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March 29, 1991

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

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

(Offsite Emergency
Planning Issues)

MEMORANDUM IN SUPPORT OF LICENSEES' MOTION FOR
SUMMARY DISPOSITION OF RECORD CLARIFICATION
DIRECTIVE IN ALAB-939

In ALAB-939,¹ the Appeal Board addressed certain questions concerning the so-called "beach-shelter" issue in this proceeding which questions had been referred to the Appeal Board by this Licensing Board.² These questions arose during this Licensing Board's consideration of the remand of the "beach-shelter" issue by the Appeal Board in ALAB-924.³ In the course of addressing the referred questions, the Appeal Board stated:

¹Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-939, 32 NRC 165 (1990).

²See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-90-12, 31 NRC 427 (1990).

³Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-924, 30 NRC 331 (1989).

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"As we have previously indicated, it was not the intent of our remand in ALAB-924 to direct planning officials to adopt sheltering of the general beach population as a protective action and we do not do so now."⁴

However, the Appeal Board went on to state:

"In light of [New Hampshire's] post-remand filings clarifying the existing adjudicatory record concerning the scope and details of the sheltering option for the transient beach population under condition (1), in the context of the intervenors' challenges to the adequacy of the sheltering option for the general beach population, we find it incumbent upon the Licensing Board to ensure that, as a consequence of evidence previously submitted by applicants in the course of the hearing, several related matters are clarified."⁵

The first of the several matters to be clarified was:

"[B]ecause the evidence presented by applicants indicates that automobiles are assigned no cloudshine sheltering value by planners, the Board should ensure that the record contains an adequately supported explanation for distinguishing between those nontransportation-dependent beachgoers already within a building who will be directed to shelter, and all other beachgoers, who will be directed to go to their cars and evacuate, in terms of condition (1)'s purpose of utilizing sheltering for 'achieving maximum dose reduction.'"⁶

The second matter was:

"[G]iven the testimony by New Hampshire emergency planning officials suggesting the need to distinguish between suitable and unsuitable shelter, the Licensing Board should ensure

⁴32 NRC at 178.

⁵32 NRC at 179.

⁶Id.

that the record is clear as to whether such measures are necessary relative to the 'shelter-in-place' option as now described by the State."

And the third, and last, of the several matters was:

"[G]iven [Licensees'] evidence acknowledging the central importance of quality emergency notification messages, the Licensing Board should ensure that any EBS/beach public address message proposed for use relative to condition (1) makes clear the steps that all members of the beach population are to take in the event that a 'shelter-in-place,' as now described by the state, is recommended."⁷

All of the several matters as to which clarification was directed by the Appeal Board, assumed that under the so-called "Condition (1)" the New Hampshire Radiological Emergency Response Plan (NHRERP) called for sheltering (shelter-in-place) of the "beach population."

On November 14, 1990, this Licensing Board issued an unpublished Memorandum and Order directing all parties and requesting the State of New Hampshire to submit memoranda reflecting their views with respect to the three remanded issues. All of these entities complied. The Licensees took the position that the record did contain the information called for with respect to the first two matters, but also stated that, "In light of the filings of the State of New Hampshire and FEMA which we understand will be made, the question posed now appears to be

⁷Id.

irrelevant."⁸ The Intervenor New England Coalition on Nuclear Pollution (NECNP) and the Attorney General of The Commonwealth of Massachusetts (MAG) filed a joint response in which they took the position that none of the remanded issues had been addressed on the record, and, therefore, further hearings were required.⁹

Responses were also filed by the Federal Emergency Management Agency and the NRC Staff. Both of these responses indicated that in the judgment of both the Staff and FEMA, the questions posed by the remand were moot. The Staff seemed to believe this was so because the NHRERP does not set forth shelter-in-place as an option with respect to ERPA A (which includes the "beach population") in the event of a general emergency and that the "shelter-in-place" option for condition (1) is a "null set" in any event.¹⁰ FEMA stated that "it is impossible to have the combination of events necessary to have 'Condition 1'. . . ." ¹¹

⁸Licensees' Response to the Memorandum and Order of November 14, 1990 of the Atomic Safety and Licensing Board Re ALAB-939 at 3 (Jan. 10, 1991).

⁹In addition, Seacoast Anti-Pollution League (SAPL), without seeking leave to do so, filed a late response. The Board has not considered this response.

¹⁰NRC Staff Views on Matters Referred in ALAB-939 at 2-3 (January 11, 1991).

¹¹Advice of the Federal Emergency Management Agency Regarding Issues Raised by ALAB-939 at 2 (January 11, 1991).

In addition, the State of New Hampshire responded.¹² In its response, signed by the Deputy Attorney General of the State, New Hampshire asserted unequivocally that "... evacuation is the planned protective action in a general emergency for ERPA A,"¹³ and that "... with respect to Condition (1), the short duration non-particulate gaseous puff release, evacuation - not shelter-in-place - is the planned protective action."¹⁴ These factual assertions were confirmed on the record during the prehearing conference under oath by the Director of the New Hampshire Office of Emergency Management (NHOEM).¹⁵

On January 24, 1991, this Licensing Board directed the Licensees to prepare a "common reference document" derived from copying respective portions of the various revisions of NHRERP and associated document which "contain the protective actions to be taken in ERPA A" thus showing the evolution of the provisions governing this matter and also to obtain a stipulation from the other parties that the reference document was sufficiently complete for the purpose stated in the Licensing Board's Order.¹⁶ This was done.¹⁷

¹²Memorandum of the State of New Hampshire on ALAB-939 (January 10, 1991).

¹³Id. at 1.

¹⁴Id. at 1-2.

¹⁵Tr. 28493.

¹⁶Unpublished Memorandum and Order (January 24, 1991).

¹⁷Licensees' Response to Memorandum and Order of January 24, 1991 (January 28, 1991); Stipulation (February 12, 1991).

Under date of March 12, 1991, this Licensing Board, in light of all of the foregoing addressed the following certified question to the Appeal Board:

"May the Licensing Board treat the post-hearing amendments to the New Hampshire Radiological Emergency Response Plan (NHRERP) and the January 10, 1991 Memorandum of the State of New Hampshire, attested to by Mr. Iverson (Tr. 28493), to the effect that evacuation is the only planned protective action for the general beach population in ERPA-A at the General Emergency Level under the NHRERP as resolving the matters posed in ALAB-939?"¹⁸

In the Memorandum, this Licensing Board also made the following observations:

"The shelter-in-place concept has not existed in the NHRERP in a general emergency for ERPA-A since October 1988."¹⁹

On March 20, 1991 the Appeal Board responded to the action of this Licensing Board in a "Memorandum Regarding Certified Question."²⁰ In its response, the Appeal Board did not directly answer the question posed by this Licensing Board; rather, after discussing the substantive issues at bar at length, the Appeal Board:

"[left] it to the [Licensing] Board

¹⁸Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-91-8, 33 NRC ____ (March 12, 1991), Slip Op. at 22-23 (hereinafter referred to as "LBP-91-8" and cited to the slip opinion).

¹⁹LBP-91-8 at 16.

²⁰Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-945, 33 NRC ____ (March 20, 1991), (hereinafter referred to as "ALAB-945" and cited to the slip opinion).

to ensure, in the first instance, that the administrative record, as developed through summary disposition or other appropriate procedural avenues, reflects any information necessary to its resolution of the matters identified in ALAB-939."²¹

However, prior to the above quoted declaration, the Appeal Board, in discussing the filings which had been made to the Licensing Board, stated:

"These filings make clear that the entities most directly responsible for the administration and evaluation of the NHRERP now insist that sheltering is not a planned protective action option for the general beach population in any foreseeable circumstance. If accepted, this assertion would negate the premise upon which our record clarification directive in ALAB-939 (and, in large part, our initial remand of the beach sheltering issue) was anchored. This acceptance hinges, of course upon whether the record itself reflects that the 'evolution' of the consideration of sheltering as a protective action for the general beach population has reached the point where it effectively has been discarded as an option. If that is the case, the issues we identified in ALAB-939 relating to the use of a sheltering option for the general beach population would in essence have become moot and so would be resolved."²²


The summary disposition motion filed by the Licensees places the materials which formed the basis for this Licensing Board's conclusion that the NHRERP no longer contains a shelter option for the general beach population in the hearing record in a procedurally acceptable way. The Appeal Board has stated that a finding to the effect that such an option is no longer a planned

²¹ALAB-945 at 5-6 (emphasis added).

²²ALAB-945 at 4-5 (footnotes omitted).

option would moot its concerns expressed in ALAB-939. A
fortiori, the motion for summary disposition should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Licensees herein, hereby certify that on March 29, 1991, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

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