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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,))
Unit 1;)

Docket No. 50-322
(Offsite Emergency Planning)

TOWN OF SOUTHAMPTON'S OBJECTIONS TO
LICENSING BOARD'S SPECIAL PREHEARING
CONFERENCE ORDER, DATED AUGUST 19, 1983

Pursuant to 10 C.F.R. 2.751a(d), the Town of Southampton submits its objections to rulings of the Licensing Board which denied admission of certain emergency planning contentions pursuant to a Board Order, dated August 19, 1983, and served by ordinary mail on August 22, 1983. Southampton understands that further specific objections are being filed by Suffolk County and hereby joins in the County's filing. Southampton further reiterates the arguments and objections previously submitted during oral argument and in writing in support of contentions denied admission by the Board but not otherwise covered by the specific objections submitted today. The purpose of this filing is to submit Southampton's separate views on the Board's exclusion of Emergency Planning Contentions 22A-C from the emergency planning proceedings.

Argument

Stripped to its bare essentials, the Board's denial of contentions 22A-C is a myopic and contrived attempt to shield

critical emergency planning and evacuation issues from litigation and public scrutiny. The Board purports to justify its decision based on the theory that the contentions challenge the Commission's emergency planning rule (Order at 11). However, Southampton submits that it is the Board, not intervenors, which is attempting to rewrite the rules, by inventing restrictions where none were intended and by ignoring the logic, spirit and letter of the emergency planning rule.

From any perspective, the emergency planning rule demands flexibility, and requires the finder of fact to apply reason and judgment to site-specific circumstances in order to ascertain whether the public health and safety can be protected. Contentions 22A-C have presented the Board with such circumstances in order to focus the litigation on real world, rather than fantasy world considerations. The Board has chosen to ignore the real world by citing "generic" considerations. Apparently, the Board feels that Long Island exemplifies no more reason to evaluate emergency planning problems beyond a 10-mile "generic" zone than say, Omaha, Nebraska.

The mere fact that the emergency planning rule contains some generic standards is no bar to the issues intervenors seek to litigate. One could hardly have a rule without some standards. What is at issue here is whether those standards encourage or preclude flexibility. We think the former is true and that the more critical and unique an area's features, the more flexibility

is required by the rule -- even if it leads to the denial of an operating license.

In apparent support of a 10-mile restriction on EPZ size, the Board offers arguments that suggest the contrary. In referring to NUREG-0396, the Board states:

"It [NUREG-0396] recommended that an EPZ of about 10 miles be established for the plume exposure pathway because that area was sufficient for the initiation of predetermined protective actions." (Order at pp. 9-10; emphasis added).

Then, in explaining the inclusion of the 10-mile radius in the emergency planning rule, the Board referenced the Commission's Statement of Considerations in support of the emergency planning rule:

"These distances are considered large enough to provide a response base that would support activity outside the planning zone should this ever be needed." (Order at 10; 45 Fed. Reg. at 55406)

Nothing in the rule sets a limit on how far beyond 10 miles planning can reasonably be extended. All parties agree that some extension is permitted, we only disagree on the magnitude, and on the factors that logically (or legally) can prompt an extension. Apparently, the Board believes that political boundaries can (see Board ruling on Contention 22D) while factors such as those listed in 22B cannot.* We think the Board's distinction is arbitrary.

* The local factors listed in 10 C.F.R. 50.47(c)2 are not inclusive, but are illustrative: The regulation states, "such conditions as . . .", not, for example, "the following conditions: . . .". (emphasis added)

More importantly, an important consideration which might justify the use of a generic 10 mile EPZ -- the fact that 10 miles is large enough to provide a response base to support activity outside the zone -- has been challenged by intervenors here. The Board has apparently concluded, without first hearing the facts, that even if unique, local factors would preclude planning beyond the 10 mile zone should that be necessary, that fact would be irrelevant to emergency planning concerns. Southampton believes that conclusion is arbitrary and contrary to the emergency planning rule.

Perhaps the most compelling demonstration of the arbitrariness of the Boards' exclusion of Contentions 22A-C are the circumstances surrounding the hearing itself. As the Commission's regulations, supporting reports and statements (NUREG-0396; NUREG-0654; 45 Fed. Reg. 55402, et seq.) recognized, the cornerstone of emergency planning is the participation and judgment of the responsible local governments. After exhaustive analysis, Suffolk County determined that it could not uphold its constitutional obligation to protect the public health and safety and accordingly, declined to adopt or implement a Shoreham emergency plan.

Over intervenors' objections, the Commission decided that LILCO was entitled to an opportunity to demonstrate, as a matter of fact, that it could replace the County (and perhaps the State) for purposes of emergency planning. Such a hearing is unprecedented, and raises the most fundamental questions concerning the

relations among private companies and local, state, and federal government and constitutional obligations and standards for protecting the health and safety of the public.

Having thus placed the intervenors in the position of factually demonstrating why LILCO's plan won't work, the Board has now selectively excluded certain critical facts it does not wish to hear, by excluding Contentions 22A-C from the hearing.

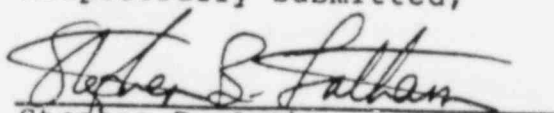
In sum, the Board's ruling on Contentions 22A-C exhibits little regard for (or knowledge of) the site-specific, local considerations and responsibilities of government that are the cornerstone of emergency planning. The Board has made no effort to distinguish its objection to litigation of site-specific PRA's prepared by the responsible local government (Contention 22A) from the local conditions set forth in Contention 22B. Nor has it explained why the local conditions listed in 22B are not within the scope of the emergency planning rule. Finally, while the Board will permit litigation of the need to include the entire Town of Riverhead, which extends more than 16 miles from the Shoreham site, in LILCO's emergency plan (see Board Order at 12), the Board has not explained why 16 miles is acceptable for Riverhead, but that 15 or 20 miles (or beyond) is not acceptable for the Town of Southampton.

Conclusion

For the reasons set forth above, Southampton objects to the

Board's exclusion of Contentions 22A-C from the emergency planning hearings. The Board's ruling is legally and logically indefensible and the contentions should be admitted.

Respectfully submitted,


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Dated: Riverhead, New York
September 1, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "TOWN OF SOUTHAMPTON'S OBJECTIONS TO LICENSING BOARD'S SPECIAL PREHEARING CONFERENCE ORDER, DATED AUGUST 19, 1983", dated September 1, 1983, submitted by the Town of Southampton, in the above captioned proceeding, have been served on the following, by deposit in the United States mail, first class, this 1st day of September, 1983.

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