43, vacated in part, CLI-88-08, 28 NRC \_\_\_ (1988). In that decision, the Appeal Board granted two motions filed by the Attorney General in which he sought to reopen the record and admit a late-filed contention in the onsite portion of this proceeding. The first late-filed contention alleged that due to the removal of its pole-mounted alert notification sirens, Applicants had no established means to provide early notification to the residents of Newburyport, Massachusetts in the event of an emergency at the Seabrook Station as required by 10 C.F.R. § 50.47(d). The second late-filed contention made the same allegation with respect to the five other towns in the Massachusetts portion of the Seabrook EPZ. The Appeal Board held that each of the Attorney General's motions met the requirements for reopening a closed record set forth in 10 C.F.R. § 2.734 in that they were timely, raised a significant safety issue, and demonstrated that a materially different result would have been likely had the newly proffered evidence been considered initially. See ALAB-883, 27 NRC at 49-50. The Appeal Board therefore remanded the matter to the Licensing Board for further litigation. Id. at 55. <sup>1/</sup>

---

<sup>1/</sup> The Appeal Board also held that "compliance with the emergency response planning regulations is a precondition to low-power operation. Therefore, no authorization of such operation may be

(FOOTNOTE CONTINUED ON NEXT PAGE)

On April 15, 1988, the Attorney General moved to amend his alert notification system contention to allege that the means established by Applicants to provide early notification to the Massachusetts portion of the Seabrook EPZ were "inadequate" as opposed to "nonexistent." On June 2, 1988, the Licensing Board issued an order admitting the Attorney General's amended contention for litigation. See Memorandum and Order (Ruling On Admissibility Of Mass. Amended Contention And Bases) (June 2, 1988). On September 17, 1988, after the parties had engaged in extensive discovery as permitted by the Licensing Board, Applicants filed the instant motion for summary disposition.

---

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

forthcoming while the remand is pending -- i.e., in advance of ultimate Licensing Board resolution of the early notification matter." 27 NRC at 45-46, 55. This holding subsequently was vacated by the Commission. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-88-08, 28 NRC \_\_\_\_ (October 7, 1988). The Commission took this action in light of the amendment to 10 C.F.R. § 50.47(d) which it adopted on September 20, 1988, which will become effective on October 24, 1988. See "Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Low-Power Testing," 53 Fed. Reg. 36955 (September 23, 1988). In amending section 50.47(d), the Commission made clear "that it was discontinuing the practice of reviewing offsite public notification systems as part of the applicants' onsite plan which needed to be in place before low power testing began." CLI-88-08, supra, slip op. at 2. The effect of CLI-88-08 and the amendments to section 50.47(d) is to remove the Attorney General's alert notification system contention as an obstacle to the issuance of a low power license for the Seabrook Station. The contention, however, must be resolved prior to the authorization of a full power license. See 53 Fed. Reg. at 36955 ("The rule does not change the emergency planning requirements that must be satisfied before full power operation can be authorized"). As discussed in this response, the evidentiary materials submitted by Applicants in support of their motion for summary disposition and the affidavit of Donald J. Perrotti which accompanies this response are sufficient to enable the Licensing Board to resolve the contention favorably to Applicants.

DISCUSSION

A. Legal Standards Governing Summary Disposition Motions

Pursuant to 10 C.F.R. § 2.749 of the Commission's Rules of Practice, a party may move for summary disposition of all or any part of the matters involved in the proceeding. Paragraph (d) of section 2.749 provides:

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and the admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law[.]

10 C.F.R. § 2.749(d). The proponent of the motion for summary disposition must meet this burden even if the party opposing the motion fails to present evidentiary material to the contrary. Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977). To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact. Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 NRC 877, 883 (1981). For a material fact to be "genuine," the factual record -- considered in its entirety -- must be enough in doubt so there is a reason to hold a hearing to resolve the issue. Perry, supra, LBP-83-46, 18 NRC 218, 223 (1983).

Although a party opposing a motion for summary disposition need only show that there are issues to be tried and not that it would prevail on the issues, Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), LBP-86-414, 418 (1986), it may not defeat a properly supported summary disposition motion by mere allegations or denials. 10 C.F.R. § 2.749(b); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981);

Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 452 (1980). Rather, the opposing party must present admissible evidence which identifies "specific facts showing that there is a genuine issue of fact." 10 C.F.R. § 2.749(b); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-32A, 17 NRC 1170, 1175 (1983). <sup>2/</sup> As explained below, an application of these principles compels the conclusion that Applicants' motion for summary disposition should be granted.

B. The Motion For Summary Disposition Should Be Granted

Applicants should prevail on their summary disposition motion because the affidavits and other evidentiary materials submitted by Applicants, and the affidavit of Donald J. Perrotti which accompanies this response, demonstrates that Applicants' have adequately described the means necessary to notify the residents of the six Massachusetts communities in the Seabrook EPZ in the event of an emergency at the Seabrook Station. <sup>3/</sup>

---

<sup>2/</sup> Paragraph (c) of section 2.749 contains the only exception to this rule:

Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the presiding officer may refuse the application for summary disposition or may order a continuance to permit affidavits to be obtained or make such order as is appropriate and a determination to that effect shall be made a matter of record.

10 C.F.R. § 2.749(c).

<sup>3/</sup> The Staff has reviewed Applicants' "Statement Of Material Facts Not In Dispute" which is attached to their motion for summary disposition. As the attached Affidavit of Donald J. Perrotti

(FOOTNOTE CONTINUED ON NEXT PAGE)

The six communities in the Massachusetts portion of the Seabrook EPZ are Amesbury, Salisbury, Newbury, Newburyport, Merrimac, and West Newbury. Combined, these six communities represent an area equivalent to approximately 36 percent of the area of the entire Seabrook EPZ. The communities of Amesbury and Salisbury are the closest to the Seabrook Station; their nearest borders are within a 2-mile radius of the site. The communities of Merrimac, Newbury, West Newbury and the City of Newburyport fall within a 10-mile radius of the site. Affidavit of Donald J. Perrotti at ¶ A6 ("Perrotti Affidavit").

Applicants developed the "Vehicular Alert Notification System" or "VANS" to alert the residents of the Massachusetts portion of the Seabrook EPZ in the event of an emergency. Id. According to Applicants, the VANS design utilizes proven technology and maintains a configuration and operation similar to a fixed-pole siren system. Id. The VANS is comprised of 16 heavy-duty construction vehicles deployed at six staging areas in or near the Massachusetts portion of the Seabrook EPZ. Id., at ¶¶A6, A8, A9. Each vehicle is equipped with a telescoping crane to which is attached a dual Whelen Model WS-4000 siren system rated at 134 dBC at 100 feet. Id. According to the Applicants, the VANS vehicles will be dispatched from their staging areas at an ALERT or higher emergency classification. Id., at ¶A6. The Seabrook Station Short-Term Emergency Director (STED) will notify the New Hampshire Yankee Offsite Response

---

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

indicates, the Staff either agrees with each of those material facts or has no basis for disagreeing with them. See Attached Affidavit Of Donald J. Perrotti at ¶ A4 (October 12, 1988) ("Perrotti Affidavit").

Office (NHY-ORO) Emergency Operations Center (EOC) Contact Point, who in turn will dispatch the VANS by notifying the VANS operators via telephone, with radio backup, at the staging areas. Id. The NHY-ORO EOC Contact Point and the VANS staging areas are each continuously staffed by trained personnel 24 hours a day. Id. Each staging area will be staffed with enough operators to deploy each VANS vehicle at all times. Id.

The VANS is designed to accomplish the alerting function within approximately 15 minutes following notification from the EOC Contact Point. Id. at ¶ 7. As indicated above, personnel needed in the event of an emergency (including VANS vehicle operators) are notified by radio and a telenotification system. Id. This notification will trigger the dispatch of the VANS vehicles to their assigned stations. Id. The vehicles will then travel to their assigned stations via predetermined routes, and once there, be set up in the operable position. Id. At this point the VANS are fully deployed for remote operation. Id. The VANS sirens are capable of receiving and storing the actuation signal while in transit and of activating as soon as the mast is raised to its vertical position. Id. The VANS sirens also can be activated manually by the vehicle operator. Id.

The question whether the VANS vehicles can be deployed and alert notification sirens activated within fifteen minutes after the onset of an emergency was examined by the Staff on April 26, 1988. Id. at ¶ 8. On that date the Staff conducted an on-the-scene review of the staging areas and associated acoustic locations, including the location with the longest route transit time. Id. The Staff observed that all routes to acoustic locations are hard-surfaced roads and consist of at least two lanes that will allow the VANS vehicle to pass stalled vehicles if

required. Id. In addition, the Staff observed a training test of the VANS prototype. Id. Vehicle dispatch, set up and silent activation of the siren were observed while route transit was simulated. All of the areas reviewed by the Staff during this period were consistent with those described by Applicants in the VANS design documents. Id.

The VANS vehicles are capable of serving their intended purpose, even during inclement weather. As Mr. Perrotti explains, the vehicles used for the VANS are construction grade trucks (which are commercially available) equipped with mounted telescoping cranes and with outriggers. Id. at ¶ 9. They are similar to other emergency service vehicles used under adverse weather conditions. Id. The VANS vehicles will be located at outdoor and indoor staging areas. Id. At indoor VANS staging areas the driveway access and facility will be maintained in a condition suitable for prompt VANS deployment. Id. At outdoor VANS staging areas, the vehicles will employ engine block heaters to maintain the reliability of the vehicles. Id. The truck has a high-ground clearance and will be equipped with snow tires suitable for traversing the transit route during inclement weather.

The VANS sirens also are adequate to provide the required level of tone coverage for the entire Massachusetts portion of the Seabrook EPZ. As Mr. Perrotti observes, "[t]he VANS design incorporates a siren system that is capable of repetitive remote or manual activation for 3-5 minutes." Id. at ¶ 10. The sirens are powered by batteries and an

onboard generator that will allow the sirens to be capable of repetitive activation as necessary in response to an emergency at Seabrook. Id. The siren system is capable of "voice message" operation, although use of this mode is not required or anticipated. Id. The current VANS utilizes a dual Whelen Model WS-4000 siren system rated at 134 dBC at 100/ft. which provides substantially greater coverage than the original fixed sirens. Id. In this manner Applicants has been able to reduce the number of sirens needed for essentially the same coverage as was previously provided by the fixed sirens. Id. The six staging areas and 16 acoustic locations were chosen after the Whelen siren system was field-tested by Wyle Laboratories to verify siren rating. Id. The VANS sirens will be tested at the same interval as the New Hampshire pole-mounted sirens which is consistent with guidelines provided in NUREG-0654. Id.

Finally, it should be noted that the results of an inspection conducted by the Staff in June 1988 indicated that the design of the VANS was sufficient to achieve its intended purpose of providing early notification to the Massachusetts portion of the Seabrook EPZ in the event of an emergency. Id. at ¶ 11. <sup>4/</sup> This inspection was conducted by

---

<sup>4/</sup> Although neither 10 C.F.R. § 50.47(b)(5) nor NUREG-0654 requires Applicants to develop a back-up alert notification system, Applicants have taken this additional but unnecessary measure. Perrotti Affidavit at ¶ A12. The airborne alerting system developed by Applicants utilizes a helicopter based and staffed 24-hours-a-day at Seabrook Station. Id. This alerting system will be used as a secondary backup to the VANS. Id. At the ALERT emergency classification or higher, the helicopter is placed on standby. Id. If any VANS primary vehicle fails, a backup VANS vehicle will be dispatched to the acoustic location. Id. However, if a backup VANS vehicle fails to reach the specific acoustic location, the helicopter

(FOOTNOTE CONTINUED ON NEXT PAGE)

inspectors in NRC Region I office and consisted of interviews with personnel, examinations of procedures and records, visits to each staging area and a subsequent timing of the runs to each of the 16 acoustic locations. Id., see also NRC Inspection Report No. 50-443/88-08. The timed runs and a review of the data compiled by Applicants indicated that the sirens can be sounded for each acoustical area within 15 minutes, including the most remote location. Id.

In view of the foregoing, it is the Staff's position that the Applicants' description of the VANS satisfies regulatory requirements. Id. at ¶ 13. The VANS appears to be a reasonable, and adequate means of providing early notification to the Massachusetts portion of the Seabrook EPZ. Id. The Attorney General has not identified any genuine issue as to any material facts which would undermine this conclusion. Applicants' summary disposition motion therefore should be granted.

---

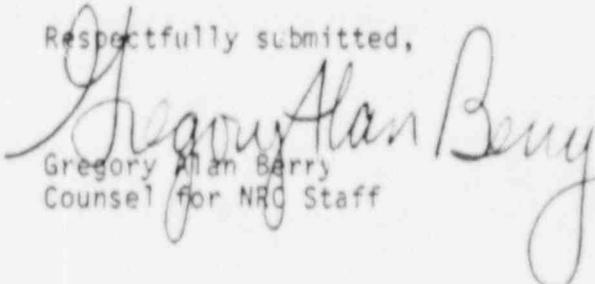
(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

will be launched to provide required acoustic coverage for that area. Id. Implementing procedures for activating the VANS vehicles and the helicopter alerting system are included in Applicants' "Seabrook Plan For Massachusetts Communities." Id.

CONCLUSION

For the reasons stated herein, Applicants' "Motion For Summary Disposition Of The Massachusetts Attorney General's Amended Contention On Notification System" should be granted.

Respectfully submitted,

  
Gregory Alan Berry  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 12th day of October 1988