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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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)

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) Docket Nos. 50-443-OL
) 50-444-OL
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OPPOSITION OF THE MASS AG AND NECNP TO THE LICENSEE'S MOTION
FOR SUMMARY DISPOSITION

In ALAB-939, Public Service Company of New Hampshire, et.
al. (Seabrook Station, Units 1 and 2), 32 NRC 165 (1990), the
Appeal Board once again remanded to the Licensing Board the
beach sheltering issue. In remanding the issue the Appeal
Board stated:

"First, because 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." In addition, given the testimony
by New Hampshire emergency planning officials suggesting
the need to distinguish between suitable and unsuitable

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shelter, the Licensing Board should ensure 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. Finally, given applicants' 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." Footnotes omitted. ALAB-939 at 179.

The Licensees have moved for summary disposition of the beach sheltering issues remanded in ALAB-939 on the ground that the issues have become moot and thus resolved. The Massachusetts Attorney General and the New England Coalition on Nuclear Pollution ("Intervenors") oppose that motion for the reasons set forth below and request that the Licensing Board deny the motion.

The standard under which to evaluate a motion for summary disposition is set forth in 10 CFR §2.749(d). Under that provision a moving party is entitled to summary disposition only if it can establish that there is no genuine issue as to any material fact, and it is otherwise entitled to judgment as a matter of law. In the present instance the Licensees are not entitled to summary disposition on the remanded issues because there are genuine issues as to material facts in dispute.

In the State of New Hampshire's January 10, 1991 submission to the Licensing Board it was averred that:

The state of New Hampshire reaffirms here that with respect to Condition (1), the short duration non-articulate gaseous puff release, evacuation - not shelter-in-place - is the

planned protective action. See State of New Hampshire's Comments Regarding Applicants' Response to Licensing Board Order of January 11, 1990 (February 16, 1990) and Comments of the State of New Hampshire Regarding NHRERP Sheltering and LBP-90-12 (May 28, 1990). (Emphasis added.)

The State of New Hampshire has never stated that evacuation is the only protective action for ERPA A. It has only gone so far as to characterize evacuation as "the planned" protective action. That is in reality saying no more than it is the preferred protective action for ERPA A, and the only protective action for which the NHRERP contains specific emergency planning provisions. In other words, sheltering-in-place will have to be implemented on an ad hoc basis by the beach population..

If the word "planned" in New Hampshire's January 10, 1991 submission, as confirmed by George Iverson, is interpreted to mean that it is the only protective action that the State of New Hampshire will ever recommend for ERPA A, then the January 10, 1991 filing of the State of New Hampshire contradicts the state's February 16, 1990 and May 28, 1990 submissions. Those submissions dealt directly with the issue of sheltering the beach population. In both of those submissions the State of New Hampshire asserted that shelter-in-place was still a protective action option under certain circumstances for the beach populations. Indeed, the State of New Hampshire in its February 16, 1990 submission stated specifically that: "The Applicant erred in inferring that the October 1988 amendments

to the NHRERP Volume 4, Appendix F precludes sheltering ERPA A in response to a general emergency classification." In New Hampshire's January 10, 1991 filing it claims to "reaffirm" its previous statements and cites to its filings of January 11, 1990 and May 28, 1990.

The NHRERP states that: "For ERPA A, evacuation is the preferred protective action." NHRERP Rev 3 2/90 at 6.4-1. Licensees' Common Reference Document dated January 28, 1991, Global Page 85. The clear implication of the NHRERP's statement that evacuation is the preferred protective action is that there are other protective actions, such as sheltering, which may be implemented in the event of an emergency. The only reasonable interpretation that can be given to the January 10, 1991 submission that is consistent with New Hampshire's other statements is that it is saying nothing more than: (1) evacuation is the preferred protective action for ERPA A; and (2) it is the only one for which the State of New Hampshire has done any affirmative planning by placing provisions in the NHRERP. The shelter-in-place option as described by the Appeal Board in ALAB-939 is still a protective action option, but the State of New Hampshire has not included in the NHRERP any specific provisions for implementing that option. While evacuation is a "planned" for option, sheltering is an

unplanned option. For example, the State of New Hampshire has not identified any buildings that would be suitable beach shelters.

The affidavit of Jeffrey Hausner attached hereto confirms that sheltering is still a protective action option under the NHRERP. It is his opinion that since it is an option and implementing procedures for that option are currently lacking, procedures should be developed for sheltering the beach population of ERPA-A. While there are no implementing procedures for sheltering the general beach population in ERPA-A in the NHRERP, sheltering is still a protective action option for that population under the NHRERP in foreseeable circumstances such as might arise in a puff release situation.

The stated intent of the State of New Hampshire is to implement sheltering as a PAR for the beach population in ERPA A in some instances, such as a Condition (1) release. In its February 16, 1990 pleading, New Hampshire stated:

While the procedures outlined in the NHRERP (as amended in October 1988) clearly reflect New Hampshire's position that evacuation is the preferred protective action recommendation in nearly all circumstances, neither the October 1988 amendments nor any subsequent amendments to the NHRERP "eliminate" the shelter-in-place option from consideration by the State's decision makers in the first of the two limited circumstances cited by the appeal Board in ALAB-924 (i.e. a limited puff release on a summer beach day).

The State of New Hampshire has adopted no changes to the NHRERP which foreclose the use of shelter-in-place as part of the plan, or which are inconsistent with testimony by state officials before this Licensing Board in May 1988.

Again in its May 28, 1990 pleading New Hampshire stated:

Evacuation is the preferred protective action recommendation for the beach population. Though the shelter-in-place option has not been precluded for the Condition 1 ("puff release") scenario, New Hampshire decision-makers would necessarily require advance notice that all the elements comprising a true puff release scenario were present and would remain present through the emergency,.....it is New Hampshire's position that the NHRERP not preclude implementation of this option so long as appropriate preconditions cannot be categorically ruled out. Page 2-3.

In discussing the February 28, 1990, May 28, 1990 and January 10, 1991 pleadings, counsel for New Hampshire categorically stated that the January 10, 1991 pleading does not differ from the previous two pleadings. Tr.28487. Thus, nothing has changed with regard to the beach sheltering issue since ALAB-939 was issued. The sheltering issue was not moot at that time and is not moot now.

In ALAB-939 the Appeal Board was reacting to an apparent conflict in the record between the State of New Hampshire's stated purpose for PAR's, i.e. achieving maximum dose reduction, and the updated shelter-in-place concept in which some portion of the beach population will be evacuating under conditions, where by established PAR calculations sheltering would afford the greatest dose savings. In that decision the Appeal Board observed that:

"Instead, interpreting the "shelter-in-place" option's proviso that "access to an indoor location" means actually

being indoors, the State now avers that what is contemplated for the general beach population is that under condition (1), those beachgoers who have their own transportation will be directed to employ sheltering as a protective action option only if they are already in a building. Everyone else in the beach area with transportation will be advised to go to their vehicles and to evacuate (although they may of their own volition and without direction from emergency management officials elect to enter a building in the immediate vicinity). Footnote omitted.

The Appeal Board's observations were based upon the filings of the State of New Hampshire prior to September 1990. The State of New Hampshire previously identified certain conditions under which it represented that sheltering will afford the greatest dose savings including a Condition (1) release.

The same sheltering problems exist today as existed in September 1990 when ALAB-939 was issued. The State of New Hampshire has represented that its January 10, 1991 submission is fully consistent with its earlier pleadings. If the statements of Assistant Attorney General Bisbee as affirmed by Mr. Iverson are to be accepted as evidence, the Intervenor should be allowed to inquire into the factual underpinnings of that submission and whether they are consistent with maximum dose savings. The sheltering issue is not moot. As indicated above and in the affidavit of Jeffrey Hausner, there are genuine issues as to material facts that require a hearing before this Board.

Because genuine issues exist, a hearing on the matter should be held. It is the position of the Intervenor that the

Licensing Board should reopen the record, permit discovery, and hold a hearing on the beach sheltering issues. The Licensing Board should deny the Licensees motion for summary disposition. It is predicated on a semantic misapplication of the word "planned", rather than any true resolution of the issues. .

NEW ENGLAND COALITION ON
NUCLEAR POWER

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Respectfully submitted,

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STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS A GENUINE ISSUE TO BE HEARD

1. Whether sheltering is an anticipated and thus, planned, protective action option under the NHRERP.

2. Whether sheltering as it is presently a protective action option under the NHRERP accomplishes the stated goal of maximizing dose savings for the beach population of ERPA-A under the current provisions of the plan which contain no implementing procedures for that option and which apparently distinguish between different classes of beach goers.