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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	Docket No. 50-443-OL 50-444
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.	(Offsite Emergency Planning Issues)
(Seabrook Station, Unit 1	

REPLY BRIEF ON BEHALF OF SEACOAST ANTI-POLLUTION LEAGUE

I. CONTRARY TO APPLICANTS' POSITION, THE COMMISSION HAS SPECIFICALLY REJECTED A "BEST EFFORTS" STANDARD OF "ADEQUACY" FOR EMERGENCY PLANS.

Applicants' Brief unequivocally sets forth its position that the "reasonable assurance" of "adequate protective measures" standard is both not a primary safety requirement and can be satisfied by a "best efforts" response. ("The Commission made clear that emergency planning was not to be viewed as on a par with the safety and siting regulations . . . " and "what the Applicants urge as a standard was basically the best plan which the hand of man could devise that would achieve maximum dose savings reasonably achievable in a given event, without taking extraordinary measures such as major construction of roads, shelters, or other structures." (Applicants' Brief, pp. 7, 8)).

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The "best efforts" standard, as urged by the Applicants, however has been specifically and categorically rejected by the Commission. This was pointed out clearly in the Commission's "Brief of Respondents in Regard to the Challenge to the 1987 Emergency Planning Rule Change." Pertinent pages from the NRC brief are attached hereto as Attachment A.

In the Statement of Considerations that accompany the final emergency planning rule, 52 Fed. Reg. 42078, Nov. 3, 1987, the Commission stated:

> "It should be emphasized that the rule is not intended to diminish public protection from the levels previously established by the Congress or the Commission's rules." Id., 42084 (Column 2).

In so stating, the Commission unequivocally rejected the "best efforts" approach to emergency planning, as a brief review of the history of the emergency planning rule clearly establishes.

The final rule change, as published in the November 3, 1987 Federal Register, followed an original proposed rule change, which was published on March 6, 1987. 52 Fed. Reg. 6980. The original rule change specifically suggested the Commission was considering two options to amending its emergency planning rules. The first retained the traditional requirement that an operating license be conditioned on there being an "adequate" level of protection as a result of emergency planning. The second option was to focus on "whether the utility has done all within its power to make

emergency planning satisfactory, rather than whether the outcome was a plan that provided adequate protection." (NRC Brief, p. 15). The NRC rejected the second option, which is the "best efforts" approach, in its final rule. Thus, contrary to the Applicants' assertion, the NRC has very recently specifically rejected the best efforts standard for emergency planning, and so informed the Court of Appeals in its brief in defense of the rule change.

The final rule change, as noted, states that the new rule "is not intended to diminish public protection from the levels previously established by the Congress or the Commission's rules."

Those "previously established" requirements included statements that the Commission made when it adopted those emergency planning rules in 1980, and which it has never disavowed. At that time, the Commission described emergency planning as an "essential" safety feature on a par with the Commission's siting requirement and regulations governing engineered safety features. (45 Fed. Reg. 55404, August 19, 1980). In describing the emergency planning rules, the Commission had stated that, as a result of the TMI accident, the Commission concluded that its siting and engineering safeguard requirements "must be bolstered" by requiring an adequate level of safety be achieved through emergency planning. (Id., 55403). No one ever contended, at the time the 1980 rule was being adopted, that it

contained only a "best efforts" standard. To now hold that this is the standard would thus "diminish public protection from the levels previously established . . . " contrary to the Commission's recent pronouncement accompanying the recent rule change.

In short, the Applicants' assertion that the Commission has adopted a "best efforts" standard for adequacy of emergency plans is absolutely without support, and contrary to a long-established, and recently reaffirmed, Commission pronouncement as to the centrally important role of emergency planning in reasonably assuring nuclear safety. (See also Town of Hampton Brief, quoting NRC Chairman Zech, at p. 23 stating the NRC's rejection of the "best efforts" standard.)

II. THE COMMISSION HAS NEVER REJECTED THE NEED TO UNDERTAKE PHYSICAL CONSTRUCTION EFFORTS, IN CERTAIN CASES, TO ACHIEVE AN "ADEQUATE" LEVEL OF EMERGENCY PLANNING.

Applicants have consistently asserted that no emergency plan can be rejected, regardless of site limitations, whether extremely long evacuation time estimates or lack of adequate sheltering, because an applicant can never be required to arrange for "major construction" of such things as shelters with good dose reduction factors or roads or access ramps. (Applicants' Brief, p. 8). (This is another aspect of the Applicants position that a "best efforts" emergency planning standard is that all that is required.) This is not correct, and at problem sites, such as Seabrook, "prudent risk reduction" may indeed require construction to improve site environs.

Certainly "prudent" risk reduction measures can include these types of actions, just as they clearly do require erection of warning sirens (or some other system) and production of public informational material. As set forth in Attachment B in July 1980, at the time when the Commission was finalizing its emergency planning requirements, it sought evacuation time estimates from licensees and construction permit holders, including the Seabrook Applicants. In doing so, the NRC's former Director of Nuclear Reactor Regulation specifically noted: "In some cases of extreme difficulty where a large population is at risk, special facility modifications may also be appropriate." Again, contrary to Applicants' assertion that emergency planning efforts, not their results, are what count, the Staff requested information on page 3 of Attachment B, as to:

> Where special evacuation problems are identified (e.g., in high population density areas), specify alternative protective actions, such as sheltering, which will reduce exposures and the effectiveness of these measures (emphasis added)." (This staff request is attachment B hereto.)

This makes it very clear that at the very time the emergency planning regulations were being finalized, the Commission clearly intended that these regulations have substantive content, and did not merely require a "best efforts" approach to emergency planning. Attachment B makes it clear that the evacuation time estimates, and the sheltering that might be required if there was

an extreme situation, needed to be determined not merely to exist, but had to be assessed for their effectiveness.

Applicants' sole support for their proposition that no construction ever need be undertaken in order to achieve a level of adequate emergency planning is the San Onofre case, CLI 83-10, 17 NRC 528. That case is not on point.

In that case, the Commission was only concerned with requirements to deal with contaminated injured individuals and held that for this narrow category of individuals, i.e., those both with radiation contamination and injuries, there was no requirement for "construction of additional hospitals or recruitment of additional medical personnel." (Id., p. 533). This case cannot be properly read as establishing a broad proposition that no applicant need ever make any physical improvements to the site environment in order to achieve the level of adequate emergency planning. Indeed, in that case, the Appeal Board had estimated the number of contaminated and injured persons to be only 1 to 25 individuals.

Therefore, it is not suprising that when Applicants' counsel first raised this theory, the NRC's director and chief hearing counsel, Edward Christenbury, rejected it. (See Hampton Brief, p. 32, note 24, which quotes the Christenbury Memorandum).

III. CONCLUSION

The Applicants/Staff have now unequivocally committed themselves to the proposition that a "best efforts" emergency

planning standard is all that the NRC's emergency planning regulations require.

SAPL believes that even such a standard has not been met, as argued in its original brief. However, even more fundamentally, SAPL contends that such a "best efforts" standard is not sufficient, and that an emergency plan must achieve some qualitatively significant level of dose savings, although under NRC requirements, no pre-set numerical dose saving standard exists.

Respectfully submitted,

Seacoast Anti-Pollution League
By its Attorneys,

BACKUS, MEYER & SOLOMON

By: _____

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105
(603) 668-7272

DATED: June 8, 1989

I hereby certify that copies of the foregoing reply brief have been telefaxed to the NRC Staff, the Applicants and the Appeal Board and copies have also been forwarded this day by first-class mail, postage prepaid to all persons on the attached service list.

_____
Robert A. Backus

ATTACHMENT A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CONSOLIDATED CASES
NOS. 87-2032, 87-2033, 88-1121

COMMONWEALTH OF MASSACHUSETTS, et al.,

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,

Respondents,

and

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.,

Intervenors.

ON PETITION TO REVIEW A FINAL RULE OF THE
UNITED STATES NUCLEAR REGULATORY COMMISSION

BRIEF FOR RESPONDENTS

WILLIAM C. PARLER
General Counsel

WILLIAM H. BRIGGS, JR.
Solicitor

E. LEO SLAGGIE
Deputy Solicitor

PETER G. CRANE
Counsel for Special Projects
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

ROGER J. MARZULLA
Assistant Attorney General

ANNE S. ALMY
Assistant Chief
Appellate Section

JOHN T. STAHR
Attorney, Appellate Section
Land and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

May 16, 1988

State and local governments, refusing to cooperate in emergency planning.

52 Fed. Reg. at 6983 (col. 1), J.A. 32.

The proposed rule was published on March 6, 1987, with a 60-day period for public comment. 52 Fed. Reg. 6980, J.A. 29. (The comment period was later extended by 30 days, finally expiring on June 4, 1987.) The proposed rule requested comments from the public on two possible approaches to emergency planning. 52 Fed. Reg. at 6981 (col. 2), J.A. 30. The first was to keep the existing regulatory approach, under which a license can be issued only when there is "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." (Emphasis in original.) The notice observed that although under existing regulations, as interpreted in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22 (1986), it was legally possible for the NRC to evaluate a utility-prepared plan, it would be difficult for a utility plan to meet the "reasonable assurance" standard in cases where states and localities declined to participate in emergency planning. 52 Fed. Reg. at 6981 (col. 2), J.A. 30.

The notice therefore asked for public comment on a second possible approach to emergency planning. Under this alternative the NRC proposed to examine whether the utility had done all within its power to make emergency planning satisfactory, rather than whether the outcome was a plan that provided adequate protection. The notice suggested that if a plant were licensed under this approach, even states and localities which had previously opposed licensing the plant would

join in the emergency planning process in order to assure the best possible protection of the public. 52 Fed. Reg. at 6983 (col. 1), J.A. 32. In support of this second possible approach to emergency planning the Commission noted that, "[a] forced abandonment of a completed nuclear plant for which billions for [sic] dollars have been invested also poses obvious serious financial consequences to the utility, ratepayers and taxpayers." 52 Fed. Reg. 6981 (col. 3), J.A. 30. It thus requested comment on the "important and difficult question [of] whether or to what extent these non-safety consequences should be a matter of concern to the Commission in setting pre-licensing emergency planning requirements." 52 Fed. Reg. 6982 (col. 1), J.A. 31.

Importantly, for purposes of this litigation, the notice made clear that under both approaches the Commission intended to rely on the "realism" assumption: that states and localities would do their best to protect the public in an actual accident, and that those best efforts would reasonably mean following a comprehensive utility plan. As noted above, the first alternative on which comments were requested would simply have left in place the LILCO adjudicatory decision that first articulated the realism approach. Moreover, the proposed second approach would specifically have required utilities to submit an emergency plan which took "into account a likely State or local response to an actual emergency." 52 Fed. Reg. at 6984 (col. 2), J.A. 33. In explaining the underlying assumptions which led the Commission to propose the second approach, the notice specifically stated:

> [T]he Commission believes that State and local governments which have not cooperated in planning will carry out their traditional public health and safety roles and would therefore respond to an accident. It is reasonable to expect that this response would follow a comprehensive utility plan.

52 Fed. Reg. at 6983 (col. 2).[5] J.A. 32.

Finally, the Commission specifically noted, even with regard to its proposed second alternative:

> Any consideration of possible changes in the Commission's emergency planning requirements must recognize one central and salient fact: That such a change would not alter the Commission's paramount obligation to assure public health and safety. For each license application, the Commission would remain obligated to determine that there is reasonable assurance that the public health and safety will be adequately protected. If the Commission, for whatever reason, cannot find that the statutory standard has been met, then the license cannot be issued.

52 Fed. Reg. 6981 (col. 2), J.A. 30.

E. The NRC's Final Emergency Planning Rule

On November 3, 1987, the Commission published its final emergency planning rule in the Federal Register. 52 Fed. Reg. 42078, J.A. 644. Relying heavily on Congressional intent, as expressed in the 1980, 1982-83, and 1984-85 NRC Authorization Acts,[6] the Commission declared that it is obligated to evaluate

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[5] That the Commission's realism doctrine was central to its alternative proposals is underscored by the dissenting views of then-Commissioner Asselstine, who emphasized his disagreement with the realism assumptions. 52 Fed. Reg. at 6986 (col. 1), J.A. 35.

[6] The Commission also noted that on August 5, 1987, the House of Representatives defeated, 261-160, an amendment which would have barred application of the NRC's proposed rule to two specific plants. 52 Fed. Reg. 42083 (col. 1), J.A. 649.

a utility plan in cases of state or local non-participation, notwithstanding that it might be difficult for a utility plan to pass muster.

The Commission emphasized that it was amending its emergency planning rules "to provide criteria for the evaluation at the operating license review stage of utility-prepared emergency plans in situations in which state and/or local governments decline to participate further in emergency planning." Id. at 42078 (col. 3), J.A. 644. In this regard the Commission observed that

> [T]he new rule provides for the first time that where a utility plan is submitted, in a situation of state and/or local non-participation in [an] emergency planning, it will be evaluated for adequacy against the same standards used to evaluate a state or local plan. However, due allowance will be made both for the non-participation of the state and/or local governmental authorities and for the compensatory measures proposed by the utility in reaching a determination whether there is "reasonable assurance that adequate protective measures can and will be taken."

Id. at 42080 (col. 3) - 42081 (col. 1), J.A. 646-47.

Moreover, the Commission also observed that

> [A] utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in [an] emergency. The rule recognizes -- as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980 -- that no utility plan is likely to be able to provide the same degree of public protection that would obtain under ideal conditions, i.e., a state or local plan with full state and local participation, but that it may nevertheless be adequate.

Id. at 42084 (col. 1), J.A. 650. The Commission explained that the rule does not "diminish public protection from the levels previously established by the Congress or the Commission's rules," inasmuch as both the Authorization Acts and the NRC's

emergency planning rules had provided for a two-tier approach to emergency planning since their inception in 1980.[7] Id. at 42084 (col. 2), J.A. 650.

Thus, in its final rule the Commission rejected the proposed alternative which would have shifted the NRC's focus from evaluating the adequacy of the utility's emergency plan to evaluating whether the utility had done all it could to provide effective emergency planning. Rather, the Commission adhered to the basic approach to emergency planning established by its 1980 regulations. As finally promulgated the rule does not alter the principle that before any nuclear plant can operate, there must be an emergency plan that provides "reasonable assurance that adequate protective measures can and will be taken" in the event of an emergency. Id. at 42084 (col. 1), J.A. 650.

To those who advocated licensing a power plant based on a utility "best efforts" emergency plan, the Commission frankly acknowledged that the approach it was adopting did not solve the "state veto" problem, and indeed made a "state veto" a de facto

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[7]The Commission did, however, clarify language in LILCO, which could have been interpreted to require NRC not only to estimate the reduction in radiological dose to the public that a utility plan could achieve in an accident, but also to estimate the dose that might be achieved if there were a state or local plan, to compare the two figures, and to permit operation only if the dose reductions were "generally comparable." The final rule points out that evaluations of emergency plans have always been made on a case-by-case basis, without reference to the specific dose reductions that a plan might accomplish or to the level of protection provided by other emergency plans, real or hypothetical. The rule explains that any plan -- state, local, or utility -- found to be adequate should be considered "generally comparable" to any other plan found to be adequate. 52 Fed. Reg. at 42084 (col. 2), J.A. 650.

(though not a de jure) possibility. The Commission explained, however, that it did not view this result as frustrating Congress's will:

> The Congress was concerned that utilities not be "penalized," but not to the extent that it was willing to countenance operation of a nuclear power plant in a situation where the public was not adequately protected.

52 Fed. Reg. at 42083 (col. 2), J.A. 649.

On the other hand, in response to charges that its new rule was motivated by a desire to improve the financial status of certain utilities, the Commission responded directly:

> The NRC rule is an effort to bring the NRC's regulations more clearly into line with a policy decision made by the Congress in 1980. The NRC's rule is thus based on economic considerations only to the extent that the Congress's policy decision of 1980 was based on economic considerations. In the Conference Report on the NRC Authorization Act of 1980 ... the conferees stated that they did not wish utilities to be "penalized" in situations in which there was no acceptable state or local plan. That could be taken as a reference to economic costs or simply to considerations of fairness, in that the issue was whether a utility was to be barred from operating a plant by the actions of third parties over which it had no control.
>
> The NRC's motivation in promulgating this rule is not economics. Its motivation is to assure that the NRC is in a position to make the decisions that Congress intended that it make, and that the Commission has declared that it would make.

Id. at 42083 (cols. 2 and 3), J.A. 649.

In one important respect, for purposes of this case, the rule codifies existing NRC practice as set forth in the 1986 LILCO decision; it adheres to the two-pronged "realism doctrine" first enunciated in that case.

ATTACHMENT B

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 2, 1980

ALL APPLICANTS FOR CONSTRUCTION PERMITS AND OPERATING LICENSES

Gentlemen:

SUBJECT: REQUEST FOR INFORMATION REGARDING EVACUATION TIMES

This letter is being sent to all applicants for construction permits and licensees of plants under construction. The purpose of the letter is a request for information regarding estimates for evacuation of various areas around proposed nuclear power plants. The information sought is described in our letter of December 26, 1979 (copy enclosed). The requested submittal date for this information was suspended by our letter of March 11, 1980.

We are requesting that you submit evacuation time estimates on an accelerated basis to enable the NRC staff to identify, in a timely manner, those sites where evacuation constraints exist and special planning measures should be considered. In some cases of extreme difficulty where a large population is at risk, special facility modifications may also be appropriate. The information requested in the enclosure should be submitted by August 1, 1980. This time is shorter than provided in the December 26, 1979 letter because of the need for timely information and because the content of the information desired has been available to you for some months. Units sharing the same site need not, of course, submit separate time estimates.

This special request for information has been submitted to the General Accounting Office and cleared by GAO as noted in the clearance block below:

Approved by GAO
B-180225 (S80010)
Expires 80-09-30

Sincerely,

Darrell G. Eisenhut, Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosure:
December 26, 1979 Letter
w/Request for Evacuation
Time Estimates

cc: Service Lists

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 26, 1979

APPLICANTS FOR CONSTRUCTION PERMITS AND
LICENSEES OF PLANTS UNDER CONSTRUCTION

Gentlemen:

SUBJECT: REQUEST FOR INFORMATION REGARDING EVACUATION TIMES

This letter is being sent to all applicants for construction permits, and licensees of plants under construction. The purpose of the letter is a request for information regarding estimates for evacuation of various areas around future nuclear power plants. The requested information is in addition to that requested by the November 21, 1979, letter to all applicants for an operating license and licensees of plants under construction from Domenic B. Vassallo, Acting Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Although evacuation time estimates are expected to be prepared in the course of the upgrading of the state of emergency preparedness as previously specified submission of these estimates to the NRC is being requested on an accelerated time scale so that the NRC can identify those instances in which unusual evacuation constraints exist and special planning measures should be considered. In some cases of extreme difficulty where a large population is at risk, special facility modifications may also be appropriate. The information requested in the enclosure should be submitted no later than March 31, 1980.

Previous correspondence indicated that efforts to develop a model plan were continuing. It now appears that the model plan will not be completed on a schedule which will be of use in developing upgraded plans in the near term. The upgraded plan development should therefore proceed on a site-specific basis.

Sincerely,

Brian K. Grimes, Director
Emergency Preparedness Task Group
Office of Nuclear Reactor Regulation

Enclosure:
Request for Evacuation Time
Estimates

cc w/enclosure:
Service Lists

REQUEST FOR

EVACUATION TIME ESTIMATES (AFTER NOTIFICATION)

FOR AREAS NEAR NUCLEAR POWER PLANTS

Background

Prior to recent NRC requests that means for prompt notification to the public be installed around each nuclear power plant site, a significant component of evacuation time estimates was the time required to notify the public of a need for evacuation. Studies of actual evacuations that have taken place generally do not distinguish between the time required for notification, the time required to implement the evacuation, and the time required to confirm that an evacuation has taken place.[1/] The estimates for time required for evacuations now requested relate primarily to the time to implement an evacuation as opposed to the time required for notification. These estimates may be based on previous local experiences (e.g., chemical spills or floods) or may be based on studies related to population density, local geography and road capacities. No standard method for making such estimates is identified for use at this time. The basis for the method chosen should be described in the response. As a check on the evacuation time estimates, comments on the time estimates made should be obtained from the principal local officials responsible for carrying out such evacuations. Such comments should be included in the submittal.

The format given below is appropriate for reporting to the NRC estimates of the time required to implement evacuation of areas near nuclear power plants. These estimates, are to be made for the primary purpose of making available, to those officials who would make evacuation decisions in an emergency situation, knowledge of the time required to complete one of the protective action options (evacuation) available for a particular potentially affected segment of the population. A second purpose of these estimates is to identify to all concerned those instances in which unusual evacuation constraints exist and that special planning measures should be considered. In some cases of extreme difficulty where a large population is at risk, special facility modifications may also be considered.

Given a decision to evacuate rather than shelter in an actual event, fewer or more sectors or different distances than given in the reporting format might be evacuated should this be the chosen protective action. For example, three 22-1/2° sectors might be initially evacuated in a downwind direction (the sector containing the plume and an adjacent sector on each side), followed by the evacuation of other sectors as a precautionary measure.

1/ Hans, J. M., Jr., and T. C. Sell, 1974 Evacuation Risks - An Evaluation, U. S. Environmental Protection Agency, National Environmental Research Center, Las Vegas, EPA-520/6-74-002.

Format for Reporting Information

The areas for which evacuation estimates are required must encompass the entire area within a circle of about 10 miles radius, and have outer boundaries corresponding to the plume exposure EPZ. These areas are as follows:

Distance	Area
2 miles	two 180° sectors
5 miles	four 90° sectors
about 10 miles	four 90° sectors

Estimates for the outer sectors should assume that the inner adjacent sectors are being evacuated simultaneously. To the exent practical, tne sector boundaries should not divide densely populated areas. Where a direction corresponding to the edges of areas for which estimates have been made is thought not to be adequately represented by the time estimates for adjacent areas, an additional area should be defined and a separate estimate made for this case. The format for submittal should include both a table and a figure (overlaid on a map) which each give the information requested in items 1 and 2 below. Additional material may be provided in associated text.

Required Information

1. Two estimates are requested in each of the areas defined in item 1 for a general evacuation of the population (not including special facilities). A best estimate is required and an adverse weather estimate is required for movement of the population.

2. The total time required to evacuate special facilities (e.g., hospitals) within each area must be specified (best estimate and adverse weather).

3. The time required for confirmation of evacuation should be indicated. Confirmation times may consider special instructions to the public (e.g., tying a hankerchief to a door or gate to indicate the occupant has left the premises).

4. Where plans and prompt notification systems have not been put in place for areas out to about 10 miles, estimates of the times required to evacuate until such measures are in place for the plume exposure emergency planning zone (EPZ) should also be given. Notification times greater than 15 minutes should be included in the evacuation times and footnoted to indicate the notification time.

5. Where special evacuation problems are identified (e.g., in high population density areas), specify alternative protective actions, such as sheltering, which would reduce exposures and the effectiveness of these measures.

6. A short background document should be submitted giving the methods used to make the estimates and the assumptions made including the routes and methods of transportation used. This document should also note the comments of principal local officials regarding these estimates.

Alan S. Rosenthal, Chrman.
Atomic Safety and Licensing
Appeal Panel
US NRC
Washington, DC 20555

Richard A. Hampe, Esquire
NH Civil Defense Agency
Hampe & McNicholas
35 Pleasant Street
Concord, NH 03301

John Traficonte, Esquire
Assistant Atty. General
One Ashburton Place
19th Floor
Boston, MA 02108

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Howard A. Wilber
Atomic Safety and Licensing
Appeal Board
US NRC
Washington, DC 20555

Gary W. Holmes, Esquire
Holmes & Ellis
47 Winnacunnet Road
Hampton, NH 03842

Judith H. Mizner, Esquire
79 State Street
Newburyport, MA 01950

Thomas S. Moore
Atomic Safety and Licensing
Appeal Panel
US NRC
Washington, DC 20555

Diane Curran, Esquire
Harmon, Curran & Tousley
20001 S Street NW
Suite 430
Washington, DC 20009

Paul McEachern, Esquire
Shaines & McEachern
25 Maplewood Avenue
P.O. Box 360
Portsmouth, NH 03801

Kenneth A. McCollom
Atomic Safety and
Licensing Board
US NRC
Washington, DC 20555

Suzanne Breiseth
Office of Selectmen
Town of Hampton Falls
One Drinkwater Road
Hampton Falls, NH 03844

Richard F. Cole
Atomic Safety and Licensing
Board
US NRC
Washington, DC 20555

Docketing & Serv. Sec.
Office of the Secretary
US NRC
Washington, DC 20555

Thomas Dignan, Esquire
Ropes & Gray
One International Place
Boston, MA 02110

Ivan W. Smith, Chrman.
Atomic Safety and
Licensing Board
US NRC
Washington, DC 20555

Joseph Flynn, Asst. Gn. Cnsl.
Fed. Emerg. Mgmt. Agcy.
500 C Street SW
Washington, DC 20472

Jane Doughty
SAPL
5 Market Street
Portsmouth, NH 03801

Phillip Ahrens, Esquire
Asst. Atty. General
State House, Sta. #6
Augusta, ME 04333

Sherwin E. Turk, Esquire
Office of Exec. Legal Dir.
US NRC
Washington, DC 20555

George Dana Bisbee, Esquire
Attorney General's Office
State of New Hampshire
Concord, NH 03301

Sandra Gavutis
Town of Kensington
Box 1154
East Kingston, NH 03827

J. P. Nadeau, Esquire
Town of Rye
155 Washington Road
Rye, NH 03870

Charles P. Graham, Esquire
McKay, Murphy and Graham
100 Main Street
Amesbury, MA 01913

Mr. Angie Machiros, Chrman.
Town of Newbury
Town Hall
25 High Road
Newbury, MA 01951

William S. Lord, Selectman
Town Hall
Friend Street
Amesbury, MA 01913

Senator Gordon J. Humphrey
US Senate
Washington, DC 20510
Attn: Janet Coit

Atomic Safety and
Licensing Appeal Board
Panel
US NRC
Washington, DC 20555

Mr. John Duffet
Pres. & Chief Exec. Officer
PSCO
P.O. Box 330
Manchester, NH 03105

Atomic Safety and
Licensing Board Panel
US NRC
Washington, DC 20555