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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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BEFORE ADMINISTRATIVE JUDGES:

Helen F. Hoyt, Chairman
Dr. Emmeth A. Luebke
Dr. Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

October 7, 1983

ANSWER OF ATTORNEY GENERAL
FRANCIS X. BELLOTTI TO THE STAFF'S
AND APPLICANTS' RESPONSES TO HIS
CONTENTION RELATIVE TO EMERGENCY PLANNING
FOR THE NEW HAMPSHIRE BEACH COMMUNITIES

On September 9, 1983, Attorney General Bellotti submitted a single contention relating to the local emergency plans for the coastal New Hampshire communities within the Seabrook Emergency Planning Zone. On September 20 and September 26, respectively, the Applicants and the Staff filed their responses to that contention. Attorney General Bellotti hereby responds to the Applicant and Staff positions as set forth in those pleadings.

Applicants have not, in fact, responded to Attorney General Bellotti's contention at all. They write that "[i]f the contention is..." such and such, then there is no legal basis for it. See Applicants' Response to the Contention of Attorney General Francis X. Bellotti Relative to Emergency Planning for the New Hampshire Beach Communities, filed September 20, 1983, at 2. However, they have not even attempted to demonstrate that the contention as submitted or the bases therefor stand for the proposition which they find objectionable. The short answer to Applicants' objection is that their hypothetical contention is not what Attorney General Bellotti has submitted and their objection to their own hypothetical contention is, therefore, utterly irrelevant.

The NRC Staff has similarly not objected to the contention itself, but rather to something it perceives the contention "might suggest" -- namely, "that evacuation must be able to prevent the occurrence of early deaths in order for the emergency response plan to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency," see NRC Staff Response to Contention of Attorney General Francis X. Bellotti Relative to Emergency Planning for the New Hampshire Beach Communities, filed September 26, 1983 [hereinafter, "Staff's Response"], at 5, or as restated in a subsequent letter to this office from

Mr. Patterson, dated October 3, 1983, that "protective measures at Seabrook cannot be found adequate unless evacuation is shown to provide complete protection under all circumstances...".

While disagreeing that the contention implies either of these things, we have attempted to redraft the contention to satisfy the Staff's concern. Having been unable to do so readily, and so as to avoid extended negotiations over the wording of the contention, we hereby stipulate that it is not Attorney General Bellotti's contention that evacuation must be able to prevent the occurrence of early deaths in order for the emergency response plan to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency or that protective measures at Seabrook cannot be found adequate unless evacuation is shown to provide complete protection under all circumstances. That stipulation cures the Staff's concern as to the perceived implications of the contention.

It should be noted that the Staff's concern on this score was not properly raised as an objection to admission of the contention. The relevant inquiry at this stage is simply whether the contention states a violation of a regulatory requirement and it clearly does so. Fear that certain evidence or arguments not set forth in the contention or its bases might later be proffered in support of it is not a proper basis for contesting admission of a contention into the proceeding.

Nor is the lack of an established "threshold number of unacceptable deaths or injuries" in Commission regulations basis for rejection of this contention. See Staff's Response, at 5, n.1. Commission regulations require that there be "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). While it is true that the Commission has not further defined what constitutes "adequate protection," it does not follow that a contention challenging the level of protection accorded in a given instance is inadmissible. What follows, rather, is that any such contention is admissible and it is then up to the Board to determine whether the level of protection provided is adequate. The Staff's position is, in effect, that because the Commission has not further defined its requirement there is no requirement to be challenged. The Staff's position further seeks greater specificity in an intervenor's statement of the regulatory requirement violated than the Commission has given in setting the regulatory requirement, an impossible request.

In the basis to our contention, we present evidence that evacuation within the times currently estimated will, under typical meteorological conditions, subject as many as 15,000 beachgoers to doses which can lead to death in a matter of days. It is Attorney General Bellotti's contention that an

emergency plan which relies solely on evacuation and sheltering as the two possible protective options, which cannot at present prevent 15,000 beachgoers from being exposed to early death doses by means of evacuation even under typical meteorological conditions, and which contains no plans or provisions for sheltering the beach population does not provide adequate protection for that population.

The Staff's attempted rewording of the contention inappropriately narrows it to one which has already been admitted to the proceeding -- namely, Massachusetts Contention IV.E challenging the fact that there are no plans or provisions for sheltering the summer beach population or seasonal residents whose homes provide inadequate shielding. This contention addresses the broader requirement that the plan provide "reasonable assurance that adequate protective measures can and will be taken" to protect the beach population. Since there has, to date, been no examination of the availability of adequate sheltering for the beach population, the contention cannot be so limited with respect to the possible means for providing adequate protection. Other potential means for assuring adequate protection include improvements in traffic management or control or improvements in the evacuation network to decrease evacuation times, examination of alternative protective options such as evacuation by foot, and

imposition of a license condition prohibiting operation of the facility during the summer months. Again, the Commission's regulation is not restrictive in terms of the means by which adequate protection must be provided and the Board and parties to the proceeding cannot, therefore, be restricted to sheltering as the sole means for providing the necessary protection.

In reviewing the Staff's Response, we have determined that the phrase "under currently estimated evacuation times" should be added to the contention to clarify that it is not any evacuation which leads to the indicated results, but evacuation within the times currently estimated. That qualification is clear from the basis of the contention, but should probably be clarified in the contention itself. (See redraft below.)

In their redraft of the contention the Staff has, without explanation, attempted to further define the meteorological conditions to which we are referring. See Staff's Response, at 5. Since all meteorological conditions to which we may refer in testimony are not covered by Tables 1 and 2 in the bases to our contention, we do not accept the Staff's proposed redrafting on this point. We have, however, redrafted the contention ourselves to provide the requested specificity and to provide the clarification mentioned above with respect to evacuation times, as follows:

The draft radiological emergency response plans for the Towns of Seabrook, Hampton, North Hampton, and Rye do not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Seabrook Station, as required by 10 C.F.R. §50.47(a)(1), because in the event of a severe accident on a summer weekend some or all of the beach area transient populations within those communities cannot, under currently estimated evacuation times and many plausible meteorological conditions (i.e., Pasquill Stability Classes A - F; wind speeds of < 2 m./sec., 2 m./sec., 4 m./sec. and > 6 m./sec., including wind shifts due to time-varying conditions; and rain) be protected by means of evacuation even from early death and because there are not adequate plans or provisions for sheltering the beach area transients within those communities.

It is our intent through this redraft to obviate the need for any later amendment to the contention to address meteorological conditions, as proposed by the Staff in its letter of October 3, 1983.

Respectfully submitted,

FRANCIS X. BELLOTTI
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By:



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CERTIFICATE OF SERVICE

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I, Jo Ann Shotwell, Esquire, counsel for Massachusetts Attorney General Francis X. Bellotti, hereby certify that on October 7, 1985, I made service of the Motion of Attorney General Bellotti For Summary Disposition on Massachusetts Contentions I, II, III, IV, V, and VI, G, SAPL Contention 5 and NECNP Contentions 3, 4, 5, 7, 12, and 14 Relative to Emergency Planning For the State of New Hampshire and the Answer of Attorney General Bellotti to the Staff's and Applicants' Responses to his Contention Relative to Emergency Planning for the New Hampshire Beach Communities by mailing copies thereof, postage prepaid, to the parties named below:

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Signed under the pains and penalties of perjury, this 7th day of
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