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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'90 FEB 28 A11:55

ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
CONSULTING & SERVICE
BRANCH

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Alan S. Rosenthal
Howard A. Wilber

In the Matter of

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE, ET AL.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-OL
50-444-OL

February 27, 1990

MASSACHUSETTS ATTORNEY GENERAL'S REPLY TO THE PETITION
AND RESPONSE OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY
TO EMERGENCY MOTION OF THE INTERVENORS TO REOPEN THE
RECORD AS TO THE NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES

On February 6, 1990, the Massachusetts Attorney General (MASS AG), with Intervenor SAPL and NECNP, filed an EMERGENCY MOTION OF THE INTERVENORS: (1) TO CLARIFY THE STATUS OF THE APPEAL OF LBP-89-33 AND (2) TO REOPEN THE RECORD ON THE NHRERP AS TO THE NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES ("First Motion"). The First Motion addressed, inter alia, Applicants' February 1 filing^{1/} which for the first time advised

^{1/} APPLICANTS' RESPONSE TO LICENSING BOARD ORDER OF JANUARY 11, 1990

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Intervenors and apparently this agency that sheltering as a protective action for the entire beach population had been eliminated in the NHRERP under circumstances where that PAR would achieve maximum dose reduction ("Condition 1"). See First Motion 8-15.

On February 16, 1990, the State of New Hampshire filed a comment with the Licensing Board on Applicants' proffered view of the current state of the NHRERP for sheltering the beach population under Condition 1.^{2/} While the State's comment did not formally respond to Intervenors' First Motion, the State advised the Board that Applicants had "erred" in their conclusion that "the State of New Hampshire's October 13, 1988 Amendments to Revision 2 of the NHRERP '(eliminated)' sheltering as an option under the first of the two circumstances contemplated by the Appeal Board" [i.e. Condition 1]. State Response at 2. Based upon the State Response, first Applicants,^{3/} then the Staff,^{4/} filed responses in

2/ STATE OF NEW HAMPSHIRE'S COMMENTS REGARDING APPLICANTS' RESPONSE TO LICENSING BOARD ORDER OF JANUARY 11, 1990. ("State Response").

3/ APPLICANTS' RESPONSE TO EMERGENCY MOTION OF INTERVENORS: (1) TO CLARIFY THE STATUS OF THE APPEAL OF LBP-89-33 AND (2) TO REOPEN THE RECORD ON THE NHRERP AS TO THE NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES (FEB. 16, 1990) ("Applicants Response").

4/ NRC STAFF'S RESPONSE TO "EMERGENCY MOTION OF THE INTERVENORS: (1) TO CLARIFY THE STATUS OF THE APPEAL OF LBP-89-33 AND (2) TO REOPEN THE RECORD ON THE NHRERP AS TO THE NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES (FEB. 23, 1990) ("Staff Response").

opposition to the First Motion. FEMA also responded to the First Motion,^{5/} claiming that Intervenor had "inaccurately characterized the NHRERP." Id. at 2.

Based upon these responses, including the Staff Response which was received in this office only yesterday (February 26), the MASS AG hereby advises the Appeal Board of its intent to file, as soon as practicable, an Emergency Motion For License Revocation Or In The Alternative To Reopen The Record And For Summary Disposition As To The Need For Sheltering In Certain Circumstances. The motion will address, inter alia, the failure of the State of New Hampshire in the current NHRERP 1) to maximize dose savings since sheltering for the entire beach population under Condition 1 has been eliminated, and 2) the State's failure to conform the sheltering provisions for the beach population to the sworn testimony of State and FEMA officials before the Licensing Board.

In accordance with the Appeal Board's Order dated February 23, 1990, however, the MASS AG files this limited Reply to "comment() on the FEMA petition for leave to file and the accompanying response." Order at 1.^{6/}

^{5/} RESPONSE OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO EMERGENCY MOTION OF THE INTERVENORS TO REOPEN THE RECORD AS TO THE NEED FOR SHELTERING IN CERTAIN CIRCUMSTANCES (FEB. 16, 1990) ("FEMA Response").

^{6/} The MASS AG does not object to the admission of the FEMA Response into the record in this proceeding.

In its Response, FEMA states:

the Intervenor's motion inaccurately characterizes the NHRERP, the history of the litigation regarding the NHRERP, and FEMA's review and evaluation of the NHRERP.

* * *

other than the "shelter-in-place" concept described above, there has never been provision for shelter in the NHRERP under any circumstances for any segment of the population. When "shelter-in-place" is the recommended protective action, transients without access to an indoor location (E.G., a private residence, beach cottage, or hotel room) would be directed to evacuate in their own vehicles. Those transients without transportation would be directed to pre-designated temporary shelter locations while waiting for buses to evacuate them. There is no provision or instruction in the NHRERP for the transient beach population to attempt to find a nearby building and enter it, nor is there any reliance in the NHRERP on the Stone and Webster survey to identify potentially available shelters.

* * *

The above analysis of the record demonstrates that the Intervenor's are incorrect in stating that on February 1, 1990, for the first time, the Applicants stated that plan changes in October 1988 eliminated sheltering as an option for the general beach population. In fact, the "shelter-in-place" concept was presented by the Applicants and the State of New Hampshire to the Licensing Board in pre-filed testimony on April 15, 1988, and was a part of the NHRERP at least since February 11, 1988. As noted above, the "shelter-in-place" concept provides for the transient beach population to evacuate and the people indoors to remain indoors. FEMA RESPONSE at 2, 5-6.

FEMA therefore claims that, at least since February, 1988, the State of New Hampshire has not provided for sheltering the beach population, except for those transients without transportation.

FEMA thereby misstates the record in the New Hampshire proceeding and contradicts the sworn testimony of its own senior staff before the Licensing Board.

In testimony filed with the Licensing Board on May 2, 1988, concerning the "shelter-in-place" concept in the NHRERP, both the State of New Hampshire and the Applicants identified the three circumstances, including Condition 1, where sheltering the beach population would be ordered.

Beach closure or evacuation of the beach areas are the preferred courses of action for the beach population. Sheltering as a protective action option for this segment of the population would be considered in only a very limited number of circumstances characterized by one or more of the following conditions as described on pp. 7-8 of Appendix 1:

1. Dose Savings

Sheltering could be recommended when it would be the most effective option in achieving maximum dose reduction.

* * *

For implementation of this protective action option (sheltering) under any of the three conditions, New Hampshire decision-makers will rely on the mechanisms now in place, or to be put in place, in the NHRERP for recommending shelter to the public whether on the beach or anywhere else. APPLICANTS' DIRECT TESTIMONY No. 6 post Tr. 10022 at 20. (Emphasis added).

Both the Applicants, see Tr. 10069, and the State of New Hampshire, see Tr. 10061, 10421, testified that sheltering under Condition 1 would be recommended for the entire beach population. This would include the general beach population (the transients with transportation, i.e. the so-called "98%")

population, see Tr. 13184) as well as the remaining 2% of the beach population of transients without transportation. See APPLICANTS DIRECT TESTIMONY NO. 6, post Tr. 10022 at 20.

Even prior to this testimony, however, the State of New Hampshire advised FEMA, by letter dated February 11, 1988, that the shelter-in-place concept "does not preclude the State from considering and selecting sheltering as a protective action for the beach population." APPLICANTS' DIRECT TESTIMONY NO. 6, post Tr. 10022 at Appendix 1, p. 3. The State also informed FEMA that Condition 1 was one of the circumstances in which sheltering would be recommended. Id. at 5. Subsequently, in testimony by Senior FEMA staff before the Licensing Board, FEMA confirmed its own understanding of the shelter strategy for the entire beach population.

THE WITNESS: (McLoughlin) Your Honor, when Ms. Weiss was conferring with you in there I thought I heard her say that we did not require -- that we would not use shelter for the 98 percent. If that was a misinterpretation on my part, I apologize for that, but that's what's concerning us right now. Because we believe that New Hampshire, and this does not preclude in any way New Hampshire from using sheltering in some instances in which it is appropriate --

JUDGE SMITH: For the 98 percent.

* * *

THE WITNESS: (McLoughlin) -- to use it for the 98 percent.

Q. I thought you had told me that it was your understanding that New Hampshire would not use sheltering for the 98 percent, but only for the two percent; didn't you tell me that about 15 minutes ago?

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A. (McLoughlin) Okay. If I did, and I'm not arguing that I didn't, I was in error in doing that. And that's what was beginning to concern me, in particular as I listen to your comment. I either misunderstood the question or answered it wrongly. Tr. 13184-85.

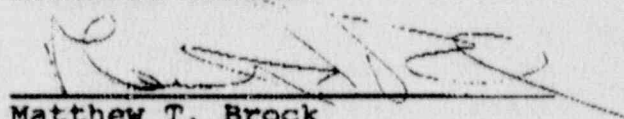
At least as of May, 1988, therefore, FEMA knew that the NHRERP as interpreted by its proponent and final arbiter, the State of New Hampshire, intended to shelter the entire beach population under circumstances where sheltering would be the most effective option in achieving maximum dose reduction.

Finally, the current FEMA Response now offers a new interpretation of the NHRERP and suggests that FEMA approval of that plan was based upon a shelter option only for the transients without transportation (2% population). See FEMA RESPONSE at 5. This contradicts the understanding of the NHRERP as testified to by Senior FEMA staff. FEMA also has approved a version of the NHRERP which was never reviewed or approved by either the Licensing Board or the Appeal Board involving sheltering the beach population. See First Motion at 8-15.

RESPECTFULLY SUBMITTED,

COMMONWEALTH OF MASSACHUSETTS

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Dated: February 27, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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February 27, 1990

CERTIFICATE OF SERVICE

I, Matthew T. Brock, hereby certify that on February 27, 1990,
I made service of the enclosed MASSACHUSETTS ATTORNEY GENERAL'S
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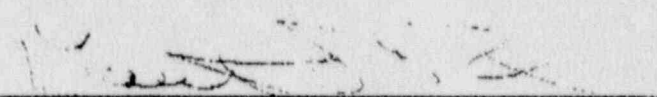
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