LILCO, August 19, 1983

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)
	)	
(Shoreham Nuclear Power Station, Unit 1)	)	

LILCO'S RESPONSE TO SUFFOLK COUNTY MEMORANDUM
IN RESPONSE TO BOARD INQUIRY REGARDING CONTENTION 22

Following oral argument on the admissibility of the contentions on August 9, 1983, and aware that the Board would issue a ruling on August 19, Suffolk County waited a week until August 16 and filed an additional bit of argument called "Suffolk County Memorandum in Response to Board Inquiry Regarding Contention 22." This unauthorized pleading was served on the Board by hand on August 16, in time for the Board to consider it in writing its opinion, and was sent to LILCO by Federal Express so as to arrive August 17.

The County's Unauthorized Pleadings

Suffolk County has adopted the practice of filing pleadings with the Board or the Commission whenever it feels it has something to say. The August 16 Memorandum, filed practically on the eve of the Board's decision on contentions, is a good example, but it is only one of many.1/ LILCO therefore

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1/ It is probably one of the least justified. The County has had multiple opportunities to argue the admissibility of its

(footnote continued)

supports the recommendation of the NRC Staff in the "NRC Staff Response to 'Suffolk County Motion for Leave to Respond to LILCO and NRC Staff NEPA Arguments,'" filed with the other Board on August 10, 1983, that the County be instructed to refrain in the future from submitting unauthorized filings until prior authorization is received from the Board. At the least, the County should be required to inform the other parties' counsel by phone when it plans to file an unauthorized pleading shortly before some important event such as a prehearing conference or a Board decision.2/

These recommendations are for the future. We would also be inclined to urge the Board to strike the County's August 16 Memorandum, except that (1) this is unrealistic, since it is likely that everybody in the case has already read the pleading and (2) the pleading doesn't appear to do any significant damage to the other parties' arguments. Instead, if the Board wishes to consider the August 16 Memorandum along with all the

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(footnote continued)

contentions, including two written responses to LILCO's objections to the contentions and oral argument on August 9. Thus the situation is distinguishable from Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 72-73 (1981).

2/ For example, the County's August 8 Response to LILCO's Objections reached LILCO the afternoon before the prehearing conference. Since the document is 125 pages long, presumably it was in preparation for several days, so that notice that it was coming could have been given.

other argument on the contentions, LILCO suggests that the Board also take into account the brief arguments set out below. In other words, if (as LILCO believes) the filing of the August 16 Memorandum was improper, the appropriate sanction in this instance3/ is not to strike the County's pleading but simply to accept the equally unauthorized argument below.

Local Conditions

The County's August 16 Memorandum is devoted in large part to arguing that all the County wants to litigate under Contention 22 is "local conditions." What is unclear is why the County has to have Contention 22 to litigate "local conditions."4/

Of course there are local conditions that must be considered in emergency planning for Shoreham. These local conditions have been taken into account in LILCO's Transition Plan. If the County thinks a particular local condition has not been

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3/ And possibly in this instance only. LILCO may well move to strike unauthorized pleadings in the future.

4/ The County lists the "shadow phenomenon" as a "local condition" that needs to be addressed. In the first place, the County has raised the issue of the shadow phenomenon in Contention 23. In the second place, overreaction in an emergency is not something new, something unique to radiological emergencies, or something unique to Shoreham. In the Waterford proceeding the NRC Staff witness testified that complications arising from public hysteria were taken into account, though without express mention, in NUREG-0654. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC ___, slip op. 44 (June 29, 1983).

taken into account, or has not been taken into account adequately, and if the County can allege with adequate specificity and basis how the condition affects emergency planning, then the County can produce an admissible contention. Indeed, it appears to LILCO that everything the County wants to litigate under Contention 22, save the PRA, is covered by some other contention.5/

What the County is apparently trying to do in its August 16 Memorandum is reformulate or recharacterize Contention 22 so as to make less clear that what the County proposes is to redo the analysis found in NUREG-0396 (albeit using different criteria) and set an EPZ as if the regulation § 50.47(c)(2) did not exist. But as the County backs further and further away from stating what it really wants to do, it falls into the trap of vagueness. To the extent it now alleges only that it wants to litigate "local conditions" under Contention 22, it is raising a contention with the same lack of specificity that caused its Phase I contention EP 1 (which also addressed "local conditions") to be ruled inadmissible for overbreadth.6/

5/ The County has indicated that even the PRA it hopes to litigate under the "shadow phenomenon," "dose assessment," and "protective action" contentions. But LILCO will in all likelihood oppose the admission of PRA evidence under these contentions when the time comes.

6/ See Supplemental Prehearing Conference Order (Phase I - Emergency Planning), LBP-82-75, 16 NRC 986, 991-95 (1982); Prehearing Conference Order (Phase I - Emergency Planning), slip op. 5-7 (July 27, 1982).

To repeat: if there is any "local condition" with a specific impact on emergency planning that should be considered, the County should have written a contention about it. Indeed, it appears to LILCO that the County has already written a contention on just about every local condition that can be thought up.

The March 15, 1982, Order

Suffolk County keeps relying on a quotation in the Board's Order of March 15, 1982:

> [O]ur ruling does not preclude a contention that because of the geography of Long Island, evacuation planning within an approximate 10 mile EPZ may not be adequate because of the impacts of persons outside and to the east of the EPZ choosing to evacuate and having to do so by coming through the EPZ.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 618-19 (1982). It has never been clear to LILCO why Suffolk County thinks this quotation supports its case. The contention envisioned by the Board in the quotation is about the adequacy of evacuation planning within an approximate 10-mile EPZ. This supports the view that, while Suffolk County may properly litigate whether the inappropriate evacuation (overreaction) of people outside the 10-mile EPZ may cause the response inside the 10-mile EPZ to be inadequate, it cannot properly litigate whether the 10-mile EPZ ought to be expanded to, say, 15 miles or 20 miles.7/

7/ Note also that the quoted language addresses the impact "of" persons outside the EPZ, not the impact "on" those persons.

Ad Hoc Augmentation of Emergency Response

The County continues to assert (at page 4 of its Memorandum) that it is appropriate to litigate whether there can be an ad hoc augmentation of the emergency response beyond the 10-mile zone. This is unquestionably a challenge to the NRC regulations. One of the four bases of the 10-mile EPZ stated in NUREG-0396 and NUREG-0654 is that a 10-mile zone is a sufficient base to allow for ad hoc augmentation beyond that distance. This was clearly a considered judgment (not an "assumption" as the County keeps claiming)8/ and was adopted by the Commission when it adopted the emergency planning rule.9/ Litigating whether this generic judgment applies to Shoreham would be a challenge to the regulation, pure and simple.

Conclusion

LILCO does not believe that either this response or the County's August 16 Memorandum was necessary, but if one is to be considered, then the other should be considered along with it. LILCO does believe that the practice of one party's always

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8/ See page 9 of the August 16 Memorandum.

9/ These distances [10 and 50 miles] are considered large enough to provide a response base that would support activity outside the planning zone should this ever be needed.

45 Fed. Reg. at 55,406 col. 2 (Aug. 19, 1980) (preamble to final emergency planning rule).

attempting to have the last word, no matter what the regulations may provide, should not be allowed by this or any other Board.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

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DATED: August 19, 1983

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 Response to Suffolk County Memorandum In Response to Board Inquiry Regarding Contention 22 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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