

March 24, 1986

UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of )	
)	
Public Service Company of )	
New Hampshire, et al. )	Docket Nos. 50-443 OL
)	50-444 OL
(Seabrook Station, Units 1 & 2) )	
)	
_____ )	Offsite Emergency
	Planning

NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S  
RESPONSE TO OBJECTIONS TO NECNP'S CONTENTIONS FILED BY  
APPLICANTS, NRC STAFF, AND STATE OF NEW HAMPSHIRE

Introduction

The New England Coalition on Nuclear Pollution responds below to the Applicants', NRC staff's, and State of New Hampshire's objections to NECNP's contentions on the New Hampshire state and local emergency response plans. In some cases, NECNP has reworded the language of a contention to respond to reasonable concerns raised in the objections.

As a preliminary matter, we note that many of the Applicants' objections to these contentions constitute inappropriate attacks on their merits. Under well-established Commission precedent, contentions need not assert evidentiary fact; nor may the Licensing Board reject them on the merits at the pleading stage. See Illinois Power Company (Clinton Power Station, Units 1 and 2), LBP-81-15, 13 NRC 708, 711 (1981), and citations therein. Therefore, to the extent that Applicants attempt to defeat these contentions on their merits, their arguments must fail as a matter of law.

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With respect to NECNP's contentions on the evacuation time estimates, siren plan, and public information materials, some of the parties have suggested that a ruling on the admissibility of contentions should be deferred until the parties have reviewed the relevant documents and submitted contentions on them. In most cases, NECNP has no objection to that suggestion. The exceptions are discussed with respect to each contention. We have received some of the new materials and plan to file contentions on them within 30 days of receipt, as provided in the Licensing Board's order of May 23, 1983, as discussed in the Board's January 17, 1986 order.

Response to objections on individual contentions:

RERP - 1. This contention challenges the adequacy of the New Hampshire Radiological Emergency Response Plan ("RERP") for its reliance on local governments that have not approved or adopted the plans and that have refused to participate in the testing of the plans. Applicants and the State of New Hampshire object to this contention on the ground that under New Hampshire law, the state may develop local plans without local approval. The NRC staff does not object to the contention to the extent that it asserts that local governments which are relied upon to implement the plans have indicated that they will not do so, but opposes any assertion that the local plans are invalid without local approval or that reasonable assurance is lacking because some towns have refused to participate in the February 1986 exercise.

These objections miss the point of the contention. The "validity" of the New Hampshire local plans under state law is not at issue here. NRC regulations at 10 C.F.R. 50.47(a) forbid the issuance of an operating license until a finding is made that "there is a reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." (emphasis added.) While there is no requirement in NRC regulations that the local governments approve their emergency plans or participate in emergency planning exercises, their failure to do so raises serious questions as to whether they will or will not be able to carry out emergency response measures in the event of an accident. To the extent that the New Hampshire RERP relies on local emergency response organizations whose commitment and capability remains unassured, the RERP fails to satisfy the NRC regulations.

RERP - 2. This contention faults the New Hampshire RERP for failure to specifically identify all areas in which it requires federal assistance, the extent of its needs, the arrangements necessary to obtain that assistance, or the expected time of arrival of Federal assistance at the Seabrook site or EPZ. Neither the NRC staff nor the state of New Hampshire object to this contention. Applicants object that there is no litigable issue because the "process" for requesting federal aid is "well developed" and because NECNP has not demonstrated the need for other arrangements with the Federal government. Applicants' objection is unfounded. First, applicants are attempting to

defeat this contention on the merits. NECNP has made a prima facie showing that specific "arrangements" for Federal aid do not exist. To the extent that the "process" for obtaining aid is relevant, the issue does not bear on the admissibility of the contention but is properly reserved for the litigation of the contention. Second, Applicants ignore the fact that although the state relies on the federal government for some amount of radiological monitoring, it has failed to show the existence of arrangements for that aid. Finally, Applicants ignore NECNP's assertion that the RERP illegally fails to state the expected time of arrival of federal aid. The contention should be admitted.

RERP - 3 This contention challenges the adequacy of pre-emergency instructional material to the adult transient population within the Seabrook Emergency Planning Zone. The state of New Hampshire does not object to this contention. The NRC staff does not object to those parts of the contention that question the durability of posters and the adequacy of provisions for French-speaking transients, but objects to the remainder of the contention. The Applicants object to the entire contention.

Both Applicants and the NRC staff argue that there is no regulatory basis for NECNP's contention that the state should take responsibility for the posting of posters and/or make such postings mandatory. Regardless of whether or not the regulations contain specific language to this effect, such measures may be found necessary to protect the public health and safety in this

case. The drafters of the NRC emergency planning regulations and NUREG-0695 could not have anticipated every circumstance that is peculiar to each EPZ. The regulations are written in general form to assure that reasonable steps are taken to assure adequate protection in the event of an emergency. In the case of the Seabrook EPZ, the existence of an extremely large transient population during the summer months necessitates planning measures to assure their protection. NECNP has raised a reasonable basis for questioning whether existing public notification measures will be adequate in view of the understandable reluctance of local merchants and proprietors to threaten their livelihoods by posting unpleasant warning notices. Whether the state takes responsibility for such postings or makes them mandatory, some assurance is needed that they will be carried out. NECNP has also raised a reasonable basis for assessing the need for bilingual notification and instructions. Applicants' arguments to the contrary constitute an impermissible attempt to dismiss this contention on the merits.

RERP - 4. This contention challenges the adequacy of the New Hampshire RERP's provisions for early notification and clear instructions to the populace within the EPZ. Neither the state of New Hampshire nor the NRC staff object to the admissibility of this contention.

Since the state has now submitted a plan for the EPZ's siren system, NECNP drops part (a) of the contention, which challenges the state's failure to submit a plan. NECNP will file

contentions on the adequacy of the siren system within 30 days of receiving the plan. NECNP also requests that the Board defer consideration of the admissibility of parts (c) and (e) of this contention until NECNP has had an opportunity to review and submit contentions on the design report for the Seabrook EPZ notification system.<sup>1</sup>

Applicants object to NECNP's assertion in part (b) that the RERP should provide for coordination of early notification between Massachusetts and New Hampshire, on the ground that "neither state can dictate to the other state how that state will discharge its responsibilities for public alert and notification." The autonomy of these two states is not at issue here, however. Rather, the issue is whether they have cooperated to the extent that they can reasonably assure that their actions will not jeopardize the health and safety of the public. No such showing has been made.

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<sup>1</sup> Applicants have objected to part (c) of the contention, which asserts that the RERP does not provide for adequate radio or siren notification to the transient population on beaches, campgrounds, and parks in the EPZ, on the ground that the sirens will be equipped for voice transmission. However, the adequacy of the coverage of the sirens cannot be determined until the design report for the notification system can be reviewed.

With respect to NECNP's assertion in part (e) that the sirens may be ineffective when the wind is wrong or in the winter, Applicants assert that the sirens are not required to alert 100% of the EPZ population. However, NUREG-0654 does require that the initial notification system "will assure direct coverage of essentially 100% of the population within 5 miles of the site." In any event, the question of the admissibility of this contention should be deferred until contentions of the siren study have been submitted.

RERP - 5. This contention asserts that audible alert systems are unreliable because there is a significant probability that in the event of an accident, there will be no offsite power source to run them. The NRC staff opposes this contention, arguing that a loss of offsite power at Seabrook Station is "not necessarily equivalent" to a loss of offsite power in the Seabrook EPZ. This is an argument on the merits of the contention, not the adequacy of its basis. Moreover, the staff offers no information demonstrating that the basis offered by NECNP is entirely invalid. Applicants suggest that this contention be deferred until the submission of contentions on the siren study. That part of the Final Design Report for the Seabrook Public Alert and Notification System can most efficiently be addressed here, however. The Final Design Report states that 133 of the 140 sirens will be battery operated, with standby capacity of several weeks or full sound output of 1/2 hour. at 20. The Report also states that tone alert radios will have backup battery power in the event of an emergency, but does not state the capacity of the batteries. Thus, NECNP's concerns have been partially satisfied. However, NECNP continues to assert that adequate backup capacity must be demonstrated for the 7 remaining sirens and the tone alert radios.

RERP - 6 This contention challenges the adequacy of sirens for nighttime notification. Both Applicants and staff object to the contention. The Applicants claim that the contention constitutes an impermissible challenge to FEMA acceptance criteria, and the staff claims that the contention lacks basis.

Applicants apparently consider the FEMA criteria to be the equivalent of NRC regulations, which cannot be challenged without making a special motion to the Licensing Board. They are not regulations, however, but "guides," which are not necessarily adequate in every circumstance. Moreover, the Licensing Board in the Shearon Harris operating license case has suggested to the Commission that compliance with the FEMA criteria may be inadequate to arouse EPZ residents from sleep during the night. See Letter from Licensing Board to Commissioners, dated November 19, 1985. Typical weather conditions on the New England coast, including storms and high winds, may act to make the FEMA criteria even less sufficient to assure adequate protection of the public health and safety.

The NRC staff responds that the Seabrook sirens will produce a higher decibel level than the Shearon Harris sirens. However, NECNP's preliminary assessment of the Final Design Report for the siren system reveals that the siren system is designed to meet the FEMA acceptance criteria outlined in NUREG-0654. Report at 15. Although the output of the sirens is high, attenuation of sound over distance is assumed. Id. NECNP has raised a reasonable basis for this contention. The factual issues surrounding the effectiveness of the sirens are properly reserved for the hearing.

RERP - 7. This contention is dropped.

RERP - 8. This contention disputes the adequacy of sheltering for the Seabrook EPZ and the sufficiency of the basis



for making choices among protective actions. The NRC staff does not object to the admission of the contention. The state of New Hampshire objects that the contention raises no litigable issue because the Board must review all protective measures as a whole. The state's response ignores the fundamental purpose of the rule, which is to provide a basis for a reasoned choice among alternative protective measures. The Applicants object that NECNP's concerns are already addressed in the plan. However, Applicants do not point out, nor can it be discerned, how the cited portions of the plan resolve the issues raised by NECNP. Applicants also claim that NECNP misconceives the nature of sheltering required for emergency planning. Applicants miss the point that regardless of the standard for the adequacy of sheltering, there is currently no basis for assessing sheltering effectiveness or capacity to accommodate the population of the Seabrook EPZ.

Finally, in response to objections that this contention is unnecessarily duplicated by NECNP's contention NHLP-7 on the New Hampshire local plans, NECNP rewords this contention to include both sets of plans as follows:

Neither the New Hampshire RERP nor the local plans provide a "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency," as required by 10 C.F.R. 50.47(a)(1), in that the plans do not provide reasonable assurance that sheltering is an "adequate protective measure" for Seabrook. Nor do the plans provide adequate criteria for the choice between protective measures, as required by § 50.47(b)(10) and NUREG-0654, § II.J.10.m.

RERP - 9. This contention challenges the absence of the state of New Hampshire's evacuation time estimates from the New Hampshire RERP. Neither the state nor the NRC staff object to the contention, although the staff recommends that issues relating to the ETE be deferred until the ETE is submitted. NECNP agrees to the staff's suggestion, but will nevertheless address the objections registered by the Applicants. Applicants oppose the contention on the ground that the regulations require only that Applicants prepare an ETE, which they have done. Applicants discount NUREG-0654's requirement for preparation of ETE's by state governments, on the ground that it is not a binding regulation. However, NRC regulations at 10 C.F.R. 50.47(b)(10) do require the offsite emergency response organizations to identify a range of protective actions and the basis for choosing among them.

The evacuation time estimates are a crucial tool for making choices regarding whether to order evacuation and what sectors of the EPZ should be ordered to evacuate. The state of New Hampshire clearly considers it essential to prepare its own evacuation time estimate in order to have a sufficient basis for those decisions. If the state's ETE is to be the basis for decisions affecting the public health and safety, it must be submitted for litigation in this proceeding before the emergency plans can be approved.

RERP - 10 This contention attacks the sufficiency of the RERP's program for radiological monitoring. The state does not

oppose this contention. The NRC staff opposes only sections (c) and (f). NECNP hereby drops those sections of the contention. With respect to part (a), applicants deliver a barrage of factual information that does nothing to refute NECNP's clear showing that three teams of radiation monitoring personnel are insufficient to conduct a host of tests throughout the EPZ.

Applicants' objection to part (b), which challenges the lack of monitoring locations, is also without merit. The NHRELP itself purports to designate monitoring locations that are "easily accessible" (RERP at 2.5-7) but the information is missing from the plan. As the state obviously agrees, such pre-determined locations are necessary to assure rapid and efficient monitoring of the EPZ.

Part (d) alleges that monitoring times must be drastically reduced in order for monitoring to provide helpful information. Applicants claim that NECNP misunderstands the role of field monitoring. Our understanding is based in NUREG-0654, which requires each organization to demonstrate they are capable of "rapid assessment, including estimating deployment times."

Finally, Applicants state that NECNP's contention in part (e), that the RERP does not assure 24-hour laboratory capability, is based on a misreading of a poorly typed table on page 2.5 - 20. NECNP has studied the table. It remains too cryptic to dispose of NECNP's concerns.

RERP - 11 NECNP contends here that the New Hampshire RERP fails to provide adequate arrangements for contaminated injured

individuals. Both Applicants and staff argue that the scope of the hearing on this contention should be limited to the question of whether the plans provide a list of existing medical facilities for treatment of contaminated injured individuals. The Commission issued that instruction to the Licensing Boards in response to the Court of Appeals' decision in Guard v. NRC, 752 F.2d 1144 (D.C. Cir. 1985), which rejected exactly such a limited treatment of the issue in the San Onofre operating case. Policy Statement, 50 Fed. Reg. 20892 (May 21, 1985). According to the Policy Statement, the Commission intends that Licensing Boards should issue full power licenses if this requirement is met and if the applicant agrees to comply with the Commission's response to the Guard order.

The Commission is wrong. The scope of the hearing defined in the Commission's policy statement has been ruled legally insufficient to demonstrate compliance with the requirements of 10 C.F.R. 50.47(b)(12). As long as the rule remains on the books, the Commission may not waive compliance in a policy statement that has no binding effect on the parties and for which no exemption proceedings have been carried out. The Commission may postpone consideration of this issue, but it may not grant a full power operating license before it has given intervenors an opportunity for an adjudicatory hearing on whether the regulation is satisfied. Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984). Moreover, a licensee's commitment to abide by the Commission's generic interpretation of 10 C.F.R.

50.47(b)(12) will not resolve the question of what specific measures and resources are needed in this particular case.

If the Board refuses to allow litigation of this contention beyond the scope delineated in the Policy Statement, NECNP intends to submit an offer of proof in order to fully preserve its rights to litigate this contention.

RERP - 12 This contention asserts that the state RERP does not adequately provide for the distribution of radioprotective drugs to institutionalized persons or consider the circumstances under which drugs should be administered to the general public. The state does not object to this contention. The NRC staff does not object to the extent that the contention addresses the needs of institutionalized persons. However, both Applicants and the NRC staff claim that the distribution of radioprotective drugs to the general public is a matter within the state's discretion. The state's discretion, however, is not completely unreviewable. It may be rejected if it is found to be arbitrary and capricious. In this particular case, where the state has rejected sheltering as a protective measure for the summer beach population and evacuation may take much longer than the timing of some reasonably probably accident sequences (See NECNP Contention NHLP-9), distribution of KI to the general public may be necessary to assure adequate protection of the public health and safety. The plan must show that the state has considered the matter and has a reasoned basis for failing to provide for public distribution of radioprotective drugs under the circumstances of this case.

NHLP - 1 Like NECNP contention RERP-1, this contention asserts that there is no reasonable assurance that the New Hampshire local plans can and will be implemented because the towns have not adopted the plans and because many of the towns have refused to participate in an exercise of the plans. Whereas RERP-1 is directed at the inadequacy of the state plan because of its reliance on local plans that may not be implemented or implemented adequately, this contention challenges the local plans themselves.

The State of New Hampshire, Applicants, and NRC staff all repeat their objections to RERP-1. For NECNP's response to those objections, please refer to pages 1-2 of this Response. In addition, the staff argues that this contention is duplicative of contention RERP-1. Although both contentions are based in the same facts, they address the legal sufficiency of two different sets of plans. Thus, they are not duplicative.

NHLP - 2 In this contention NECNP asserts that the local plans do not assure that each principal emergency response organization has a staff to respond to and augment its initial response on a continuous basis. The contention has nine subsections addressing different aspects of the emergency plans.

None of the parties object to parts (a), (f), (g), (h), (i), or (j). Only the Applicants object to parts (b), (c) and (d). Finally, all of the parties object to part (e), which NECNP hereby drops.

Applicants first object to part (b), which asserts that there is no assurance that necessary police and fire department personnel will be reachable or capable or responding promptly in the event of a radiological emergency. Citing the Commission's decision in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528 (1983), Applicants object on the ground that the contention calls for extraordinary measures, which are not required because a nuclear power plant is in the area. Applicants' argument is without merit. In the first place, the contention does not call for any "measures" at all. It simply asserts that the regulation is not met. Second, if the licensee or some other party should offer measures to compensate for this deficiency, the appropriateness of those measures is a question of fact for the Board to decide in the hearing process, not a barrier to the admissibility of the contention. Finally, the San Onofre decision cited by Applicants does not support Applicants' position. That decision dealt with the adequacy of arrangements required by NRC regulations for medical treatment of contaminated injured individuals. Although the Commission stated that extraordinary measures were not required, it did establish minimal requirements for satisfaction of the regulation.<sup>2</sup> 17 NRC at 535.

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<sup>2</sup>Some of those requirements were later deemed inadequate by the U.S. Court of Appeals for the District of Columbia Circuit. See Guard v. NRC, 753 F.2d 1144, 1148-50 (D.C. Cir. 1985).

Applicants next object to part (c), which questions whether emergency response personnel can be relied upon to perform their assigned functions during an emergency. In support of their position, Applicants cite Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC 184, 187 (1985). In that case, the Commission upheld the Licensing Board's denial of a contention that there was no reasonable assurance that guards and inmates at the Graterford prison would not spontaneously evacuate during a radiological emergency. The Commission found that the prison incidents cited by intervenors in support of the contention did not contain "any indication that the guards deserted or the inmates spontaneously evacuated." 22 NRC at 187. Thus, the Commission ruled that the intervenors had failed to offer a "reasonably specific basis" for the contention. Id. In this case, on the other hand, NECNP has provided substantial factual information in support of its contention, including the results of numerous interviews with emergency response personnel conducted by NECNP and others. Moreover, NECNP cites the unusual circumstance of this case that many of the emergency response workers will be outside of the EPZ when an emergency is declared. Although the Board may eventually find, based on the record, that emergency workers are likely to leave a position of safety to assist a dangerous effort, it is unreasonable to make that assumption at the outset.

Part (d) contends that the plans contain no demonstration that private companies or individuals who will be depended on to



assist in an emergency will actually be able, committed and willing to perform those functions. As basis, NECNP cites the lacks of letters of agreement in the plans, and conversations with owners of private companies who were either unaware that they were being relied upon for an emergency response or who lacked the equipment they were alleged to have. Applicants attempt to exclude this contention by attacking it on the merits. They argue, for example, that the state RERP lists a "wealth" of state owned vehicles that can be relied on in an emergency, and that therefore the absence of letters of agreement does not by itself raise a litigable issue. Applicants also make generalized assertions that towing equipment is available. These assertions are insufficient to refute the factual basis that NECNP has offered in support of the contention. The contention should be admitted.

NHLP - 3 This two-part contention challenges the adequacy of measures for emergency notification to emergency response organizations and personnel. The NRC staff objects only to part (b), which NECNP hereby withdraws. The Applicants object to part (a), which asserts numerous deficiencies in the means for prompt notification of local officials. According to Applicants, NECNP erroneously seeks "perfection" in the emergency notification schemes. To the contrary, NECNP seeks a reasonable assurance that the NRC regulations and requirements of NUREG-0654 are met. NECNP has provided substantial support for its assertion that those requirements are far from satisfied.

The State of New Hampshire also objects to part (a) of this contention, on the ground that there is no regulatory requirement for a dedicated telephone line from the county dispatch to each town. NECNP drops this sentence from the contention.

NHLP - 4 This contention challenges the adequacy of measures for early notification and clear instructions to the populace within the plume exposure EPZ.

NECNP drops part (a) of the contention, since it concerns the siren study that has now been submitted to the intervenors. NECNP will file any contentions on the siren study within thirty days of receipt.

Part (c)<sup>3</sup> asserts that there has been no attempt by any of the emergency response organizations to determine or establish the time required for notifying and providing prompt instructions to the public within the plume exposure pathway EPZ. Both the Applicants and the NRC staff object to part (c) on the ground that there is no regulatory basis for such a requirement. In addition, the staff argues that NECNP has provided no factual basis to suggest that the responsible offsite organizations cannot provide prompt notification to the public within 15 minutes after receiving notification from the licensee. These arguments are without merit. The contention is soundly based in NUREG-0654's requirement that the licensee has "responsibility to

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<sup>3</sup>The designation of this section as part (c) rather than (b) was a typographical error. In the interest of avoiding confusion, we have not changed the alphabetical designation of the parts.

demonstrate" that administrative and physical means exist for prompt notification of the public. Section II.E.6. The allegation of such capability is not equivalent to a demonstration. The regulation is not satisfied.

Part (d) alleges the lack of bilingual notification and communication measures for the French-speaking transients in the Seabrook EPZ. For the sake of efficiency, part (d) is hereby dropped and incorporated into contention NHLP-5, which covers the same issues.

Part (e) asserts that the local plans do not make adequate provision for notification of people with special notification needs. The NRC staff does not object to this part of the contention. Applicants again attempt to defeat this contention by arguing the merits of the plans' provisions for early notification, asserting that complete success is not required by the regulations. This argument does not refute the reasonable factual basis supplied by NECNP. The question of the adequacy of the special notification provisions must be reserved for litigation on the merits.

NHLP - 5 This contention challenges the adequacy of protective measures for French-speaking individuals in the Seabrook EPZ. The state does not object to the contention. The Applicants make the same objections as to contention RERP-3. NECNP's response to Applicants is found at pages 4-5 of this Response. The NRC staff also attacks that part of the contention which concerns behavioral difficulties raised by the language

barrier. However, despite the NRC's protestations to the contrary, NECNP has offered concrete factual examples that support its contention.

NHLP - 6 None of the parties object to this contention, which challenges the adequacy of relocation measures for individuals with special needs.

NHLP - 7 This contention challenges the adequacy of guidelines for the choice of protective actions. Both the Applicants and NRC staff object on the ground that the contention duplicates NECNP's contention RERP-8. NECNP intentionally raised the same issue with respect to both the state and local plans in order to assure that the requirement would be addressed with respect to at least one set of plans. In response to the objections and to satisfy its own concerns, NECNP has reworded contention RERP-8 to encompass both the state and local plans.

NECNP - 8 This contention challenges the local plans' provision for the use of radioprotective drugs for emergency workers or institutionalized persons whose immediate evacuation may not be feasible; and the lack of a description of the methods by which decisions for administering radioprotective drugs to the general population are made during an emergency and the predetermined conditions under which such drugs may be used.<sup>4</sup>

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<sup>4</sup>The contention also contains an additional section (c), which was included here by a typographical error. Part (c) is hereby dropped.

Applicants contend that the means of distribution of KI are described in the New Hampshire RERP; however, the RERP describes only the storage locations. It does not describe how distribution will be assured. Both Applicants and staff also object to that part of the contention which challenges the plans' failure to provide for distribution of radioprotective drugs to the general public. That objection is addressed in NECNP's response to objections to contention RERP-12 at page 12.

NHLP - 9 This nine-part contention challenges the adequacy of measures for evacuation of the Seabrook EPZ. The various parts of the contention are discussed separately below.

Section (a) asserts that the consequences of an accident at Seabrook are such that evacuation must be completed promptly in order to avoid unacceptable damage to the public health and safety. Both the Applicants and staff object to this contention. First, the NRC staff asserts that the contention calls for litigation of accident consequences, which is not required by NRC's emergency planning regulations. However, the use of consequence analysis is entirely consistent with the principles of NUREG-0654, which require the Commission to consider a spectrum of accidents. The consequence studies that have been developed for Seabrook are material to the question of spectrum of accidents that should be considered in this case. Moreover, since probabilistic risk analysis is now being used in other safety analyses by the staff, it would be absurd to reject the concept for this one aspect of the NRC's regulatory task.

Second, the parties argue that NRC regulations prescribe no minimum performance requirements or unacceptable radiation exposures. The staff and Applicants apparently consider that the operation of the Seabrook plant is a given, and the Licensing Board must approve any plans that show a reasonable effort to cope with the serious evacuation and sheltering problems posed by the site. That is not what the regulations require, however. Rather, the Board must determine whether the protective measures themselves are adequate to protect the public health and safety. 10 C.F.R. § 50.47(a)(1). This involves providing "dose savings" and "immediate life savings" in the event of an emergency. NUREG-0654 at 6. That judgment cannot be skewed by the Applicants' investment in the plant. If the reasonable assurance finding cannot be made, the license must be denied. Seacoast Anti-Pollution League v. NRC, 690 F.2d 1025, 1033 (D.C. Cir. 1982).

Finally, Applicants argue that this contention raises a siting issue that was resolved conclusively at the construction permit stage. As the court made clear in SAPL v. NRC, that is not the case. There, the court approved the NRC's denial of SAPL's request for construction permit revocation proceedings to consider whether the Seabrook site could be evacuated in conformance with the NRC's newly promulgated regulations at 10 C.F.R. 50.47. That regulation had not been considered at the construction permit stage. The court based its decision in part on the NRC's assurance that no operating license would issue if

it appeared that "the infeasibility of EPZ evacuation renders it impossible for PSC to provide the requisite 'reasonable assurance'" of safety. 690 F.2d at 1030-1033. Thus, the question of whether Seabrook can be safely evacuated is properly before this Licensing Board.

The remaining parts of this contention challenge the adequacy of evacuation as a protective measure in numerous respects. The Applicants object to the entire contention. The NRC staff does not object to parts (b), (d), (f), and (g), but does object to parts (h) and (i). NECNP hereby drops part (h).

Both parties suggest that some of the subcontentions should be deferred until submission of the evacuation time estimates for Seabrook. These issues may be relevant to an evaluation of the evacuation time estimates. However, we note that NUREG-0654 establishes evacuation criteria in addition to the requirement for evacuation time estimates. Section II.J.j requires "identification and means for dealing with potential impediments (E.G., seasonal impassability of roads) to use of evacuation routes, and contingency measures." Thus, in addition to submitting evacuation time estimates, the offsite organizations must show that they have coped with the type of evacuation impediments described in this contention. NECNP has provided substantial factual basis for its assertions. They should be admitted.

NHLP - 10 This contention, which asserts noncompliance with 10 C.F.R. § 50.47(b)(12)'s requirements for emergency medical

services, has two parts. Part (a) asserts that the towns within the Seabrook EPZ do not have sufficient ambulances or emergency medical equipment to care for contaminated injured individuals. Part (b) asserts that the towns have insufficient emergency vehicles to evacuate hospitals, convalescent homes, and the nonambulatory population.

For reasons explained in its opposition to contention RERP-11, the NRC staff objects to this contention to the extent that it asserts the need for further medical arrangements than currently required by the Commission in its post-Guard policy statement. However, the staff would not object to a contention that is reworded to address the issues raised in part (b) without reference to 10 C.F.R. 50.47(b)(12).

In response to the staff's objection, NECNP hereby rewords this contention as two separate contentions that address different regulatory violations. Contention 10 is reworded as follows:

The local plans do not contain adequate arrangements for medical services for contaminated injured individuals because the towns within the EPZ do not have sufficient ambulances or emergency medical equipment to care for contaminated injured individuals.  
10 C.F.R. § 50.47(b)(12), NUREG-0654, § 11.L.

This contention has the same basis as NHLP-10(a). For NECNP's response to the parties' objections, see NECNP's answer to the objections to RERP-11.

A new contention NHLP-14 is offered as follows:

The local plans do not demonstrate that there are sufficient numbers of vehicles to evacuate hospitals, convalescent homes, and the nonambulatory residential



population, many of whom must be transported by emergency medical vehicles. 10 C.F.R. § 50.47(b)(8), NUREG-0654, § II.J.10.d.

The basis is the same as for contention NHLP-10(b).

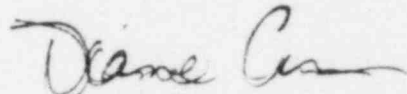
NHLP-11 Both Applicants and the NRC staff object to this contention, which asserts that the local plans fail to take into account the effects of a loss of offsite power on the ability of local governments to take adequate protective measures. The parties speculate that loss of offsite power would not have the drastic effects posited by NECNP. However, NECNP has supplied a reasonable basis that warrants the further investigation of the issue. The contention should be admitted.

NHLP-12 The contention challenges the adequacy of host plans and relocation centers. The NRC staff does not object to the contention as long as it is limited to the host plan of Nashua, New Hampshire. However, NECNP's assertions are the result of a review of all of the host plans, of which Nashua is only an example. Applicants attack the contention on the merits. The contention has a reasonable basis in fact and should be admitted.

NHLP-13 This contention asserts that the host plans do not provide assurance that evacuees from the Seabrook EPZ will be monitored and will be decontaminated if necessary. The plans thus pose a threat that evacuees will bring radiological contamination into other areas of the state and even into other states and Canada.

Applicants and staff both object that this contention constitutes as impermissible challenge to Commission regulations, because there is no mandatory requirement for monitoring of evacuees or attendance at evacuation centers. What is required is the implementation of reasonable measures to protect the public health and safety. The plans assume that large numbers of evacuees will not go to evacuation or decontamination centers. The potential contamination of other people outside the Seabrook area is a significant threat to the health and safety of the general public. The contention should be admitted.

Respectfully submitted,



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March 24, 1986

DOCKETED  
USNRC

CERTIFICATE OF SERVICE

86 MAR 26 110:34

I certify that on March 24, 1986, copies of NECNP's Response to  
Objections for NECNP's Contentions on ~~000~~ <sup>OFFICE OF</sup> ~~000~~ <sup>DOCKETING</sup> ~~000~~ <sup>UNIT</sup> Hampshire State and Local  
Emergency Response Plans and motion in support thereof were served on  
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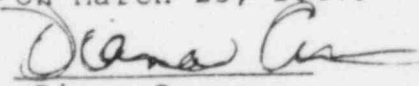
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\* - copies served by first class mail with courtesy copies to be delivered at prehearing conference on March 25, 1986.

  
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