LILCO, July 8, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322 (OL)
	)	Emergency Planning
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

LILCO'S ANSWER OPPOSING THE
SUFFOLK COUNTY MOTION FOR LEAVE TO
FILE CONTENTIONS REGARDING ONSITE EMERGENCY PREPAREDNESS

On June 27, 1983, intervenor Suffolk County filed a set of contentions on (allegedly) onsite emergency preparedness, along with a "Suffolk County Motion for Leave to File Contentions Regarding Onsite Emergency Preparedness" (hereinafter "County Motion."). The purpose of the motion is to place an additional obstacle in the way of a low-power testing license for the Shoreham Station.1/

A motion was necessary to submit these new onsite contentions because the County voluntarily gave up its right to

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1/ LILCO applied for a low-power license on June 8, 1983. The NRC has said that before it issues a low-power license, it will review certain "offsite elements of the applicant's emergency plan." 47 Fed. Reg. 30,233, 30,234 col. 1 (July 13, 1982). The County therefore characterizes its contentions as involving "offsite elements" of LILCO's onsite radiological emergency plan for Shoreham. County Motion 1.

litigate onsite preparedness issues when it refused to go forward with litigation of such issues last November. Accordingly, the Licensing Board dismissed with prejudice the County's "Phase I" emergency planning contentions. Transcript of Hearing in Hauppauge, New York, Nov. 23, 1982, Tr. 14,747-48; Memorandum and Order Confirming Ruling on Sanctions for Intervenors' Refusal to Comply with Order to Participate in Prehearing Examinations (Dec. 22, 1982).

The County's rationale for reopening the onsite preparedness record at this late stage is (though not in these words) a plea of "changed circumstances" or "new information." The County argues that the Phase I litigation in 1982 was based upon the "erroneous fundamental assumption" that Suffolk County would adopt and implement an offsite emergency plan. County Motion 3. The County says that "[i]t was not until February 17, 1983, after public hearings held in January, that the County Legislature adopted Resolution No. 111-1983 which disapproved the draft County offsite plan and determined that Suffolk County would not adopt or implement any offsite emergency plan." County Motion 4. Thus, "only in February 1983 did it become clear that one of the fundamental assumptions of the Phase I litigation -- that the County would participate in overall emergency preparedness for the Shoreham plant -- was no longer valid." County Motion 4-5.

Notwithstanding this explanation, there are five good reasons why the County's new onsite contentions should not be admitted:

I. The new contentions are about offsite preparedness, not onsite. Consequently they do not have to be resolved prior to issuance of a low-power license but instead can be litigated (if they have the requisite basis, specificity, etc. and could not have been raised in Phase I) along with the County's other Phase II contentions.

II. The County treats its request to file new contentions as merely a motion to reopen the record because of new information (namely the County's decision to resist emergency preparedness). This approach ignores the fact that the County has been prohibited from litigating onsite issues as a sanction for improper behavior.

III. Even if this were just an ordinary motion to reopen the record, it would fail because it is untimely. The "new information" was in the County's sole control, and it was known to the County no later than February. The County's request to submit contentions could have been filed in February or April but was in fact not filed until it appeared in June that some new tactic would be required to delay the issuance of a low-power license.

IV. The new circumstances relied on by the County, namely its categorical refusal to participate in emergency planning, is nothing less than a challenge to NRC regulations.

V. Individually most of the new onsite contentions are inadmissible anyway because of technical deficiencies such as lack of specificity or basis. Some of them could have been litigated in Phase I. Some of them are covered by settlement agreements signed by the County itself.

For all these reasons, the Board should deny the County Motion. We will elaborate below.

I. The new onsite contentions call for findings on the state of offsite emergency preparedness, not on "offsite elements" of the applicant's onsite plan

The first objection to the County's new onsite contentions is that they are not really about LILCO's onsite plan at all. This is not so much an objection to their admissibility (since they may still be admissible as Phase II contentions) as an objection to their being treated as "offsite elements of the applicant's emergency plan" -- that is, as low-power issues.

The Federal Register preamble to the low-power emergency planning regulation, 10 C.F.R. § 50.47(d), says that before issuing a low-power license the NRC will review the offsite elements of the applicant's emergency plan covered by 10 C.F.R. § 50.47(b)(3), (5), (6), (8), (9), (12), and (15). The key to the phrase "offsite elements of the applicant's emergency plan" is the word "applicant's": only a review of the applicant's onsite plan is contemplated. This is consistent with the regulation itself, which says that "no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance" of a low-power license.2/ 10 C.F.R. § 50.47(d)

2/ A week ago the NRC ruled that the regulation means just what it says. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-83-17, 17 NRC ___ (June 30, 1983).

(1983), 47 Fed. Reg. 30,236 col. 1 (July 13, 1982).

What this means, generally speaking, is that the licensee must have its own onsite arrangements complete and also have in place the communication links between the power plant and the outside world. As the San Onofre low-power decision3/ put it, "[t]he most appropriate criteria for testing the adequacy of emergency planning for low-power operations is whether the on-site plan meets relevant full-power requirements (forgiving any deficiencies that are insignificant to low power), plus the ability to communicate with off-site authorities." Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 196 (Jan. 11, 1982). All of the County's new onsite contentions share the deficiency that they are not really about elements of LILCO's onsite plan at all,4/ and for this reason alone the County Motion should be denied.

Denying the County Motion would not by itself prevent the County from litigating its new onsite contentions. All it would do would be to prevent the County from interposing them

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3/ The decision predated the final regulation, but the San Onofre Board said the approach taken in the then-proposed regulation, 46 Fed. Reg. 61,132 (Dec. 10, 1981), was consistent with the approach the Board would have adopted in any case. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 194-95 (1982).

4/ This deficiency is indicated, in the detailed objections attached to this answer, by the phrase "not a low-power issue."

as an obstacle to a low-power, as opposed to a full-power, license. This is as it should be. Only last week the Commission ruled that 10 C.F.R. § 50.47(d) "requires no predictive finding of 'reasonable assurance' with regard to offsite emergency planning prior to low-power operation and none was intended by implication or otherwise." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-83-17, 17 NRC ___, slip op. 3 (June 30, 1983). The Commission observed:

> We believe the better procedure is to reserve full-power issues, like offsite emergency planning, for the full-power authorization decision.

Id., slip op. 4. As the attachment to this answer shows, the County's new onsite contentions are full-power issues, and they should not be treated otherwise.

II. The real issue is not whether the new onsite contentions could have been raised last November, but whether a party that has defied a Board order should be able to escape the sanctions imposed on it by creating changed circumstances

The second objection to the County Motion is that it does not address the sanctions that were imposed against the County last November. The County treats its motion to file new contentions as an ordinary request to reopen the record because of newly discovered evidence. (The newly discovered -- that is, newly created -- evidence is simply the County's own refusal to participate in emergency planning.) But the issue is

not, as the County would have it, whether the new contentions could have been raised earlier (if it were, the County Motion would still fail, as shown in part III below); it is rather whether this particular party should be allowed to raise them at all.

In fact this is not the usual request to reopen the record. It is rather a request to revoke sanctions imposed on the County for defiance of a Licensing Board order. The County gave up its right to litigate contentions about LILCO's onsite plan by refusing to comply with the Licensing Board's choice of procedure. Accordingly, the issue here is not principally one of the untimeliness of the County's new contentions, but whether it should be allowed to use "changed circumstances" created by itself to evade sanctions that were imposed upon it lawfully and for good reason.

A brief review of why the sanctions were imposed in the first place will show why those sanctions should be made to stick. The Licensing Board ordered evidence on onsite emergency preparedness to be taken in the first instance by depositions. Full cross-examination was to take place, just as in a public hearing, and the public was free to attend, just as in a public hearing. The only difference was that the Board was to read the transcripts of the depositions rather than be present at them. The Board then planned to hold a conventional public hearing to explore parts of the deposition record that still

seemed to need more elaboration. At this hearing the parties were again to cross-examine witnesses, to the extent they had not been able to do so during the depositions, and the Board would have been present to ask questions itself and observe witnesses' demeanor. See Memorandum and Order Ruling on Licensing Board Authority to Direct that Initial Examination of the Pre-Filed Testimony be Conducted by Means of Prehearing Examinations (Nov. 19, 1982).

The judges' remarks about the proposed procedure are illuminating:

> JUDGE CARPENTER: I would just like to make a couple of remarks to provide some perspective on what the Board's hopes are. If we look at the administrative proceedings like this, one would like to see the record which will undoubtedly be reviewed be both comprehensive and incisive, and I think you might tend to agree with me that those are basically incompatible in a simple way, so that it is a difficult thing to produce such a record which is both comprehensive and incisive.
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> And the reason the Board feels this initial examination to develop a comprehensive record is very useful and there is unavoidably much detail that must be presented. Then the Board needs to look at the detail, look at the comprehensive record, and then try to bring to focus all parties on the critical elements that have come from that detailed examination. So we can proceed to examine with perspective that has been developed from the detail.
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> So all we were suggesting is a recognition of the need to do two different kinds of things -- to get a comprehensive

> record with all of the technical facts put on the table, and then to examine those facts in an incisive way. And I am trying to be responsive, Mr. Brown, to your request to understand the Board's thinking, and I am trying to express it just as simply as I can.

Tr. 14,721-22.

> JUDGE MORRIS: I would just like to add one comment.
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> The Board recognizes that the subject of emergency planning is of great interest up here in Suffolk County on Long Island, and we want to be sure that we have time to reflect on the details that are developed in the proceeding, and that means hearing the parties, having time to examine the evidence, at least, prior to conducting the final hearing process in public to ask our questions, and to allow for further questioning by the parties.

Tr. 14,722.

The County and other intervenors categorically refused to participate in this procedure, calling it "unlawful." Tr. 14,725, 14,726. The Board offered to facilitate appellate review of its proposed procedure:

> JUDGE BRENNER: Did you see our remarks on the transcript of Friday as to the appellate procedures that might be invoked if we advocate that position, that that is a normal course of appellate procedure when a trial court rules one way and a party rules another, you sometimes have to wait until the end of the proceeding for review.
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> However, in this instance, we would be willing to assist the County in facilitating a rapid review, so long as it wasn't otherwise in default of its obligations before us while seeking that

> review. However, we have never gotten any indication from the County as to any proper appellate procedures that it wished to follow.

Tr. 14,726-27.

> We believe we have the authority to implement this quite clearly. However, trial boards have been wrong before and we would invite that kind of accelerated procedure to assure that the proceeding isn't diverted on the side trail that detracts from the substance, the very antithesis of the comprehensiveness and incisiveness that we are seeking, as Judge Carpenter just said.

Tr. 14,728-29.

Four things about this incident are worth noting here:

1. The procedure ordered by the Board was so eminently reasonable it is hard to imagine why anyone would object. It is designed to focus the Board's attention on the significant issues and to give the parties two chances, rather than the usual one, to cross-examine the witnesses. Since LILCO had the burden of proof, two chances to challenge its witnesses should have been a great benefit to the intervenors, especially since they presented no written testimony of their own on some of the Phase I issues.

2. The County never explained why it thought the Board's procedure was unlawful.5/

5/ The County did file a paper addressing the issue, but it contained "no supporting analysis and almost no explication." Memorandum and Order Ruling on Licensing Board Authority to Direct that Initial Examination of the Pre-Filed Testimony be Conducted by Means of Prehearing Examinations 5 (Nov. 19, 1982); see also Memorandum and Order Confirming Ruling on Sanctions for Intervenors' Refusal to Comply with Order to Participate in Prehearing Examinations 5 n.1 (Dec. 22, 1982).

3. The County never explained why it thought it would be harmed by the Board's procedure.

4. The County never asked the Commission to review the Board's procedure, despite the Board's invitation to do so.

The County, along with the other intervenors, was therefore prohibited from contesting Phase I issues, since it had refused to do so except on its own terms. The sanction was imposed for the County's breach of a fundamental principle -- that litigants obey the orders of judicial bodies even if they disagree with them.6/

The same policy that justified the sanctions in the first place now just as surely justifies denying the County's request to ignore the sanctions:

> To allow intervenors to decline to follow our order, solely because they disagree with it, would be a particularly egregious abdication of our duty under 10 C.F.R. § 2.718 to regulate the course of this proceeding. Not only would permitting such actions be contrary to Commission precedent, but it would also likely be repeated were sanctions not imposed for this breach so as to induce future compliance with Board orders.

Memorandum and Order Confirming Ruling on Sanctions for Intervenors' Refusal to Comply with Order to Participate in Prehearing Examinations 13 (Dec. 22, 1982).

6/ See Memorandum and Order Confirming Ruling on Sanctions for Intervenors' Refusal to Comply with Order to Participate in Prehearing Examinations 13 n.5 (Dec. 22, 1982).

The new onsite contentions raise issues about the feasibility of emergency preparedness when the County government will not cooperate, and there are serious issues involved. Ordinarily the NRC recoils at the prospect of denying any party the right to litigate serious issues. But denying admissions of the County's new onsite contentions would not leave the issues unexamined, for two reasons. First, upon the County's default the onsite issues did not disappear; they simply fell to the NRC Staff for review. Tr. 14,748; Memorandum and Order Confirming Ruling on Sanctions for Intervenors' Refusal to Comply with Order to Participate in Prehearing Examinations 18 (Dec. 22, 1982). Second, as noted in Part I above, the issues raised in the new onsite contentions are in truth offsite issues, and they will be fully litigated before this Board, if they meet the usual requirements for admissible contentions and could not have been raised in Phase I.

III. The County's new onsite contentions are untimely

The third objection to the new contentions is that they are untimely. The County could have protected itself in several ways from being precluded from litigating the contentions it now seeks to litigate:

1. It could have gone forward with the Phase I litigation in the first place. (It never articulated a legal basis for refusing to go forward.)

2. It could have appealed the Licensing Board's action immediately to the Commission; the Board not only invited the County to do so several times, but offered to expedite the appeal.

3. It could have raised new onsite contentions in February, when it created the "erroneous fundamental assumption."

4. It could have raised new contentions in April, when the Licensing Board excluded "any contention addressed to Phase I emergency planning matters."7/

The last two of these go to the timeliness of the County's current effort to reopen the record. Obviously Suffolk County could have moved to submit new onsite contentions in February of this year, when the County Legislature decided to oppose emergency planning.8/ Or it could have raised new

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7/ Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding, LBP-83-22, 17 NRC ___, slip op. 63 (Apr. 20, 1983). The County alleges that its motion at this late date is prompted by the Board's "Order Scheduling Prehearing Conference," dated June 10, 1983, in which the Board stated that it expected the parties to comply with limitations on the scope of contentions prescribed by LBP-83-22. County Motion 1.

Also, there may be the implication in the County Motion that a recent revision to LILCO's onsite plan prompted the new contentions. This could not possibly be the case, however, because the revisions were minor ones designed to correct deficiencies found by NRC inspectors. The County has made no attempt to tie its new onsite contentions to recent revisions in the onsite plan.

8/ Perhaps even earlier. The County has said that "it is clear from the record that the County had grave concerns about the feasibility of planning for an emergency at Shoreham well in advance of 1982 and that LILCO was on notice of those concerns as early as 1977." Suffolk County's Reply to LILCO's and the NRC Staff's Briefs in Opposition to Suffolk County's Motion

(footnote continued)

contentions in April, when the Licensing Board ruled that Phase I issues would not be permitted in Phase II of the litigation.

Instead, the County waited two more months until June 27 to submit the new contentions, giving as a justification for this delay only that the County Motion "is prompted by the Board's 'Order Scheduling Prehearing Conference,' dated June 10, 1983, in which the Board stated that it expected the parties to comply" with the April 20 order mentioned above. County Motion 1. It is hard to understand why a June 10 order merely reaffirming an earlier order would have prompted the County to act, especially when an order of May 12 had already said that previous orders "remain in full force and effect." Order Directing Change of Service on Emergency Planning Submissions, ASLBP No. 83-488-03-OL (May 12, 1983).

Evidently what really prompted the County's effort to reopen the onsite emergency planning record was LILCO's filing of a low-power license application on June 8. The County's June 27 onsite contentions were part of a coordinated attack on the low-power license application, consisting of the contentions, a formal "Answer and Opposition" to the low-power license application (also dated June 27), and a flurry of

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(footnote continued)

to Terminate the Shoreham Operating License Proceeding and the County's Motion for Certification" 23 (Mar. 29, 1983).

pleadings and correspondence to the Commission on June 29 and 30 on the low-power issue resolved in CLI-83-17.

The County cannot claim it was taken by surprise by the low-power license application, because it was made clear to the County long ago that the Phase I record might become the basis for a finding authorizing a temporary or low-power license.9/ As the Board said at the April 14, 1982 prehearing conference:

> We may be called upon to make partial findings under the proposed legislation in both authorization bills issued by Congress and also under the proposed regulation of the NRC. And unless and for that reason, partial findings could well be material to some of the issues in the proceeding, and I say that in contradiction of the point raised by some of the findings, I believe primarily SOC's that no useful purpose would be served by litigating part of the issues because nothing could happen in any event until all of the issues were litigated.
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> That may not be the case, depending on the proposed regulation and the legislation and depending upon our findings on the issues. If the gap had only been a short period of time, then from a pragmatic, not a legal, point of view, it may have been useful to wait and try everything together.

9/ The Board did not decide whether the resolution of the Phase I issues would support the legal requirements for a low-power license. Prehearing Conference Order (Phase I -- Emergency Planning) 2 n.1 (July 27, 1982). It is clear, nevertheless, that the Phase I issues were defined broadly enough to encompass low-power concerns. For example, Phase I Contention EP 11 on "Communications/telephones" was to focus on "LILCO's communications with the first line of authorities, not to the general public, and on the forms of backup communications available." Prehearing Conference Order (Phase I -- Emergency Planning) 11 (July 27, 1982).

> Essentially it is our view, and we also indicated this in our order, that LILCO's actions, the applicant's actions under the plan could be litigated. That was not restricted to their actions on site. One of the filings, and we haven't had much time to look at it, underlined the word "site." We did not describe it that way, I don't believe. It is licensee's actions under their emergency plan. There is a distinction between some of the areas, because their actions take place offsite although they depend wholly, or at least primarily, upon the applicant's actions; for example, the operations facility, dose monitering [sic] teams, and so on.

Tr. 745-46.

> COUNSEL FOR SOC: I would like to ask the Board, when you say you have a responsibility to make these partial findings, are you talking about under this legislation that is being developed?
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> JUDGE BRENNER: Yes. Also under the proposed Regulations and also in terms of litigating that which can be litigated as opposed to taking hiatus for almost a year and then coming back.

Tr. 800. The Board repeated this point at the July 20, 1982 conference:

> COUNSEL FOR SUFFOLK COUNTY: If I may, Judge Brenner, I'm just a little mystified. I don't believe there's any -- and maybe Mr. Black has addressed this, but I don't see a motion that is before the Board for a low-power license. As far as we are concerned, we are not litigating that question here, unless there is one that I don't know about. We haven't been advised of it, so I don't know why the Staff would want to pursue some hypothetical event.

> JUDGE BRENNER: Well, I guess I don't know why you are mystified. Back at the first conference of the parties, I believe, or certainly during one of the prehearing conference stages, we talked about going ahead with issues we could go ahead on, with that possibility in mind so as not to preclude by inertia the failure to make those findings if and when such a motion is made.

Tr. 7264-65 (emphasis added). Thus, the parties were well aware that if they wanted to raise low-power issues they should do it, to the extent possible,10/ in Phase I, and in many cases we shall find that the County's new onsite contentions could have been litigated during Phase I.

At this late stage of the proceeding, therefore, the County's having waited four and a half months to raise its own refusal to do emergency planning as an onsite issue is intolerable. The Shoreham plant will be physically ready to load fuel next month. The only real issue left before the Licensing Board is whether Suffolk County's efforts to block offsite emergency preparedness make it impossible to accomplish adequate offsite preparedness. All the rest is merely detail. The County will get a full chance to be heard on both the "impossibility" issue and on its detailed criticisms of LILCO's

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10/ In response to the intervenors' complaints about dividing emergency planning into two phases, the Board invited them to specify in their contentions where necessary information was lacking because an offsite plan had not yet been developed. Tr. 802.

offsite plans when it litigates its offsite contentions. But to allow it in addition to use these offsite issues to delay the low-power license would be to throw away any notion that the parties to NRC proceedings have an obligation not to delay the proceedings unduly.

IV. The new circumstances relied on by the County are nothing less than its own challenge to NRC regulations

It would be particularly inappropr te to allow the County to plead new circumstances to avoid the Board's sanctions discussed in Part II above when the new circumstances are nothing but the County's own out-of-court behavior. For equitable reasons, if no others, a litigant should not be permitted to create out-of-court obstacles to another litigant's cause and then plead those very obstacles as reasons for regaining procedural rights he earlier abandoned.11/

Indeed, the Licensing Board indicated, in its April 20 order, that contentions alleging the County's own refusal to participate would not be entertained:

> [I]f the County seeks to have its findings adopted, it must litigate before us the facts which it believes support its view that it is not feasible to implement emergency preparedness actions which

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11/ "He who prevents a thing from being done may not avail himself of the nonperformance which he himself has occasioned . . . ." R. H. Stearns Co. v. United States, 291 U.S. 54, 61 (1934).

> would meet NRC regulatory requirements in the event of a radiological emergency at the Shoreham Nuclear Power Plant. The right of the County to litigate whether necessary emergency actions can be taken may be distinguishable from the circumstance of a governmental litigant before us which simply refuses to take otherwise feasible actions.

LBP-83-22, 17 NRC ___, slip op. 59 (April 20, 1982).

> For example, we will not entertain contentions premised solely on the absence of a Suffolk County approved plan.

Id., slip op. 62.12/

These admonitions about what types of contentions will and will not be heard are perfectly justifiable, particularly because the County's contentions about its own refusal to participate in emergency planning amount to nothing less than a challenge to the NRC's regulations. The challenge is twofold. First, in deciding that adequate emergency preparedness is impossible, the County did not attempt to apply the federal standards 10 C.F.R. § 50.47 and NUREG-0654; it ignored them, applying criteria of its own that have never been articulated. So the County rejected either the applicability or the adequacy of the NRC regulations. Second, the County has decided, in

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12/ In a sense, of course, all the new onsite contentions are about the County's refusal to do emergency planning; that refusal is, after all, the circumstance that the County says justifies its late request. But in the detailed objections attached to this answer we have made the "County's own doing" objection only where the contention is a particularly bald statement of the County's unwillingness and nothing more.

essence, that a nuclear plant should not be sited on Long Island. This is a challenge to the NRC siting regulations.13/

V. The new onsite contentions are individually inadmissible for a variety of reasons

Finally, apart from the reasons set out in parts I through IV above, many of the proposed new onsite contentions are inadmissible for such traditional technical reasons as lack of specificity or basis or because they could as well have been raised in Phase II. A list of these objections is attached to this pleading. Several of the objections are unique to the peculiar circumstances of this proceeding and therefore deserve some discussion here.

13/ Arguably the County has also challenged the NRC process for assessing emergency plans. First, it refused to participate in the Phase I hearings before the Board. Then it held its own hearings apart from the NRC process, made its own finding that existing emergency plans were inadequate, and passed a resolution decreeing that no offsite plan would be implemented. This action was based squarely on the County's own views of radiological health and safety. Now the County attempts to raise its own Resolution No. 111-1983 and its own refusal to help with emergency planning as a reason why the NRC should deny a license. Since the County would not be refusing to do emergency planning if it had submitted to the NRC process for deciding if emergency preparedness is adequate, the County's position is tantamount to refusing to recognize NRC authority over licensing decisions. The County is participating in the NRC process, it is true, but it has announced that it will resort to the courts if the NRC reaches a decision not to its liking, and it is clear that the County is using the NRC process only as an attempt to impose its own views of emergency planning and radiological health and safety.

A. Lack of basis and specificity

The objection that some of the new onsite contentions have "no basis" or are "not specific" are familiar ones, but a word about LILCO's view of what these requirements mean in this case may be helpful. In particular, LILCO believes that in the circumstances of this case Suffolk County should bear an unusually high burden of being specific.

1. Basis

In LILCO's view, the requirement that a contention have a "basis" is that there is a reason to believe the contention may be true. This is a very light burden; it does not, for example, require the sponsor of the contention "to detail the evidence which will be offered in support of each contention." Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (June 19, 1983). But it does require that the sponsor give a "reasonable explanation or plausible authority" for factual assertions. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 184 (1981). The sponsor needs to "assign reasons for his belief." See Houston Lighting and Power Co. (Allen's Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980).

2. Specificity

With regard to the specificity of the contentions LILCO submits that Suffolk County should have an unusually heavy burden.14/ The County is the party that ought to be doing offsite emergency planning, not LILCO. The County has argued vigorously that it and only it has the duty and responsibility of offsite emergency planning. It has cited its $600,000 study of emergency planning, its public hearings on the subject, and the qualifications of its experts. It has alleged, in short, that it has done an exhaustive study of emergency planning on Long Island. Therefore the County ought to be in a position to be very specific about what its objections to emergency planning are.

In particular, the County should specify in every case which "evaluation criterion" of NUREG-0654 it thinks is not met.15/ Also, it is not enough for the County to merely contend that a particular feature of LILCO's emergency plan is not "adequate" or even to explain why it is not adequate; the

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14/ In Phase I the Board was insistent that the County's contentions be "particularized." See, e.g., Prehearing Conference Order (Phase I - Emergency Planning) 16, 17 (July 27, 1982); Supplemental Prehearing Conference Order (Phase I - Emergency Planning) 15 (Sept. 7, 1982).

15/ NUREG-0654 is universally used as guidance for assessing emergency plans, and the County should be quite familiar with it. The draft emergency plan prepared by the County's consultants was organized along the lines set up by NUREG-0654.

County should also specify in every case exactly what LILCO should do to correct the problem the County sees. And if the County thinks there is no solution, it should say so. Among other things, this would have the beneficial effect of separating out those contentions that the County thinks make emergency planning impossible, and those contentions which the County thinks merely raise problems that can be solved. Requiring the County to specify what measures it thinks would be adequate would also facilitate settlement, because if the County will just say what it wants, LILCO may be able to provide it.

B. "Phase I issue"

Besides the objections regarding basis and specificity, a recurring objection is that the new onsite contentions could have been raised in Phase I. Some of them actually were Phase I issues. Some of them are covered by Phase I settlement agreements signed by the County itself.

The Board has made clear that these Phase I issues may no longer be litigated:

> Accordingly, we will not consider any contention addressing LILCO's onsite plan or other matters which either were the subject of a previously admitted Phase I emergency planning contention or clearly were within the permissible scope of the Phase I emergency planning litigation.

Memorandum and Order Denying Suffolk County's Motion to

Terminate the Shoreham Operating License Proceeding, LBP-83-22, 17 NRC ___, slip op. 64 (Apr. 20, 1983).

> This is because the parties were being bound by any stipulation regarding Phase I contentions which was approved by the Board, see Stipulations ff. Tr. 14,719, as well as by our order dismissing the remaining Phase I contentions "with prejudice" due to intervenors' intentional default in refusing to proceed with the examinations before hearing is ordered by the Board.

Id. 64-65.

The meaning of "Phase I" was explicated many times:

> Therefore, Phase I emergency planning was defined to include not only onsite matters, but also matters such as gaps in siren coverage within 10 miles of the Shoreham plant, notification of and communications with offsite response organizations, arrangements and training for offsite assistance resources needed on site (e.g., medical and fire services), and assessment and monitoring by LILCO of actual or potential onsite and offsite radiological releases in doses.

LBP-83-22, slip op. at 64. The Phase I issues were those "within LILCO's responsibility to perform whether it be onsite or offsite." Prehearing Conference of April 14, 1982, Tr. 796; see also Tr. 797-802. They were the issues "currently capable of final resolution" even without an offsite plan. Prehearing Conference Order (Phase I - Emergency Planning) 2 (July 27, 1982); see also Prehearing Conference Order 7 (April 20, 1982).

In particular, the Phase I issues were to cover the "first channel of communication, if you will, from the utility to the governmental authorities." Tr. 7225-26 (July 20, 1982).16/ They were to focus on LILCO's communications with the "first line" of authorities and on the forms of backup communications available. Prehearing Conference Order (Phase I - Emergency Planning) 11 (July 27, 1982).

> We would like the parties to jointly examine contentions, those subject areas and determine whether they fall within the category that I am about to describe now, that is, actions by LILCO, whether it be onsite or offsite but actions by LILCO. That would be the broad definition. This would include communications between LILCO and offsite response agencies, particularly the initial notification from LILCO in the event of an emergency.

Tr. 747 (Apr. 14, 1982) (emphasis added). As is made clear in the detailed objections attached to this answer, many of the County's new onsite contentions could have been raised in Phase I and so are not litigable now.

VI. Conclusion

The County's new onsite contentions should not be admitted. Most or all of the issues they raise are being addressed

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16/ The scope of the Phase I issues encompassed the low-power issues (that is, onsite preparedness plus the offsite elements of the applicant's plan referred to at 47 Fed. Reg. 30,234 col. 1 (July 13, 1983)) plus some full-power issues such as the coverage of the sirens.

in the Phase II litigation, and there is no reason, except to delay a low-power license, to treat them as onsite (that is, low-power) issues.

Respectfully submitted,

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SPECIFIC OBJECTIONS TO INDIVIDUAL NEW ONSITE CONTENTIONS

Below are set out the specific technical objections that LILCO has to Suffolk County's new onsite emergency planning contentions (Appendix A to the "Suffolk County Motion for Leave to File Contentions Regarding Onsite Emergency Preparedness," filed June 27, 1983).

A. A generic problem: cumbersomeness

In the first place, LILCO has the fundamental objection, that the new onsite contentions are cumbersome (overlong and wordy). Typically the County's contentions consist of a fluffy cloud of words surrounding a hard kernel of contention. One can usually find a sentence or two that state the County's concern in a reasonably concise manner; the surrounding words tend to be background, statement of basis, and argument.

This cumbersomeness, or lack of conciseness, stems from the following problems:

1. The contentions contain lengthy explanations

In an attempt to provide proof against objections for lack of basis and specificity, the County has included a great deal of unnecessary information that lengthens the contentions without helping the reader. Often this excess baggage consists

of quoting, rather than merely citing, the regulations the County thinks relevant. LILCO has no objection to the County's explaining its contentions, but the explanations should be in a separate "statement of basis" or the like so as to avoid freighting the contention itself with too many words.

Asking that the contentions be kept concise is not a frivolous request. The contentions must be referred to and cited hundreds of times over the next several months. The mechanics of preparing documents are made much more difficult by prolix contentions. More important, it is hard to keep the issue in mind when it is stated in three pages rather than three sentences. This is a very real difficulty and tends to make the litigation more confusing and difficult to manage.

2. The contentions are repetitive

The new onsite contentions are repetitive and contain frequent cross-references to other of the new onsite contentions. The redundancies could be eliminated by a thoughtful consolidation.1/

The repetitiveness apparently results from organizing the contentions along the lines of certain documents (the

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1/ In Phase I, the Board in a number of instances directed the parties to consolidate and simplify their contetions. See, e.g., Prehearing Conference Order (Phase I -- Emergency Planning) 9, 11, 14, 15 (July 27, 1982). Some contentions were ruled "redundant and inadmissible." See Supplemental Prehearing Conference Order (Phase I -- Emergency Planning) 14, 27 (September 7, 1982).

regulations or the emergency plan) rather than along the lines of the facts that will have to be litigated. For example, instead of writing a contention about command and control and alleging that the people doing that function will have "role conflict" and then writing another contention about ambulance drivers and claiming that they will suffer role conflict, when the same witnesses will testify about role conflict in all of the emergency personnel, there should simply be a contention about role conflict that has as its subparts the different personnel who will allegedly experience role conflict.

3. The contentions are not self-contained; they cannot be understood without resort to the offsite contentions

The new onsite contentions contain numerous references to the County's offsite contentions. Thus one cannot understand the new contentions, or decide whether they have the requisite basis and specificity, without flipping back and forth from one document to another.2/

2/ For example, new onsite contention A.4.a mentions "limitations of the LILCO Customer Service Office resources," referring the reader to offsite contention 8.A.1 (later renumbered SC 78) for specifics, and then mentions "inadequacies of the LILCO paging system," referring to offsite contention 8.A.3 (later SC 80). Contention 8.A.3 in turn references offsite contention 8.A.2 for the reasons why activating pagers by commercial telephone is unacceptable.

Returning to onsite contention A.4.a, the reader next finds a statement that because of the 8.A.1 and 8.A.3 reasons referenced above, there is no assurance that the Director of Local Response can be notified and the EOC activated fast

(footnote continued)

4. The numbering scheme is over-complicated

The County identifies its contentions with letters and numbers in numerous subparts. This is largely a result of the County's organizing the contentions according to documents, noted above. For example, the contentions on pages 4 and 5 of the new draft onsite contentions are somewhat awkwardly designated A.4.a, A.4.b, and so on. The contentions should instead be numbered sequentially (1, 2, and so forth), with fewer subparts and sub-subparts. The Board ordered or suggested this type of numbering in Phase I. Prehearing Conference Order (Phase I - Emergency Planning) 3, 14 (July 27, 1982); see also Tr. 803 (Apr. 14, 1982).

B. The types of specific objection

The observations above suggest that the new onsite contentions could profit from a serious rewriting. In addition, the contentions are subject to seven types of objection:

(footnote continued)

enough. This is followed by a "See Contention D below." Contention D of the new onsite contentions says that (1) Suffolk County will not allow LILCO to use the Suffolk County Probation Building as the EOC and that LILCO's substitute EOC at Brentwood has "not yet been established." The reader is referenced to offsite contention 5 for details about how the Brentwood EOC has not been established. (The cross-reference does not help since all contention 5 says is that the Brentwood EOC has not been established.)

1. Not a low-power issue - A pure offsite issue that is not an "offsite element of the applicant's emergency plan" within the meaning of 47 Fed. Reg. 30,234 col. 1 (July 13, 1982).

2. Not specific (vague, unparticularized) -- the contention is not sufficiently precise about what it really means, particularly when one asks what type of evidence would have to be presented to either support or refute the contention. In part vagueness is caused by the use of highly abstract words (such as the contention that "adequate" "medical services" are not provided for).

3. No basis -- there is no reason to believe that the contention is true, no "reasonable explanation or plausible authority."

   In particular, some of the new onsite contentions fail to specify evaluation criteria of NUREG-0654 that are not allegedly met. Since what the County is alleging to raise are offsite elements of the applicant's plan, it must specify a NUREG-0654 criterion, and one with an "X" in the "Licensee" column of the criterion.

4. Phase I issue -- these contentions could have been raised in Phase I.

5. County's own doing -- this is a shorthand for those contentions that amount simply to the proposition that the County refuses to give its consent. The basis for this objection is the Board's April 20 order, which indicated that the County must litigate the feasibility of offsite emergency planning and not artificial obstacles like the County's own refusal to cooperate.

6. Repetitive -- Repeats the substance of another new onsite contention.

7. Already settled -- The onsite security issue was resolved by a settlement agreement and is not now litigable.

C. The contentions

The contentions below have been rewritten by paring away excess words, but the words that remain are almost entirely the County's own. The numbering scheme too is the County's. Regulatory requirements and guidelines that are allegedly not met are in parentheses at the end of the contentions. In some cases the new onsite contentions refer to certain of the County's offsite contentions in the draft of June 23, 1982. In the objections below we have changed those references to conform to the more recent draft of July 7, 1983.

A.1 Authority to make decisions. LILCO does not have the authority under New York State law to make and implement decisions about public health and safety during a radiological emergency. (10 C.F.R. § 50.47(b)(5); 10 C.F.R. Part 50 Appendix E § IV.D.3; NUREG-0654 II.E.6.)

LILCO's Objections:

1. Not a low-power issue. Issues about offsite decisionmaking are not about an "offsite element of the applicant's emergency plan" within the meaning of 47 Fed. Reg. 30,234 (July 13, 1982). The fact that the onsite plan states that offsite organizations will notify the public does not make such notification an element of the onsite plan for low-power purposes. Likewise, the fact that NUREG-0654 II.E.6 says it is the applicant's responsibility to demonstrate that means of notification exist does not mean that such means are elements of the applicant's onsite plan. Obviously the contention calls for a "finding . . . concerning the state of offsite emergency preparedness." See 10 C.F.R. § 50.47(d) (1983).

2. Not specific. Does not specify what state law, if any, is violated.3/ The term "implement decisions" is vague and does not specify any act that is prohibited by law (see the "Repetitive" objection below).

3. County's own doing. The issue is created entirely by the County's refusal to cooperate.

4. Repetitive. People can make any kind of "decision" they want without violating the law; only if they take some action. and a law says they may not, do they run afoul of the law. The County really means that LILCO lacks legal authority, not to "make decisions," but to "implement" decisions by doing such things as activating the sirens and advising people to leave their homes. These functions are covered by contentions A.2 and A.3, and so A.1 is repetitive.

A.2 Authority to activate sirens. LILCO does not have the legal authority to activate the Prompt Notification System sirens.

LILCO's Objections:

1. Not a low-power issue. It would be hard to think of a more purely "offsite" issue than siren activation. NUREG-0654 II.E.6 recognizes the sirens as an offsite plan matter, for it says that State and local governments are responsible for activating them. In Diablo Canyon, which predated the low-power emergency planning regulation § 50.47(d), the Board authorized a 5% power license even though the sirens had not yet been installed. Pacific Gas & Electric Co. (Diablo Canyon Nuclear

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3/ The reference to the FEMA findings does not help, because FEMA's own term "necessary police powers" is too vague to make an admissible contention.

Plant, Units 1 and 2), LBP-81-21, 14 NRC 107, 131 (July 17, 1981), made effective with respect to Unit 1, CLI-81-22, 14 NRC 598 (Sept. 21, 1981). Obviously this contention calls for a "finding . . . concerning the state of offsite emergency preparedness."

2. Not specific. Does not specify any law that prohibits LILCO from activating the sirens. (However, offsite contention SC 1.F suggests that the County would cite N.Y. Penal Law §§ 190.25(3), 195.05 (McKinney) to correct this deficiency.)

3. No basis. Generally speaking, people in this country can do what they wish unless a law prohibits it. LILCO paid for and installed the sirens, and without more specificity (see above), there is no reason to believe there is any legal reason why LILCO may not sound the sirens in an emergency.

4. County's own doing. Since the County could give LILCO permission to activate the sirens, this contention is merely another way of saying the County refuses to cooperate. If Suffolk County were still not cooperating in emergency planning when an accident occurred, LILCO would request the County's permission to activate the sirens, and it is inconceivable that the County would refuse. So the contention is a sham issue.

A.3 Authority to use EBS. LILCO lacks authority to activate the emergency broadcast system (EBS).

LILCO's Objections

1. Not a low-power issue. Activating the radio warning system to alert the public is not an element of the applicant's (onsite) plan within the meaning of 47 Fed. Reg. 30,234 col. 1 (July 13, 1982).

2. Not specific. Does not specify any law that prohibits LILCO from using the EBS. (Judging from offsite contention SC 1.F, the County would cite N.Y. Penal Law §§ 190.25(3), 195.05 (McKinney) to correct this deficiency in the contention.)

   Does not specify any criterion of NUREG-0654, Planning Standard E, that is not met.

3. No basis. No reason to believe that lack of authority would hinder emergency response in a real emergency.

4. County's own doing.

A.4.a Too slow notification from Customer Service Office. Due to the "limitations of the LILCO Customer Service Office resources" (offsite contention SC 78) and the "inadequacies of the LILCO paging system" (offsite contention SC 80), the Director of Local Response can not be notified and the EOC activated in a timely manner. The time needed to notify and mobilize the LERO personnel necessary to make the decision to activate the sirens will prohibit [sic] their timely activation.

According to offsite contention SC 78, the limitations on the Customer Service Office at Hicksville are

- Too few staff (two operators on midnight shift, no back-up for on-duty dispatcher(s))
- Inadequate training
- Inadequate equipment to permit timely notification

According to offsite contention SC 80, the inadequacies of the LILCO paging system are

- It operates over too short a distance
- Batteries must be charged or replaced and tested periodically
- People with pagers may be ill or away on travel

- The pagers are activated by commercial telephones (refer to offsite contention SC 79)

- No means exist for determining whether the paged notification is received

LILCO's Objections:

1. Not a low-power issue. The contention says that once the offsite contact point (the Hicksville Customer Service Office) is contacted it will not in turn be able to contact all the offsite personnel who will be needed fast enough. But the "offsite element" reviewed for low-power purposes is communication to the first line of offsite authorities. This contention, on the other hand, is an issue about mobilizing emergency personnel after the initial communication from the plant. It is thus not one of the "offsite elements of the applicant's plan" referred to at 47 Fed. Reg. 30,234 col. 1 (July 13, 1982). (Note that Evaluation Criteria 3 and 4 of Planning Standard E in NUREG-0654 speak of messages "from the plant" and "from the facility.") Part of the rationale for limiting the low-power findings to the onsite plan is that there is a long time to put together an offsite response if necessary, so a contention that all the offsite personnel cannot be mobilized quickly enough rather clearly falls outside the low-power issues.

2. No basis for the part about notifying the Director. No reason to believe that the Director cannot be notified or in a timely manner. There is simply no reason to believe that it would take longer for LILCO to reach the designated LILCO Director, over whom LILCO has some control, than to notify Suffolk County personnel, over whom LILCO has no control. That is, the County claims that this contention is justified by the fact that

the County is no longer participating in emergency planning. But whatever could be done to notify the County could also be done to mobilize the LERO Director.

A.4.b Backup for sirens. If the sirens fail, LERO/LILCO personnel will be unable to provide backup notification in a timely manner.

LILCO's Objections:

1. Not a low-power issue. Means of notifying the public in case the sirens fail is clearly not an element of the applicant's plan.

2. Not specific. What is "a timely manner" for backup notification? What type of backup notification would the County think adequate?

3. No basis. No reason to believe that backup notification could not be provided in a timely manner.

4. Phase I contention. The County raised the issue of backup power to the sirens in Phase I. See Phase I Contention 2.B (Aug. 20, 1982), renumbered EP 1.B by the Board in the October 4, 1982 Appendix to the September 7, 1982 Supplemental Prehearing Conference Order.

A.4.c Sirens ineffective for transients and hearing impaired. The notification system does not provide adequate notification of an emergency to transients moving from outside to inside the EPZ or to people with impaired hearing.

LILCO's Objections:

1. Not a low-power issue. Whether the sirens are adequate for the hearing-impaired and for transients is not an element of the applicant's plan. Notifying the hearing-impaired was an issue put into Phase II by the Board. Prehearing Conference Order of July 27, 1982, at 8; see Tr. 7304. Obviously the contention calls for a

"finding . . . concerning the state of offsite emergency preparedness." See 10 C.F.R. § 50.47(d) (1983).

2. Not specific. What does the County think would provide adequate notification? The contention refers to an offsite contention, but that only confuses matters.4/ A different offsite contention (4.C-4(d)) in the June 23 draft questions LILCO's plan for registering the handicapped, but it is not cross-referenced in A.4.c. Absent a specific complaint about the registration plan, a contention that hearing-impaired people cannot hear sirens is immaterial.

3. No basis for the part about transients. No reason to believe that transients would not hear the sirens (though the contention may mean that transients will hear but not understand).

A.4.d Coast Guard. There is no assurance that the Coast Guard will receive timely notification of an emergency since LILCO relies on commercial telephone for such communications; moreover, the mobilization time required by the Coast Guard will prevent their timely notification of the public.

LILCO's Objections:

1. Not a low-power issue. The

4/ This is an example of a case where the multiple cross-references make the contentions almost impossible to deal with. The onsite contention A.4.c refers to offsite contention 9.C.1 in the June 23 draft but really means 8.C.1. It is difficult to trace 8.C.1 from the June 23 draft into the July 7 draft, though the first part of it has become SC 92. (SC 92 in turn references deficiencies noted in SC 78-82.) Finding the rest of the old 8.C.1 is difficult; SC 93 refers to persons with impaired hearing and people outside the EPZ, but it addresses radio broadcasts, not sirens. SOC 4 addresses alternate means of notifying the hearing-impaired.

Given all this, it is impossible to know what point the County is trying to make in new onsite contention A.4.c.

mobilization time of the Coast Guard is clearly not an element of the applicant's plan. Obviously the contention calls for a finding concerning the state of offsite emergency preparedness.

2. Not specific. What mobilization time does the County think would be adequate? (Judging from SC 96.B, the County would say less than 15 minutes.)

3. No basis for the mobilization time part.

4. Phase I issue. The part about LILCO's communications with the Coast Guard has not been changed by the County's nonparticipation. Phase I contention EP 15 (renumbered 11), sponsored by NSC but supported by SOC and Suffolk County, raised numerous issues about "communication with offsite national, state, and local response organizations." Contention EP 15.D (Aug. 20, 1982), renumbered EP 11.C in the Board's October 4, 1982 Appendix B, specifically challenged commercial telephones as the primary communications link to the Coast Guard. Also, Suffolk County signed a settlement agreement resolving Phase I issue EP 3 (ff. Tr. 14,719) by which LILCO agreed to add to its plan a paragraph about calling the Coast Guard. Among other things, the paragraph says this:

> Assistance [from the Coast Guard] is available twenty-four (24) hours a day by calling the contact phone number listed in the Emergency Plan Implementing Procedures. It is anticipated that the U.S. Coast Guard's maximum response time will be four (4) hours.

Finally, Phase I issue EP 3 in the Board's October 4 Appendix B alleged LILCO's failure to incorporate Federal response capabilities into the onsite emergency plan.

A.4.e LILCO's credibility. LILCO will not be considered by the public to be a credible source of information and therefore notification or EBS information may be disregarded.

LILCO's Objection:

1. Not a low-power issue. Whether the public will believe the sirens and radio warnings is not an element of the applicant's plan under 47 Fed. Reg. 30,234 col. 1 (July 13, 1982). The contention refers to communications by the onsite response organization to the public, not to elements of LILCO's onsite plan.5/

A.4.f Brochures not read. The LILCO information brochures will not be read or understood by the public.

LILCO's Objections:

1. Not a low-power issue. The contention calls for a finding on the state of offsite preparedness. In the San Onofre case the adequacy of the public brochure was apparently not decided as a low-power issue. Cf. 15 NRC 61 with 15 NRC 1163, 1204.

2. No basis. What reason is there to believe that the brochures will not be read or understood by the public?

B. No County facilities or personnel. Suffolk County will not permit LILCO to communicate through the Suffolk County emergency operations center in Yaphank and will not allow the County Department of Emergency Preparedness to implement the procedures of the various local agencies. (10 C.F.R. § 50.47(b)(5) and (6).)

5/ The issue of whether Long Island residents would obey instructions was raised by the County in Phase I contention EP 1.1(v) (Aug. 20, 1982). The contention was not admitted, the Board deeming it more appropriate for Phase II, if anywhere.

LILCO's Objections:

1. Not a low-power issue. The communications link to the County is the same as it has always been. If the County's contention is that it will not pick up the receiver, then it is not an onsite plan issue as contemplated by 47 Fed. Reg. 30,234 col. 1 (July 13, 1982). The contention does not question the communications from the plant to the first-line authorities, only those authorities' willingness to help. A finding on the state of offsite preparedness is called for.

2. Phase I issue. The dedicated phone system to the County's Yaphank center is the same as the one to the Hicksville LILCO office. If the County thought this system inadequate, it should have litigated it in Phase I.

2. County's own doing. This is simply the contention that the County will not cooperate. The contention ignores the LILCO Transition Plan, which substitutes LILCO personnel and facilities for those of Suffolk County. If the County resources mentioned in the contention were needed, LILCO would ask the County to use them, and it is inconceivable that the County would refuse if there were a real radiological emergency.

C. Training. Suffolk County Police Department personnel expected by LILCO to respond onsite to a security incident have not received radiological emergency response training. (§ 50.47(b)(15); NUREG-0654 §§ II.O.1.b, II.O.3.d [sic6/])

LILCO's Objections:

1. Not a low-power issue. The first

6/ The County cites 3.d but may mean 4.d of Planning Standard O.

NUREG-0654 criterion cited by the County, II.1.b (apparently this refers to section 1.b of Planning Standard O), does not have an "X" in the "Licensee" column. The training of police is obviously a matter for a finding on the state of offsite preparedness.

2. Phase I issue. The training of police expected to respond onsite, as the new onsite contention puts it, was ripe for adjudication in Phase I. (By comparison, the County both put forth contentions and submitted testimony about traffic conditions making it difficult for emergency personnel to respond to the site. See Direct Testimony of Andrew C. Kanen (Oct. 12, 1982); see also Suffolk County's Response to LILCO's Motion for Summary Disposition of EPs 2B, 5B and 7B (Nov. 19, 1982). LILCO's written testimony and its Motion for Summary Disposition of November 9, 1982, addressed police reporting to the site, even though Suffolk County chose to concentrate on fire trucks and ambulances.

   The settlement agreement for Phase I issue EP 6 (ff. Tr. 14,719), signed by the County, addressed training of offsite agencies, namely fire and ambulance personnel.

3. County's own doing. This is simply the contention that the County will not cooperate. LILCO is ready to provide any necessary training to the police, and if police lack training, it is because the County wants them to lack training.

4. Already settled. Training of police in radiological emergency response is a matter covered by the security settlement agreement. Further, contrary to the contention, police department personnel have already undergone radiological emergency response training.

D. Emergency Operations Center. Suffolk County will not allow the Suffolk County Probation Building in Yaphank to be used as the Emergency Operations Center; LILCO's alternate EOC in Brentwood has not yet been established. In the absence of an operational EOC, LILCO is unable to:

1. Notify local response organizations and emergency personnel.

2. Notify and instruct the populace.

3. Communicate among principal response organizations to emergency personnel to the public.

4. Disseminate coordinated information to the public. (§ 50.47(a)(8); see NUREG-0654 II.H.3.)

LILCO's Objections:

1. Not a low-power issue. The relevant evacuation criterion in NUREG-0654, II.H.3, has no "X" in the "Licensee" column. Therefore this contention does not involve an "offsite element of the applicant's emergency plan" within the meaning of 47 Fed. Reg. 30,234 col. 1 (July 13, 1982). Obviously a finding on the state of offsite preparedness is being called for.

2. No basis. No specific shortcoming in the Brentwood EOC is stated. That the substitute LILCO EOC at Brentwood is not now operational is immaterial, so long as it is operational by the time it may be needed.

   An analogous Phase I contention asserting that LILCO's Technical Support Center would not be completed by fuel load (EP 24) was ruled inadmissible for lack of basis. Supplemental Prehearing Conference Order (Phase I - Emergency Planning) 63-64 (Sept. 7, 1982).

3. County's own doing. The first part of the contention is merely the assertion that the County will not allow its facility to be used as the EOC.

E. Communications. Suffolk County will not allow LILCO to use the communications systems of the Suffolk County Police Department, the Department of Fire Safety, and the Department of Emergency Preparedness. LILCO's alternative communication system is inadequate because (§ 50.47(b)(6)):

LILCO's Objections:

1. Not a low-power issue.

2. County's own doing.

E.1. Customer Service Office. The LILCO Customer Service Office does not have adequate resources to notify necessary personnel in a timely manner.

LILCO's Objections:

1. Repetitive. As a general matter, contention E appears to be repetitive of B and D. New onsite contention A.4.a covers the "limitations" of the LILCO Customer Service Office "resources." If the "inadequate" "resources" cited in E.1 are different from the "limitations" in "resources" cited in A.4.a, the difference is not apparent; both A.4.a and E.1 cross-reference offsite contention SC 78.

2. Same objection as to A.4.a:

Not a low-power issue.

E.2. LILCO communications system. The LILCO communications system does not assure prompt notification of key LILCO/LERO personnel.

LILCO's Objections:

1. Repetitive. Appears to refer to the same alleged inadequacies of the paging system as A.4.a; both A.4.a and E.2 refer to offsite contention SC 80.

2. Same objection as to A.4.a:

Not a low-power issue.

E.3. Commercial phone lines. Notification of emergency personnel by a commercial nondedicated phone line will not be feasible during an emergency.

LILCO's Objections:

1. Not a low-power issue. As the reference to offsite contention SC 81 makes clear, this contention addresses communications to emergency personnel after the initial offsite communication has been made. It obviously calls for a finding on the state of offsite preparedness.

2. Phase I issue. The inadequacies of commercial phone lines in an emergency were raised during Phase I. Indeed, the Board admitted EP 15.A and 15.D (renumbered 11.A and 11.C), which dealt with alleged inadequacies of commercial phones. Order of Sept. 7, 1982 at 49, 50.

   A settlement agreement for Phase I issue EP 11(E) (ff. Tr. 14,719) addresses the contention that personnel alerted by pagers would not be able to call in because commercial phone lines would be overloaded. The agreement was that these personnel would be trained to report to their emergency posts if they found the phone lines overloaded.

E.4. Training and number of communicators and communications repairmen. There is no assurance that personnel will be adequately trained or that there will be an adequate number of communicators and repair technicians to enable the proposed communications system to operate.

LILCO's Objections:

1. Not a low-power issue. Judging from the cross-reference to offsite contentions SC 84 and SC 85, this contention appears to say that offsite communications, following initial notification from the plant, will be inadequate. The contention thus does not address elements of the applicant's plan as contemplated by 47

Fed. Reg. 30,234 col. 1 (July 13, 1982), but rather calls for a finding on the state of offsite preparedness.

2. Phase I issue. Most issues about LILCO communications and repairmen could have been raised in Phase I. For example, a settlement agreement for Phase I issue EP 12(A) (ff. Tr. 14,719) agreed to provide seven communicators in the Emergency Operations Facility instead of only three.

E.5. Back-up frequencies and compatibility of LILCO's radio system. There are no backup frequencies for LILCO's Emergency Radio System; moreover, LILCO's Emergency Radio System will not be compatible with the radio communications equipment used by hospitals and ambulance, fire and rescue vehicles, also relied upon by LILCO for assistance in an emergency.

LILCO's Objections:

1. Not a low-power issue. If the contention refers to communications from offsite facilities to hospitals etc., it is not an element of the applicant's plan as contemplated by 47 Fed. Reg. 30,234 col. 1 (July 13, 1982), and it does call for a finding on the state of offsite preparedness.

2. Phase I issue. If the contention addresses communications from Shoreham to ambulances etc. responding to the site, it clearly could have been raised during Phase I. Of the Phase I contentions, EP 2.B and 5.B addressed whether ambulances and other emergency personnel would be able to make it through congested traffic. LILCO's pleadings and testimony addressed radio communications with ambulances. See Testimony of Nicholas J. DiMascio . . . on . . . EP2(B) at 8 (Oct. 12, 1982); LILCO's Motion for Summary Disposition of the Traffic Congestion Issues (Nov. 9, 1982). Contention 15.G in the Phase I contentions of August 20, 1982, which was not admitted for lack

of basis, addressed coverage and load capacity of UHF and VHF radio-based stations, and EP 15 (subsequently renumbered EP 11) covered other issues about communications with offsite organizations.

E.6. Transfer points. LILCO's proposal to relay command and control communications to field personnel through transfer points will not work.

LILCO's Objection:

1. Not a low-power issue. The contention addresses communications between the offsite field personnel and the offsite EOC. It thus clearly does not address an element of the applicant's plan as contemplated by 47 Fed. Reg. 30,234 col. 1 (July 13, 1982), and it does call for a finding on the state of offsite preparedness.

E.7. Communications equipment for LILCO field personnel. Many LILCO field personnel will not be equipped with necessary communications equipment.

LILCO's Objections:

1. Not a low-power issue. This contention addresses communications between offsite "field personnel" and the offsite EOC. It is not an element of the applicant's plan as contemplated by 47 Fed. Reg. 30,234 col. 1 (July 13, 1982).

2. Not specific. What "LILCO field personnel"? Are these different field personnel from the ones that would be in the field if the County were participating?

3. Phase I issue. If the "field personnel" are the ones called for in the onsite plan, then this could have been litigated in Phase I. For example, the County raised and settled a Phase I issue, EP 10.A, about the number of field monitoring teams.

E (continued) The absence of an EOC exacerbates the communications deficiencies.

LILCO's Objection:

1. Repetitive. This is redundant of contention D.

F. Identification of offsite response organizations. Suffolk County will not implement an offsite plan or agree to allow the basement of the Suffolk County Probation Building to be used as the EOC; LILCO does not have the authority to perform many of the functions essential to an effective and implementable offsite response. (§ 50.47(b)(3)7/.)

LILCO's Objections:

1. Not a low-power issue. The contention that the offsite organization lacks legal authority is not an "offsite element of the applicant's plan" as contemplated by 47 Fed. Reg. 30,234 col. 1 (July 13, 1982). The contention calls for a finding on the state of offsite preparedness.

2. County's own doing. The contention amounts to nothing more than the assertion that Suffolk County refuses to participate.

3. Repetitive. The contention has two parts. The first part says that Suffolk County will not participate. The second part says LILCO lacks authority to substitute for Suffolk County. The first of these parts is repetitive of new onsite contentions B, D, E, and F, plus several offsite contentions. The second part about LILCO's authority is repetitive of new onsite contentions A.1 through A.3, B, D, and E, plus several offsite contentions. Indeed, the

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7/ The County also cites 10 C.F.R. § 50.47(b)(1), but this is not one of the "offsite elements" reviewed before a low-power license is issued. See 47 Fed. Reg. 30,234 col. 1 (July 13, 1982). NUREG-0654 II.A.1.a, b, and c, cited "see also" by the County, elaborate on § 50.47(b)(1).

contention references all the other new onsite contentions (A through E).

4. Not specific. Probably because the contention is so repetitive, the County does not bother to specify what "essential functions" cannot be performed, unless one counts the reference to all the other new onsite contentions. Nor does the contention cite any NUREG-0654 Planning Standard C evaluation criterion that is allegedly not met.

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322 (OL)

I hereby certify that copies of LILCO's Answer Opposing the Suffolk County Motion for Leave to File Contentions Regarding Onsite Emergency Preparedness were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by Federal Express.

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DATED: July 8, 1983