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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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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 TO
SUFFOLK COUNTY'S MOTION FOR
REJECTION OF LILCO TRANSITION PLAN
AND FOR CERTIFICATION TO THE COMMISSION

On August 4, 1983, intervenor Suffolk County filed its "Motion for Rejection of LILCO Transition Plan and for Certification to the Commission" (hereinafter "Motion"). Suffolk County argues that the LILCO Transition Plan, an offsite emergency plan under which LILCO would assume most of the responsibility for emergency response in the case of an accident at its Shoreham Station, is automatically inadequate because neither Suffolk County nor the State of New York has agreed to participate in it. For the reasons stated below, LILCO opposes Suffolk County's motion.

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- I. The constant need to reargue the same
issue is only diverting attention from
the litigation of the facts

Suffolk County has made the same argument so many times now that it is getting difficult to count. The Suffolk County Legislature decided on February 17, 1983, to oppose radiological emergency planning. A week later the County filed its Motion to Terminate the Shoreham Operating License Proceeding (Feb. 23, 1983). The argument was then, as it is now, that without Suffolk County's help it is impossible to meet the NRC emergency planning requirements. The Licensing Board believed that the County's filing did not clearly raise and support the legal issues and ordered a briefing schedule.^{1/} On March 4 the County filed a supplemental brief. After LILCO and the NRC Staff filed briefs in response, the County filed an unauthorized reply,^{2/} along with a request for leave to file it. The Licensing Board, and subsequently the Commission, decided that the County was wrong. Memorandum and Order, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-83-13, 17 NRC ____ (1983).

1/ Confirmatory Memorandum and Order Directing the Submission of Briefs Addressing Suffolk County's Motion to Terminate this Proceeding (Feb. 28, 1983).

2/ Suffolk County's Reply to LILCO and the NRC Staff's briefs in Opposition to the Shoreham Operating License Proceeding and the County's Motion for Certification (Mar. 29, 1983).

Having thus lost the argument, the County set out to make it anew. As soon as LILCO filed its offsite plans, including the Transition Plan as well as three other modules to be used if the State, FEMA, or the NRC participated, the County filed its June 7 "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness," making the argument it now makes to this Board. On June 13 it filed its "Motion for Immediate Commission Decision Rejecting LILCO 'Transition Plan.'" The rejection of these efforts by the Commission on procedural grounds was what prompted the instant motion to this Board.

Next the County attacked on the low-power testing license front, filing its "Motion to Defer Commission Action and for Commission to Hear Views of the Parties before Deciding Certified Question Regarding Low Power License for Shoreham." Again, it argued that no offsite plan could be implemented because of its own nonparticipation. It argued the same point in its "Suffolk County Motion for Leave to File Contentions Regarding Onsite Emergency Preparedness" on June 27, and again in its "Answer and Opposition of Suffolk County to LILCO's Motion for a Low Power License" of June 27. It argued the same point in correspondence from the Suffolk County Executive to the Commissioners.

Finally, Suffolk County argues the same essential point -- that LILCO cannot meet the NRC's emergency planning regulations without Suffolk County's cooperation -- in many of its 177 pages of contentions, the most recent version of which is dated July 26, 1982. The short of the matter is that Suffolk County has already had so many bites of the apple that there is no apple left.

The County's argument in each and every one of the above pleadings is simply that without Suffolk County's cooperation, and without present assurance of the State's help, LILCO cannot possibly meet the NRC emergency planning regulations. The need to reargue this issue over and over again is a waste of resources. It is costing time and money that could better be spent in preparing to litigate the facts.

At some point the filing of pleading after pleading arguing the same point becomes abusive. LILCO believes that point was reached some time ago.

II. The Commission has already decided the issue

It is not the case, as the County asserts at pages 3 and 6 of its motion, that the issue it now raises is a new one that the Commission has never reached. The County suggests that the Commission's Memorandum and Order of May 12, affirming the

Licensing Board's decision of April 20, was based on the assumption that the State of New York (or some other government) would participate in the emergency plan.^{3/} There are several answers to this argument.

First, there is not the slightest indication in the Licensing Board's decision or the Commission's affirmance that what the County says is true. To the contrary, the Commission said "as we read the applicable regulatory provisions, the agency is obligated to consider a utility plan submitted in the absence of State and local government-approved plans."

CLI-83-13, slip op. 3 (emphasis added). Indeed, in its second brief on this issue the County attempted to distinguish the Indian Point case by noting that "the State has determined that it 'will not be a party to any effort to impose an independently developed State plan upon Suffolk County.'" Supplemental Brief of Suffolk County 29 (Mar. 4, 1983). The County attached the Governor's statement to that effect to its brief as Exhibit 5.

^{3/} It is not true, as Suffolk County alleges, that no governmental entity at all will participate in the offsite plan. The Department of Energy will participate in the same capacity as it participates in offsite plans at other nuclear facilities. The Coast Guard will also participate.

Second, it is quite too early to rule out New York State's participation in an offsite plan. A decision on that score has not been made and will probably not be made until the Governor's Shoreham Fact Finding Panel completes its work sometime this fall. It is worth noting that this Board has not eliminated the offsite plan submitted by LILCO that includes New York State personnel; it has only deferred consideration of that plan until such time, if it comes, that New York State agrees to help.^{4/}

Third, it is quite apparent that the issue of whether the LILCO Transition Plan is adequate is a factual issue that requires a hearing. The County relies to a large extent on Commissioner Gilinsky's view that there can clearly not be adequate emergency preparedness if neither the State nor the County governments will participate. Motion 4. But the fact of the matter is that the Commissioner's view is not clear. He did state, as the County points out, that there clearly cannot be adequate emergency preparedness. On the other hand, on June 29 he said that he does "not have a view as to whether the Licensing Board's doubts about the possibility of adequate emergency preparedness are justified." Separate Views of Commissioner Gilinsky, Long Island Lighting Co. (Shoreham Nuclear

^{4/} See Order Limiting Scope of Submissions (June 10, 1983).

Power Station, Unit 1), CLI-83-17, 17 NRC ____ (1983). In his separate views on the Commission's July 15 Order Commissioner Gilinsky said that the Commission was evading its responsibilities by evading the central issue (the issue now argued by the County) and as a result was delaying resolution of the case.

Obviously an evidentiary record is necessary to decide whether there can be adequate emergency preparedness without County participation, and without State participation if the State declines to help. This is unquestionably an issue of fact, and due process, if nothing else, requires that LILCO be given a hearing. Indeed the County argues it as a question of fact in its motion, citing the evidence of Three Mile Island:

The County submits that one of the undisputed lessons of the TMI accident is that there can be no adequate preparedness without the full support and participation of the responsible governments. Without reasonable assurance of adequate emergency preparedness, the NRC cannot issue an operating license to LILCO. 10 C.F.R. § 50.47(a)(1). Since LILCO's "Transition Plan" has neither the support or participation of any government, that "plan" should be rejected.

Motion 5. There is, LILCO submits, no court and no administrative agency in this country that would deny a hearing to an applicant with a \$3.2 billion facility on the basis of the "undisputed lessons of the TMI accident." In fact, the "lessons

of the TMI accident," especially the need to prevent the poor communications to the public that characterized that accident, have been taken into account in designing LILCO's Transition Plan.

For that matter, Suffolk County, in its "Suffolk County Response to ASLB Request for Parties' Views on Emergency Planning Matters" (Aug. 4, 1983), argues that "to test whether LILCO is in fact capable of implementing adequate protective actions in the event of a Shoreham emergency, the LILCO plan must be carefully analyzed and its bases fully understood" (page 8.). The County proposes to take depositions of LILCO people for 32 days and follow-up depositions of people from the Red Cross, the Department of Energy, and bus companies (pages 15, 17). Taking the County's two August 4 pleadings together, then, the County's position appears to be (1) that the essential facts are undisputed and (2) that there are an astonishing number of complicated facts to explore.

If the Board wants to know what the facts are, the facts are not that the "undisputed lessons" of TMI show emergency planning on Long Island to be impossible. The facts are that LILCO is training 1700 people, holding discussions with outside organizations such as the Red Cross and the Department of Energy, arranging for some 300 evacuation buses to be available,

and doing the countless other detailed tasks that need to be done to put in place a workable emergency plan. An organization of some 30 people at LILCO is engaged in nothing else, full-time. The County is entitled to try and prove, if it can, that these efforts will be inadequate. What the County cannot do with any credibility is pretend that the adequacy of those efforts is a question of law rather than of fact.

III. No certification to the Commission is necessary

For the reasons stated above, certification to the Commission is not warranted. The Commission has already decided the issue, and there is no need for it to decide it again.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

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DATED: August 8, 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 Answer to Suffolk County's Motion for Rejection of LILCO Transition Plan and for Certification to the Commission 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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