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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'87 JUL -6 P2:10

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-443 OL
PUBLIC SERVICE COMPANY OF)	50-444 OL
NEW HAMPSHIRE, <u>et al.</u>)	Off-site Emergency Planning
)	
(Seabrook Station, Units 1 and 2))	

NRC STAFF'S RESPONSE TO MOTIONS FOR
SUMMARY DISPOSITION OF OFF-SITE
EMERGENCY PLANNING CONTENTIONS

On June 11, 1987, the Applicants filed fourteen motions for summary disposition of various off-site emergency planning contentions; ^{1/} on the same date, the Town of Hampton filed a motion for summary disposition of Town of Hampton-4 and 6 and Attorney General Shannon of Massachusetts filed a motion for partial summary disposition on Town of Hampton-8, SAPL-16 and NECNP-RERP-8. On June 10, 1987, the Board granted earlier motions and summarily disposed of Town of Rye-2, Town of South Hampton-1 and 6 and Town of Kensington-10.

The NRC Staff hereby files its response to these motions and reiterates its support for the Applicant's March 25, 1987 motion for summary disposition of NECNP-RERP-2 which the Board did not address

1/ Applicant's motions addressed Town of Rye-2, Town of South Hampton-1, Town of South Hampton-6, Town of Kensington-10, SAPL-15, NECNP-NHLP-6, Town of South Hampton-8, SAPL-18, SAPL-25, Town of Kensington-6, Town of South Hampton-3, NECNP-NHLP-4, Town of Hampton Falls-4, and Town of Kensington-2.

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in its June 10, 1987 Memorandum and Order. For the reasons set forth below, and in the attached affidavits,^{2/} there are no genuine issues of material fact on two of the subject contentions and summary disposition is appropriate for those contentions. The motions for summary disposition on the remaining contentions should be denied because FEMA has not yet made the findings required by the Commission's regulations that the relevant parts of the emergency plans are adequate. The material facts still in issue are set forth in the attached affidavits and the letter provided to the Board and parties by the Staff on June 12, 1987.^{3/}

DISCUSSION

A discussion of the legal principles underlying summary disposition and the significance of FEMA findings to the NRC's determination of the adequacy of off-site emergency plans was provided in the NRC Staff's April 15, 1987 Answer to Motions for Summary Disposition of Off-Site Emergency Planning Contentions and will not be repeated here.

The Applicants', Town of Hampton's and Attorney General Shannon's Motions

The Applicants, Town of Hampton and Attorney General Shannon have filed motions for summary disposition of off-site emergency planning

^{2/} The Staff has attached hereto "Affidavit of Edward A. Thomas in Support of Certain Motions for Summary Disposition" and "Affidavit of Edward A. Thomas in Opposition to Certain Motions for Summary Disposition." The first of these affidavits reiterates FEMA's support for summary disposition of NECNP RERP-2, notwithstanding the fact that the Applicants have not refiled their motion for summary disposition thereof.

^{3/} Letter from Robert J. Bores (NRC RAC Member) to Edward A. Thomas (FEMA RAC Chairman), dated June 4, 1987.

contentions. These contentions raised various concerns as to the adequacy of the New Hampshire radiological emergency response plans for the Seabrook Station.

As set forth in the attached affidavits of Edward A. Thomas, the Federal Emergency Management Agency (FEMA) and the Regional Assistance Committee (RAC) have evaluated and reviewed the radiological emergency response plans submitted by the State of New Hampshire, as well as the compensatory plan and the revisions to the plans which have been submitted by the State. In addition, FEMA has conducted and evaluated an exercise of the New Hampshire radiological emergency response plans, held on February 26, 1986.

Based upon the continuing FEMA review of the New Hampshire radiological emergency response plans, the State's compensatory plan and the revisions to the plans which have been submitted, as well as the exercise held on February 26, 1986, it has concluded that, as to two of the subject contentions and the matters embraced by those contentions, the New Hampshire radiological emergency response plans appear to be adequate to FEMA and no issues of material fact remain to be litigated. FEMA supports the Applicants' Motions for Summary Disposition regarding Town of Kensington-2 and NECNP-RERP-2.

The motions for summary disposition on the other contentions should be denied. FEMA has identified unresolved issues of fact within the scope of those contentions. Pertinent unresolved matters which have been identified to date by FEMA are set forth in the attached, "Affidavit of Edward A. Thomas in Opposition to Certain Motions for Summary Disposition."

In addition to the reasons set forth in the Thomas affidavit opposing the motion for summary disposition of Town of Hampton-8, SAPL-16 and NECNP-RERP-8, an additional factual issue exists regarding the adequacy of the protection afforded the transient beach population. The FEMA position is inconsistent with that of the NRC's representative on the FEMA RAC.

In contrast to the position expressed by FEMA, the NRC RAC member had recommended a finding that NHRERP does provide "reasonable assurance" for beach populations:

Based on the above, it appears that contingent on the completion of action by the State to resolve the other RAC concerns with respect to the New Hampshire and local plans, those plans appropriately provide for dose savings for the spectrum of possible accidents and are adequate to provide reasonable assurance that the beach and unwinterized housing populations will be protected and that these plans will essentially meet the criteria of NUREG 0654 and the intent of the NRC regulations in this area. ^{4/}

As the Staff noted in its June 29, 1987 filing to the Commission, ^{5/}

10 CFR § 50.47(a)(2) provides:

with respect to offsite matters, by the Commission's finding is to be based upon a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented. However, that regulation further provides that "[i]n any licensing proceeding, a FEMA finding will constitute a rebuttable presumption on

^{4/} See footnote 3.

^{5/} NRC Staff's Response to Joint Motion for Leave to File a Supplement to Motions for Stay of Partial Initial Decision Filed by SAPL, Town of Hampton, and Attorney General Shannon at 4-6.

questions of adequacy and implementation capability."

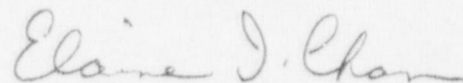
Although the Thomas Affidavit opposing summary disposition states at paragraph 9 that its current position on this issue "does not constitute a finding" the difference of opinion between FEMA and the NRC RAC member confirms that a genuine factual issue remains.

Since FEMA is unable that at this time to make the required findings of fact required by 10 C.F.R. § 50.17(a)(2) on the adequacy of the relevant aspects of the Seabrook Station Emergency Off-Site Plan, or because FEMA's position on beach transient protection differs from that of the NRC member of the RAC, summary disposition of these contentions cannot now be granted.

CONCLUSION

For the reasons more fully set forth above and in the attached affidavits of Edward A. Thomas, the Licensing Board should grant the motions for summary disposition of Town of Kensington Contentions 2 and NECNP Contention RERP-2. As to all the remaining contentions, the motions for summary disposition should be denied.

Respectfully submitted,



Elaine I. Chan
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of July, 1987