

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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  
(Emergency Planning)

DOCKET NUMBER  
FILED IN FILE 50-322-0L-3

SUFFOLK COUNTY MOTION FOR LEAVE TO FILE  
CONTENTIONS REGARDING ONSITE EMERGENCY PREPAREDNESS

I. INTRODUCTION AND BACKGROUND

Suffolk County hereby moves for leave to file in the emergency planning proceedings before this Board contentions (attached hereto in draft form as Appendix A and incorporated herein by reference) regarding certain "offsite elements" of the onsite radiological emergency plan for Shoreham. This 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 limitations on the scope of contentions prescribed by LBP-83-22, 17 NRC \_\_\_, slip op. 62-65 (April 20, 1983).

The Board in LBP-83-22 excluded "any contention addressed to Phase I emergency planning matters." LBP-83-22 at 63. It explained:

While we have at times described the scope of Phase I matters using such shorthand terms as "onsite matters" or "LILCO's actions under its onsite plan," we consistently noted that we wished to litigate during Phase I all matters which were at that time capable of final resolution in advance of the then pending preparation of a local offsite plan by Suffolk County.

Id. (emphasis added).

Suffolk County submits that, under the circumstances of this case, the matters set forth in the County's draft contentions attached as Appendix A were not "capable of final resolution" during the "Phase I" proceedings, and accordingly such contentions were not excluded by LBP-83-22 and should be permitted to be filed in the present emergency planning proceeding.

## II. DISCUSSION

The County's draft contentions all relate to aspects of the LILCO onsite emergency plan, revised in May 1983 (the "Revised Onsite Plan"), which involve or depend upon offsite elements. The offsite elements required for onsite preparedness, but for which LILCO has not adequately provided in the Revised Onsite Plan are:

- A. Notification to the Public [(10 CFR § 50.47(b)(5))];

B. Notification of and Communications with State and Local Response Organizations [10 CFR § 50.47(b)(5) and (6)];

C. Training [10 CFR § 50.47(b)(15)];

D. Emergency Operations Center [10 CFR § 50.47(b)(8)];

E. Notification of and Communications with Emergency Personnel [10 CFR § 50.47(b)(6)]; and

F. Failure To Identify Offsite Response Organizations [10 CFR §§ 50.47(b)(1) and (3)].

All of the contentions arise from LILCO's failure to provide adequate measures to compensate for the fact that the County will not adopt or implement a radiological emergency response plan.

In its definition of "Phase I emergency planning" the Board did include certain offsite elements of the onsite plan. See LBP-83-22 at 64. However, the County's draft contentions, in Appendix A, which relate to offsite elements of the Revised Onsite Plan, were not "capable of final resolution" during the Phase I litigation in 1982 because such offsite elements were at that time based upon the erroneous fundamental assumption that Suffolk County would adopt and implement an offsite emergency plan. This is made clear by the Board's statement of the facts, Appendix A to LBP-83-22 ("Board Appendix A").

In the summer and fall of 1982, the Board, LILCO, and all parties were aware that the County was preparing an offsite emergency plan, while LILCO attempted to have New York State approve an offsite plan prepared by LILCO, but relying upon County participation and implementation. See Board Appendix A at A-6 to A-9. At the time that the Board, by confirmatory order of December 22, 1982, dismissed with prejudice the County's Phase I emergency planning contentions, the County's consultants had completed work on a draft offsite plan and the County had entered into a stipulation, in a New York State Court action, which anticipated County approval or disapproval of that plan by February 23, 1983. See Board Appendix A at A-8. Therefore, it is clear that during the 1982 Phase I litigation, the offsite elements of LILCO's onsite emergency plan as then drafted, and the County's contentions regarding the LILCO onsite plan (before they were dismissed), contemplated and relied upon the County's participation in and implementation of an offsite emergency plan. It 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. See Board Appendix A at A-9 to A-10. 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.

In late May 1983, LILCO submitted its Revised Onsite Plan. The County's draft contentions on the Revised Onsite Plan focus on issues which arise because that Plan does not adequately take into account the fact that Suffolk County will not participate in or implement any offsite emergency plan, including the so-called "LILCO Transition Plan." For example, the contentions show that the Revised Onsite Plan continues to rely upon Suffolk County government resources, despite Resolution No. 111-1983. These contentions involve matters which could not have been litigated and resolved during Phase I before the Board's December 22, 1983 Order confirming sanctions against the County, because at that time the onsite plan assumed the County would participate in and implement an offsite emergency plan.

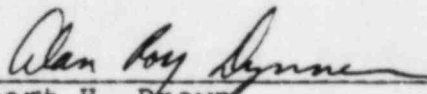
### III. CONCLUSION

For the foregoing reasons, Suffolk County submits that its motion for leave to file draft contentions regarding offsite elements of the Revised Onsite Plan should be granted. The County submits that, as shown in the draft contentions, the

Revised Onsite Plan is defective and incapable of adequate implementation because it erroneously relies upon the County to participate in and implement an offsite emergency plan.

Respectfully submitted,

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June 27, 1983



## APPENDIX A

### Suffolk County Draft Contentions Regarding Offsite Elements of LILCO's Revised Onsite Emergency Plan

Suffolk County contends that LILCO has not satisfied the regulatory requirements related to offsite elements required to achieve onsite preparedness, and therefore the LILCO onsite "Emergency Preparedness Plan, Revision 4" (May 1983) (the "Revised Onsite Plan") is deficient and does not provide "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 CFR §50.47(a)(1). The specific deficiencies in LILCO's Revised Onsite Plan are as follows:

#### A. Notification to the Public

Section 50.47(b)(5) requires in part that there be "means to provide early notification and clear instruction to the populace" in the event of a radiological emergency at Shoreham. Such means of notification are essential to alert the public and to keep it informed, if an accident occurs at Shoreham. The system established for notification of the public must have the capability essentially to complete that function within 15 minutes. 10 CFR Part 50, Appendix E, Section IV.D.3. It is the applicant's responsibility to demonstrate that all public notification requirements are met. NUREG 0654, Section II.E.6.

LILCO's Revised Onsite Plan calls for State and local response organizations to provide emergency notification to the public. (Revised Onsite Plan at 6-12; see also 5-10.)

However, neither the State nor Suffolk County have agreed to perform this task. Moreover, the Revised Onsite Plan does not specify any other "local response organization" which has agreed to do so, and no agreements to this effect are included in the Plan. Therefore, as written, the notification procedures outlined in the Revised Onsite Plan cannot and will not be implemented. Thus, the Plan does not satisfy 10 CFR §50.47(b)(5).

LILCO's "SNPS Local Offsite Radiological Emergency Response Plan" (the "Offsite Plan")<sup>1/</sup> relies upon LILCO employees to perform all necessary command and control functions, as well as all other emergency functions (with some assumed assistance from voluntary organizations). According to the Offsite Plan, the LILCO-staffed offsite emergency response organization, "LERO," will notify the public of a radiological emergency by activating an 89-siren Prompt Notification System, covering most of the 10-mile EPZ, and transmitting Emergency Broadcast System (EBS) messages over WALK radio. (Offsite Plan at 3.8). This provision cannot be implemented, however, because:

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<sup>1/</sup> Though LILCO's Offsite Plan provides alternatively for NRC, FEMA, the State of New York or LILCO to provide necessary command and control, this Board ruled on June 10, 1983 that only the LILCO Transition Plan, implemented by LILCO, is properly at issue at this time. Thus, all references to LILCO's Offsite Plan are to the LILCO Transition Plan.



1. LILCO does not have the authority under New York State law to make and implement decisions regarding public health and safety during a radiological emergency. Thus, it cannot lawfully make the determination that in a given emergency at Shoreham the public must be notified;<sup>2/</sup>

2. LILCO does not have the legal authority to utilize or activate the Prompt Notification System sirens;<sup>3/</sup>

3. LILCO does not have the authority to order Emergency Broadcast System messages to be broadcast over the radio or to determine the content of such messages;<sup>4/</sup>

4. Even assuming arguendo that LILCO possesses such authority, its efforts to notify the public, as set forth in the Offsite Plan, will be ineffective. As set forth in detail in SC Draft Contention 9: Public Notification/Information and SC Contention 8: Communications<sup>5/</sup>, the specific deficiencies in

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<sup>2/</sup> See FEMA's findings on the LILCO Transition Plan, submitted to the NRC on June 23, 1983 (the "FEMA Report") at 2-3 ("the legal authority cited in Attachment 1.4.1 to the plan (10 CFR 50.47) does not specifically grant the necessary police powers to a licensee to implement those aspects of an offsite emergency response requiring the exercise of governmental authority").

<sup>3/</sup> See n. 2 above.

<sup>4/</sup> See n. 2 above.

<sup>5/</sup> See "Consolidated Draft Emergency Planning Contentions," (June 23, 1983) at 115-124 (the "Draft Contentions").

LILCO's proposed notification procedures include the following:

a. LILCO does not have the ability to mobilize its key command and control personnel in a timely manner. The Offsite Plan identifies the Director of Local Response -- a LILCO employee -- as the individual responsible for making the decision to activate the prompt notification system, following his receipt of information concerning the emergency from the Shoreham Control Room and from other LILCO personnel. Activation of the sirens is through an encoder located in the Local EOC. (Offsite Plan at 33-4.) However, due to the limitations of the LILCO Customer Service Office resources (SC Draft Contention 8.A.1) and the inadequacies of the LILCO paging system (SC Draft Contention 8.A.3), there is no assurance that the Director of Local Response can be notified and the EOC activated in a timely manner. (See Contention D below). The time needed to notify and mobilize the LERO personnel necessary to make the decision to activate the sirens will prohibit their timely activation.

b. Assuming a decision to activate the sirens has been made, in the event of siren failure, LERO/LILCO personnel will be unable to provide backup notification in a timely manner (SC Draft Contention 8.C.2).

c. The notification system does not provide adequate notification of an emergency to transients or to those with impaired hearing (SC Draft Contention 9.C.1).

d. The Offsite Plan relies upon the Coast Guard to provide notification of an emergency to swimmers and boaters. There is no assurance that the Coast Guard will itself receive timely notification of the emergency since LILCO relies on commercial telephone for such communications (SC Draft Contention 8.A.2); moreover, the mobilization time required by the Coast Guard will prevent their timely notification of the public. (SC Draft Contention 8.C.5).

e. LILCO will not be considered by the public to be a credible source of information, and therefore notification or EBS information may be disregarded (SC Draft Contention 9.A).

f. The LILCO information brochures will not have been read or understood by the public. Therefore, the public will have no basis for understanding the notification and information it may receive from LILCO (SC Draft Contentions 9.B and 10).

g. Notification of and Communications with State and Local Response Organizations

10 CFR § 50.47(b)(5) requires procedures "for notification by the licensee of State and local response organizations." Section 50.47(b)(6) further requires that there exist

provisions for prompt communications among principal response organizations. Such notification and communication is important, both for onsite and offsite preparedness, to alert offsite emergency response authorities in the event of a radiological emergency and to inform them of its progress. Suffolk County contends that LILCO's Revised Onsite Plan offers no assurance that adequate means of notification of and communications with offsite response authorities exist.

LILCO's Revised Onsite Plan states that notification of an emergency to the local offsite emergency response authorities will be through the Suffolk County Emergency Operations Center in Yaphank. (Revised Onsite Plan at 7-4; EPIP 1-5 at 6, Attachment 6; see also, Revised Onsite Plan at 3-1, 5-10.) Moreover, the Revised Onsite Plan provides that communications will be established and maintained with the Suffolk County Department of Emergency Preparedness which "has the responsibility for the implementation of the County's emergency plans and implementing procedures of the various local agencies involved in the Suffolk County Emergency Plan (Department (sic), Suffolk County Sheriff, Riverhead Town Police, Fire Safety, etc.)." (Revised Onsite Plan at 5-10; see also 3-1.)

It is evident from this language that LILCO's Revised Onsite Plan depends upon County participation to fulfill the

requirements of 10 CFR §§50.47(b)(5) and (6). However, LILCO does not have an agreement with Suffolk County to perform the services which LILCO assumes in its Revised Onsite Plan will be available. Moreover, despite LILCO's references to County participation, pursuant to Suffolk County Resolution Nos. 111-1983 and 456-1982, Suffolk County will not adopt or implement an emergency preparedness plan for the Shoreham plant. Thus, no Suffolk County resources or personnel will be available to assure that the offsite notification and communications links required for onsite emergency preparedness at Shoreham will, in fact, exist and be implemented. Therefore, the LILCO Revised Onsite Plan, as written, fails to comply with the requirements of 10 CFR §§50.47(b)(5) and (6).

C. Training

It is essential that all offsite organizations expected to respond onsite, including the police, receive appropriate radiological emergency training. 10 CFR §50.47(b)(15); NUREG 0654, Sections II.1.b and II.1.d. Failure to conduct such training could lead to emergency workers' being exposed to dangerous levels of radiation due to lack of knowledge about radiation and radiation protections.

The Revised Onsite Plan contemplates that the Suffolk County Police Department may respond onsite to a security



incident at Shoreham (EPIP 1-15 at 6). Yet, Suffolk County Police Department personnel expected by LILCO to respond have not received radiological emergency response training. For this reason, there is no compliance with 10 CFR §50.47(b)(15).

D. Emergency Operations Center

The NRC's emergency planning regulations require that there be "[a]dequate emergency facilities and equipment to support the emergency response." 10 CFR §50.47(b)(8); see NUREG 0654, Section II.F.1.d. One such required facility is a local emergency response center which is essential "for use in directing and controlling response functions." NUREG 0654, Section II.H.3. An Emergency Operations Center (EOC) is necessary for onsite preparedness so that there can be adequate notification of and communications with offsite authorities, who in turn can alert and inform the public of an accident and its progress.

The Revised Onsite Plan designates the basement of the Suffolk County Probation Building in Yaphank as the center for direction and control of the offsite emergency response. (Onsite Plan at 5-10, 7-4). However, LILCO has no agreement with Suffolk County permitting the use of this County facility for such a purpose. Indeed, such use is prohibited under Suffolk County Resolution Nos. 111-1983 and 456-1982.

Accordingly, the Revised Onsite Plan, as written, has no provision for an EOC and thus fails to satisfy 10 CFR §50.47(b)(8).

The LILCO Offsite Plan does provide for an EOC to be established by LILCO in Brentwood. Yet, as set forth in detail in SC Draft Contention 5: Emergency Operations Center,<sup>6/</sup> that EOC has not yet been established. In the absence of an operational EOC, LILCO is unable to perform the following functions required for onsite preparedness:

1. Notification of local response organizations and emergency personnel;
2. Notification and instruction to the populace;
3. Communication among principal response organizations to emergency personnel and to the public;
4. Dissemination of coordinated information to the public.

Accordingly, LILCO does not comply with 10 CFR §50.47(b)(8).

E. Notification of and Communications with Emergency Personnel

It is essential to any emergency response that there be adequate and reliable communications to and among emergency

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<sup>6/</sup> Draft Contentions at 100-101.

workers. Therefore, it is required that there be provisions for prompt communications to and among all emergency personnel during a radiological emergency. 10 CFR §50.47(b)(6). Such communications are vital so that emergency personnel may be quickly notified, mobilized and directed in a coordinated manner.

As noted in Draft Contention B above, the LILCO Revised Onsite Plan assumes that the communications systems of the Suffolk County Police Department, the Department of Fire Safety and the Department of Emergency Preparedness will be available to notify and communicate with emergency workers of offsite agencies. However, pursuant to Suffolk County Resolution Nos. 111-1983 and 456-1982, such communications systems will not be available for such use. Thus, the Revised Onsite Plan does not provide for communications with emergency personnel and therefore fails to comply with 10 CFR §50.47 (b)(6).

The LILCO Offsite Plan attempts to establish, on paper, an alternative communications system. However, for the reasons set forth in detail in SC Draft Contention 8: Communications,<sup>7/</sup> LILCO has not provided for adequate notification of and communications with its offsite emergency personnel.

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<sup>7/</sup> Draft Contentions at 107-121.

In particular:

1. The LILCO Customer Service Office does not have adequate resources to notify necessary personnel in a timely manner (SC Draft Contention 8.A.1).
2. The LILCO paper communications system does not assure prompt notification of key LILCO/LERO personnel (SC Draft Contention 8.A.3).
3. Notification of emergency personnel via commercial non-dedicated phone lines as proposed in the Offsite Plan will not be feasible during an emergency (SC Draft Contention 8.A.4).
4. 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 (SC Draft Contention 8.B.1 and 8.B.2).
5. 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. (SC Draft Contention 8.B.6).

6. LILCO's proposal to relay command and control communications to field personnel through transfer points will not work (SC Draft Contention 8.B.5).

7. Many LILCO field personnel will not be equipped with necessary communications equipment (SC Draft Contention 8.B.7).

In addition, the absence of an EOC capable of accommodating the notification and communications functions (see Draft Contention D above), further exacerbates the communications deficiencies in LILCO's emergency response scheme. Thus, LILCO fails to meet the requirements of 10 CFR § 50.47(b)(6).

F. Failure to Identify Offsite Response Organizations

10 CFR § 50.47(b)(1) requires that the responsibilities for emergency response be assigned to the licensee and State and local organizations. See also, NUREG 0654, Section II.A.1.a, b, and c. Section 50.47(b)(3) further requires that "arrangements for requesting and effectively using assistance resources have been made," and that "organizations capable of augmenting the planned response have been identified." Without identification of those entities, capable of assisting in an integrated emergency response, to be relied upon in the event of an emergency, there can be no assurance of onsite or offsite emergency preparedness.



LILCO's Revised Onsite Plan incorrectly identifies Suffolk County as the local response organization which will implement an offsite plan.<sup>8/</sup> (Revised Onsite Plan at 2-2, 5-10.) Moreover, the Revised Onsite Plan at 7-4 incorrectly identifies the basement of the Suffolk County Probation Building in Yaphank as the local EOC. In addition, Figures 3-1, 3-1.1, 3-1.2 and 3-1.3 in the Revised Onsite Plan, which purport to represent the organizational structure of the emergency response, do not identify any specific local response organizations; rather, the single word "Local" is typed into the applicable portion of the figure.

As set forth in Draft Contentions A through E above, LILCO has no agreement with Suffolk County to provide emergency resources or facilities in the event of an emergency at Shoreham. Furthermore, Suffolk County, through Resolution Nos. 111-1983 and 456-1982, has determined that it will not adopt or implement a radiological emergency response plan. Therefore, the organization and facilities that the Revised Onsite Plan identifies to carry out offsite functions are not and will not

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<sup>8/</sup> The Revised Onsite Plan at 3-1 also erroneously states that the Director of the Suffolk County Department of Emergency Preparedness has been authorized to function as Emergency Operations Director.

be available to perform those functions. As a result, the Revised Onsite Plan, as written, fails to identify a local emergency organizations with the capability of performing specific emergency response functions as required by 10 CFR §§50.47(b)(1) and (3).

The LILCO Offsite Plan identifies LILCO/LERO as the organization that will implement all offsite response and provide most necessary offsite resources. However, as stated in detail in SC Draft Contention 1 and in the FEMA Report (see n.2 in Draft Contention A above) LILCO does not have the authority to perform many of the functions essential to an effective and implementable offsite response.<sup>9/</sup> Thus, LILCO has failed to demonstrate the existence of an offsite response organization capable of performing the necessary emergency response functions; therefore LILCO does not and cannot comply with 10 CFR §§50.47(b)(1) and (3).

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<sup>9/</sup> FEMA also found that in addition to the 34 specific NUREG 0654 deficiencies found in the Offsite Plan, it could not make a favorable finding on the adequacy of the Offsite Plan absent:

A determination of whether LILCO has the appropriate legal authority to assume management and implementation of an offsite emergency response plan.

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LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322
	)	(Emergency Planning)
(Shoreham Nuclear Power Station,	)	
Unit 1)	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY MOTION FOR LEAVE TO FILE CONTENTIONS REGARDING ONSITE EMERGENCY PREPAREDNESS, dated June 27, 1983, have been served to the following this 27th day of June 1983 by U.S. mail, first class, except as otherwise noted.

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DATED: June 27, 1983

\* By Hand on 6/28 (by 1st class mail on 6/27)  
# By Federal Express