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May 19, 1989  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
before the  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

APPLICANTS' OBJECTION IN THE NATURE OF A MOTION  
IN LIMINE TO THE ADMISSION IN EVIDENCE OF  
THE PREFILED TESTIMONY OF MASS AG'S WITNESSES  
GERARD ST. HILAIRE, HOWARD SAXNER, AND BARBARA DAVIS

Applicants object to and move this Board in the nature of a motion in limine to exclude as evidence in this proceeding the "Testimony of Gerard St. Hilaire, Howard Saxner, and Barbara Davis on Behalf of James M. Shannon, Attorney General for the Commonwealth of Massachusetts on the Proposed Use of Evacuation Bed Buses in the SPMC" ["Testimony"]. In support of their motion, Applicants say that the Testimony is not material or relevant to the issues before this Board, and that sections of it suffer additional infirmities of form and completeness.

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## SUMMARY OF TESTIMONY

The first section of the Testimony is offered by Gerard St. Hilaire, who identifies himself as General Counsel for the Registry of Motor Vehicles. St. Hilaire says that he is familiar with motor vehicle licensing procedures and, in particular, that he is familiar with the requirements for registering ambulances. Having looked at certain documents pertaining to the Applicants' use of evacuation bed buses during a radiological emergency, St. Hilaire asserts that the Registry would classify bed buses in the ordinary course of business as ambulances and would require a certificate from the state Department of Public Health before their operation was permitted.

Howard Saxner, whose statements comprise the second section of the Testimony, works for the Commonwealth as Deputy General Counsel for the Department of Public Health. Saxner states that he has developed procedures and regulations concerning the licensing and certification of ambulances. He contends that bed buses "would be required to have certificates as ambulances" and that "the entity operating such vehicles would have to be licensed as an ambulance service by the Department of Public Health." Testimony, at 6. The witness then lists several things that he says are required in order to obtain a license as an ambulance service, to receive a certificate to operate an ambulance, and to equip an ambulance with qualified medical

personnel. Saxner concludes that evacuation bed buses lack the necessary equipment and personnel to be certified as ambulances.

The final section of the Testimony is offered by Barbara Davis, who is a manager of health care programs at the Commonwealth's Department of Public Health. Davis, who says that she will discuss "what is meant by the various levels of care in nursing homes," testifies that the difference between "Level I" and "Level II" patients only reflects the source of the funding for a patient's care.

#### ARGUMENT

The sections containing the three witnesses' testimony are joined in a single document, but their testimony concerns distinct matters and is readily severable. All three sections should be excluded in their entirety, for the reasons argued below.

(1) St. Hilaire and Saxner.

The testimony of St. Hilaire and Saxner, the two attorneys for the Commonwealth, should be excluded for four independently sufficient reasons: a) the allegation that bed buses would be illegal is late-filed; b) the testimony inappropriately concerns matters of law instead of fact; c) the witness's statements are irrelevant; and d) the testimony is so misleading that it has no value.

(a) The Testimony's Central Allegation is Late-Filed.

St. Hilaire and Saxner's allegation that the use of evacuation bed buses in a radiological emergency would be illegal amounts to a late-filed contention. No contention admitted for litigation has alleged that it would be illegal to implement evacuation bed buses without having them certified as ambulances by the Department of Public Health. Intervenor's knew, when they filed their original contentions on the SPMC in April 1988, that Applicants then planned to use bed buses. They failed to raise the issue at that time, See, e.g., JI Contention 50, Bases I and J.

Intervenor's have no good cause for previously omitting the issue, and, as is explained in this motion below, the introduction of St. Hilaire and Saxner's testimony will not assist in the development of a sound record. Having neglected to make any claim involving the legality of the use of bed buses during an emergency, Intervenor's cannot now introduce testimony whose main focus is to contest that subject and whose chief effect will be to appreciably increase the length of the SPMC proceedings.<sup>1</sup>

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<sup>1</sup> Thus, applying the five-factor test of 10 C.F.R. §2.714(a)(1), Mass AG has failed to carry the first, third, and fifth factors. Factors two and four, which as usual tend to favor Intervenor's, are "accorded less weight, under established Commission precedent, than factors one, three, and five." Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 245 (1986), citing with approval, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Power Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

Moreover, since Mass AG failed even to make reference

(b) The Testimony Is Improper Because It Addresses Legal Issues.

Even if the issue were properly admitted for litigation, the testimony should be excluded because, instead of discussing factual issues, it concentrates exclusively on legal questions. St. Hilaire, when asked about the subject of his testimony, said that it concerns "the requirements for the registration of ambulances as motor vehicles on the roads of the Commonwealth." Testimony, at 1. Similarly, Saxner directs his testimony to "the requirements for certification of ambulance vehicles and licensure of ambulance services." Id. at 4. After discussing those requirements, the witnesses conclude, respectively, that the state Registry of Motor Vehicles would refuse, under state law, to register evacuation bed buses without a certificate and that the Department of Health would deny, under state law, a certificate to all bed buses that do not meet the requirements for the operation of an ambulance. Testimony, at 4, 8.

Courts, in general, do not permit opinion testimony on a question of law. MCCORMICK ON EVIDENCE §12 (3rd ed. 1984).

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to the five-factor test, the late-filed contention should be rejected out of hand. See Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2), LBP-86-41, 24 NRC 901, 927-928 (1986), modified, ALAB-859, 25 NRC 23 (1987), aff'd, ALAB-872, 26 NRC 127 (1987); see also Memorandum and Order (Ruling on Massachusetts Attorney General's Exercise Contentions 8.C.1, 8.C.3, 18, and 21.C) at 12-13 (January 13, 1989), and cases cited therein.

"Expert testimony on law is excluded because 'the tribunal does not need the witness' judgment . . . [T]he judge (or the jury as instructed by the judge) can determine equally well . . .'" Marx & Co., Inc. v. Diner's Club, Inc., 550 F.2d 505, 510 (2nd Cir. 1977), cert. den. 434 U.S. 861 (1977). NRC regulations, in particular, define a party's right to present evidence that "may be required for full and true disclosure of the facts" [emphasis added]. 10 C.F.R. §2.743(a). Since St. Hilaire and Saxner's testimony makes assertions, not of fact, but about how the Commonwealth's legal rules would apply to a set of facts, that testimony should be excluded.

(c) The Testimony Is Irrelevant.

Even if the issue of the legality of bed buses were before the Board and the Testimony were of a proper type, the Testimony is irrelevant. St. Hilaire and Saxner's testimony turns upon legal provisions that do not apply to the facts at issue.

Both witnesses allege that bed buses would be required to have certificates as ambulances before they could enter service, but neither evaluates the importance of the narrow, specific circumstances during which bed buses would be used. Applicants do not seek to register and operate bed buses as ambulances in every-day operation, and Intervenors have not alleged that they intend to do so. Rather, Applicants plan to make emergency use of licensed buses that have had conversion kits installed. Saxner actually recognizes this

when he notes that bed buses are "to be used only [emphasis added]. . . in the event of an emergency at the Seabrook plant."

Such emergency use is entirely consistent with regulations issued by the Department of Public Health, which permit uncertified vehicles to render emergency medical transportation in the case of a major emergency. See MASS. REGS. CODE tit. 105, §170.010 (1988), Attachment A hereto. That regulation states, in part (A), "Uncertified vehicles may be used to render emergency medical transportation in the case of a major catastrophe when the number of certified ambulances capable of emergency dispatch in the locality of the catastrophe is insufficient to render the required emergency medical transportation services." Thus, St. Hilaire and Saxner's testimony, the thrust of which is that Applicants could not register the bed buses as ambulances, is irrelevant.

(d) The Testimony Is So Misleading That It Has No Value.

Even if the Testimony were within the scope of the contentions, proper in form, and relevant, it should be excluded because of its highly incomplete characterization of applicable law. The witnesses are not only attorneys for state agencies in this field; they also claim to have particular familiarity with the requirements for registering and certifying ambulances. Nevertheless, their testimony makes no reference at all to section 170.010 of Title 105 of

the Code of Massachusetts Regulations, Attachment A hereto, the provision which allows uncertified vehicles to be used during crisis situations to provide emergency medical transportation. The omission by the witnesses of the controlling regulation on point renders their testimony so misleading as to be of no value to the Board. Cf. FED. R. EVID. 403.

(2) Davis.

Davis's testimony should be excluded as irrelevant, because it never explains why Applicants should not use evacuation bed buses. Davis contends that the only difference between nursing home patients designated "Level I" and those designated "Level II" is the source of the funds for their care. The witness further states that it is therefore wrong to assume that Level I patients need a higher level of medical or nursing care than Level II patients. But Davis never asserts or explains why either type of patient might have difficulty being transported in evacuation bed buses.<sup>2</sup> Consequently, this portion of the Testimony is irrelevant and should be excluded.

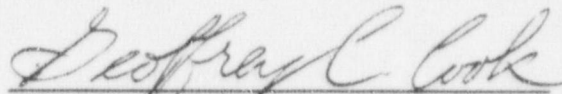
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<sup>2</sup> If the witness intends to imply that Level II patients cannot safely be transported by bed bus, the testimony should still be excluded. The issue of the adequacy of bed buses was raised, litigated, and decided in the New Hampshire hearings. See TOH Contention IV, Attachment B hereto; Tr. 7827-29; Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), LBP-88-32, 28 NRC 667, 698-99 (December 30, 1988).

CONCLUSION

For the reasons stated above, the Testimony should be excluded.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Geoffrey C. Cook", written over a horizontal line.

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## 105 CMR: DEPARTMENT OF PUBLIC HEALTH

170.002: Authority

This chapter is adopted under the authority of M.G.L. c. 111C and M.G.L. c. 30A, s. 2.

170.003: Citation

This chapter shall be known and may be cited as "Regulations Governing Ambulance Services and Coordinating Emergency Medical Care", 105 CMR 170.000. The short form of citation shall be "The Massachusetts Emergency Medical Service Regulations," 105 CMR 170.000.

170.010: Scope

This chapter governs emergency medical services systems, ambulance services, ambulances, equipment, training and personnel.

(A) Uncertified vehicles may be used to render emergency medical transportation in the case of a major catastrophe when the number of certified ambulances capable of emergency dispatch in the locality of the catastrophe is insufficient to render the required emergency medical transportation services.

(B) Nothing in this chapter is intended to preclude the public from choosing any mode of transportation to get to a hospital or other established site of medical care.

DEFINITIONS170.020: Meaning of Terms

The definitions set forth in 105 CMR 170.020 through 170.061 shall apply for the purpose of this chapter, unless the context or subject matter clearly requires a different interpretation.

170.021: Advanced Life Support

Advanced Life Support (ALS) means the pre-hospital use of medical techniques and skills by qualified personnel who are specially trained and shall include such functions as advanced airway and circulatory maintenance and the management of cardiac disorders.

170.022: Ambulance

Ambulance means any aircraft, boat, motor vehicle, or any other means of transportation, including a dual purpose vehicle, however named, whether privately or publicly owned, which is intended to be used for, and is maintained and operated for, the transportation of sick, injured or disabled patients.

170.023: Ambulance Attendant

Ambulance attendant means an Emergency Medical Technician trained and certified in accordance with these regulations who provides emergency medical care to sick or injured persons prior to and during transport by an ambulance. The term ambulance attendant includes the EMT who operates the ambulance.

170.029: Ambulance Service

Ambulance service means the business or regular activity, whether for profit or not, of transporting sick, injured or disabled individuals by ambulance.

emergency vehicles. (FEMA, Final Exercise Assessment, 6/2/86, p. 39). The letters of agreement in Volume 5 of the plans only demonstrate a total of 445 bus-and-driver pairs. As stated above, the local plans alone show a need for 482 buses, though the State plan shows that only 444 buses are needed for those communities.

"Because the State of New Hampshire has erroneously reduced its estimate of the number of buses that will be needed by reducing population estimates and by reducing the percentage of non-auto owning individuals to be provided for (see SAPL Contentions Nos. 34 and 18), because there are insufficient emergency vehicle drivers and because adequate traffic control measures cannot be carried out due to personnel shortages, there is no reasonable assurance that adequate assistance resources will be provided or that those resources that are available can be used effectively."

#### Limitation

"Limited to issues concerning availability of evacuation vehicles and drivers for persons requiring transport assistance and ability of transport vehicles to transverse EPZ to reach designated areas in an emergency."

#### Sources

Seacoast Anti-Pollution League's Contentions on Revision 2 of the New Hampshire Radiological Emergency Response Plan, November 26, 1986, at 35-38;  
Memorandum and Order, February 18, 1987, at 5.

#### TOH IV

#### Contention

"Revision 2 fails to provide for adequate emergency equipment, fails to demonstrate that adequate protective responses can be implemented in the event of radiological emergency, and fails to correct deficiencies in emergency response capabilities apparent from the emergency exercise. 10 CFR, §50.47(1)(8)(10)(14)."

#### Basis

"NUREG requires that each local RERP include written agreements with any organization serving an emergency response role within the emergency planning zone.

NUREG, pg. 32(3). The State has entered into three agreements with transportation companies to provide buses and vans to the Town of Hampton in the event of evacuation. See attached. Under these agreements, the Town of Hampton will be provided with only sixty-seven buses and two vans for an evacuation emergency. To evacuate the anticipated populations from schools, other special facilities, and the non-auto owning residents of the town, however, the Hampton RERP requires a minimum of seventy-four buses, twelve vans, and twenty-three EMS vehicles. RERP, pgs. II-28, 29. On its face, therefore, and even using State projections, the evacuation transportation allocated to Hampton is plainly inadequate to meet town needs.

"Additionally, while the RERP makes provision for providing transportation to non-auto owning residents of Hampton, the plan does not provide for any transportation for vacationers, transients, or other non-resident individuals who may lack their own transportation in the event of emergency. In view of the substantial number of tourists and transients coming to Hampton during the summer months, it is only reasonable to assume that a significant number of additional public transportation vehicles will be required in the event of evacuation.

"Finally, although three agreements for bus and van transportation for Hampton have been executed, only the Berry Transportation Company of North Hampton is located in reasonable proximity to the Town of Hampton in the event evacuation is required. The Jan-Car Leasing Corporation of Nashua, and the Timberland Transportation Company of Salem, are located in the south central portion of the state, thirty-five and forty miles respectively from the town of Hampton. Since under the RERP, individuals evacuated from Hampton will be taken to Nashua, RERP, pg. II-17, the buses attempting to reach Hampton for evacuation purposes will be required to maneuver through evacuation traffic leaving Hampton. The likelihood of substantial delay, if not impossibility, of evacuation vehicles reaching Hampton therefore raises significant questions on the feasibility of the evacuation transportation provided to the town under its RERP. The Hampton RERP therefore fails to provide reasonable assurance of control of access to evacuated areas and fails to consider the potential impediments of evacuation traffic in promptly providing evacuation vehicles to the town. NUREG, pg. 63, Protective Response."

### Further Basis

"NUREG requires that each local RERP include written agreements with any organization serving an emergency response role within the emergency planning zone. NUREG, page 32(3). The State has entered into three agreements with transportation companies to provide buses and vans to the Town of Hampton in the event of evacuation. Under the Compensatory Plan, however, only two bus companies will provide the transportation for Hampton in the event of emergency. Compensatory Plan, page 7A-24. The transportation provided to the Town of Hampton under the Compensatory Plan and Revised RERP fail to provide reasonable assurance of adequate protective measures mandated by 10 CFR §50.47(A)(1) for the following reasons:

"(A) Under the Compensatory Plan, the Berry Bus Company shall provide the Town of Hampton with 40 buses. Page 7A-24. Under the terms of the letter agreement with Berry Bus, however, see attached, Berry Bus is only obligated to provide 31 buses in the event of emergency, or 9 fewer buses than even the State acknowledges are necessary in the event of radiological emergency.

"(B) The Compensatory Plan provides only one bus to evacuate Aslan's Pride School, Happy Apple Nursery, and the Taylor School emergency. Compensatory Plan, page 7A-7. Rather than provide a van to evacuate each of these schools in the event of emergency, the Compensatory Plan therefore requires a single bus driver to maneuver through heavy evacuation traffic and to proceed to each of the three schools to evacuate the children. Substantial delay, if not impossibility, of requiring a single bus driver to evacuate three schools is unreasonable and would likely result in substantial delay in removing these children from the EPZ.

"(C) The Compensatory Plan and the revised Hampton RERP acknowledge that 23 emergency and special needs vehicles will be required to evacuate the Town in the event of emergency. Compensatory Plan, page 7A-7; Revised Hampton RERP, page II-30. The letter agreements for Hampton's transportation needs, however, fail to allocate a single emergency or special needs vehicle for the Hampton population.

"(D) The Revised Hampton RERP does not provide ~~transportation~~ for any vacationers, transients or other non-resident individuals who may lack their own transportation and may be present in the Town at the time of emergency. In view of the substantial number of

tourists and transients coming to Hampton throughout the year, and particularly during the summer months, it is only reasonable to assume that a significant number of additional public transportation vehicles will be required to promptly carry out an evacuation.

"(E) Under the Compensatory Plan, the Timberlane Bus Company of Salem, New Hampshire shall provide the Town of Hampton with 35 buses in the event of emergency. Salem is located approximately 40 miles from the Town of Hampton. Since under the Revised Hampton RERP, individuals evacuated from Hampton will be taken to Nashua, immediately adjacent to Salem, Revised RERP, page II-17, the Timberlane buses attempting to reach Hampton for evacuation purposes will be required to maneuver through evacuation traffic leaving Hampton. The likelihood of substantial delay, if not impossibility, of evacuation vehicles reaching Hampton therefore raises significant questions on the feasibility of the evacuation transportation provided to the Town under its Revised RERP. The Revised Hampton RERP therefore fails to provide reasonable assurance of prompt access for emergency vehicles to the EPZ and fails to consider the potential impediments of evacuation traffic in promptly providing evacuation vehicles to the Town. NUREG-0654, page 63."

#### Further Basis

##### "(A) Emergency Resources and Equipment.

"Revision 2 fails to allocate adequate buses or EMS vehicles to the Town of Hampton to reasonably support an evacuation on grounds including:

"1. The State indicates that the bus companies under Letter of Agreement will provide 553 buses and 496 drivers to support an evacuation in the event of radiological emergency. Vol. 4, App. I-1 and 2. These figures are inaccurate and misleading. Many of the buses to be provided by a particular bus company lack sufficient drivers and, conversely, other bus companies are prepared to provide drivers, but have no buses for them to drive. Id. FEMA correctly notes that only 'bus-and-driver pairs' under agreement should be counted to determine the maximum number of emergency vehicles available to support an evacuation. FEMA, Final Exercise Assessment, 6/2/86, at p. 39. The state, however, can only demonstrate 431 bus-and-driver pairs. Vol. 4, App. I-1 and 2, or 13 bus/driver pairs less than the 444 necessary minimum required to carry out an

evacuation, Vol. 4, App. I-8, even using the State's own unreasonably low EPZ population figures.

"2. The bus-and-driver pairs under Letter Agreement with the State represent an 'absolute maximum,' FEMA, Final Exercise Assessment, 6/2/86, at p. 39, and do not provide reliable figures to measure available evacuation buses or personnel. FEMA, Final Exercise Assessment, 6/2/86, App. I, at p. 233. Both common sense and conversations between FEMA and the bus companies indicate that in fact the actual bus-and-driver availability would be substantially less than as specified in the Letter Agreements, *id.*, which could reasonably be expected to be reduced by reason of bus breakdown, driver unavailability, drivers who may get lost enroute to the EPZ, or who may become embedded in outgoing evacuation traffic thereby substantially delaying or prohibiting a driver from timely reaching the EPZ. RAC Review, August, 1986, Section VI, p. 12.

"3. In an apparent effort to address FEMA's concerns on the inadequacy of available personnel and transportation resources, the State has entered into an agreement with the Teamsters Union, apparently for the purpose of providing additional bus drivers for evacuation. Vol. 4, App. I-11. Revision 2, however, fails to demonstrate that the Teamsters under agreement are in fact adequately trained to drive the school buses and emergency vehicles for the mobility impaired to properly effectuate an evacuation, fails to specify how these backup drivers promptly will be notified and coordinated with available buses, and fails to support the purported agreement with the Teamsters with Letter Agreements executed by the individual members of this union.

"(B) Emergency Exercise.

"The February 26 exercise only confirmed the consistent position of the Town of Hampton and other intervenors that evacuation of the EPZ around Seabrook Station is not feasible and that the personnel and equipment allocated to support an emergency response are inadequate. For example, the State could not satisfy even the limited demand for buses of communities participating in the exercise, FEMA, Final Exercise Assessment, p. 40, could not provide adequate EMS or ambulance service, FEMA, Final Exercise Assessment, pp. 42, 44, no buses were allocated for summertime employees, RAC Review, August 1986, Section VI at p. 9, the State failed to demonstrate that adequate backup buses were available to support an evacuation, FEMA,

Final Exercise Assessment, 6/2/86, p. 42, and the State did not allocate transportation for those individuals who may have a vehicle in the household, yet the vehicle may be unavailable at the time of an emergency. RAC Review, August 1986, Section I, p. 71. Revision 2 fails to correct these and related deficiencies. Additionally, if the State was unable to reasonably carry out a limited and preplanned evacuation exercise, with no requirement for coordination with Massachusetts, and in the dead of winter, an actual evacuation of the summertime beach population is wholly unrealistic and unworkable.

"(D) Compensatory Plan

"FEMA has recommended that the State Compensatory Plan be revised 'to anticipate the non-participation of any of the local jurisdictions in the Seabrook plume EPZ.' FEMA, Final Exercise Assessment, 6/2/86, p. 44. Based upon the FEMA recommendation, and from the avowed non-participation of the Town of Hampton and numerous other towns within the EPZ to implement the NHRERP, the State has promulgated a compensatory plan consisting of only five pages. Vol. 2, App. G. As presently drafted, the Compensatory Plan wholly fails to allocate adequate personnel, equipment, or resources to implement an evacuation on grounds including:

"1. The plan erroneously assumes the cooperation and participation of Hampton school officials, although no letter agreements confirming this participation have been obtained. Vol. 2, App. G-2.

"2. Aside from vague reference to the coordination of 'law enforcement activities and traffic control,' Vol. 2, App. G-3, the compensatory plan wholly fails to specify where this additional law enforcement personnel will be obtained to make up for those local police who will not participate in the implementation of the NHRERP, including the Hampton Police Department. Either the plan erroneously assumes local participation in the face of the express vote of the Town of Hampton not to so participate, or the plan relies upon the inadequate number of personnel in State Police Troop A to carry out local law enforcement duties. With its 35 troopers, however, Troop A does not even have sufficient personnel to staff access control points for the EPZ, as required under Revision 2, let alone take over the traffic management and security duties presently assigned to Hampton and other local police departments. FEMA, Final Exercise Assessment, 6/2/86 at p. 46.

"(E) Transit Dependent Individuals

"Revision 2 adopts a 'concept of pre-designated bus routes' to evacuate transit dependent residents and transients without private transportation. RAC Review, August, 1986, Section I, p. 73. Apparently this procedure has been adopted to purportedly increase the speed of evacuation, by eliminating the need for door to door pickups of transit dependent individuals as provided in the prior NHRERP. These pre-designated bus routes, however, will require individuals, including the 'mobility-impaired,' to leave their homes during a radiological emergency, to locate the pre-designated bus routes, and to remain outdoors subject to increased radiological exposure, awaiting evacuation buses which FEMA has already indicated may reasonably be expected not to arrive. FEMA, Final Exercise Assessment, 6/2/86 at p. 40. This procedure unreasonably compromises the public health and will not adequately protect the Hampton population from radiation injury. Additionally, the transportation allocated for the Town of Hampton under Revision 2, Vol. 18, p. 34, does not include buses for the substantial number of transients, including the beach population. Vol. 4, App. I-8."

Limitation

"Limited to matters raised by NHRERP Revision 2."

"In summary, TOH Revised Contention IV (October 31, 1986) is admitted, as limited to the bases offered by TOH, as follows:

Basis (A), Emergency Resources and Equipment: (A)1 and (A)2 admitted; (A)3 admitted, except for assertion that Letter Agreements are required with individual Teamsters Union members who volunteer to drive.

Basis (B), Emergency Exercise: Allegations of uncorrected deficiencies in NHRERP from FEMA Final Exercise Assessment, admitted, except conclusionary assertion of applicability of February 1986 exercise to actual evacuation. Supplementary basis (B) proffered November 19, 1986 (at 3-4) is rejected in its entirety.

Basis (C), Special Needs Population: rejected in its entirety.

Basis (D), Compensatory Plan: (D)1 and (D)2 admitted; (D)3 rejected.

Basis (E), Transit Dependent Individuals: admitted."

"[T]here are some concerns expressed that have not been dispositively allayed by Applicants and other concerns that we cannot resolve from the materials before us. Thus, there remain material facts in dispute.

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CERTIFICATE OF SERVICE

I, Geoffrey C. Cook, one of the attorneys for the Applicants herein, hereby certify that on May 19, 1989, I made service of the within document by mailing copies thereof, postage prepaid, to:

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Adjudicatory File  
Atomic Safety and Licensing  
Board Panel Docket (2 copies)  
U.S. Nuclear Regulatory  
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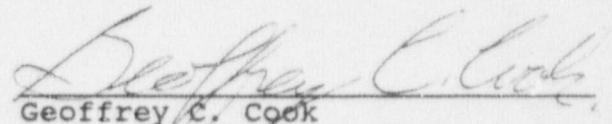
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