UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '83 SEP -6 A11 :03

Before the Atomic Safety and Licensing Board

In the Matter of	
LONG ISLAND LIGHTING COMPANY	Docket No. 50-322-OL-3 (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	

SUFFOLK COUNTY OBJECTION TO
SPECIAL PREHEARING CONFERENCE ORDER

On August 19, 1983, this Licensing Board issued a Special Prehearing Conference Order (the "Order"), which contained rulings on admissibility of emergency planning contentions and established a schedule for emergency planning discovery and other matters. The Order was served, by mail, on August 22, 1983. Pursuant to 10 CFR § 2.751a(d), Suffolk County hereby objects to those portions of the Order which deal with the admissibility of Revised Emergency Planning Contentions 12, 13, 22, 26.B, 35-38, 43, and 85.1/ The County's objections are set forth by contention below.

1/ On August 23, 1983, the County filed an Objection to the portion of the Order dealing with scheduling. The Board ruled on that scheduling Objection in a Revised Prehearing Conference Order, dated August 30, 1983. In the instant filing, the County addresses 10 of the contentions which were denied admission by the Board. The County continues to oppose the Board's rulings on the other contentions which were not admitted but does not address those other contentions in this filing since the arguments relating to them have already been set forth in the County's previous filings.

Contention 22

The Board denied admission to parts A, B and C of Contention 22 by citing the San Onofre decision,2/ and concluding that Intervenors improperly "seek to challenge the 10-mile radius rule for a plume EPZ." Order at 11. The County objects to this Board ruling because it mischaracterizes the contents of Contention 22 and misapplies the San Onofre case.

In Contention 22, Suffolk County challenges LILCO's compliance with the regulatory mandate that specified "local conditions" be considered in establishing the "exact size and configuration" of the EPZ. Among those specified local conditions are "demography, topography, land characteristics, access routes, and jurisdictional boundaries." 10 CFR §50.47(c)(2). The fact is that LILCO has not considered those specified local conditions in defining the EPZ. There is no basis for this Board to deny Suffolk County the right to put into controversy whether the "exact size and configuration" of the EPZ proposed by LILCO has been "determined in relation to local emergency response needs and capabilities as they are affected by" such specified local conditions. Suffolk County

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2/ Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-9, 15 NRC 1163 (1982).

contends, and again hereby offers to demonstrate, that the very local conditions mandated by Section 50.47(c)(2) have not been used by LILCO to define the EPZ. In short, Contention 22 merely tracks the explicit requirements of an NRC regulation. The County is at a loss to understand the basis for this Board's refusal to hear the evidence of LILCO's failure to comply with the explicit requirements of that regulation.

In denying the admission of Contention 22, the Board is ruling that it will make its decision on the "exact size of configuration" of the EPZ without considering the actual local conditions on Long Island -- that is, "such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." In other words, the Board is ruling that it will make its decision on the exact size and configuration of the EPZ without taking into account the very considerations required by the regulation. With due respect, Suffolk County submits that such a Board ruling constitutes a per se violation of the regulations.

There would seem to be no more legitimate contention possible for this Board to admit than a contention which puts into factual controversy whether an applicant has complied with regulatory requirements. The County is not contending that LILCO should not consider local conditions in defining the EPZ. Such

a contention would be a challenge to Section 50.47(c)(2). Instead, the County is asking LILCO to comply with Section 50.47(c)(2). How can a demand by Suffolk County for LILCO to comply with an NRC regulation possibly be a challenge to that regulation? It obviously cannot, and that is where the Board has erred in its ruling which rejects Contention 22.

Local conditions -- such as the winds, topography, the Long Island road network, and population density (particularly during summer peaks) -- and local emergency response needs and the limited capabilities of LILCO's proposed emergency response force are by law the central factors necessary to determine the "exact size and configuration" of the EPZ. Suffolk County now wishes to present evidence to prove what these factors mean in the context of a radiological emergency at Shoreham. But, the effect of the Board's ruling is to preclude even this opportunity to present evidence regarding the real world local conditions on Long Island. The County submits that this ruling is inconsistent with Section 50.47(c)(2), which mandates that the exact size and configuration of the EPZ must be determined in relation to such emergency response capabilities and local conditions. Thus, the Board should reconsider its Contention 22 ruling and admit the Contention.

Further, it is important for the Board to grasp fully what Parts A, B, and C of Contention 22 allege. Contrary to the implication in the Board's Order, which suggests that all three parts concern local conditions that are either not listed in 10 CFR §50.47(c), or that are "found in local PRA's" (Order at 11), parts A, B and C of Contention 22 each allege different, although related, reasons for Intervenors' belief that the LILCO plume exposure EPZ is contrary to regulatory requirements.

Part A focuses primarily on the health consequences of a Shoreham accident. The County's concern for health consequences is not an attempt to redo the NRC's emergency planning rule. Rather, this portion of the contention brings to the Board's attention specific local conditions which will result in the health consequences of a serious Shoreham accident being experienced over a larger area than in many circumstances. The local conditions of concern in Part A include one factor explicitly listed in 10 CFR §50.47(c)(2) --i.e., local topographic conditions -- as well as other local conditions which, while not explicitly named in Section 50.47(c)(2), are clearly of the same type as those which are named -- i.e., local meteorological and wind conditions. Part A is also based on other Shoreham-specific conditions (e.g., fission product release characteristics and probabilities) that

are factors considered in the site specific consequence analysis performed on behalf of the County using data from a Shoreham-specific PRA. Thus, while Part A does consider certain factors "found in local PRA's," it also considers other factors that are well within the explicit scope of Section 50.47(c)(2). The critical point is that Part A puts into controversy actual local conditions, which is precisely what Section 50.47 contemplates.

Part B of Contention 22 focuses primarily on the need for an EPZ designed to reflect actual local conditions in order to provide an adequate response base to permit ad hoc expansion of response efforts, which may be necessary in a Shoreham emergency. It is based upon several of the local conditions expressly included in Section 50.47(c)(2) -- i.e., demography, topography, land characteristics and access routes -- as well as the essential fact that the emergency response for a Shoreham emergency will be provided by LILCO, rather than by a governmental entity.

What could be more of a "local condition" affecting emergency response capabilities than the fact that the entire emergency response organization is not a government, but is the utility itself? What could be more in need of assessment by this Board than the "capabilities" of that utility emergency

response organization as they are affected by the actual local conditions specified in Section 50.47(c)(2)? These are not mere rhetorical questions. They are the meat of essential issues that are raised by Section 50.47(c)(2), which directs this Board to permit litigation of "local emergency response needs and capabilities."

The central fact that a private corporation is responsible for the entire emergency response under the LILCO Plan cannot be ignored by this Board in making the findings required under Section 50.47. In addition, the Board itself indicated that the facts listed in Part B concerning emergency response needs of residents of the East End of Long Island would be pursued in this hearing. See Order of March 15, 1982 at 25. The effect of the Board's rejection of Contention 22 is to reverse its earlier March 15, 1982 Order.

Part C of Contention 22 focuses on voluntary evacuation by persons living outside the 10-mile EPZ. Its allegation that an EPZ larger than 10 miles is necessary is based on some of the local conditions expressly stated in Section 50.47(c)(2) -- i.e., demography, land characteristics and access routes -- which result in voluntary evacuation adversely affecting the ability of persons inside the 10-mile EPZ to take necessary or recommended protective actions. It also deals with "local

emergency response needs and capabilities" which are explicitly called out in Section 50.47(c)(2).

The Board states the basis for its blanket ruling that in parts A, B and C of Contention 22 Intervenors "seek to challenge the 10-mile radius rule" as follows:

> Local conditions which can affect the size and configuration of an EPZ are listed in 10 CFR §50.47(c). We cannot broaden the regulation to permit introduction of evidence of site-specific conditions such as those found in local PRA's.

The Board has mischaracterized the County's Contention 22. Suffolk County does not ask this Board to "broaden" anything in this proceeding, let alone an NRC regulation. All that Suffolk County asks is that this Board apply the NRC's regulation -- in this case Section 50.47(c)(2), which specifically requires this Board to assure that the "exact size and configuration" of the EPZ be defined as such size and configuration are affected by expressly listed local conditions.

Furthermore, the County believes the Board is in error in ruling that only the specific local conditions expressly referenced in Section 50.47(c)(2) can be considered by the Board. Section 50.47(c)(2) sets forth the method by which the exact size and configuration of the EPZ surrounding a particular nuclear power reactor "shall be determined." (emphasis added).

The determination shall be "in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." (emphasis added). The use of the term "such as" indicates that the listed items are demonstrative only and not all-inclusive. It is in keeping with the settled legal principal of interpretation, ejusdem generis. The reference to "local emergency response needs and capabilities" clearly encompasses such matters as the capability of LILCO's LERO organization to expand the emergency response on an ad hoc basis (as discussed in Parts B and C of Contention 22), and the need to deal with the emergency response needs of East End residents and persons within 10 miles of the plant who will be unable to evacuate because of congestion caused by voluntary evacuees (as discussed in Parts B and C).

The County also disagrees with the Board's statement that Section 50.47(c)(2) was adopted "to preclude" a case-by-case consideration of the extent of a plume EPZ. See Order at 11. Section 50.47(c)(2) expressly states precisely the opposite: "the exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography,

land characteristics, access routes and jurisdictional boundaries." 10 CFR §50.47(c)(2) (emphasis added). The Board's reasoning, which would preclude a hard look at local conditions and local emergency response needs and capabilities, renders the section devoid of meaning.

Nor does the County agree that the San Onofre opinion cited by the Board leads to the conclusion that Parts A, B and C of Contention 22 constitute an impermissible challenge to the regulations. First, unlike Contention 22, the San Onofre intervenors' contention stated that a 20-mile EPZ was necessary for that plant. Contention 22, on the other hand, alleges that LILCO's 10 mile EPZ is inadequate because the regulatory requirement of applying local conditions has not been met and that the "exact size and configuration of the EPZ" should be fixed to account for the local conditions upon which evidence will be presented, including the limitations on ad hoc expansion of LILCO's emergency response capabilities. The determination as to the exact size and configuration of the EPZ adjustment that is justified by the evidence is for the Board to make. The County will make its case predicated upon the actual local conditions which LILCO has ignored and which this Board must now consider under Section 50.47.

Second, the San Onofre Licensing Board stated that the Section 50.47(c)(2) reference to "an area about 10 miles . . . in radius" is mandatory language, clearly precluding an EPZ of "20 or more miles." San Onofre at 1181 (cited in Order at 11). The San Onofre Board further stated, however:

> [The regulation] would clearly allow leeway for a mile or two in either direction, based on local factors.

Id. The County disputes that definition of "leeway" as "a mile or two,"; there is no basis for an arbitrary cut off at those points if adverse effects on public health and safety can be demonstrated elsewhere because of actual local conditions. If this Board does decide to adhere to the arbitrary confinements of San Onofre, Contentions 22A, B, and C should still not be denied admission. Rather, these parts are admissible, although limited to an area of 1-2 miles beyond the 10 EPZ mile radius proposed by LILCO. The critical question, however, is whether this Board could refuse to look at the effect of an actual local condition on the public which resides 3 or 4 or even more miles beyond the radius of Shoreham.

Moreover, this issue raised in Contention 22 was not addressed is San Onofre. The County is not here asking this Board to go beyond a regulatory provision. The County, instead, is asking the Board to apply the precise language and

import of the "local conditions" requirement of Section 50.47(c)(2).

Suffolk County merely seeks the opportunity to present evidence of local conditions and local response needs and capabilities, necessary to define the "exact size and configuration" of the EPZ. Should this Board wish to reword Contention 22, the County will of course assist in any way requested. Indeed, this matter is too important to public safety for it to be foreclosed from consideration.3/

Contention 12

The Board denied admission of Contention 12, stating the following reason:

> We find no basis to support the allegation that LILCO personnel "will not be able to exercise proper or effective command and control" of emergency response "because LILCO personnel will not be adequately familiar with the site specific contentions [sic] in Suffolk County.

3/ The County further submits that the Board's apparent rationale for denying admission of parts A, B and C of Contention 22 is inconsistent with its ruling admitting Part D of the Contention. The County believes the Board was correct in admitting Part D. It notes, however, that if it is proper for the Board to consider the local conditions necessitating the definition of the EPZ boundaries to include entire municipalities, it is also proper for the Board to consider the local conditions discussed in Parts A, B and C which similarly necessitate consideration in fixing the EPZ boundaries.

Order at 5. The County objects to this ruling because contrary to the implication in the Board's statement, Contention 12 in fact explicitly sets forth multiple bases and, indeed, meets the basis requirement of 10 CFR §2.714 and the bases standards of the Appeal Board.

First, the multiple bases for Contention 12 are set forth in detail in the contention -- in portions not quoted in the Board's ruling. Thus, assuming that the excerpts quoted by the Board in the Order correctly state the central allegation of the contention, the Board's conclusion that Intervenors state "no basis" to support that allegation is incorrect. In fact, the following factual assertions -- bases for the contention -- are explicitly set forth in Contention 12:

-- "Familiarity is essential [with respect to] the County's geography, topography, road network, demography, and the locations, characteristics and capacities of schools and other institutions and volunteer organizations"

-- "It is . . . essential that LILCO personnel be familiar with the legal and jurisdictional limitations of . . . entities who may assist or participate in response to a Shoreham emergency."

-- "Familiarity with, and complete understanding of, such facts and conditions are essential to the effective management and coordination of emergency response."

-- "Those in command and control positions must be able to make prompt and informed decisions dealing with circumstances and

events that may not be contemplated or specifically provided for in a written emergency plan."

-- "Many of the command and control personnel do not reside or work in the Shoreham vicinity . . . ."

-- "Familiarity [with local conditions] can[not] be taught to LILCO personnel, because the essential knowledge can only be obtained if classroom training is reinforced by day-to-day responsibility and experience . . . ."

-- "LILCO personnel do not have such training or experience."

-- "LILCO command and control personnel will not be aware of how the various entities, institutions, organizations and the population operate and interact with each other on a day-to-day basis or in an emergency situation. . . ."

Thus, the bases for the allegation that LILCO personnel will be unable to exercise proper or effective command and control because they will not be adequately familiar with specific conditions in Suffolk County are set forth in detail in Contention 12 itself. If the Board disagrees, it should explain precisely why the foregoing data do not meet applicable basis requirements. A mere general statement that insufficient basis is given does not in fact constitute a proper ruling when viewed in the context of the detailed factual assertions which are given.

Second, since the bases for Contention 12 are in fact set forth, the Board's ruling appears to be, in effect, a ruling on the factual assertions contained in Contention 12. Thus, in light of the numerous factual assertions (quoted above) which underlie the contention, the Board's comment that it can "find no basis to support the allegation" seems to be a statement of the Board's disagreement with, or disbelief of, the assertions in the contention.

It is well established that intervenors are not required "to detail the evidence which will be offered in support of each contention"; indeed, it is sufficient to meet the basis requirement if intervenors state their intention to introduce evidence to support the factual assertions contained in a contention. Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). See also, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980). For example, in Allens Creek, a contention that inadequate consideration had been given to a marine biomass farm as an alternate energy source was held to have been stated with sufficient basis when the only reason (i.e., the basis) stated in the contention was the intervenor's assertion that such a farm would be environmentally preferable. Id. at 544-48. In Contention 12, Intervenors stated one general reason in support of

the contention that LILCO personnel will be unable to exercise proper and effective command and control -- that they will not be adequately familiar with specific local conditions. That contention, standing alone, satisfies the basis requirement. In addition, however, Intervenors went beyond the minimal legal requirements by stating several reasons in support of the factual assertion that the LILCO command and control personnel will lack necessary familiarity. Moreover, the County intends to present evidence to support each of the assertions contained in Contention 12.

As both Grand Gulf and Allens Creek hold, a Licensing Board, in ruling on admissibility of contentions, is not permitted to consider the correctness of factual assertions which are set forth in the contention. The correctness of factual assertions is to be determined on the merits, either by way of summary disposition or at trial. This Board's ruling on Contention 12 appears to rest on the Board's view of the merits of the factual assertions contained in Contention 12, and therefore is not a proper application of the basis requirement.4/

4/ In addition, the County notes that based upon its preliminary review of materials obtained through initial discovery, there is additional reason to support Contention 12. Of approximately 60 LERO command and control personnel, only one (a Sanitary Support Coordinator) lives or works in the EPZ. Indeed, the vast majority of them (approximately 51) work over thirty miles from the plant; approximately half live between 14 and 30 miles from the plant, and the other half live over thirty miles from the plant.

Contention 13

The Board denied the admission of (what it described as) "the first portion" of Contention 13 for lack of basis and for inadequate specificity. See Order at 5. The County objects to the Board's ruling for reasons similar to those set forth above with respect to Contention 12. The Board ruling to which the County objects concerns the following portion of Contention 13:

> Contention 13. The LILCO Plan assigns to LILCO employees the responsibility of command and control over the personnel in the non-LILCO support organizations relied upon in the Plan for performing emergency response functions. Such organizations are the American Red Cross ("ARC"), Brookhaven National Laboratory ("BNL"), local law enforcement agencies, ambulance, fire and rescue organizations, the Long Island Railroad ("LIRR"), the Salvation Army, voluntary groups such as churches and industries, and an unnamed lumber company. (See OPIP 2.1.1; Plan at 2.2-2, 2.2-4, 4.2-1; Appendix A at IV-82, IV-186-7). LILCO's attempt to exercise such authority conflicts with the normal chains of command, assignment of responsibilities, and internal operating procedures according to which these organizations function. For example, support organizations have their own plans and procedures which may differ significantly from the LILCO Plan and its implementing procedures. In addition, some local law enforcement officers and firefighters will decline to implement any Plan which is not the Plan of the local government (i.e., Suffolk County). Therefore, there is no assurance that the procedures set forth in the Plan, or other procedures that may be ordered by LILCO

> personnel during an emergency, will be followed by non-LILCO employees, particularly in the event that the support organization supervisors or the individual emergency workers decide that a different procedure would be better or more appropriate in a given situation.
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> * * *
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> As a result, emergency response personnel, particularly those not employed by LILCO, may refuse to obey the command and control directives of LILCO employees, and thus may not carry out tasks and responsibilities assigned to them under the LILCO Plan.5/

In making its lack of basis ruling, the Board has overlooked the contents of Contention 13, and has improperly applied the basis requirement. First, the essence of Contention 13 is that with LILCO employees in command and control positions, there is no assurance that non-LILCO support organizations will carry out the tasks and responsibilities assigned to them under the LILCO Plan. The bases for that contention are several, and are specifically set forth in the contention:

5/ It is not clear from the Order precisely what the Board intended to cover with its ruling as to "the second portion" of Contention 13, to which the County does not separately object herein. The County assumes, however, that it applies to only the first sentence of the second paragraph of the contention. The second sentence of that paragraph is a conclusion which applies to the allegations contained in the first paragraph of the contention as well as those relating to indemnification.

-- LILCO's attempted exercise of authority over personnel in such organizations conflicts with the normal chains of command and assignment of responsibilities according to which the organizations function.

-- Emergency response organizations have their own emergency plans and procedures which differ significantly from the LILCO Plan and procedures.

-- Certain non-LILCO personnel (i.e., local law enforcement officers and firefighters) will refuse to implement a plan that is not sponsored by the local government.

-- If supervisors of non-LILCO organizations, or individual personnel, decide that a particular procedure or action would be appropriate, a contrary order from a LILCO command and control person would not be obeyed.

The County intends to introduce evidence in support of each factual assertion recited above and in Contention 13; an intervenor is under no obligation to detail such evidence in the contention itself. See Allens Creek and Grand Gulf, cited in the discussion of Contention 12 above. Contention 13 thus meets the basis requirement. Again, if the Board disagrees, it should explain precisely why the detailed factual assertions and other data set forth in the contention are insufficient to meet the NRC's basis requirements.

Second, the County submits that Contention 13 also meets the specificity requirement of 10 CFR §2.714, as that requirement has been interpreted by the Appeal Board. The purpose of

the specificity requirement is "to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose." Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). Contention 13 makes clear precisely what Intervenors intend to prove at the hearing; certainly, other parties are aware of what they must defend against or oppose in that contention. The non-LILCO organizations and personnel to which the Contention refers are identified, as are the precise portions of the Plan and procedures which indicate LILCO's reliance on such organizations. The County is at a loss to fathom how the other factual assertions contained in the contention could have been stated with more specificity without, in essence, including detailed testimony in the contention. The County submits, therefore, that the notice requirement of pleading with specificity has been met in Contention 13. See Grand Gulf, 6 AEC at 426; Allens Creek, 11 NRC at 548-49.

Contention 26.B

The Board denied admission Contention 26.B with the following ruling:

> The subject matter of this sub-contention is the alleged inadequacy of nondedicated commercial telephone lines for notification of emergency response

> personnel. Contention EP 11 specifically addressed this issue during Phase I of this proceeding; that contention was dismissed. . . . We will not relitigate issues which were raised in Phase I.

Order at 15-16. The County objects to this ruling because the express limitations on the scope of Phase I made it impossible to have litigated previously the matters raised in Contention 26.B. In addition, even assuming that certain matters in Contention 26.B were within the scope of Phase I Contention EP 11, the impact of such matters on offsite emergency preparedness could not have been litigated during Phase I.

To put the Board's ruling in proper context, Phase I Contention EP 11 is set forth below:

> The [LILCO on-site] Plan relies completely for communication with off-site national, state and local response organizations upon telephone communications (e.g. 7.2.1 through 7.2.8) and on a low powered UHF Radio Based Station with a VHF Radio Based Station (7.2.10). It fails to meet the criteria of 10 CFR 50.47(b)(2)(5)(6), 10 CFR 50 Appendix E, IV Paras D(3) and E(9) and NUREG 0654, Appendix 3, para C(1), in the following respects:
>
> A. Insofar as the [LILCO on-site] Plan relies on telephone communications (7.2.1 through 7.2.8), it does not take into account the possibility of (1) a power outage, (2) sabotage and (3) overload. This omission is especially significant because the [LILCO on-site] Plan describes the Hotline as the "primary means for notification of the State and County of emergency conditions at Shoreham." (7.2.1; see also 5.4).

B. Assuming that the telephone communications depend upon overhead, outdoor lines (there is nothing to the contrary in the [on-site] Plan), the telephone communication network is vulnerable to extreme weather conditions, especially to sleet and ice formations on its lines and poles.

C. The [LILCO on-site] Plan relies on commercial telephone lines as "the primary communication link" for hospitals, Coast Guard, and DOE (7.2.4). These lines will become overloaded in an emergency, thus preventing communication with these vital offsite organizations.

D. The [LILCO on-site] Plan does not describe the "redundant power supplies" (7.2) which purportedly insure communications with off-site facilities. NSC understands a "power supply" to mean the source of the power to maintain the communications systems and not the different communication modes and systems.

E. The personnel to whom beepers are issued have varying responsibilities to notify response organizations. However, the beeper requires them only to call in to predetermined numbers (7.2.9), using commercial telephone lines.

F. The [LILCO on-site] Plan describes the National Alert Warning System (NAWAS) as the "primary back-up communications link between the Shoreham site and off-site officials." (7.2.3) It does not otherwise describe NAWAS and therefore it is impossible to determine if it can perform its assigned task. For example, there is no description of its load capacity, coverage, or technical configuration; nor does it name the "off-site officials" and their agencies who are linked to NAWAS.

Appendix B to September 7, 1982 Supplemental Prehearing Conference Order (Phase I -- Emergency Planning), October 4, 1982, at 11-14 (footnotes omitted).

The offsite response organizations discussed in EP 11 were expressly limited to those required or expected to report onsite in the event of an emergency. See Tr. 747-48 (April 14, 1982, Brenner) ("What we believe could be litigated now would . . . include the arrangement of assistance resources needed onsite by the licensee . . . . That is for the onsite operations that would need to take place in an emergency"). Moreover, in its Prehearing Conference Order of July 27, 1982 at 11, the Board specifically stated that EP 11 should focus upon LILCO's ability to notify "the first line of authorities" of an accident. Therefore, despite the use in EP 11 of the broad term "offsite response organizations," a proper reading of that contention in the context of Phase I limitations is that it in fact dealt with notification of Federal, State and County officials, and the few offsite organizations (such as a hospital) that could be required to respond onsite.6/

6/ See, e.g., first sentence of EP 11 ("national, state, and local response organizations" -- in context, "local response organization" means Suffolk County); second sentence of part A ("State and County"); first sentence of part C ("hospitals, Coast Guard, and DOE"); and part F (National Alert Warning System as a link to "offsite officials and their agencies").

Clearly, EP 11 did not address the issue of notification of the personnel required or expected to provide the offsite response to an emergency. To have done so at the time of the Phase I litigation would have meant litigation of the methods used by the various Suffolk County agencies to notify their personnel (for example, the County Police, County Emergency Preparedness personnel, and County health personnel). Indeed, footnote 1 of EP 11 explicitly referenced the need to file separate contentions concerning the Suffolk County response after the offsite response plan became available. Thus, the Phase I contention did not address, and in fact could not at that time have addressed, the notification of the offsite response personnel who are the subject of parts 3-5 of Contention 26.B.

Further, the limited offsite communication issue that was addressed in EP 11 -- that is, the effect of commercial telephone overload or unavailability on the notification of the first line of authorities and those few organizations expected to report onsite -- was not, and could not have been, presented in the context of the circumstances which exist now and are asserted in Contention 26.B. First, as noted above, the notification in question during Phase I was strictly limited to the first line of authorities and the organizations expected to respond onsite. In Phase II, however, the notification issue

involves much, much more, including: (a) the marshalling of almost the entire LERO organization (approximately 1600 persons); (b) the notification of numerous organizations and entities expected to provide offsite services (e.g., reception hospitals for nursing homes and hospitals in the EPZ, ambulance and fire/rescue dispatch stations, bus companies, lumber companies, relocation centers, and the American Red Cross); and (c) the notification of all schools, hospitals, nursing homes, other special facilities, and handicapped persons in the EPZ, to verify their awareness of an emergency, the need to evacuate, and to arrange for assistance.

Second, the fact that commercial telephones will be used for so many purposes under the LILCO Transition Plan means that the probability of overload is much more significant now than it would have been under the facts that could have been litigated under EP 11 during Phase I. Thus, assuming arguendo that the factual question of the amount of public telephone usage during an emergency and the resulting likelihood of overload could have been litigated during Phase I, the facts concerning the likelihood of overload are substantially changed now because of the extensive use of telephones by LILCO personnel under the LILCO Plan. Even if public usage were a constant value in both Phase I and Phase II, the probability of overload is not.

Third, the impact of overload -- assuming the Board agreed with Intervenors' evidence on the probability of overload -- is much different under current circumstances than it would have been during Phase I. That is, even if Intervenors had prevailed on Contention EP 11, the result would have been a finding that LILCO's onsite plan was inadequate, and the problem could, arguably, have been remedied by installation of dedicated telephone lines or other more reliable means of communications between the Shoreham Control Room and the few entities covered by EP 11. Contention 26.B, however, addresses the much broader issue of whether there is reasonable assurance that any protective actions offsite can and will be implemented. Clearly, the problem identified in Contention 26.B -- that is, the LILCO Plan's almost total reliance upon commercial telephones for implementation of its entire offsite response Plan -- was not and could not have been addressed under Phase I Contention EP 11.

In sum, Intervenors are entitled to an opportunity to present evidence on the implementability of the offsite plan proposed by LILCO, including LILCO's proposals for notifying and marshalling the offsite response force. For these reasons, Contention 26.B should be admitted.

Contentions 35-38

The Board denied admission of training Contentions 35, 36, 37 and 38, stating that "the unavailability of [LERO] training materials precludes Intervenors from filing specific contentions required by NRC regulations." Order at ____. The Board also cites Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460 (1982), modified CLI-83-19, 17 NRC ____ (June 30, 1983) and appears to rule that Intervenors must meet the standards for late-filed contentions in filing training contentions once LILCO's training materials become available. Order at 17-18. The County objects to the Board's ruling because Contentions 35-38 meet the specificity requirement of 10 CFR §2.714, and because in the circumstances of this case, application of the late filed contention standard would be inappropriate. Surely, the County cannot be saddled with the burden of meeting the late filed contention standard when the sole reason for the County's not making a timely filing is that LILCO did not make training materials available on a timely basis. LILCO itself is the sole cause of this delay, and LILCO should in no way be permitted to use its tardiness to deny Suffolk County's rights.

Contentions 35-38 allege that LILCO's Plan, as presented to this Board as part of LILCO's licensing documentation, fails

to demonstrate that adequate training can and will be provided to emergency response personnel. The County alleges that this violates specific regulatory requirements. In the County's view, and as stated in Contentions 35-37, the Plan is deficient because LILCO has failed to develop training materials that satisfy applicable regulatory requirements, and because even the Plan's description of the planned training reveals inadequacies. Thus, given these deficiencies there can be no assurance that the personnel relied upon by LILCO will be adequately trained.

In dismissing Contentions 35-38, the Board seems to imply that a determination regarding the adequacy of LERO training could be made by the Board even in the absence of evidence concerning essential training materials. The County strongly disagrees and urges the Board to reconsider its ruling on Contentions 35-38. Intervenors are entitled to submit contentions that address LILCO's failure to comply with the regulations which require a finding of reasonable assurance that emergency personnel will be adequately trained.

Although the Board appears to believe it was granting a LILCO objection in its ruling on Contentions 35-38 (see Order at 17), the County notes that LILCO never raised a lack of specificity objection to those contentions. Rather, LILCO

asserted that all the training contentions (35-43) lacked basis because the County had not yet reviewed certain training materials not yet developed by LILCO. The lack of basis objection is inapposite. Contentions 35-38 are based upon the contents of the LILCO Plan and specifically identified implementing procedures. Although LILCO has stated its intention to develop additional training materials, the Plan and the Procedures nonetheless purport to describe the training to be provided or "offered" to offsite response organizations. The Contentions denied admission by the Board are based upon specific inadequacies which can be identified from such descriptions. While the forthcoming LILCO training materials may give rise to additional contentions, the non-availability of those materials does not render Contentions 35-38 inadmissible for lack of basis.

In addition, the County takes issue with the implication in the Board's Order that Contentions 35-38 are "unacceptably vague or unprecise." Order at 17. Those contentions clearly put the parties on notice of what they must defend against or oppose, as evidenced by LILCO's decision not to make a lack of specificity objection to them. For this reason, the Commission's opinion in Catawba does not support the Board's action. Catawba makes clear that "intervenors are expected to raise issues as early as possible" and that "[t]o the

extent . . . this leads to contentions that are superseded by the subsequent issuance of licensing-related documents, those changes can be dealt with" -- for example, by modifying the superseded contentions. The Board has previously been notified by the County of its intent to follow just such an approach if and when LILCO provides additional training materials. See note 10 to the Revised Emergency Planning Contentions.

Should the Board determine not to reconsider its ruling on Contentions 35-38, the County requests that LILCO be required to inform the Board and the parties when it considers its training materials to be complete. Without such a formal notification, the County will be unable to determine when, in the Board's opinion, it would be proper to file its training contentions.7/

Contention 43

The Board denied admission of Contention 43 with the following statement:

7/ This is particularly important since training materials are being sent to the County in a piecemeal fashion (apparently, as they have been completed). The County needs to know when such transmissions are complete and can be considered to constitute the entirety of the training materials, so that the County can at that time send the materials to the necessary consultants for review -- a necessary prerequisite to contention drafting.

> The Intervenors fail to establish adequate bases for the assertions that (1) distant residences of emergency workers render them unfamiliar with local conditions in the EPZ so as to have an adverse impact upon their performance during an emergency; (2) training cannot compensate for any adverse impacts of distant residence; and (3) a substantial number of LERO personnel do not in fact reside in the area.

Order at 18. The County objects to this ruling for the reasons stated above with respect to Contention 12.

Contention 43 reads as follows:

> Contention 43. Because many LILCO personnel are not area residents, they will not be familiar with the geography, topography, road network, demography, school and other facility locations, jurisdictional limits of emergency and volunteer organizations and their capabilities, and other local conditions in and around the EPZ. Moreover, they will not be aware of the internal workings of the communities within the EPZ. As a result, emergency personnel may be unable to deal promptly with, and make correct decisions concerning, unexpected situations or contingencies, as required by 10 CFR Section 50.47(a)(1), including: traffic accidents at key intersections; obstructions of evacuation routes; situations where persons refuse to evacuate because they fear that their homes/businesses will be unprotected; unavailability of relied upon emergency resources or personnel. Training alone cannot serve as a substitute for experience and is even less effective when those expected to manage and coordinate the emergency response or implement that response in the field are unfamiliar with, and may not have a concerted interest in, the area of the emergency. Thus, LILCO cannot

demonstrate compliance with 10 CFR Section 50.47(b)(15), 10 CFR Part 50, Appendix E, Section IV.F, and NUREG 0654, Section II.O.1.

As was the case with respect to Contention 12, the Board's ruling implies either that the Board disagrees with the factual assertions contained in Contention 43, or that the Board does not believe Intervenors can establish the truth of such assertions. Neither is an appropriate reason to rule a contention inadmissible for lack of basis. The County intends to introduce evidence to support each of the factual assertions contained in the contention, and is under no obligation to state such evidence at this stage of litigation.8/

Contention 85

The Board denied admission of Contention 85, stating only that "There is no basis for this contention." Order at 24. The County objects to this ruling and submits that the stated basis of Contention 85 satisfies the basis requirement of 10 CFR §2.714. If it does not, the Board should supply a full explanation, as required by NRC regulations governing Board decision-making.

8/ See, however, footnote 4 above for a description of some pertinent evidence which has been derived from initial discovery responses.

Contention 85 reads as follows:

> Contention 85. The LILCO Plan states (at 3.10-1):
>
> > LERO personnel will continue to monitor the affected areas and when radiation levels are such that it is safe to enter the area, will inform the Director of Local Response [a LILCO employee]. The Director of Local Response will then appoint a Recovery Action Committee to develop a recovery plan for the restoration of the area to its pre-emergency condition.
>
> (Emphasis added). The LILCO Plan thus merely states that a plan for recovery and reentry will be developed; at this time no such plan exists. This is contrary to the requirement of 10 CFR Section 50.47(b)(13) that "[g]eneral plans for recovery and reentry are developed," (emphasis added), and NUREG 0654 Section II.M.

It is clear from a reading of the contention that it sets forth both its factual basis (a quoted portion of the LILCO Plan) and its regulatory basis (10 CFR §50.47(b)(13) and NUREG 0654 §II.M). The County is at a loss to determine what additional basis the Board would require. The County submits that

Contention 85 meets the basis requirement and therefore should be admitted.9/

Respectfully submitted,

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Dated: September 1, 1983
Washington, D.C.

9/ The County is authorized to state that SOC joins in these Objections.

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-3 (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY OBJECTION TO SPECIAL PREHEARING CONFERENCE ORDER, dated September 1, 1983, have been served to the following by U.S. mail, first class, this 1st day of September 1983.

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