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NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Public Service Company of New
Hampshire, et al.

(Seabrook Station, Units 1 and 2)

)
)
) Docket Nos.
) 50-443, -444
)
)

NECNP REPLY TO RESPONSES BY APPLICANTS AND
NRC STAFF TO NECNP CONTENTION ON
NEW HAMPSHIRE LOCAL EMERGENCY RESPONSE PLANS

1. The Applicants object to this contention on the ground that it lacks specificity. To the contrary, NECNP has, in compliance with NRC regulations for the formulation of contentions, specifically alleged the unreliability of information in the plans, and has provided a number of very specific examples. Applicants also complain that the contention does not give fair notice of its thrust. If the thrust of our contention is not evident, we will explain it here. NECNP is concerned that much of the information in the plans has not been verified, and that there is no program in place to keep it up to date. Thus, at the time it is to be used, it may be hopelessly inaccurate and leave great holes in the emergency response. The aim of the contention is to obtain some assurance that all information in that plans that must be relied on during an emergency response is accurate now, and will be kept that way.

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The Staff does not oppose the contention if it is limited to the examples cited in its basis. The rules do not require NECNP to list each and every example of the plans' unreliability in the basis of the contention. NECNP has gathered a number of examples of inaccuracies in the local emergency plans that cast doubt on the general reliability of the information contained therein. In the short time available for preparing contentions, it was impossible for NECNP to telephone every number listed in every plan or attempt to verify each piece of factual information. However, we found enough mistakes to cast general doubt on the reliability of the information in the plans. Under the Commission's regulations, we have given the Staff sufficient notice of our concerns and the general basis for them. The contention should be admitted.

2. The Applicants object to parts b, c, d, e, j, h(1) and i of contention 2. Applicants claim that parts c, d, e, and j "should not be litigable" because they raise issues as to whether individuals charged with responsibility under the plans will perform their functions. Applicants give no reasons for their position. The issues raised by NECNP in these contentions are indeed litigable, because they raise the issue of whether there is a reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. 10 C.F.R. § 50.47(a)(1) (emphasis added). NECNP has given sufficient basis to raise a reasonable doubt as to whether the individuals and organizations relied

upon in the local plans will actually provide their services during a radiological emergency at Seabrook. The contention meets NRC standards for admission and should be accepted.

The Staff opposes admission of subcontention (e) on the grounds that a survey of the intentions of each emergency response organization is not required by NRC regulations; and that NECNP has not offered a "sufficiently detailed, Seabrook-specific basis for such a requirement."

In other sections of contention 2, NECNP alleges the unreliability of emergency response personnel because they do not exist, are not committed, or for other reasons. Subcontention (e) alleges that a survey of emergency response personnel is needed in order to provide a reasonable assurance that these personnel will perform their functions. Although there is no specific requirement to this effect, NECNP believes that under the circumstances, there is no other means of achieving the reasonable assurance required for the issuance of an operating license.

The Staff's claim that NECNP does not provide an adequate Seabrook-specific basis for this contention is difficult to fathom, since the entire basis consists of Seabrook-specific examples. NECNP has cited a report prepared especially for the Seabrook site which found unwillingness to participate in an emergency response; and statements by public officials, made in public meetings in towns within the Seabrook EPZ. These separate sources of information regarding reluctance by

emergency personnel to participate in an emergency response at Seabrook more than satisfy the Commission's standards for admissibility of this contention. We also refer the Staff to other examples in other parts of Contention 2 of unwillingness by emergency response personnel to carry out the responsibilities assigned to them by the plans. See, for example, the basis for subcontentions (b) (fire department employees), (d) (wrecking company owner), and (j) (police department employees).

The Staff would not oppose the admission of the rest of contention 2 if it is limited to the towns, personnel, resources and duties specified in its basis. NECNP is not required at this stage to make an exhaustive list of every defect in the plans, and it would thus be unfair to limit the contention to the specific elements of its basis. The purpose of the contention at this stage is to put the other parties on notice of our concerns, which we have done.

The Staff also suggests that subcontentions c and j be consolidated because of their similarity. NECNP agrees to this change. Accordingly, 2(c) is reworded as follows:

The emergency response personnel, both professional and volunteer, cannot be relied upon to respond to a radiological emergency at Seabrook. There is thus no reasonable assurance that the adequate protective measures plans can and will be implemented as required by 10 C.F.R. 50.47(a)(1).

The bases for the two former subcontentions are consolidated.

In the September 29 filing, NECNP inadvertently labelled

two of the subcontentions as "h". The second subcontention "h", which appears at the top of page 12, is therefore redesignated as "i", and "j" is dropped since it has been consolidated.

3. Applicants do not object to the admission of this contention. The Staff objects to that part of subcontention (a) that calls for a direct communication link between the site and each town or for a mechanical means of communication from the plant to offsite entities. NECNP therefore withdraws that aspect of the subcontention. The towns listed in the basis are representative of the general pattern of all of the offsite plans. Therefore, it is not reasonable to restrict the contention to those towns named in the basis, as the Staff suggests.

The Staff also objects to subcontention (b) on the grounds that there is no regulatory requirement for mechanical communication to offsite entities, and that NECNP has provided no Seabrook-specific basis. The basis for this contention is the requirement of 10 C.F.R. 50.47(b)(6) for prompt communication among principal response organizations, coupled with the experience at Three Mile Island that operators were reluctant to notify the public of the seriousness of the problems at the plant. This contention is grounded both in the regulations and in factual experience, and thus meets Commission requirements for admission.

A third subcontention, erroneously labelled "b", was not objected to. It is redesignated as 3.c.

4. The Staff does not object to the admission of this contention. Applicants object to parts (a) and (e).

Applicants object to part (a) on the ground that it "involves implementation." Part (a) contends that the plans are deficient in that the public alert system (PAS) has not yet been designed, and therefore it is impossible to assess the effectiveness of primary notification. Applicants apparently consider that the design of the PAS is a matter of "implementation" that is somehow exempt from litigation. There is no regulatory basis for such an objection. Means of primary notification are required both by NRC regulations at 10 C.F.R. § 50.47(b)(5) and NUREG-0654. NECNP is entitled to contest either the absence of such means of notification, or the adequacy of notification systems to provide a reasonable assurance that adequate protective measures can and will be taken during a Seabrook emergency.

Applicants also object to part (e) in that it is "not based on any regulatory requirement." Part (e) challenges the absence in the plans of bilingual messages for the large numbers of French-speaking individuals who are often in the Seabrook area. The basis for this subcontention is 10 C.F.R. § 50.47(b)(5), which requires "procedures to provide early notification and clear instruction to the populace within the plume exposure EPZ." That this regulatory requirement cannot be met unless the messages conveyed by such notification and instruction can be understood and implemented by the people in

the EPZ. The special circumstances of Seabrook, where large numbers of French-speaking Canadians visit each summer, require bilingual messages.

5. The Staff does not object to that part of this contention which asserts that communications and informational materials must be in English and French. The Staff objects, however, that there is no regulatory requirement supporting that part of the contention which asserts that emergency response personnel who may have to deal with non-English speaking people must be fluent in French, and trained to handle the behavioral difficulties that may arise as a result of the language barrier. The Applicants object to the entire contention as lacking regulatory basis.

Applicants and Staff appear to believe that unless some specific provision calling for a bilingual emergency response appears in the regulations, it cannot be required. The regulations cannot be interpreted so narrowly. They contain broad language which calls for a "reasonable assurance that adequate protective measures can and will be taken" and provision for "communication," "notification" and "clear instruction." An emergency response would involve a wide variety of notification and communication measures, from radio announcements to traffic control instructions from police officers, to directions for taking shelter in special buildings. There is a regulatory requirement for a reasonable assurance that these protective measures can and will be

implemented. 10 C.F.R. 50.47(a)(1). There is thus a regulatory basis for NECNP's assertion that there must be a reasonable assurance that the elements of an emergency response requiring communication with non-English speakers can be carried out safely.

6. Neither Applicants nor Staff object to Parts 1 and 2 of this contention; but both object to part 3 as repetitive of NECNP contentions 4(e) and 5. Applicants also object to 4(e) on the same substantive grounds as 5. Please see the discussions of 4(e) and 5 above for a response to Applicants' substantive objection.

These contentions are not repetitive because they allege noncompliance with different regulatory requirements. Contention 4(e) alleges noncompliance with 10 C.F.R. § 50.47(b)(5), which requires "early notification and clear instruction" to the EPZ population, while contention 6(3) alleges noncompliance with 10 C.F.R. § 50.47(b)(6), which requires "prompt communications among principal response organizations to emergency personnel and to the public." Contention 5 asserts noncompliance with the general requirement that the public health and safety be protected during an emergency, in that emergency response personnel are not equipped to handle the special communication and behavioral problems involved with a language barrier. The panicked behavior caused by an inability to communicate in a dangerous situation may seriously impair a smooth and effective emergency

response. Although these contentions may overlap, they focus on different aspects of the emergency response, and therefore are not duplicative.

7. Neither Staff nor Applicants object to this contention.

8. The Staff does not oppose this contention. Applicants object on the ground that under NUREG-0654, § II.J.m., only the state plan is required to contain guidelines for the choice of protective actions. The regulation itself, however, does not put such a limitation on protective guideline. 10 C.F.R. § 50.47(b)(10) requires that:

A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

NECNP's interest in filing this contention is to assure that any government involved in choosing an appropriate response has sufficient information to make the best possible decision. At this point, guidelines for choosing an appropriate emergency response do not appear anywhere, either in the state or local plans. It is not particularly important to NECNP where the guidelines appear, as long as they are available to whatever decisionmaker the state and local governments agree should choose the emergency response. Therefore, NECNP rewords this contention to allege that:

Neither the state plan nor the local plans contain adequate guidelines for the choice of protective actions or information on which the choice of

protective actions could be based in the event of an emergency. 10 C.F.R. § 50.47(b)(10).

9. Applicants do not object to the admission of this contention. The Staff objects to the admission of 9(c), which alleges a failure to estimate or project traffic capacities for different evacuation routes and circumstances, on the ground that it raises the accuracy of evacuation time estimates, which have already been litigated. Because the state has now filed its own evacuation time estimates, NECNP drops 9(c) and will raise the issue, if necessary, in contentions on the ETES.

10. Applicants do not object to the admission of this contention. The Staff objects that the contention lacks specificity and basis. The basis for this contention is the requirement of 10 C.F.R. § 50.47(b)(3) that "arrangements for requesting and effectively using assistance resources have been made..." Each local plan identifies in general language some aspects in which it will rely on outside assistance, whether for towing from private companies, or traffic control from the state police. Not a single plan includes any reference to specific arrangements for this assistance. Nor do the plans specifically identify the nature and extent of their assistance needs. The contention puts all parties on notice of this general deficiency in the plans.

11. There was no objection to this contention.

12. Applicants and Staff do not object to parts (h) and (i) of this contention. Their objections to the other subcontentions are treated below.

a. Applicants object that part (a) is inadmissible because it is premised on the incorrect concept "that the plan must guarantee feasible evacuation with no deaths or injury in all circumstances." The Staff opposes part (a) on the ground that "there is no regulatory basis for its implicit assertion that there is a set maximum acceptable evacuation time."

This contention is based on the regulatory requirement that there be a "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.R. § 50.47(a)(1) (emphasis added) as discussed in the basis for the contention, information provided in an NRC-commissioned study by the Sandia Laboratories demonstrates the possibility of very severe consequences under even more favorable circumstances than predicted by Applicants' and Staff's evacuation time estimates for the Seabrook EPZ. The Sandia study also casts doubt on the effectiveness of sheltering to protect the population from radiation.

This contention raises the fundamental question of whether it is possible to take "adequate" protective measures in the event of a radiological emergency. NECNP does not attempt to establish "maximum evacuation times," but to evaluate whether the options of evacuation and sheltering can provide "adequate" protection to the public. Applicants state that "adequate" does not mean complete freedom from injury. That may be true, and the parties are entitled to dispute the meaning of the term. But Applicants cannot dispute that "adequate protective

measures" may fall somewhere between zero and 6,880 acute fatalities, and thus there is a reasonable basis for this contention.

Subcontentions b through g are withdrawn.

13. Neither Applicants nor Staff object to this contention.

14. The Staff does not object to this contention.

Applicants object that training of emergency response personnel is an implementation issue not litigable under the Waterford decision. The issue of training is highly relevant to the question of whether emergency response measures "can and will be implemented during an emergency. Unless there is some assurance that emergency response personnel have been trained according to a program that adequately prepares them for their responsibilities, there can be no assurance that the plans can be carried out safely.

15. The Applicants do not oppose this contention. NECNP accepts the Staff's suggestion that the contention be limited to apply to those persons who are injured and contaminated, pursuant to the Commission's decision in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-83-10, 17 NRC ____ (1983).

16. This contention is withdrawn.

17. The Applicants object to this contention on the vague grounds that the contention is "irrelevant," and that the plans "will either be found adequate or not." Contention 17 addresses the decisionmaking process at the local level. The

Voorhees Report, prepared for FEMA, found that local officials were frustrated in their planning efforts by a number of factors, including lack of information about important aspects of an emergency response. Since it is the local governments themselves who will be responsible for carrying out their emergency response plans, their effective participation in the development and approval of the plans is important to a reasonable assurance finding.

The Staff asserts that Contention 17 is repetitive of Contention 9(a), which challenges the absence of evacuation route maps, evacuation time estimates, and location of relocation centers or shelter areas. As stated above, however, Contention 17 addresses the effect of these deficiencies on the ability of local governments to participate effectively in the planning process, and is therefore not duplicative of Contention 9(a).

18. This contention is withdrawn.


19. The Staff does not oppose admission of this contention, but requests clarification from NECNP as to the cause of the postulated loss of offsite power. The basis for this contention, as stated in NECNP's September 9 filing, is the testimony of Phillip B. Herr in the August licensing hearings, and we refer the Staff to that testimony for a discussion of causes of loss of offsite power. Applicants object that this aspect of Mr. Herr's testimony was excluded for lack of expertise on the source. In excluding this part of

Mr. Herr's testimony, the Board did not state its reasons. Regardless of the Board's reasoning, Mr. Herr's statement is not offered as testimony, but as a reasonable basis for a contention, and thus does not have to meet the same stringent standards for admissibility.

20. Applicants do not object to this contention. NECNP agrees with the Staff to exclude the towns of Newton, Kensington, Rye, Greenland, and Portsmouth, from the scope of the contention.

Respectfully submitted,


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October 11, 1983

CERTIFICATE OF SERVICE

I certify that on October 11, 1983, copies of NECNP REPLY TO RESPONSE BY APPLICANTS AND STAFF TO NECNP CONTENTION ON NEW HAMPSHIRE LOCAL EMERGENCY RESPONSE PLANS were served on the following by first-class mail:

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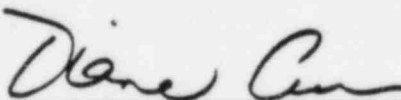
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